

to determine whether the legal estate is in the trustees or administratrix. To remove any question on this point, when title is being made both should join in the conveyance.

Costs out of the estate.

HODGINS, LOC.J.

DECEMBER 1ST, 1904.

EXCHEQUER COURT OF CANADA.

(IN ADMIRALTY.)

REX v. THE "TUTTLE."

*Ship—Arrest—Release—Re-arrest—Escape—Burden of Proof
—Bond—Pleadings.*

Motion by the Crown for a bond and pleadings.

A. G. Murray, North Bay, for the Crown.

E. G. Morris, for the ship.

HODGINS, LOC.J.—The proceedings before me on this interlocutory application disclose several irregular and unexplained proceedings on the part of some of the officials concerned in the following matters.

On 2nd August, 1904, a writ of summons and warrant of arrest were issued out of this Court against the ship "H. B. Tuttle" for injuries caused by her to the Indian Point bridge in Manitoulin. On 4th August the ship was arrested at French River by the collector of customs at that port. On 8th August the following telegram from the public works department was sent to the solicitor for the Crown at Gore Bay:

"H. B. Tuttle was sold by marshal Admiralty Court in 1903. Claim now invalid. Attorney advises release."

On the following day the above telegram was cancelled by the following to the same solicitor:

"Message of yesterday cancelled. On further information with regard to the Tuttle withdraw order for release at once."

This telegram was supplemented by the following on the same day:

"On reading your letter of 6th, Attorney-General desires Tuttle held and wire of yesterday cancelled."

But it was admitted during the argument that some person interested in the ship obtained from the public works department (whether from the head or a subordinate officer of the department has not been disclosed) a copy of the first