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EXTRADITION–PENDING JUDICIAL HEARING UNDER ILLINOIS FUGITIVE ACT NO BAR

Petitioner appealed from an order quashing a writ of habeas corpus filed to secure release from custody under an extradition warrant issued by the Governor of Illinois on requisition of the Governor of New York. Petitioner contended that the pending judicial hearing on a fugitive complaint filed previously in the Municipal Court of Chicago in accordance with the Illinois Fugitives from Justice Act,[1] precluded issuance of a rendition warrant until compliance with the statute, and that failure to do so was a denial of due process under the provisions of the 14th Amendment to the United States Constitution. It was held that the pending judicial hearing to which the accused was entitled on the fugitive complaint was rendered *functus officio* by the requisition of the demanding state for a rendition warrant, and action on the requisition was not precluded by the pendency of the judicial hearing on the fugitive complaint. *People ex rel. Millet v. Babb*, 1 Ill. 2d 191, 115 N.E. 2d 241 (1953).

There is no previous case exactly in point, although the same contention was raised in *People ex rel. Gilbert v. Babb*.[2] There, it was held that the petitioner, in moving for a hearing by the Governor on the requisition made by the demanding state subsequent to the fugitive complaint, waived his right to a judicial hearing. The court in the instant case distinguished it on that basis.

Extradition is a creature of statute[3] and, as it relates to the regulation of interstate relations, the United States Constitution and federal statutes enacted in aid thereof as interpreted by the United States Supreme Court are controlling.[4] However, state statutes may be enacted in conformance with and in furtherance of the controlling federal law.[5]

Under Illinois statute there are two alternate methods by which extradition proceedings may be commenced.[6] In order for a valid extradition under either method, federal law states two requirements: (1) that the accused is substantially charged with the commission of an extraditable offense in the demanding state, and (2) that the accused is a fugitive from justice, i.e., that he was in the demanding state at the time of the alleged

[1] Ill. Rev. Stat. (1953) c. 60, §§ 3 and 4.

[2] 415 Ill. 349, 114 N.E. 2d 358 (1953).

[3] U.S. Const. Art. 4, § 2; 62 Stat. 822 (1948), 18 U.S.C.A. § 3182 (1951); Ill. Rev. Stat. (1953) c. 60.

[4] United States ex rel. McCline v. Meyering, 75 F. 2d 716 (C.A., 7th, 1935); Ex parte Rubens, 73 Ariz. 101, 238 P. 2d 402 (1951), cert. denied 344 U.S. 840 (1952).

[5] Holmes v. Babb, 414 Ill. 490, 111 N.E. 2d 316 (1953); Bishop v. Jones, 207 Miss. 423, 42 So. 2d 421 (1949); Spiak v. Seay, 185 Va. 710, 40 S.E. 2d 250 (1946).

[6] People ex rel. Gilbert v. Babb, 415 Ill. 349, 114 N.E. 2d 358 (1953).

offense.[7] The first is a question of law; the second, a question of fact.[8] The difference between the two methods is primarily one of proof of the first of these two elements, since by both methods the determination of the fact question resides in the Governor.[9]

The first method of extradition is by direct application to the Governor by the demanding state. It is the method contemplated by and in conformance with the controlling federal law. Under this procedure, whether or not the accused is substantially charged is determined by the Governor on the face of the requisition papers which, with the rendition warrant, constitute a prima facie case against the accused.[10]

The second method supplements and expedites the extradition process by providing for the arrest and detention of the accused prior to any action by the demanding state. It is in harmony with the federal statute in accomplishing this purpose. By this method, the asylum state is compelled by consideration of due process to offer evidence at the hearing on the fugitive complaint to justify the restraint of the accused's liberty. The evidence offered at the judicial hearing stands in the stead of the requisition papers present in the first method.

