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Extradition--Habeas Corpus--Petitioner Not a Fugitive From Justice

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EXTRADITION — *Habeas Corpus* — PETITIONER NOT A FUGITIVE FROM JUSTICE.—*P*, a merchant in West Virginia, gave *S*, a broker in Maryland, a check in payment of a truckload of produce. When the produce arrived, it was found to be unmerchantable and *P* stopped payment on the check. *P* notified *S* that payment had been stopped, and that he would seek an adjustment. Without answering, *S* presented the check for payment which was refused. *S* then had *P* indicted under a Maryland statute for obtaining goods under false pretenses, and sought his extradition to that state for trial. Extradition was granted by the Governor of West Virginia. In *habeas corpus* proceedings, to test the legality of the extradition, evidence was introduced showing that the check was not given as instant payment and that *S* had, at the time of the transaction in question, a previous check of *P* which he was holding. Evidence was also admitted to show that *P* had sufficient funds in the drawee bank to pay one, but not both checks. *Held*, that *P* committed no overt act of crime within the state of Maryland and is not a fugitive from justice. *Boyles v. Hudak*.[1]

By statute in West Virginia, it is provided that the accused shall have an opportunity to test the legality of arrest by application for a writ of *habeas corpus*.[2] Beyond forbidding an inquiry by the Governor or the courts into the guilt or innocence of the accused, except as may be involved in identifying that person,[3] the statute is silent as to what inquiries may be proper after formal demand for extradition. Neither have the courts determined, with any degree of exactitude, the scope and limits of such a hearing on *habeas corpus*.[4] However, an extensive reading of the cases will disclose that the courts have evolved certain guiding principles by confining some questions within the boundary of inquiry,[5] and excluding others, which, in general, are either artfully probative of the guilt

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[1] 199 S. E. 5 (W. Va. 1938).

[2] W. VA. REV. CODE (Michie, 1937) c. 5, art. 1, § 9(a). It is to be noted that this is the West Virginia enactment of the Uniform Criminal Extradition Act as adopted in 1937, W. Va. Acts 1937, c. 42. This act is now in effect in approximately thirty states.

[3] W. VA. REV. CODE (Michie, 1937) c. 5, art 1, § 9 (k).

[4] Notes (1932) 32 COL. L. REV. 1411; (1930) 16 VA. L. REV. 829; (1936) 10 ST. JOHNS L. REV. 272. See Biddinger v. Com'r of Police, 245 U. S. 128, 134, 38 S. Ct. 41, 62 L. Ed. 193 (1917).

[5] That requisition papers are not in proper form, *Ex parte* Hubbard, 201 N. C. 472, 160 S. E. 569 (1931); Commonwealth v. McNeil, 75 Pitts. 189 (1927); *Ex parte* Spears, 88 Cal. 640, 26 Pac. 608 (1891). That he is not the person named in the requisition, *In re* Gillis, 38 Wash. 156, 80 Pac. 300 (1905); *cf.* Stuart v. Johnson, Sheriff, 192 Ark. 757, 94 S. W. (2d) 715 (1936).

or innocence of the petitioner,[6] or offer some extraneous reason why extradition should be refused.[7]

Whether or not the courts have power to review the conclusion of the governor of the asylum state that the person, demanded by another state, is a fugitive from justice within the meaning of the United States Constitution,[8] is a question which has many times confronted state and federal courts. The courts seem generally agreed that if an executive warrant for extradition is in proper form, there is a *prima facie* case in favor of the demanding state to the effect that the accused is a fugitive from justice from that state.[9] It is safe to say, however, that a majority of the courts have held that the executive warrant is not conclusive of that fact, and that it is competent for the prisoner to show on *habeas corpus* that he is not a fugitive from the demanding state, and that, therefore, the warrant of the Governor was improvidently issued.[10]

But conceding to the courts the power to review the conclusion of the Governor, what evidence is necessary to overthrow the *prima facie* case *created by the executive warrant?* That the court should be clearly satisfied that an error has been committed before setting aside the solemn act of the Governor is clearly settled.[11] Thus, it is uniformly held that where there is a substantial conflict in evidence

