Fordham Law Review

Volume 5 | Issue 3 Article 9

1936

The New York Extradition Act

LEGISLATION

THE NEW YORK EXTRADITION ACT.[1]—During the past decade there has been an increasing recognition of the stubborn barrier which state lines present to law enforcement agencies. Led by the Interstate Commission on Crime and the Commissioners of Uniform State Laws, a concerted attack has been launched in the form of uniform state legislation[2] calculated to revolutionize our anachronistic system of tightly boxed-in criminal jurisdictions. The chaotic condition of the law of interstate rendition and the ease with which extradition could be delayed made the need for reform in this field glaringly apparent. With the view of securing greater reciprocity, New York has recently joined a long line of states[3] which have adopted the Uniform Criminal Extradition Act.

The Federal Constitution,[4] the basis of interstate rendition of criminals in all states, provides: "A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on the Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime." As this provision does not set up the *modus operandi* for extradition, it was supplemented by the passage, in 1793, of a federal interstate rendition statute[5] based upon executive demand and surrender. An examination of this

1. N. Y. CODE CRIM. PROC. (1936) §§ 827-859.

2. UNIFORM FIREARMS ACT, 9 UNIFORM LAWS ANN. (Supp. 1935) 48; UNIFORM MACHINE GUN ACT, 9 UNIFORM LAWS ANN. (Supp. 1935) 85; UNIFORM CLOSE PURSUIT ACT, N. Y. CODE CRIM. PROC. (1936) § 835 (1) to (8); UNIFORM ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHOUT THE STATE IN CRIMINAL CASES, N. Y. CODE CRIM. PROC. (1936) § 618-a; UNIFORM ACT FOR OUT-OF-STATE PAROLEE SUPERVISION, N. Y. CODE CRIM. PROC. (1936) § 224.

"Next year, when over forty of our forty-eight state legislatures meet, it is confidently expected that, with the close official legislative liason which the Interstate Commission on Crime has, a large number of our states will adopt these measures to make interstate cooperation in crime a reality." (1936) PROGRAM AND COMM. REP., American Bar Ass'n, Crim. Law Section, p. 8.

3. ALA. CODE ANN. (Michie, Supp. 1936) §§ 4183 (1) to 4183 (28); Ark. Acts 1935, no. 126, p. 353; IDAHO CODE ANN. (1932) §§ 19-4601 to 19-4630; IND. STAT. ANN. (Burns, Supp. 1936) §§ 9-419 to 9-448; ME. REV. STAT. (1930) c. 150; NEB. COMP. STAT. (Supp. 1935) §§ 29-707 to 29-736; N. M. STAT. ANN. (Courtright, 1929) §§ 56-101 to 56-129; N. C. CODE ANN. (Michie, 1935) §§ 4556 (a) to 4556 (y); ORE. CODE ANN. (Supp. 1935) §§ 13-2620 to 13-2647; PA. STAT. ANN. (Purdon, 1930) tit. 19, §§ 101 to 183; S. D. COMP. LAWS (1929) §§ 4637-H to 4637-Z11; UTAH REV. STAT. ANN. (1933) §§ 105-56-1 to 105-56-26; VT. PUB. LAWS (1933) §§ 2506 to 2534; WIS. STAT. ANN. (1933) §§ 364.01 to 364.27; Wyo. Sess. Laws (1935) c. 122.

4. U. S. CONST. Art. IV, § 2, cl. 2. The constitutional provision regarding extradition is in the nature of a treaty stipulation between the states which has for its purpose the securing of a prompt and efficient administration of the criminal laws of the several states. See Appleyard v. Mass., 203 U. S. 222, 227 (1906); McNichols v. Pease, 207 U. S. 100, 108 (1907).

5. 1 STAT. 302 (1793), 18 U. S. C. A. § 662 (1927). The constitutionality of this statute was upheld in Prigg v. Commonwealth, 41 U. S. 539 (1842); Roberts v. Reilly, 116 U. S. 80 (1885); Lascelles v. Georgia, 148 U. S. 537 (1893).

act[6] reveals that it failed to provide what shall be done with the fugitive prior to a demand for his arrest and rendition; the method of procedure in securing the arrest and surrender to the demanding state; the power to compel an executive to comply with a requisition; the manner of ascertaining whether the accused is, within the meaning of the Constitution, a fugitive from justice; how the question of identity, when raised, should be determined; the scope and extent of inquiry on a writ of *habeas corpus;* and the particular form of the certificate of authentication. Consequently auxiliary legislation by the states was necessary. The diverse manner in which the states treated these matters led to confusion and greatly hindered prompt rendition.

