

Some Phases of Uniform Interstate Extradition

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SOME PHASES OF UNIFORM INTERSTATE EXTRADITION.¹

State lines present perplexing difficulties in interstate administration of criminal justice. Particularly is this true in the extradition of criminals. Technical statutory requirements of perfecting extraditions and conflicting decisions by the state courts on legal issues have afforded loopholes of escape for the criminal.² To achieve uniformity on this subject, the Commissioners on Uniform State Laws³ have urged adoption by the state of a Uniform Extradition Act.⁴ The more important aspects of this Act will be considered here.

Article IV, Section 2, of the Federal Constitution 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 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."

In conformity with this provision, Congress passed a statute⁵ pre-

¹ SCOTT, INTERSTATE RENDITION (1917); MOORE, TREATISE ON LAW OF EXTRADITION AND INTERSTATE RENDITION (1891); SPEAR, LAW OF EXTRADITION (1879); INTERSTATE EXCHANGE OF WITNESSES AND INTERSTATE RENDITION (1929) pamphlet of Ass'n of Grand Jurors of New York County; REPORT OF LAW REVISION COMMISSION (N. Y. 1935) 97 *et seq.* It has been pointed out that "rendition" rather than "extradition" is the more accurate and appropriate word when referring to interstate transfer of accused persons. "Extradition" refers properly to international transfer of accused persons. *People ex rel. Hauptman v. Hanley*, 153 Misc. 61, 274 N. Y. Supp. 813, *aff'd*, 242 App. Div. 257, 274 N. Y. Supp. 824 (1st Dept. 1934). The law of international extradition differs in many material respects from the law of interstate rendition. SCOTT, INTERSTATE RENDITION (1917) § 2.

² THE PANEL, June, 1929; REPORT OF LAW REVISION COMMISSION (1935) p. 100.

³ The Proposed Uniform Extradition Act is contained in REPORT OF LAW REVISION COMMISSION (1935) with New York annotations.

⁴ NAT. CONF. OF COMM. ON UNIF. STATE LAWS (1925) p. 585. The Act is being forwarded by the newly formed Interstate Commission on Crime. See Perry, *The Interstate Compact and Social Legislation*, POL. SCI. Q., March, 1936. Since 1925 the Act has been the basis of legislation in Alabama, Idaho, Maine, New Mexico, North Carolina, Pennsylvania, South Dakota, Utah, Vermont, and Wisconsin. See *In re Hubbard*, 201 N. C. 472, 476, 160 S. E. 569 (1931); *Commonwealth v. Ashe*, 114 Pa. 119, 173 Atl. 715 (1934). The Act has been twice vetoed in New York. See REPORT LAW REVISION COMMISSION, p. 139.

⁵ U. S. C. A. tit. 18, § 662 (formerly R. S. § 5278): "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 affidavit made before a magistrate of any state or territory, charging the person demanded with having committed treason, felony or other crime, 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

scribing the conditions under which "it shall be the duty" of a governor to surrender a fugitive. The early case of *Kentucky v. Dennison*⁶ held the phrase "it shall be the duty" not to be mandatory but merely declaratory of a moral obligation as there was no power to compel the governor to comply. Auxiliary procedural legislation on extradition may be passed by states, but the constitutional provision and the congressional acts are paramount.⁷

As extradition involves substantial rights of citizens, its essential elements must be strictly followed.⁸ The requisition of a governor⁹ and the accompanying documents, *viz.*: the indictment, affidavit, or information must meet the requirements of the federal statute.¹⁰ Defects in the form and content of the required papers have been a barrier to the enforcement of interstate renditions.¹¹ In order to eliminate technical obstructions created by the defective papers and to provide a uniform standard, the Extradition Act requires a demand to be made by the governor in writing accompanied by (1) a copy of an indictment, or by (2) an information supported by affidavit in the state having jurisdiction of the crime, or (3) by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which may have been issued thereon. The accompanying papers must show that (1) the accused was present in the demanding

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. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses * * * shall be paid by such (demanding) state or territory."

⁶ *Kentucky v. Dennison*, 65 U. S. 66 (1868) (mandamus does not lie to compel a governor to surrender an accused); *People ex rel. Marshall v. Moore*, 167 App. Div. 479, 153 N. Y. Supp. 10 (3d Dept. 1915). *Ex parte Cubreth*, 49 Colo. 436 (1875) (discretion of executive may be regulated by state statute).