[6] Courts will not consider the question of present sanity or insanity of the alleged fugitive. State v. Owen, 133 Ohio St. 96, 12 N. E. (2d) 144 (1937); Drew, Sheriff v. Thaw, 235 U. S. 432, 35 S. Ct. 137, 59 L. Ed. 302 (1914). Neither the court nor the governor has jurisdiction to inquire into disputed questions of fact. Romani v. Meyering, 352 Ill. 436, 186 N. E. 150 (1933); *Ex parte* Murray, 112 S. C. 342, 99 S. E. 798 (1919). Purpose or motive of the accused in leaving the demanding state is immaterial. Appleyard v. Massachusetts, 203 U. S. 222, 27 S. Ct. 122, 51 L. Ed. 161, 7 Ann. Cas. 1073 (1906).

[7] Fear of accused that he would not have a fair trial is no defense to extradition, *In re* Ray, 215 Mich. 156, 183 N. W. 777 (1921). That the prosecution was instituted in bad faith, or to collect a debt, Leonard v. Zweifel, 171 Ia. 522, 151 N. W. 1054 (1915); Barranger v. Baum, 103 Ga. 465, 30 S. E. 524 (1898). Contra: *Ex parte* Owens, 34 Okla. Crim. 128, 245 Pac. 68 (1926). That the statute of limitations has run, People v. Baldwin, 341 Ill. 604, 174 N. E. 51 (1930).

[8] U. S. CONST. Art. VI, § 2.

[9] McNichols v. Pease, 207 U. S. 100, 28 S. Ct. 58 (1907); Williams v. Robertson, 339 Mo. 34, 95 S. W. (2d) 79 (1936); Lacondra v. Hermann, 343 Ill. 608, 175 N. E. 820 (1931).

[10] Blake v. Doeppe, 97 W. Va. 203, 124 S. E. 667 (1924); *In re* Mohr, 73 Ala. 503 (1883); State v. Westhues, 318 Mo. 928, 2 S. W. (2d) 612 (1928); Strassheim v. Daily, 221 U. S. 280, 31 S. Ct. 558, 55 L. Ed. 735 (1911); Notes (1927) 51 A. L. R. 797, (1929) 61 A. L. R. 715; see Roberts v. Reilly, 116 U. S. 80, 95, 6 S. Ct. 291, 29 L. Ed. 544 (1885). *Contra*: Grace v. Dogan, 151 Miss. 267, 117 So. 596 (1928); *In re* Ryan, 15 Misc. 303, 36 N. Y. Supp. 888 (1895).

[11] *Ex parte* Brown, 28 Fed. 653, 654 (N. D. N. Y. 1886).

as to the petitioner's presence in, or absence from the demanding state at the time the offense was allegedly committed, the petitioner is not entitled to his freedom on that issue.[12] But, "if the evidence be clear and convincing that the accused was not personally in the demanding state at the time of the commission of the offense charged, and has committed no prior overt act therein indicative of an intent to commit the crime, or which can be construed as a step in the furtherance of the crime afterwards consummated, he should be discharged."[13]

A cursory reading of the case of *Boyles v. Hudak*[14] might lead to the impression that the West Virginia court has overstepped the bounds of the statute by actually inquiring into the guilt or innocence of the petitioner. However, it should be remembered that the question of guilt or innocence, and the question of whether or not the petitioner is a fugitive from justice may in some cases overlap, and the former be enveloped as an incident of, and subordinate to a determination of the latter. A close analysis of the principal case will clarify this somewhat elusive, but valid distinction.

Ordinarily, a check is given and accepted as payable instantly on demand, but such is not the situation in the *Boyles* case. The proof shows "without controversy"[15] that the check given in payment of the produce was not intended as instant payment. Where this fact is not in dispute, or where this fact as shown even by the evidence of the prosecuting witness, is so overwhelmingly on the side of the petitioner, it would seem apparent that the warrant for extradition does not charge the crime of obtaining goods under false pretenses in the demanding state; consequently, the petitioner is not a fugitive from justice.

