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CRIMINAL PROCEDURE—INTERSTATE EXTRADITION—SCOPE OF REVIEW ON HABEAS CORPUS—[Missouri].—The relator, charged with the commission of robbery in Adams County, Illinois, on June 22, 1930, was taken in custody on the warrant of the Governor of Missouri, issued upon the requisition of the Governor of Illinois. The relator brings habeas corpus to effect his release, contending that the Governor of Missouri had wrongly considered evidence to show commission of the alleged crime on a different date from that originally charged. Held: The question of jurisdiction to issue the warrant is the only question subject to judicial review.¹ Hence the relator was remanded to custody.

Interstate extradition is not dependent on comity, courtesy or contract,² but is governed by the Federal Constitution³ and statutes⁴. The method devised is essentially one of the executive demand and executive surrender,⁵ with an unenforceable duty resting on the surrendering executive.⁶ The governor of one state is authorized to honor the requisition made on him by the governor of another state⁷ when the following jurisdictional grounds exist: (1) That the accused has been formally charged with a crime in the demanding state; (2) that he has fled therefrom.⁸ Whether there has been a sufficient charge of the crime is a question of law; whether the accused is a fugitive from justice is a question of fact.⁹

1. *Williams v. Robertson*, agent of State of Illinois, 95 S. W. (2d) 79 (Mo. 1936).

2. *People v. Hyatt*, 172 N. Y. 176, 64 N. E. 825, 92 Am. St. Rep. 706, 60 L. R. A. 774; *Aff'd.* 188 U. S. 691, 23 S. Ct. 456, 47 L. Ed. 657 (1903); *Rummerfield v. Watson*, 335 Mo. 71, 70 S. W. (2d) 895 (1934); *State v. Westhues*, 318 Mo. 923, 2 S. W. (2d) 612 (1928); *Ex parte Montgomery*, 244 Fed. 967 (D. C. S. D. N. Y., 1917); *In re opinion of Justices*, 201 Mass. 609 (1909).

3. U. S. Const., Art. 4, Sec. 2; *Ex parte Montgomery*, supra, note 2; *State v. Westhues*, supra, note 2.

4. 1 Stat. 302 (1793), 18 U. S. C. A. sec. 662; For the historical background, see Hoague, *Extradition between States* (1879) 13 Am. L. Rev. 181; R. S. Mo. 1929 sec. 1458 and R. S. Mo. 1929 sec. 3591 disclose on their face that they are intended to be merely in aid of the federal law.

5. See *Drucker, A Proposed Correction of the Illinois Statute to Facilitate Extradition* (1931) 26 Ill. L. Rev. 168.

6. See *Kentucky v. Dennison*, 24 How (U. S.) 66, 16 L. Ed. 717, where it was said that mandamus will not lie to compel the executive to obey a proper requisition.

7. See *Ex parte Hogan*, 245 S. W. 336 (Mo. 1922).

8. U. S. Const. Art. 4, sec. 2; 1 Stat. 302, 18 U. S. C. A. sec. 662 (1793); *Keeton v. Gaiser*, 331 Mo. 499, 55 S. W. (2d) 302 (1932); *Ex parte Morgan*, 20 Fed. 298 (D. C. W. D. Ark., 1883); *Hughes v. Pflanz*, 138 Fed. 980 (C. C. A. 6, 1905); *Roberts v. Reilly*, 116 U. S. 80, 6 S. Ct. 291, 29 L. ed. 544 (1885). The proposition has been variously stated, See *Munsey v. Clough*, 196 U. S. 364, 25 S. Ct. 282, 49 L. ed. 515 (1905); *Rummerfield v. Watson*, supra, note 2; *Commonwealth v. Supt. of County Prison*, 220 Pa. 401, 69 A. 916, 21 L. R. A. (N. S.) 939 (1908). If either fact is wanting, then the governor is without authority to honor the requisition, *Roberts v. Reilly*, supra; *State v. Westhues*, supra, note 2; *Ex parte Spears*, 88 Cal. 640, 26 Pac. 608, 22 Am. St. Rep. 341 (1891); *State v. Wellman*, 102 Kan. 503, 170 Pac. 1052 (1918).

