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# Criminal Law--Extradition for Nonsupport

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for the agent to accept the service of process. Hence, the holding clearly shows that there is a difference in a state appointing an agent for service of process and the parties themselves appointing an agent for service of process.

The decision in the principal case making the agency valid may open the doors in the future to a great deal of litigation on this matter. Other big businesses may start putting clauses in all of their interstate contracts specifying a "sham" agent to accept service of process for the other party. If the parties were on an equal footing as far as bargaining power is concerned than it would seem that the result of the principal case would be more easily accepted. But, as in the principal case, where the bargaining power greatly favors the plaintiff, there is some doubt that the defendant, by having the form lease forced upon him, actually gave his consent to be sued in a foreign state and waive his constitutional right to be sued in his home state.

*William Walter Smith*

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### **Criminal Law—Extradition for Nonsupport**

Petitioner, a New Hampshire resident, instituted habeas corpus proceedings to obtain release from custody. Massachusetts had brought extradition proceedings under the Uniform Reciprocal Enforcement of Support Act. A hearing in New Hampshire resulted in a refusal of extradition. Thereafter, Massachusetts brought proceedings under the Uniform Criminal Extradition Act against petitioner to answer criminal charges for the nonsupport of his alleged illegitimate child born in Massachusetts in 1953 shortly after the mother had moved there from New Hampshire. The mother married sometime thereafter and continued to reside in Massachusetts. The petitioner was never within the state of Massachusetts. In 1962 the mother requested public support and as a result Massachusetts officials started extradition proceedings. *Held*, writ granted. Massachusetts could not impose on a New Hampshire resident never present in Massachusetts an obligation to support an alleged illegitimate child nor make his failure to support criminal. Under the law of New Hampshire, no duty to support an illegitimate child arises unless a suit to determine paternity is instituted within one year after the birth of the child. The dissent stated that section 6 of the Uniform

Criminal Extradition Act applied and that petitioner could be extradited. *Hardy v. Betz*, 195 A.2d 582 (N.H. 1963).

The basis for extradition is found in the Constitution of the United States. U.S. Const. art. VI, § 2. Constitutional extradition proved too limited since it affected only "fugitives" who had fled from the demanding state. *State v. Hall*, 115 N.C. 811, 20 S.E. 729 (1894), recognized the authority of a state to enact legislation for extraditing criminals on less exacting terms than those provided by the Constitution. Thus through legislation and judicial decisions, the states built up bodies of law which were different throughout the country. See *Cassis v. Fair*, 126 W. Va. 557, 29 S.E.2d 245 (1944).

In 1926 the National Conference of Commissioners of Uniform State Laws adopted the Uniform Criminal Extradition Act, (Uniform Extradition Act). This act has been adopted in substance by most of the states. The Uniform Extradition Act was designed to provide consistency among the states and to cover areas of extradition not provided for in the Constitution. Under sections 5 and 6 of the act, a criminal was made a "fugitive" and his extradition from the state where the act was committed to the state where the act had its criminal effect, was provided for. The Uniform Extradition Act was amended in 1932 to provide extradition of that person not only from the state in which he acted, but also from any state into which he later fled. *Commissioners' Prefatory Note*, 9 UNIFORM LAWS ANN. 261 (1957); UNIFORM CRIMINAL EXTRADITION ACT §§ 5, 6.

In nonsupport matters extradition proved unsatisfactory in many cases. It removed the obligor from gainful employment, placed a criminal stigma on him, and tended to destroy any possibility of a reconciliation. 2 St. LOUIS U.L.J. 14 (1952). The Uniform Reciprocal Enforcement of Support Act, (Uniform Support Act) was adopted by the Commissioners on Uniform State Laws in 1950 to alleviate such problems. Thirty-five states have adopted some form of this act. 9c UNIFORM LAWS ANN. 9 (1963 Cum. Supp.).