Provisions of the Act

The Act provides that it is the duty of the governor of New York State, upon demand, to have arrested[7] and delivered up to the executive authority of the demanding state any person who, having been charged with the commission of a crime against that state, has fled from justice[8] and is presently within the borders of this state.[9] A person who has escaped from confinement or who has broken the terms of bail, parole or probation is subject to rendition in the same manner as one charged with a crime.[10] While a

6. The Act provides in part: "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crimes, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear."

7. N. Y. CODE CRIM. PROC. (1936) § 827. If the governor decides to comply with the demand, he will then issue a warrant of arrest. *Id.* § 835. The peace officer or other person to whom the warrant is directed may arrest the accused at any time and in any place within the state, and the authority of such officer or other person shall be the same as that held by peace officers in the execution of any criminal process. *Id.* §§ 836, 837. The governor may recall his warrant or issue another whenever he deems proper. *Id.* § 850.

8. The term "fugitive" has been held to include one who has entered the asylum state under compulsion. Innes v. Tobin, 240 U. S. 127 (1916) (the prisoner had been extradited from Oregon into Texas; after disposition of the charges there, she was not released but again extradited into Georgia). See N. Y. CODE CRIM. PROC. (1936) § 833.

9. The governor of New York, in making a demand for the rendition of one who is charged with a crime in this state or who has broken the terms of his bail, probation, or parole, or who has escaped from confinement, may issue a warrant to some agent ordering him to receive the person so charged and convey him to the county in this state wherein the offense was committed. N. Y. CODE CRIM. PROC. (1936) § 852.

10. N. Y. CODE CRIM. PROC. (1936) § 830. Prior to the passage of the Uniform Extradition Act parolees, who had violated the terms of their parole, were extraditable as fugitives. People *ex rel.* Hutchings v. Mallen, 126 Misc. 591, 214 N. Y. Supp. 211 (Sup. Ct. 1926), *rev'd on other grounds,* 218 App. Div. 461, 218 N. Y. Supp. 432 (1st

reading of the Act would make it appear that its provisions are mandatory upon the governor, yet since it has been held by the Supreme Court of the United States that there is no paramount authority which can enforce the duty,[11] the governor's obligation to deliver the prisoner must be regarded as purely moral.

The governor must be tendered a demand in writing accompanied with a copy of the indictment found, or an information supported by affidavit, or an affidavit made before a magistrate together with a copy of any warrant issued thereon.[12] The governor may in his discretion hold an investigation preliminary to rendition and determine whether the accused should be surrendered.[13] The Act recognizes the right of the asylum state, within the discretion of its governor, to withhold the extradition of one serving a sentence or against whom a criminal prosecution is pending, until that issue has been finally determined;[14] if the governor decides to approve the rendition, the demanding state must, after the disposal of its charges against the accused, return him at its expense to the asylum state.[15]

A notable Section of the Act provides for the rendition, in the discretion of the governor of the State, of a person who was not in the demanding state at the time that the acts complained of occurred, but whose action in this or another state constituted a crime against the demanding state.[16] But this may only be done where the acts if performed outside of the State of New York would have resulted in a crime against the State of New York.[17] Many states have provisions similar to a New York statute which provides that a person who commits an act outside the state, affecting persons or property within the state, may be punished in New York if the act would have been a crime if committed in New York.[18] If the state from which the criminal operated, or in which he is presently found, does not have this Section in its

Dep't 1926); *Ex parte* Weinhause, 202 Mo. App. 245, 216 S. W. 548 (1919); *Ex parte* Carroll, 86 Tex. Cr. R. 301, 217 S. W. 382 (1920).