⁷ BURDICK, LAW OF AMERICAN CONSTITUTION (1922) §210. *State v. Hale*, 115 N. C. 811, 20 S. E. 729, 28 L. R. A. 289 (1894) (accused who was not present in the demanding state at the time of crime may be surrendered); Note (1895) 28 L. R. A. 802 (state may require governor to surrender fugitive on terms less exacting than those imposed by act of Congress). But see note 26, *infra*. See 11 R. C. L. 722.

⁸ See note 5, *supra*. *United States ex rel. McCline v. Meyering* 75 F. (2d) 715 (C. C. A. 7th, 1935).

⁹ By statute, a demand or requisition can only issue from the governor, but any person can make application to the governor for the latter to make a demand. *Matter of Bruchman*, 28 N. D. 358, 148 N. W. 1052 (1914) (application by abandoned wife). *Keller v. Butler*, 246 N. Y. 249, 158 N. E. 570 (1925) (a person who falsely procures the extradition of an innocent person is liable to suit for false imprisonment).

¹⁰ Speaking of the federal statute, note 5, *supra*, the Supreme Court said: "If either of these conditions is absent, the Constitution affords no warrant for a restraint of the liberty of any person." *Pierce v. Creecy*, 210 U. S. 387, 28 Sup. Ct. 714 (1908); *Roberts v. Reilly*, 115 U. S. 80, 60 Sup. Ct. 291 (1885); *Raftery ex rel. Huie Fong v. Bligh*, 55 F. (2d) 189 (C. C. A. 1st, 1932); *In re Blankmeyer*, 50 Ohio App. 151, 197 N. E. 596 (1935). See *Ex parte Dickson*, 4 Ind. Terr. 481, 69 S. W. 943 (1902) (authentication by governor).

¹¹ INTERSTATE EXCHANGE OF WITNESSES *etc.*, note 1, *supra*, article by George S. Elpern on Interstate Extradition, pp. 12-26.

state at the time of the crime, (2) he fled and is now in this state, (3) he is lawfully charged with having committed a crime, or that he has escaped confinement or broken his parole.¹²

The demand and the accompanying papers do not require the accuracy of pleadings. If regularly upon their face, a *prima facie* case for extradition is made out.¹³ But vaguely charging the accused with an alleged crime¹⁴ or a reference to a class of criminal acts without specifying a particular crime¹⁵ is insufficient. A requisition cannot be denied when the copy of the affidavit or indictment is held sufficient by the courts of the state where the offense was committed although it would not be held good by the courts of the asylum state.¹⁶

Extradition based on an affidavit will be more closely scrutinized for the required elements than an indictment since the affidavit is an *ex parte* accusation.¹⁷ Thus, an affidavit will be dismissed where

¹² Proposed Unif. Extra. Act § 3. *State v. Hackett*, 161 Tenn. 602, 33 S. W. (2d) 422 (1931) (warrant unaccompanied by other papers insufficient to hold accused); *cf.* N. Y. CODE OF CRIM. PROC. § 827, which does not provide for an affidavit made before a magistrate, but such a provision has been held to be constitutional in *Matter of Strauss*, 197 U. S. 324, 25 Sup. Ct. 535 (1904).

¹³ *Compton v. Alabama*, 214 U. S. 1, 29 Sup. Ct. 305 (1909) (affidavit must allege that it was taken before a magistrate authorized to issue process for arrest of persons on criminal charges); *Marks v. Eckerman*, 23 F. (2d) 761 (C. A. D. C. 1927) (magistrate); *Hill v. Dorsey*, 22 F. (2d) 1003 (C. A. D. C. 1927) (indictment charging larceny); *Brown v. Fitzgerald*, 39 F. (2d) 870 (sufficiency of indictment); *Downey v. Hale*, 67 F. (2d) 208 (C. C. A. 1st, 1934), *cert. denied*, 291 U. S. 662, 54 Sup. Ct. 438 (1934); *People ex rel. Ryan v. Conlin*, 15 Misc. 303, 36 N. Y. Supp. 888 (1895) (papers must show on their face that accused is fugitive); *People ex rel. Hamilton v. Police Comm'r*, 100 App. Div. 483, 91 N. Y. Supp. 760 (1st Dept. 1905); *People ex rel. Edelstein v. Warden of City Prison*, 154 App. Div. 261, 138 N. Y. Supp. 1095 (2d Dept. 1912); *Chase v. State*, 93 Fla. 963, 113 So. 103 (1927) (affidavit, warrant, authentication, *etc.*); *Chandler v. Sipes*, 103 Neb. 111, 170 N. W. 604 (1919) (sufficiency of papers); *Katyuga v. Cosgrove*, 67 N. J. L. 213, 50 Atl. 679 (1901); *Ex parte Cheatham*, 50 Tex. Cr. 51, 95 S. W. 1077 (1905) (affidavit must show that crime was committed within jurisdiction of demanding state and that accused is a fugitive).