Section 5 of the Uniform Support Act, which is in the criminal section, was designed to relieve the extradition process of the narrow requirement that the obligor, whose surrender is demanded, must have been in the demanding state at the time the acts of nonsupport were committed. The obligor is subject to extradition to the demanding state even though he was not in demanding state during the period for which nonsupport was sought and has not fled there-

from. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 5; *Sinclair v. Sinclair*, 196 Tenn. 538, 268 S.W.2d 576 (1954). However, this section of the act is qualified by sections 6 and 7.

Under section 6 the obligor may submit his case to the courts of the state in which he was present during the time for which nonsupport is sought. Then by the authority given this state by section 7 of the act, its courts can make a determination under its law as to whether the obligor is under a duty to support, and if a duty is found, these courts can determine the amount. The obligor can pay this amount into court according to the payment schedule set up by the court and be relieved of extradition. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 6, 7; *Ex parte Susman*, 116 Cal. App. 2d 698, 254 P.2d 161 (1953). These two sections of the Uniform Support Act would remedy the problem of taking the obligor away from gainful employment and sending him back to a state where he has no job.

In the instant case under New Hampshire law, no duty to support an illegitimate child arises unless a paternity suit be instituted within one year of the birth of the child. N.H. REV. STAT. ch. 168, § 1 (1955). However, under Massachusetts law, the determination of paternity is not a prerequisite to indictment for nonsupport. This question may be settled in the nonsupport proceedings. MASS. ANN. LAWS ch. 273, § 15 (1956). The Uniform Support Act anticipated conflict of laws problems and the act was designed to clear them up. Since the obligor was present in New Hampshire during the time for which support was sought, New Hampshire Law would govern and no duty to support arose. Under the Uniform Support Act as adopted by New Hampshire, there appears to be no way the petitioner can be made liable for the support of his alleged illegitimate child and thus there are no grounds for extradition.

The dissenting judge's view that section 6 of the Uniform Extradition Act applied and that petitioner could be extradited is not supported by authority. The only authority found in point is to the contrary. *Buck v. Britt*, 187 Misc. 217, 62 N.Y.S.2d 479 (1946), which was decided prior to the adoption of the Uniform Support Act, held that an obligor could not be extradited to the demanding state, under the Uniform Extradition Act, when he had never been present in demanding state. The obligor, a New York resident, married the obligee while on military duty in California. He was later sent overseas for duty and afterwards returned to New York. His wife re-

mained in California and later moved to Minnesota where the proceedings for extradition were initiated. The court stated that it could not be claimed that the obligor had committed in New York or any third state an act which intentionally resulted in a crime in the state of Minnesota. The obligor had never been present in Minnesota and the court of Minnesota had no jurisdiction over the person of the obligor. Extradition could not be properly granted by the responding state because it could not be said that the obligor committed any crime in the demanding state.

West Virginia has adopted the Uniform Extradition Act and the Uniform Support Act with little variation from those proposed by the commissioners. The Uniform Extradition Act which was enacted in 1937 is now W. VA. CODE ch. 5, art. 1, §§ 7-13 (Michie 1961). The Uniform Support Act which was enacted in 1950 is now W. VA. CODE ch 48, art. 9, §§ 1-20 (Michie 1961).

The court in the instant case based refusal of extradition on lack of jurisdiction over the person of the obligor. The court reasoned that neither the Uniform Extradition Act nor the Uniform Support Act gave the Massachusetts court jurisdiction. Section 6 of the Uniform Extradition Act did not apply because Massachusetts could not, by a legislative act, impose an obligation to support an illegitimate child in Massachusetts and could not impose criminal liability for failure to support such a child where the alleged father had never been within the jurisdiction of Massachusetts. The act of non-support was not sufficient to give the demanding state jurisdiction. Further, the Uniform Support Act did not give Massachusetts jurisdiction over the person of the obligor because during the period for which support was sought the obligor was not present within Massachusetts and no obligation to support could arise under its laws. Thus the majority opinion in the instant case appears to best protect the rights of the individual obligor.

*Fred Adkins*

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### **Marshaling Claims—The Effect Of State Exemption Laws On Collection Of Government Liens**

*P* was the beneficiary of a life insurance policy insuring the life of *X*. This policy had a cash surrender value of 27,285.87 dollars, and a face value of 50,000 dollars. *B*, bank, had a senior lien on the