However, extradition is a summary and ministerial proceeding and involves only the substantive right of the accused to be free from illegal detention by the asylum state for the purpose of extradition. The legality or illegality of the detention depends entirely on federal law establishing the requisites for extradition. Otherwise, extradition is a procedural provision which does not impinge on any substantive right of any individual and does not affect any provision of the Constitution or its amendments protecting such rights.[11]

Habeas corpus is the remedy for testing the validity of the detention by the asylum state. It is expressly provided for by the Illinois statute, although the federal statute is silent. However, there is no question of the availability of this remedy.[12] The scope of habeas corpus review is limited.[13] It is not the purpose of the writ to substitute the judgment of another tribunal upon the facts or the law of the matter to be treated by

[7] Appleyard v. Massachusetts, 203 U.S. 222 (1906); Brewer v. Goff, 138 F. 2d 710 (C.A., 10th, 1943); Kahn v. Meyering, 348 Ill. 486, 181 N.E. 300 (1932).

[8] People ex rel. Gardner v. Mulcahy, 390 Ill. 511, 62 N.E. 2d 418 (1945).

[9] Gilbert v. Babb, 415 Ill. 349, 114 N.E. 2d 358 (1953); People ex rel. Guidotti v. Bell, 372 Ill. 572, 25 N.E. 2d 45 (1940).

[10] Willis v. Mulcahy, 392 Ill. 411, 64 N.E. 2d 860 (1946); Strobel v. Mulcahy, 390 Ill. 233, 60 N.E. 2d 397 (1945).

[11] Johnson v. Matthews, 182 F. 2d 677 (App. D.C., 1950).

[12] United States ex rel. Darcy v. Superintendent of County Prisons, 111 F. 2d 409 (C.A. 3d, 1940); Ex parte Birdseye, 244 Fed. 972 (S.D. N.Y., 1917).

[13] State v. Parish, 242 Ala. 7, 5 S. 2d 828 (1941).

the court of the demanding state.[14] The question of the guilt or innocence of the accused, or the method of his apprehension, are not for consideration. The hearing on the writ of habeas corpus is limited to the determination of whether or not the two requisite elements for extradition are present.[15]

The purpose of the federal constitutional provision and statute is the expeditious return of fugitives from justice to the demanding state.[16] A state statute which hinders or impedes the operation of the federal statute has been held void.[17] Further, it has been held that a state statute in aid of extradition need not necessarily be complied with.[18]

Extradition by direct requisition upon the asylum state supersedes prior proceedings under any state process of extradition. Procedural errors in the prior proceedings do not invalidate the subsequent proceedings on the direct requisition. The right of the accused is limited to a review by writ of habeas corpus of the two essential elements enumerated above. Other matters are extraneous to the procedure, and do not constitute grounds for relief.

LABOR LAW–DISLOYALTY AS CAUSE FOR DISCHARGE

A labor union representing television technicians appealed to the United States Supreme Court for modification of a National Labor Relations Board order upholding the discharge of certain technicians by the television station. At a critical time in the initiation of the station's television service, the technicians sponsored or distributed handbills, which made a sharp, public, disparaging attack upon the quality of the station's product and its business policies, in a manner reasonably calculated to harm the station's reputation. The handbills contained no reference to a labor dispute. The decision of the Supreme Court was that these acts constituted disloyalty and, thus, grounds for "discharge for cause" and not an "unfair labor practice," within the meaning of the Taft-Hartley Act. The decision was not influenced by the fact that at the time of distribution of the handbills a labor dispute existed between the station and the union. *NLRB v. Local Union No. 1229, International Broth. of Elec. Workers*, 74 S.Ct. 172 (1953).

[14] Drew v. Thaw, 235 U.S. 432 (1914); Flowers v. Ross, 196 F. 2d 25 (App. D.C., 1952).

[15] Davis v. O'Connell, 185 F. 2d 513 (C.A. 8th, 1950); Dean v. State of Ohio, 107 F. Supp. 937 (N.D. W. Va., 1952); Gerrish v. New Hampshire, 97 F. Supp. 527 (S.D. Me., 1951).

[16] Biddinger v. Commissioner of Police, 245 U.S. 128 (1917).

[17] State v. Parrish, 242 Ala. 7, 5 So. 2d 828 (1941).

[18] In re Sanders, 31 N.E. 2d 246 (Ohio App., 1937); Ex parte Bergman, 60 Tex. Crim. Rep. 8, 130 S.W. 174 (1910).