11. Kentucky v. Dennison, 65 U. S. 66 (1860).

12. N. Y. CODE CRIM. PROC. (1936) § 830. This section, insofar as it provides that a demand will be proper if accompanied by an information supported by affidavits, adds an additional alternative to the federal statute. See note 6, *supra*. For a discussion of the constitutionality of this provision, see p. 490, *infra*.

13. N. Y. CODE CRIM. PROC. (1936) § 831. The investigation may be delegated to the attorney-general or any other prosecuting officer. However, this investigation may not be directed to the question of the guilt or innocence of the accused. *Id.* § 849.

14. N. Y. CODE CRIM. PROC. (1936) §§ 832, 848. *Cf.* Ponzi v. Fessenden, 258 U. S. 254 (1922); Chapman v. Scott, 10 F. (2d) 156 (D. Conn. 1925).

15. N. Y. CODE CRIM. PROC. (1936) § 832. See also § 857 providing for a non-waiver by this State of its rights to try the demanded person for the crime committed here, or of its rights to regain his custody by extradition proceedings.

16. N. Y. CODE CRIM. PROC. (1936) § 834. For a discussion of the constitutionality of this section, see p. 489, *infra*.

17. This contemplates a situation, for example, wherein *X*, in State *A*, procures *Y* and *Z* to commit a crime in State *B* and upon their return to State *A*, *X* shares in the proceeds thereof.

18. N. Y. PENAL LAW (1909) § 1930; see *e.g.*, ORE. CODE ANN. (1930) § 13-302; TEX. ANN. CODE CRIM. PROC. (Vernon 1926) Art. 186.

rendition statute, he could not be extradited, because he is not a fugitive from justice in the technical sense of the word. It is further provided that the governor may in such an instance make rendition conditional upon an undertaking by the governor of the demanding state that the accused shall not be prosecuted for any crime other than the one charged in the demand.[19]

Before surrender to the demanding state, the prisoner must first be brought before a judge or a justice of a court of record, who must reveal the demand made for his surrender and the crime with which he is charged, and inform him of his right to employ counsel in his defense.[20] Should the prisoner desire to contest the validity of his arrest, the court must fix a reasonable time within which he may apply for a writ of *habeas corpus*.[21] At the hearing, the petitioner may not raise the question of his guilt or innocence,[22] but may contend that he is not a fugitive from justice;[23] that he is not the person named in the requisition;[24] that he is not charged with a crime under the laws

19. N. Y. CODE CRIM. PROC. (1936) § 834. *Cf.* § 856, discussed, p. 489, *infra*, which grants no immunity to the prisoner from prosecution on other criminal charges once he is within the demanding state. *Quere:* where the prisoner has been extradited under such an agreement, between the governors of the demanding and asylum states, and the prisoner is acquitted of the particular charge, would prosecution on other charges in the demanding state be invalid? The Federal Constitution, Art. I, § 10, prohibits a state from entering into a compact without the consent of Congress. A blanket consent was ". . . given to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime . . . ." 48 STAT. 909 (1934), 18 U. S. C. A. § 420 (1935). It would seem that the agreement provided for by the Extradition Act is clearly embraced by this consent. An agreement or compact between states consented to by Congress, is inviolable under the Constitution. Green v. Biddle, 21 U. S. 1 (1823); Hawkins v. Barney's Lessee, 30 U. S. 457 (1831). It would follow, then, that an attempted prosecution on another charge would be invalid, either as a violation of the Constitution, Art. I, § 10, and the accompanying statute above cited, or as a violation of the Fourteenth Amendment of the Federal Constitution in that it would deprive the prisoner of his liberty without due process of law. Furthermore, it is well-settled in statutory construction that wherever there is a general and a particular enactment in the same statute, the general does not overrule the particular but applies only where the particular enactment is inapplicable. People v. Gilon, 126 N. Y. 147, 27 N. E. 282 (1891); Hoey v. Gilroy, 129 N. Y. 132, 29 N. E. 85 (1891).