9. *Ex parte Brown*, 259 Pac. 280, (Okla. 1927); *Keeton v. Gaiser*, supra,

The problem arises of whether the courts in habeas corpus proceedings may question the executives' determination of the above questions.¹⁰ The sufficiency of the indictment is a matter of technical pleading to be determined by the laws of the demanding state, and not a matter for review on habeas corpus.¹¹ However the courts do not hesitate to review and reverse the executive conclusion for manifest error.¹² The more difficult question is whether the accused was in the demanding state at the time specified and hence became a fugitive from justice when he left it.¹³ The courts agree that bodily presence is essential and that constructive presence is not sufficient, since a person cannot be said to have fled from a place in which he never was.¹⁴ When the executive of the asylum state has determined that the accused is a fugitive from justice, the propriety of reviewing his conclusion has been the subject of much controversy.¹⁵ A few cases deny any inquiry.¹⁶ This holding is obviously objectionable since it would permit the executive to abuse legal process.¹⁷ At the other extreme is the view that, the relator need only establish by a preponderance of the evidence that he is not a fugitive from justice.¹⁸ This "weight of the evidence" position is said to ignore the proposition that a writ of habeas corpus may not be used

note 8; *Hogan v. O'Neill*, 255 U. S. 52, 41 S. Ct. 222, 65 L. ed. 497 (1921); *Appleyard v. Massachusetts*, 203 U. S. 222, 27 S. Ct. 122, 51 L. ed. 161, 7 Ann. Cas. 1073 (1906); *People v. Hyatt*, supra, note 2. No other questions can be raised or considered on appeal. See *People ex rel Witfield v. Enright*, 117 Misc. Rep. 448, 191 N. Y. S. 491 (1921).

10. This involves somewhat the nature of the acts of the governor of the Asylum State. Generally the courts have said his duty is ministerial, without the power to exercise executive or judicial discretion. But some have stated that he acts judicially also. See *State ex rel Redwine v. Selman*, 12 S. W. (2d) 368 (Tenn. 1928).

11. *Ex parte Regel*, 114 U. S. 642, 55 S. Ct. 1143, 29 L. ed. 250 (1805). *Pierce v. Texas*, 155 U. S. 311, 15 S. Ct. 116, 39 L. ed. 164 (1894).

12. *People ex rel Lawrence v. Brady*, 56 N. Y. 182 (1874); *People ex rel Jourdan v. Donohue*, 84 N. Y. 438 (1881); *State ex rel Stundahl v. Richardson*, 34 Minn. 115, 24 N. W. 354 (1885). The law of the demanding state of course furnishes the test. *In re Veasey*, 146 S. E. 599 (N. C. 1929). Motive underlying the institution of prosecution in the demanding state cannot be considered by the court. *State v. Westhues*, supra, note 2.

13. *Keeton v. Gaiser*, supra, note 8.

14. *Ex parte Regel*, supra, note 11; *Keller v. Butler* 246 N. Y. 249, 158 N. E. 510 (1927); *In re Mohr*, 73 Ala. 503 (1883); *State v. Hall*, 115 N. C. 811, 20 S. E. 729, (1894).

15. *Roberts v. Reilly*, supra, note 8; *Appleyard v. Massachusetts*, supra, note 9. See also *Levitt, Judicial Review of Executive Acts* (1925) 23 Mich. L. Rev. 588.

16. *People ex rel Ryan v. Conlin*, 15 Misc. Rep. 303, 36 N. Y. Supp. 888 (1895). See *Beddinger v. Commissioner of Police*, 245 U. S. 128, 38 S. Ct. 41, 62 L. ed. 193 (1917); *Grace v. Dogan*, 117 So. 596 (Miss. 1928); *Ex parte Edwards*, 91 Miss. 621, 44 So. 827 (1907).