¹⁴ *Ex parte Slausson*, 73 Fed. 666 (1896); *People ex rel. DeMartini v. McLaughlin*, 243 N. Y. 417, 154 N. E. 853 (1925); *Renner v. Renner*, 13 N. J. Misc. 749, 181 Atl. 191 (1935).

¹⁵ *Ex parte Slausson*, 73 Fed. 666 (1896) (the crime alleged was "fraudulent appropriation of money"); *Ex parte Reggel*, 114 U. S. 642, 5 Sup. Ct. 1148 (1884) ("crime" includes felonies and misdemeanors).

¹⁶ *Webb v. York*, 79 Fed. 616 (C. C. A. 8th, 1897); *Ex parte Cupp*, 84 S. W. (2d) 731 (Tex. Cr. 1935); *Barranger v. Baun*, 103 Ga. 465, 30 S. E. 524 (1898). See *In re Hubbard*, 201 N. C. 472, 160 S. E. 569 (1931), 81 A. L. R. 547 and note (accused allowed to show that alleged crime charged is not crime in demanding state).

¹⁷ *Ex parte Thaw*, 214 Fed. 423 (D. C. N. H. 1914) (requisition does not have to state all facts necessary for extradition; sufficient if they appear in accompanying papers); *People ex rel. Corkran v. Hyatt*, 172 N. Y. 176, 64 N. E. 852 (1903); *Kassin v. Sheriff of N. Y. County*, 149 Misc. 11, 266 N. Y. Supp. 595 (1933); *United States ex rel. Austin v. Williams*, 12 F. (2d) 661 (C. C. A. 5th, 1926); *Collins v. Traeger*, 27 F. (2d) 842 (C. C. A. 9th, 1928) (condition precedent to extradition where there is no indictment); *People ex rel. McCline v. Meyering*, 365 Ill. 210, 190 N. E. 261 (1934); *Ex parte Rogers*, 33 Okla. Cr.

upon information and belief it charges a crime and omits to specify the essential element of the crime.¹⁸ And the fact that a warrant has been issued upon an affidavit does not necessarily justify the inference that a crime was charged in the affidavit.¹⁹ By declaring an indictment, information, or affidavit "to be *prima facie* evidence of its truth," the Uniform Act will not change the law as to closer examination of the affidavit.²⁰

Most important and most controversial in the Uniform Extradition Act is that section²¹ which permits the extradition of a person who is charged on indictment with intentionally committing a crime in a state though the accused was not present there at the time of the crime and from which state he could not therefore have fled.²² The provision is aimed at modern criminals who are the "brains" of a crime but who remain away from the state in which the crime is committed.²³ This section has been strongly assailed as unconstitutional for the Constitution specifically provides that only fugitives are extraditable.²⁴ It has been urged that the provision can be enforced by the states as a matter of comity but this seems questionable.²⁵

82, 242 Pac. 781 (1926); *cf.* State *ex rel.* Huston v. Clark, 163 So. 471 (Fla. 1935). See Benson v. Henkel, 198 U. S. 1, 25 Sup. Ct. 569 (1904) (sufficiency of indictment).

¹⁸ People *ex rel.* De Martini v. McLaughlin, 243 N. Y. 417, 153 N. E. 853 (1925) (failure to allege defendant's knowledge of guilt of principal offenders on prosecution as an accessory after the fact).

¹⁹ People *ex rel.* Lawrence v. Brady, 56 N. Y. 182 (1874).

²⁰ Proposed Unif. Extra. Act § 3; REPORT OF LAW REVISION COMMISSION (1935) p. 117.