20. N. Y. CODE CRIM. PROC. (1936) § 838.

21. *Ibid.* In allowing *habeas corpus* as a matter of right, the section is in keeping with judicial decisions. Pettibone v. Nichols, 203 U. S. 192 (1906); McNichols v. Pease, 207 U. S. 100 (1907). If the accused is surrendered by an officer of this State to the agent of the demanding state without giving the accused the right to test the legality of the arrest, such officer is guilty of a felony. N. Y. CODE CRIM. PROC. (1936) § 839. Any wilful violation by an officer of any portion of the Extradition Act is deemed a misdemeanor in office. *Ibid.*

22. N. Y. CODE CRIM. PROC. (1936) § 849. This section is an expression of the law under the federal statute. Drew v. Thaw, 235 U. S. 432 (1914); Edmunds v. Griffin, 177 Iowa 389, 156 N. W. 353 (1916); *cf.* People *ex rel.* Plumley v. Higgins, 109 Misc. 328, 178 N. Y. Supp. 728 (Sup. Ct. 1919).

23. South Carolina v. Bailey, 289 U. S. 412 (1933); Seely v. Beardsley, 194 Iowa 836, 190 N. W. 498 (1922); People *ex rel.* Plumley v. Higgins, 109 Misc. 328, 178 N. Y. Supp. 728 (Sup. Ct. 1919); *Ex parte* Jowell, 87 Tex. Cr. R. 556, 223 S. W. 456 (1920).

24. Grandee v. Bates, 101 Minn. 303, 112 N. W. 260 (1907); *In re* Gillis, 38 Wash.

of the demanding state;[25] and that the requisition papers are not in proper form.[26]

A person charged with a crime in another state may be arrested prior to a requisition.[27] A warrant for his arrest may be issued on the strength of an oath or affidavit of any credible person[28] to the effect that he has committed a crime in another state, and has fled from justice,[29] or that he has been convicted of a crime in another state and has escaped from confinement, or has broken the terms of his probation, bail or parole.[30] Such a person may also be arrested by a peace officer or a private person without a warrant upon reasonable information that he has been charged with having committed a felony in another state.[31] The prisoner may be held for a limited period pending formal requisition.[32]

A prisoner may forego extradition proceedings by subscribing, in the presence of a judge of a court of record, a writing expressing his willingness to return to the demanding state.[33] However, before the execution of a waiver, the court must inform the prisoner of his rights to the issuance and service of a warrant of extradition and his right to obtain a writ of *habeas corpus*.[34] It is doubtful that the professional criminal will resort to this expeditious method of surrender. It is conceivable that he might do so in order to evade prosecution for a more serious offense in New York when his apprehension has not as yet come to the knowledge of the New York authorities. It was to minimize the occurrence of such an evasion that the provision for execution of the waiver before a judge was incorporated in the statute. The careful

156, 8 Pac. 300 (1905). Several states have had statutes that required the question of identity to be settled by a judicial hearing without resort to *habeas corpus*. See, *e.g.*, N. Y. CODE CRIM. PROC. (1895) § 827 (2) (now repealed by the Uniform Criminal Extradition Act, N. Y. CODE CRIM. PROC. (1936) § 838); OHIO GEN. CODE (Page, 1926) § 113.

25. Seely v. Beardsley, 194 Iowa 863, 190 N. W. 498 (1922); *Ex parte* Finch, 106 Neb. 45, 182 N. W. 565 (1921); People *ex rel.* Whitfield v. Enright, 117 Misc. 448, 191 N. Y. Supp. 491 (Sup. Ct. 1921).

26. *Ex parte* Spears, 88 Cal. 640, 26 Pac. 608 (1891); *Ex parte* Hubbard, 201 N. C. 472, 160 S. E. 569 (1931); *Ex parte* Johnson 120 Tex. Cr. R. 65, 49 S. W. (2d) 788 (1932).

27. N. Y. CODE CRIM. PROC. (1936) § 842.

28. In this respect the Act goes beyond the legislation in most jurisdictions which generally require that the warrant issue only where the accused stands charged with a foreign crime. See, *e.g.*, ILL. REV. STAT. ANN. (Smith-Hurd, 1935) c. 60, § 3; IOWA CODE ANN. (1935) § 13503; MASS. ANN. LAWS (Lawyer's Co-op. 1933) c. 276, § 16; MINN. STAT. (Mason, 1927) § 10543; MO. REV. STAT. (1929) § 3596. But see S. C. CODE (Michie, 1932) § 913.

