

## TORONTO ADMIRALTY DISTRICT.

*In re* THE SHIP *ISHPEMING*.

1902

Nov. 24.

*Maritime law—Arrest on telegram—Rescue—Contempt of court—Ignorantia legis neminem excusat—Practice.*

It is competent for a deputy-marshal to arrest a ship in an action for wages upon a telegram from the marshal of the Admiralty District having jurisdiction of the action, informing him that a writ of summons and a warrant had been issued and mailed to him.

2. The master of the ship, although ignorant of the legal consequences of his act, was held guilty of contempt in permitting the ship to be moved after the deputy-marshal had gone on board, read to the master a copy of the writ of summons and of the marshal's telegram, informed him that the ship was under arrest, and tacked up a copy of the writ on the ship.

**MOTION** for an order of commitment for contempt of court in an action against a foreign ship for wages.

A warrant of arrest had been issued, at Toronto, and a telegram was sent by the marshal to his deputy at Port Stanley, where the ship then was, to arrest the ship, and informing him that a writ of summons and a warrant had been issued and mailed to him. The deputy, on receiving the telegram and before receiving the warrant, went on board, read a copy of the writ of summons and of the marshal's telegram, to the master of the ship, and informed him that the ship was under arrest, and tacked up a copy of the writ of summons on the ship. During the temporary absence of the deputy, the mate of the vessel, acting as he says on the advice of a solicitor, and of the United States consul, and without any orders from the master of the ship, and without his consent or knowledge, ordered the ship from the dock at Port Stanley and proceeded on the voyage.

1903

*In re*THE SHIP  
ISHPEMINJ.Statement  
of Facts.

Judgment.

Plaintiffs then moved for an order against the master of the ship, directing the issue out of the court of a writ of attachment against him for his contempt of court in releasing and rescuing the said ship from arrest, after the same had been placed under seizure in the manner above described.

The master filed his affidavit in reply stating that he had given no orders to move the ship; but on the contrary had intended remaining at Port Stanley, although at heavy expense and loss, and was not aware that the mate had done so until the ship had reached the next port. He then suggested to the mate that the ship should return, but he thought the question at issue so trifling that the ship should not be delayed in her earnings. He further stated in his affidavit that in permitting the ship to continue her course he did not know he was committing any contempt of court.

On the motion, which after several adjournments, came on for argument, before his Honour Judge McDougall, local judge in Admiralty, on the 24th day of November, 1902, it was contended on behalf of the master that there was no valid arrest, the warrant not having arrived until after the ship had left the port, and that notice of the warrant was insufficient.

*W. J. Tremear*, for plaintiffs.

*H. J. Wright*, for master of ship.

*Per Curiam*: The arrest upon the telegram was valid, and the master was guilty of contempt of court; but he now apologizing and bringing into court a sum sufficient to cover the claim and costs, an order was made that upon payment of the costs of the motion, the ship be released from arrest.

The *Seraglio* (1885) L. R. 10 P. D. 120, followed and applied.

*Order accordingly.*