²¹ Proposed Unif. Extra. Act § 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 third state, intentionally resulting in a crime in the state whose executive authority is making the demand * * * even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom". *Cf.* N. Y. PENAL LAW § 1933. If an act done in New Jersey has criminal consequences in New York, New York can punish the accused if he comes into the state, but cannot extradite him. State v. Hale, 115 N. C. 811, 20 S. E. 729, 28 L. R. A. 289 (1894) (shooting over a border line); *cf.* N. Y. PENAL LAW § 1930, par. 1.

²² Drew v. Thaw, 235 U. S. 432, 35 Sup. Ct. 137 (1914) (sufficiency of indictment cannot be determined by asylum state on *habeas corpus* proceeding); Innes v. Tobin, 240 U. S. 127, 36 Sup. Ct. 290 (1916); Hogan v. O'Neil, 255 U. S. 52, 41 Sup. Ct. 222 (1912) (governor's warrant *prima facie* evidence of flight). SCOTT, INTERSTATE RENDITION (1917) 320.

²³ REPORT OF GOVERNOR'S CRIME CONFERENCE (N. Y. 1935) 646 *et seq.*

²⁴ The Civil Liberties Union has attacked the provision because it fails to distinguish between persons accused of political crimes as opposed to those who commit other crimes. See REPORT OF GOVERNOR'S CONFERENCE ON CRIME (1935) 653.

²⁵ "The right of extradition is not founded on any state statute, comity or contract, but upon the constitution and the laws of the United States." *Ex parte* Montgomery, 244 Fed. 967, *aff'd*, 266 U. S. 656, 38 Sup. Ct. 424 (1924); State v. Brown, 166 Tenn. 669, 64 S. W. (2d) 841 (1933); *cf.* Innes v. Tobin, 240 U. S. 127, 36 Sup. Ct. 290 (1916).

A person has "fled" from a state if he has committed a crime while physically present there and has left after incurring guilt.²⁶ Precipitate flight²⁷ need not be shown and the motive²⁸ for flight is unimportant. If the accused was only constructively present in a state, he cannot be held as a fugitive.²⁹ Thus in *Matter of Mitchell*,³⁰ a New York resident who owned a building in New Jersey which collapsed and killed several people could not be extradited to stand a charge of manslaughter. One who has escaped from prison³¹ or broken parole³² and has fled to another state as a fugitive from justice is extraditable. One who has left the state while the authorities have knowledge of his crime is nevertheless deemed to have fled.³³ But there is a conflict of authority as to whether a prisoner who leaves state *A* in the custody of its officers to answer charges in state *B*, may be returned to state *A* from which he did not flee.³⁴ The Extradition Act in accordance with the weight of authority seeks to remove this difficulty by declaring that the prisoner has no right of asylum in state *B* and may be returned.³⁵ By being denied the right

²⁶ *Roberts v. Reilly*, 116 U. S. 80, 6 Sup. Ct. 291 (1885); *Bruce v. Raynor*, 124 Fed. 481 (C. C. A. 4th, 1903) (to negative flight, accused allowed to show that after alleged act of bigamy, he remained in demanding state until the statute of limitations), but this case is apparently overruled by *Biddinger v. Police Commissioner*, 245 U. S. 128, 38 Sup. Ct. 41 (1917); *People v. Stillwell*, 244 N. Y. 196, 155 N. E. 98 (1926); *State v. Brown*, 166 Tenn. 669, 64 S. W. (2d) 841 (1933); (1934) 34 Col. L. Rev. 775.

²⁷ *Taft v. Lord*, 92 Conn. 539, 103 Atl. 644 (1918).

²⁸ *Appleyard v. Massachusetts*, 203 U. S. 222, 27 Sup. Ct. 122 (1906) (even though person unknowingly flees from justice he is a fugitive); *Chase v. State*, 93 Fla. 963, 113 So. 103, 54 A. L. R. 27 and note (1927); *Keeton v. Gaiser*, 331 Mo. 499, 55 S. W. (2d) 302 (1932) (parent who departs from New York, and while in foreign state forms intent to abandon his child, not extraditable); *Ex parte Kuhns*, 36 Nev. 487, 137 Pac. 83 (1913). See Note (1917) 13 A. L. R. 415 (motive for flight).

²⁹ *People ex rel. Corkran v. Hyatt*, 172 N. Y. 176, 64 N. E. 852, *aff'd*, 188 U. S. 691, 23 Sup. Ct. 456 (1903); *State v. Hale*, 115 N. C. 811, 20 S. E. 729, 28 L. R. A. 289 (1894).