29. The section excepts cases which arise under N. Y. CODE CRIM. PROC. (1936) §§ 833, 834.

30. N. Y. CODE CRIM. PROC. (1936) § 842.

31. N. Y. CODE CRIM. PROC. (1936) § 843. The term "felony" is defined to include all offenses punishable by death or imprisonment for one year. *Ibid.*

32. N. Y. CODE CRIM. PROC. (1936) § 844. The accused may not be held longer than ninety days; he may be admitted to bail as provided for in N. Y. CODE CRIM. PROC. (1936) § 845.

33. N. Y. CODE CRIM. PROC. (1936) § 851.

34. *Ibid.*

wording of the statute calling for the explanation to the prisoner of his rights was inserted to protect the casual or innocent prisoner from the over-zealous persons who might be inclined to trick him out of his substantial rights. However, the final proviso of the Section defeats these purposes since the appearance before a judge of a court of record is not made mandatory either upon the prisoner or upon the officers who have him in custody.[35]

A person who is brought into the State by means of extradition or who comes into the State after waiver of extradition is immune from service of process in civil actions based upon the facts which gave rise to the crime with which he is charged.[36] This has the effect of changing the New York law which formerly gave no immunity whatsoever.[37] The New York Courts reasoned that since immunity from process was given to encourage voluntary attendance at judicial proceedings, no justification for the extension of the privilege could be found where as a result of extradition proceedings, the person served comes into the state under arrest or other compulsion of law.[38] Against this view is the practical consideration that the governor of an asylum state might refuse the request for rendition if he thought that the prisoner might be subjected to a civil action.

There is no corresponding immunity from criminal prosecution. Once a person has been brought into this State after extradition proceedings based upon the charge of having committed a specific crime, he may subsequently be tried for any other crime which he has committed against the State of New York.[39] In qualification of this statement, however, it must be noted, that where a person has been extradited under the Section providing for rendition of those who are not fugitives from justice and the governor of the asylum state has secured the undertaking of the governor of this State not to prosecute for any crime other than that charged in the requisition papers, it would seem that the prisoner is immune from further prosecution.[40]

Constitutional Problems

Unquestionably the constitutionality of the Section which allows rendition of persons who are not fugitives from justice will be disputed. The extradition provision of the Constitution refers only to those persons ". . . who shall flee from Justice . . . ."[41] No mention is made of the situation, covered by the statute,[42] where the offender has never been within the borders of the state

35. ". . . provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state." N. Y. CODE CRIM. PROC. (1936) § 851.

36. N. Y. CODE CRIM. PROC. (1936) § 855.

37. Williams v. Bacon, 10 Wend. 636 (N. Y. 1834); Slade v. Joseph, 5 Daly 187 (N. Y. 1874).

38. See Netograph Mfg. Co. v. Scrugham, 197 N. Y. 377, 380, 90 N. E. 962, 963 (1910).

39. N. Y. CODE CRIM. PROC. (1936) § 856.

40. See discussion, note 19, *supra*.

41. U. S. CONST. Art. IV, § 2, cl. 2.

42. N. Y. CODE CRIM. PROC. (1936) § 834.

against which the crime has been committed. There are two opposing views: either the Constitution embodies a delegation of exclusive powers to the federal government to control interstate rendition,[43] or it contains an authorization limited to the express terms of the grant,[44] namely, to legislate on the subject of interstate rendition only where the prisoner has fled from the demanding jurisdiction. If the first view is adopted, it may be implied that the provision prohibits a state from surrendering a prisoner found within its jurisdiction except as provided by the Constitution. If this is so, it follows that the Section is unconstitutional. On the other hand, if the second alternative represents the correct view, the states would have the power to control all phases of extradition machinery not relating to the handling of fugitives from justice, for all powers not delegated to the federal government are reserved to the states.[45] It is submitted that the first view is not in accord with precedent and practice and that the Section is constitutional. There are many decisions which state that the power to legislate upon the subject of extradition is exclusively within the domain of the federal government.[46] A close examination of these cases will reveal, however, that they do not concern state legislation enacted under residuary powers, but rather state action in direct contravention to the express terms of the Constitutional mandate. Another line of cases[47] holds that where a person has been illegally transported from one state to another, he is nevertheless subject to criminal prosecution in the state into which he has been brought, and he cannot secure his return to the asylum state by resort to the federal courts. These cases contain language to the effect that neither the Constitution, nor the federal extradition statute passed thereunder, prohibits such action.[48] This would seem to indicate that there is no constitutional right of asylum, and that cases which do not involve flight from a demanding state are without the purview of federal control. In addition eminent authorities[49] have come to the conclusion that the statute embraces a field entirely outside the province of the federal Constitution and that enforcement of the Section may be based upon principles of interstate comity. So viewed, the Section is clearly constitutional.

