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CRIMINAL PROCEDURE-EXTRADITION FOR NON-SUPPORT UNDER SECTION 6 OF THE UNIFORM CRIMINAL EXTRADITION ACT

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CRIMINAL PROCEDURE—EXTRADITION FOR NON-SUPPORT UNDER SECTION 6 OF THE UNIFORM CRIMINAL EXTRADITION ACT—Petitioner had been divorced while residing in the State of California and ordered to pay $30 per month to his wife for the support of three minor children. After moving to New Mexico he defaulted in the payments. The Governor of California requested the extradition of the petitioner under section 6 of the Uniform Criminal Extradition Act to answer the charge of failure to provide for minor children. Petitioner questioned his detention under the order for extradition by seeking a writ of habeas corpus in an original proceeding before the Supreme Court of New Mexico. *Held,* writ denied. Section 6 of the Uniform Criminal Extradition Act, providing for extradition when the accused was not in the demanding state at the time of the commission of the crime and has not fled therefrom, is constitutional and applicable to the crime of non-support. *Ex parte Dalton,* (N.M. 1952) 244 P. (2d) 790.

Absent a statute, extradition is limited under the Federal Constitution to situations in which the accused is a "fugitive" from justice in the sense that he departed from the demanding state after the commission of the crime.[1] This limitation of the extradition power precludes the return of many wayward married men who commit the misdemeanor of non-support following their departure from the state. This glaring weakness was among the considerations resulting in the adoption in most states of the Uniform Criminal Extradition Act. Section 6 of this act expressly provides for the extradition of the accused criminal despite his absence from the demanding state at the time of the commission of the crime.[2] The constitutionality of section 6 has been repeatedly

[1] Art. IV, §2. And see 32 A.L.R. 1167 (1924); 54 A.L.R. 281 (1928).

[2] 9 U.L.A. 192, §6: "The governor of this state may also surrender . . . any person in this state charged in such other state . . . with committing an act in this state, or in a

upheld in cases involving many types of crimes[3] including the crime of non-support.[4] Numerous state courts have ruled that such an extension of the extradition power by statute is within the police power of the state, for the extradition power under the Federal Constitution is exclusive, not inclusive, of the right of states to enact legislation concerning the power.[5] The term "crime" in the constitutional provision specifying extradition for "treason, felony, or other crime" has been interpreted by the courts to include all misdemeanors under the laws of the demanding state.[6] The various decisions concerning section 6 apparently adopt the same interpretation of the word "crime."[7] Thus the fact that the crime of non-support may be a misdemeanor is immaterial. The decision in the principal case is in accord with the overwhelming weight of authority. Even if the demanding state has not adopted the U.C.E.A. and would be unable to perform in return the same service for the asylum state, it would nevertheless seem that extradition would be granted for there is no theory of reciprocity in the operation of the act.[8]

In extradition proceedings involving the alleged violation of non-support statutes, questions of domicile have arisen when the demanding state is not the legal residence of the accused. Quite often the wife and child separate from the husband and take up residence in another state wherein they institute proceedings for the extradition of the husband. New York has denied extradition under section 6 in such cases where the accused has never lived in the demanding state and the asylum state is his legal residence.[9] On the other hand, the Oklahoma court has taken a contrary view granting extradition despite the fact that the accused had never set foot in the demanding state.[10] It is quite possible that the Oklahoma interpretation of section 6 could be a source of great vexation to the family man with his wandering wife or child remaining incommunicado.[11] Nevertheless, it is submitted that the Oklahoma view does concur with the

third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and . . . shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom."

[3] English v. Matowitz, 148 Ohio St. 39, 72 N.E. (2d) 898 (1947).

[4] Faulds v. Herberich, 276 App. Div. 852, 93 N.Y.S. (2d) 272 (1949); McLarnan v. Hasson, (Iowa 1951) 49 N.W. (2d) 887.

[5] 151 A.L.R. 239 (1944). See also cases in notes 3 and 4 supra.

[6] Chief Justice Taney emphatically stated this interpretation of the word "crime" in Kentucky v. Dennison, 24 How. (61 U.S.) 66 (1861).

[7] In re Roma, 82 Ohio App. 414, 81 N.E. (2d) 612 (1948); McLarnan v. Hasson, supra note 4. See also Gatewood v. Culbreath, (Fla. 1950) 47 S. (2d) 725.

[8] Ex parte Morgan, 86 Cal. App. (2d) 217, 194 P. (2d) 800 (1948).

[9] Buck v. Britt, 187 Misc. 217, 62 N.Y.S. (2d) 479 (1946), noted in 35 MARQUETTE L. REV. 201 (1951). Petitioner, a legal resident of New York, married in California while in military service. He was discharged and returned to his New York residence without passing through Minnesota. Then his wife, living in Minnesota, instituted the proceedings.

[10] Ex parte Bledsoe, (Okla. 1951) 227 P. (2d) 680.

[11] The fundamental inquiry in the extradition proceeding is not the guilt or innocence of the accused but whether he has been substantially charged with a crime in the demanding state. 22 AM. JUR., Extradition §44 (1939). Thus the husband could well be the victim of the spiteful wife who conceals her whereabouts from her husband and then institutes proceedings for his extradition for failure to send money for her support.

policy behind section 6, the very reason for this provision being to extend the extradition power to include situations where the accused was not in the demanding state at the time the crime was committed. It remains for the legislatures, not the judiciary, to change this policy if they believe that section 6 works too great a hardship in family situations where the accused has never entered the demanding state.

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