³⁰ 4 N. Y. Cr. Rep. 596 (1885).

³¹ *State ex rel. Treseder v. Remann*, 165 Wash. 924, 4 P. (2d) 866 (1931), 78 A. L. R. 412 and note.

³² *Hughes v. Pflanz*, 138 Fed. 980 (C. C. A. 6th, 1905); SCOTT, INTERSTATE RENDITION (1917) § 60. Cf. *People ex rel. Hutchings v. Mallon*, 218 App. Div. 461, 218 N. Y. Supp. 432 (1st Dept. 1926), *aff'd*, 245 N. Y. 521, 157 N. E. 842 (1927) (on revocation of parole, accused becomes fugitive); *People ex rel. Patterson v. Bockel* (N. Y. Ct. of App.), reported N. Y. L. J., March 18, 1936.

³³ *Reed v. Corrigan*, 190 Ind. 29, 129 N. E. 8 (1920). *Contra: In re Tod*, 12 S. D. 386, 81 N. W. 637 (1900).

³⁴ *Bassing v. Cady*, 208 U. S. 306, 28 Sup. Ct. 392 (1907); *In re Whittington*, 34 Cal. App. 344, 167 Pac. 404 (1907). *Contra: State v. Wall*, 187 Minn. 246, 244 N. W. 811 (1932), 85 A. L. R. 174 and note. See Note (1917) 13 A. L. R. 415, 422 (effect of compulsory removal from state); *Ex parte Martin*, 52 P. (2d) (Kan. 1936); *Grogan v. Welch*, 55 S. D. 613, 227 N. W. 74 (1929); *State v. Brown*, 166 Tenn. 669, 64 S. W. (2d) 841 (1933), *cert. denied*, 292 U. S. 603, 54 Sup. Ct. 717 (1934). *If Hauptman Is Not Convicted in New Jersey*, N. Y. L. J., Oct. 11, 1934, at 1208.

³⁵ Proposed Unif. Extra. Act § 26.

of asylum, a person may be extradited on one charge and tried on another without allowing him a reasonable time to leave the state.³⁶ Also, if the accused's presence in the demanding state has been obtained by trick, fraud or abduction, he must nevertheless stand trial.³⁷

The Uniform Extradition Act provides for an arrest before requisition where a person in this state swears to, or a complaint on the affidavit of a person in another state sets forth, the necessary elements for extradition.³⁸ And an arrest may be made by an officer or private person without a warrant upon reasonable information that the accused stands charged in the courts of another state for a crime punishable by a prison term exceeding one year.³⁹ But in that case, the prisoner must be given an immediate hearing in court.⁴⁰ The judge can then release or commit him to prison for not more than 30 days to await requisition.⁴¹ A prisoner, except in capital and life imprisonment cases is entitled to bail.⁴² In cases where criminal prosecutions are pending in the asylum state against the accused, the governor may, in his discretion, surrender the accused.⁴³

³⁶ *Lascelles v. Georgia*, 148 U. S. 537, 13 Sup. Ct. 687 (1893), *overruling State v. Rauscher*, 119 U. S. 407 (1886); *cf.* *People ex rel. Post v. Cross*, 135 N. Y. 536, 32 N. E. 246 (1892).

³⁷ *Cook v. Hart*, 146 U. S. 183, 13 Sup. Ct. 40 (1892) (accused abducted into demanding state); *Pettibone v. Nichols*, 203 U. S. 192, 27 Sup. Ct. 111 (1906); *Leahy v. Kunkel*, 4 F. Supp. 849 (N. D. Ind. 1933); *State v. Wellman*, 102 Kan. 503, 170 Pac. 1052, Ann. Cas. 1918 D 1006 and note. *Cf. Ex parte Wilson*, 63 Tex. Cr. 281, 140 S. W. 98 (1911); *People v. Hill*, 350 Ill. 129, 183 N. E. 17 (1932).

³⁸ Proposed Unif. Extra. Act § 13. *Simmons v. Van Dyke*, 138 Ind. 380, 37 N. E. 973 (1894), 46 A. L. R. 411 and note; *Matter of Petter*, 23 N. J. L. 311 (1852) (requisition must be made within reasonable time); *In re Mitchell*, 205 N. C. 788, 172 S. E. 350 (1934).