Another Section of the Act provides that the demand for the return of one who has fled from justice may be based upon ". . . a copy of an information supported by an affidavit in the state having jurisdiction of the crime

43. See Prigg v. Commonwealth, 41 U. S. 539, 617, 618 (1842); Innes v. Tobin, 240 U. S. 127, 131 (1916).

44. See Holmes v. Tennison, 39 U. S. 540, 597 (1840); State v. Wellman 102 Kan. 503, 506, 107 Pac. 1052, 1053 (1918); Matter of Fetter, 23 N. J. L. 311, 315 (1852).

45. U. S. CONST. Amdt. X.

46. Prigg v. Commonwealth, 41 U. S. 539 (1842); *Ex parte* Reggel, 114 U. S. 642 (1885); Roberts v. Reilly, 116 U. S. 80 (1885); Hyatt v. People *ex rel.* Corkran, 188 U. S. 691 (1903), *aff'g* 172 N. Y. 176 (1902).

47. Pettibone v. Nichols, 203 U. S. 192 (1906); Innes v. Tobin, 240 U. S. 127 (1916); Kelly v. Mangum, 145 Ga. 57, 88 S. E. 556 (1916).

48. Pettibone v. Nichols, 203 U. S. 192, 212 (1906); Innes v. Tobin, 240 U. S. 127, 133 (1916); Kelly v. Mangum, 145 Ga. 57, 59, 88 S. E. 556, 557 (1916).

49. HANDBOOK OF THE NATIONAL COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS (1930) 134; *Id.* (1932) 399, 400.

. . .",[50] and the information ". . . must substantially charge the person demanded with having committed a crime under the law of that state . . . ."[51] The federal extradition statute[52] allows rendition only upon the presentation of a copy of an indictment or an affidavit made before a magistrate of the state in which the crime was committed. It would appear, therefore, that the New York statute would entertain an extradition proceeding upon papers which would not conform to the requirements called for by the federal statute. However, it has been decided that the states may legislate on matters which are within the terms of the Constitutional provision but with which the federal executing statute failed to deal.[53] Under this principle extraditions based upon a charge of crime by means of an information can be held constitutional.

Conclusion

The passage of this Act does not, in the main, effectuate any fundamental changes in the principles of rendition formerly enunciated by New York statutes and decisions. However, the fact that the statute is a uniform act which has been generally adopted should facilitate the transfer of apprehended persons to and from the State. In addition, the novel Section providing for the rendition of persons who are not fugitives, greatly expands the scope of extradition proceedings, and renders more difficult frustration of the criminal law of this State by persons who operate wholly from without the State. The careful research which has gone into the construction of the statute is reflected in the simple but clear form in which its provisions are cast. It is to be hoped that judicial interpretation will remain close to the spirit and purpose of the statute and will aid rather than impede its efficient administration.

50. N. Y. CODE CRIM. PROC. (1936) § 830.

51. *Ibid.*

52. 1 STAT. 302 (1793), 18 U. S. C. A. § 662 (1927). See provisions of this section, note 6, *supra.*

53. Innes v. Tobin, 240 U. S. 127 (1916); Kurtz v. State, 22 Fla. 36 (1886); Commonwealth v. Tracy, 46 Mass. 536 (1843); *Ex parte* Ammon, 34 Ohio St. 518 (1878). This view would further substantiate the assumption that the section of the Act dealing with the rendition of one who was without the state at the time the acts complained of occurred (discussed p. 489, *supra*) is constitutional.