17. *Pettibone v. Nichols*, 203 U. S. 192, 27 S. Ct. 111, 51 L. ed. 148, 7 Am. Cas. 1047 (1906); *In re Moore*, 75 Fed. 8 21, (D. C. D. Oregon, 1896).

18. *In re Veasey*, 146 S. E. 599 (N. C. 1929); *Commonwealth v. Supt. of County Prison*, supra, note 8; *State v. Adams*, 192 N. C. 787, 136 S. E. 116 (1926).

taken in the great majority of jurisdictions where it is held that the conclusion of the governor must stand unless clearly erroneous.²⁰ This holding seems to be eminently fair and sensible, allowing the court to rectify obvious mistakes and review cases involving bad faith, but at the same time attaching due weight to the executives' determinations.

In the instant case there was evidence that the date of the alleged crime was at a different time than that charged in the indictment. Since this evidence was satisfactory to the governor and his action not contrary to law, the court very properly refused to reverse his decision.

J. L. A.

EMINENT DOMAIN—TITLE AND RIGHT OF POSSESSION BEFORE ACTUAL COMPENSATION—[Federal].—In the recent case of *Hessel v. A. Smith & Co.*¹ a landowner sought an injunction to restrain a contractor from proceeding to erect a government building, on the ground that the statute under which the land had been acquired from the plaintiff was unconstitutional. The statute,² which provided that in proceedings by the United States to condemn land, the title and right of possession should vest in the United States on the filing of a "Declaration of Taking" and the deposit in court of the amount of estimated compensation, was held constitutional against the claim that it violated the 5th Amendment.

It is well settled that the government may constitutionally take possession of privately-owned land prior to conclusion of condemnation proceedings, even in the absence of express statutory authority, provided adequate provision is made for ultimate payment of just compensation to the landowner.³ The procedure approved by the court in the earlier cases, however, has been criticized as not adequately protecting the rights of the property owner.

The mere right to have the compensation judicially determined subsequently to the taking with the ultimate award insured by the pledge of

to fulfill the functions of an appeal or writ of error.¹⁰ A middle ground is

19. *People v. Hazard*, 361 Ill. 60, 196 N. E. 827 (1935); *In re Halderman*, 119 A. 735 (Pa. 1923); *In re Frederich*, 149 U. S. 70, 13 S. Ct. 793 (1893). Habeas Corpus is not the proper proceeding to try the question as to the guilt or innocence of the accused. *Munsey v. Clough*, supra, note 8; *State ex rel Cooney v. Hoffmeister*, 80 S. W. (2d) 195 (Mo. 1935).

20. *Munsey v. Clough*, supra, note 8; *Hogan v. O'Neill*, supra, note 9; *Keeton v. Gaiser*, supra, note 8. Governor's determination as to the sufficiency of the sworn evidence that the party charged is a fugitive from justice is subject to judicial review. *Drumm v. Penderson et al.*, 259 N. W. 208 (Iowa 1935).

1. 3 U. S. Law Week 1201 (D. C. E. D. Ill., June 30, 1936).

2. 46 Stat. 1421, 40 U. S. C. A. sec. 258 (1931).

3. *Cherokee Nation v. The Southern Kansas Ry. Co.*, 135 U. S. 641, 10 S. Ct. 965, 34 L. ed. 295 (1890); *Bragg v. Weaver*, 251 U. S. 57, 40 S. Ct. 63, 64 L. ed. 135 (1919); *in re Condemnation for Improvement of Rouge River*, 266 Fed. 105 (D. C. Mich., 1920); *Backus v. Fort Street Union Depot Co.*, 169 U. S. 557, 18 S. Ct. 445, 42 L. ed. 853 (1897).