³⁹ Proposed Unif. Extra. Act § 14. *Burton v. N. Y. Central R. R.*, 147 App. Div. 557, 132 N. Y. Supp. 628 (2d Dept. 1911), *aff'd*, 210 N. Y. 567, 104 N. E. 1127 (1914); *Rogers v. McCroach*, 66 Misc. 85, 120 N. Y. Supp. 686 (1910).

⁴⁰ Proposed Unif. Extra. Act § 14: "The accused must be taken before a justice, judge, or magistrate with all practical speed".

⁴¹ Proposed Unif. Extra. Act § 16.

⁴² Proposed Unif. Extra. Act § 16. *Matter of Barlow*, 141 App. Div. 640, 127 N. Y. Supp. 542 (1st Dept. 1910); *State v. Quigg*, 91 Fla. 197, 107 So. 409 (1926) (bail pending *habeas corpus*); *Harnes v. Sturdivant*, 182 S. E. 601 (Ga. 1936) (person in custody under extradition warrant not entitled to bail); *State v. Moeller*, 182 Minn. 369, 234 N. E. 649 (1931); (1931) 30 MICH. L. REV. 156.

⁴³ Proposed Unif. Extra. Act § 19. *Roberts v. Reilly*, 116 U. S. 80, 6 Sup. Ct. 291 (1885); *People v. Klinger*, 319 Ill. 275, 149 N. E. 799 (1925), 42 A. L. R. 581 and note; *People v. Martin*, 188 Colo. 281, 205 Pac. 121 (1922), 21 A. L. R. 1399 and note. *Ex parte Muddaugh*, 268 Pac. 321 (Okla. Cr. 1928) (convict on parole may be surrendered). *Contra: Carpenter v. Lord*, 88 Ore. 128, 71 Pac. 577 (1918); *Ex parte Youstler*, 40 Okla. Cr. 273, 268 Pac. 323 (1928), case discussed in (1928) 42 HARV. L. REV. 277; *Re Opinion of Justices*, 201 Mass. 609, 89 N. E. 174 (1909) (governor of Massachusetts cannot surrender convict serving sentence); Note (1934) 93 A. L. R. 921; *cf.* *Matter of Briscoe*, 51 How. Pr. 422 (N. Y. 1876) (a person under arrest in a civil action cannot be surrendered until the claim has been satisfied). See Note (1908) 21 HARV. L. REV. 224.

The obligation of a governor to honor a requisition cannot be enforced by legal mandate.⁴⁴ An accused is not entitled to receive notice or be present at a hearing before the governor on the requisition, for the proceeding is not judicial.⁴⁵ No inquiry will be made into the nature of the crime or of the accused's guilt.⁴⁶ The official documents regular upon their face make out a *prima facie* case for extradition.⁴⁷ They must, however, set forth the essential elements or rendition will be denied.⁴⁸ A demand for rendition which has for an ulterior design the enforcement of a civil obligation will be denied.⁴⁹ Examination of documents and the issuance of a warrant must be made personally by the governor.⁵⁰ The Uniform Act in no way limits the broad discretionary powers of a governor in surrendering fugitives.⁵¹

When the governor is ready to comply with the demand, he must sign a warrant of arrest which must substantially recite the facts necessary to the validity of its issuance.⁵² Technical defects will not

⁴⁴ *Kentucky v. Dennison*, 65 U. S. 66 (1868); *Ex parte Germain*, 258 Mass. 289, 155 N. E. 12 (1927); (1927) 22 LL. L. REV. 320.

⁴⁵ *Munsey v. Clough*, 196 U. S. 364, 25 Sup. Ct. 282 (1904); *Ex parte Pelinski*, 213 S. W. 809 (Mo. 1919).

⁴⁶ *Lascelles v. Georgia*, 90 Ga. 347, 16 S. E. 945, *aff'd*, 148 U. S. 537, 13 Sup. Ct. 687 (1892); *Drew v. Thaw*, 235 U. S. 432, 35 Sup. Ct. 137 (1914).

⁴⁷ *Black v. Muller*, 59 F. (2d) 687 (C. C. A. 9th, 1932); *People ex rel. Corkran v. Hyatt*, 172 N. Y. 176, 64 N. E. 852, *aff'd*, 188 U. S. 691, 23 Sup. Ct. 456 (1903).

