

Street, J.]

REX v. WATTS.

[Feb. 15.

Habeas corpus—Contempt of foreign divorce judgment—Parent stealing his own child—Foreign law—Extradition—Crim. Code s. 284.

Application for discharge on a writ of habeas corpus. The prisoner and his wife got a collusive decree for divorce in the State of Illinois where they were domiciled in 1900, and the marriage was absolutely dissolved. One of the terms of the decree gave the custody of their child, five years old, to the wife, with permission to the prisoner to take it out with him in the day time but to return it the same day. The prisoner having obtained the child, instead of returning it, brought it to Canada.

Held, following *Re Murphy*, 24 O.R. 163, 23 A.R. 385, that "child stealing" being mentioned in the existing Extradition Treaty between the United States and Great Britain, one of the extradition crimes, the court should in the absence of any evidence to the contrary, assume the crimes to be identical in the two countries, and the onus did not rest upon the Crown of proving what the foreign law was. The evidence taken before the extradition commissioner shewed a case of child stealing under sec. 284 of the Criminal Code, 55 56 Vict., c. 29, and in the absence of evidence of foreign law that was sufficient. Sec. 284 of the Criminal Code does not exclude the case of father and child. Though what was done was a contempt of court, yet if a man has committed a crime it does not become the less a crime because it also happens to be a contempt.

As to the prisoner's contention that he had acted in good faith because he had been advised that the decree of divorce having been obtained collusively was a nullity, this was a matter which might properly be set up as a defence by the prisoner upon his trial, but could not be properly dealt with by the magistrate who had before him the decree of the foreign court, and the oath of the wife that she did not collude.

Aylesworth, K.C. and *F. A. Anglin*, for prisoner. *Shepley*, K.C., for Crown.

Street, J.] IN RE PUBLISHERS' SYNDICATE. MALLORY'S CASE. [Feb. 21.

Company—Subscription for shares—Condition precedent—Liability—Notice.

Mallory signed an application for five shares in the company subject to the condition, not however appearing on its face, that he was not to be required to accept any allotment until he should have collected \$700 then due to him, which would enable him to pay for the shares. The president was fully advised of this condition, either when the application was handed in to him, or shortly afterwards. The directors allotted the shares to Mallory, but no formal notice of such allotment was ever given to him. He never paid anything on the shares or acted in any way as a shareholder. He failed to collect the \$700 referred to, and on two occasions told this to persons sent on behalf of the company to enquire; he finally went to the