It has been suggested that the courts should be exceedingly slow to discharge by *habeas corpus* one accused in a sister state of a crime, else the courts themselves will furnish a shield for the

[12] Munsey v. Clough, 196 U. S. 364, 372, 28 S. Ct. 282, 49 L. Ed. 515 (1905); *In re* Bonner, 280 N. W. 843 (Neb. 1938).

[13] Blake v. Doeppe, 97 W. Va. 203, 204, 124 S. E. 667 (1924); *cf.* Getzendanner v. Hiltner, 117 W. Va. 418, 185 S. E. 694 (1936); Comment (1936) 43 W. VA. L. Q. 75.

[14] 199 S. E. 5 (W. Va. 1938).

[15] *Id.* at 6. It is to be noted that the material fact relied upon for extradition will never be entirely free from controversy, for the prosecuting witness must positively allege a crime in order to secure the necessary warrant for extradition, and in West Virginia his demand must be accompanied by an affidavit made in good faith. W. VA. REV. CODE (Michie, 1937) c. 5, art 1, § 7(b). However, it is submitted that upon hearing on *habeas corpus*, the evidence may so conclusively break down the allegations of the prosecuting witness as to result in a record free from material dispute.

perpetration of crime. However sound this may be, it cannot be seriously contended that the Uniform Extradition Act, as adopted in West Virginia, was intended to reduce our courts to mere ministerial agencies unable to throw safeguards around its citizens.

C. E. G.

TRUSTS—BANKS AND BANKING—SPECIAL DEPOSITS.—In 1931, *P* deposited funds with *D* bank to pay off a deed of trust on lands held by *P*, *D* being also agent for the creditor under the trust deed. No payments were due upon the indebtedness until 1934. *D* accepted the funds, and agreed to apply them as directed, paying interest on the money by way of paying to the creditor interest on the principal debt during the intervening period. In 1933, *D* bank became insolvent, and as the bank had not applied the funds as directed, *P* filed suit against the receiver therefor, seeking to impress the funds in his hands with a trust in his favor in the amount of the deposit. *Held*, that this being a deposit for a specific purpose, *P* was entitled to a preference in the amount of his deposit as the fund had become impressed with a trust. *Henson v. Lamb*.[1]

Although the court refers to the deposit in this case as both a "special deposit" and a "deposit for a specific purpose", there is, strictly speaking, a difference between the two, yet courts have generally disregarded this difference.[2] Apparently no question was raised in the principal case as to whether or not payment to the bank as agent for the creditor was in fact payment to the creditor.

The principal case sheds further light on the subject of preferences upon insolvency of banks in West Virginia.[3] In deciding the case, the court had a choice of adopting either of two views on the subject. The minority of courts and writers deny the existence of a trust relationship on these facts,[4] primarily on the ground that since the fund deposited is not to be kept separate there is no trust

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[1] 199 S. E. 459 (W. Va. 1938).

[2] "A special deposit is where the whole contract is that the thing deposited shall be safely kept, and that identical thing returned to the depositor." 1 MORSE, BANKS & BANKING (6th ed. 1928) § 183. On the other hand, "When money is deposited to pay a specified check drawn or to be drawn, or for any purpose other than mere safe-keeping, or entry on general account, it is a specific deposit, and the title remains in the depositor until the bank pays the person for whom it is intended . . ." *Id.* at § 185. See also Note (1922) 6 MINN. L. REV. 306.

[3] See Comments (1932) 38 W. VA. L. Q. 365; (1937) 43 *id.* 241; (1938) 44 *id.* 408.

[4] MORSE, BANKS & BANKING § 210; SCOTT, CASSES ON TRUSTS (2d ed. 1931) 55, wherein is a collection of authorities; Fallgatter v. Citizens' National Bank, 11 F. (2d) 383 (D. C. D. Minn. 1926); Northern Sugar Corp. v. Thomp-