⁴⁸ See text to notes 12 and 13, *supra*.

⁴⁹ *Marbles v. Creecy*, 215 U. S. 63, 30 Sup. Ct. 32 (1909) (that colored person might not get fair trial, no basis for refusing demand); *Hale v. Crawford*, 65 F. (2d) 738 (C. C. A. 4th, 1933) (fact that negroes were excluded from grand jury did not render indictment void); *People v. Murray*, 357 Ill. 326, 192 N. E. 198 (1934); Note (1934) 94 A. L. R. 1493 (inquiry into motive for requisition); *Work v. Corrington*, 34 Ohio St. 64 (1877) (extradition denied when proved to be for purpose of enforcing private claim for money); Proposed Unif. Extra. Act § 23 requires a governor of this state, when making a demand, to state that it is not for the purpose of enforcing a debt). See REPORT OF GOVERNOR'S CONFERENCE ON CRIME, note 1, *supra*, at 654.

⁵⁰ *In re Tod*, 125 N. D. 386, 81 N. W. 637 (1900) (power to issue warrant cannot be delegated in absence of statute); *cf. State ex rel. Webster v. Moeller*, 191 Minn. 193, 253 N. W. 668 (1934) (governor does not have to personally sign warrant); *Armstrong v. Van De Vanter*, 21 Wash. 682, 59 Pac. 510 (1899) (requisition is official act, may be signed by acting governor).

⁵¹ Proposed Unif. Extra. Act § 4. An aroused public opinion against chain gangs seems to have been the basis of New Jersey's former Governor A. Harry Moore's refusal to honor a demand for the return of a fugitive to a Georgia chain gang. N. Y. Times, Dec. 22, 1933, at 1.

⁵² Proposed Unif. Extra. Act § 7. *Ex parte Murray v. Harris*, 112 S. C. 342, 99 S. E. 798 (1919); *Ex parte Haynes*, 98 Tex. Cr. 609, 267 S. W. 490 (1925) (warrant stating conviction of accused in demanding state sufficient); *Downey v. Schmidt*, 4 F. Supp. 1 (N. D. Tex. 1933) (warrant unlawfully issued by a governor may be revoked by his successor); *People ex rel. Jourdan v. Donahue*, 84 N. Y. 438 (1881) (a governor may revoke warrant); Proposed Unif. Extra. Act. § 21.

vitate the warrant which requires no particular form.⁵³ Jurisdictional facts as to whether the accused has been charged with crime and whether he is in fact a fugitive are presumptively established by the warrant of rendition.⁵⁴ But this presumption is rebuttable and may be reviewed by the courts.⁵⁵

The accused is entitled as a matter of right by *habeas corpus* to question the legality of his arrest under the warrant of rendition.⁵⁶ Both the federal and state tribunals may be invoked for this purpose.⁵⁷ Neither a court nor a governor has jurisdiction to inquire into the guilt or innocence of the accused or go into disputed questions of fact.⁵⁸ Nor can the court pass upon the constitutionality of the law under which the accused is charged or upon the regularity of the proceedings at which the requisition was issued in the demanding state.⁵⁹ If the accused proves conclusively that he was not present

⁵³ United States *ex rel.* Jackson v. Meyering, 54 F. (2d) 621 (1931), *cert. denied*, 286 U. S. 542, 52 Sup. Ct. 498 (1931) (warrant reciting wrong date of alleged crime not ground for discharge); People *ex rel.* Hamilton v. Police Comm'r, 100 App. Div. 483, 91 N. Y. Supp. 760 (1st Dept. 1905); People *ex rel.* Steele v. Mulrooney, 139 Misc. 525, 248 N. Y. Supp. (1931) (naming accused by one of his several aliases sufficient); State *ex rel.* McNichols v. Justus, 84 Minn. 237, 87 N. W. 770 (1901); State *ex rel.* Webster v. Moeller, 191 Minn. 193, 253 N. W. 668 (1934) (governor does not have to personally sign warrant).

⁵⁴ Drew v. Thaw, 235 U. S. 432, 35 Sup. Ct. 137 (1914); Hogan v. O'Neill, 255 U. S. 52, 41 Sup. Ct. 222 (1921); Carter v. Atlantic Coast Line R. R., 109 S. C. 119, 95 S. E. 357, 11 A. L. R. 1410 (1921); *Ex parte* Cupp, 84 S. W. (2d) 731 (Tex. Cr. 1935). Flight is a question of fact. Whether the accused has committed a crime is a question of law. Roberts v. Reilly, 116 U. S. 80, 6 Sup. Ct. 291 (1885); People v. Moore, 167 App. Div. 479, 153 N. Y. Supp. 10 (1915), *aff'd*, 217 N. Y. 632, 112 N. E. 1070 (1916).

⁵⁵ *Ex parte* Hart, 63 Fed. 249 (C. C. A. 4th, 1894); Reed v. United States, 224 Fed. 378 (C. C. A. 9th, 1915); People *ex rel.* Gottschalk v. Brown, 237 N. Y. 483, 143 N. E. 653 (1924).

⁵⁶ *Ex parte* Montgomery, 244 Fed. 967, *aff'd*, 246 U. S. 656, 38 Sup. Ct. 424 (1917); Day v. Keim, 2 F. (2d) 966 (C. C. A. 4th, 1924); People *ex rel.* Corkran v. Hyatt, 172 N. Y. 176, 64 N. E. 825 (1902); State v. Currie, 174 Ala. 1, 56 So. 736 (1911) (*habeas corpus* not proper proceeding to try questions of alibi, or any question of guilt or innocence of accused); People *ex rel.* Mark v. Toman, 362 Ill. 232, 199 N. E. 124 (1936) (limitation of writ of *habeas corpus* in extradition proceedings).

⁵⁷ Robb v. Connolly, 111 U. S. 624, 4 Sup. Ct. 544 (1884); *Ex parte* Montgomery, 244 Fed. 967, *aff'd*, 246 U. S. 656, 38 Sup. Ct. 424 (1917); Day v. Keim, 2 F. (2d) 966 (C. C. A. 4th, 1924); *Ex parte* Nash, 44 F. (2d) 403 (W. D. Ark. 1930); United States *ex rel.* McCline v. Meyering, 75 F. (2d) 716 (C. C. A. 7th, 1934).

⁵⁸ Romani v. Meyering, 352 Ill. 436, 186 N. E. 150 (1933); Work v. Corrington, 34 Ohio State 64 (1877); *Ex parte* Murray, 112 S. C. 342, 99 S. E. 798 (1919); *cf.* People *ex rel.* Fong v. Honeck, 227 App. Div. 436, 238 N. Y. Supp. 123 (2d Dept. 1929); (1930) 16 V. A. L. Rev. 829.

⁵⁹ Pearce v. Texas, 155 U. S. 311, 15 Sup. Ct. 116 (1894); People *ex rel.* Sapiro v. Bolan, 149 Misc. 73, 267 N. Y. Supp. 323 (1933).

in the demanding state at the time of the crime or that he is not a fugitive, he will be released from custody.⁶⁰ The accused may prove mistaken identity.⁶¹ The Uniform Law gives the accused the right to appear before a court and apply for a writ of *habeas corpus* if he demands it.⁶² This is a departure from the general rule which makes it a prerequisite to extradition that the accused be heard on a writ of *habeas corpus* unless specifically waived in writing.⁶³

With the exception of the provision which changes the law as to fugitives and the few exceptions pointed out above⁶⁴ the Uniform Extradition Act corresponds substantially with the New York Code of Criminal Procedure.⁶⁵

THOMAS BRESS.

THE POWER OF EMINENT DOMAIN IN SLUM-CLEARANCE AND LOW-COST HOUSING PROJECTS.

Origin of the Problem.

Under the authority of Title II of the National Industrial Recovery Act, enacted by Congress in 1933,¹ the President issued executive orders creating the Federal Emergency Administration of Public Works and delegated to its Administrator all powers granted thereunder.² "With a view to increasing employment quickly,"³ the Pub-

⁶⁰ *State v. Bailey*, 289 U. S. 412, 53 Sup. Ct. 667 (1933) (burden of proving absence should be beyond reasonable doubt); *People ex rel. Sherman v. Barr*, 131 Misc. 915, 229 N. Y. Supp. 268 (1928); (1928) 77 U. OF PA. L. REV. 135; *Lawrence v. King*, 203 Ind. 252, 180 N. E. 1 (1932); *Roger v. Murnane*, 172 Minn. 401, 215 N. W. 863 (1927) (burden of disproving flight on prisoner); *State ex rel. Gaines v. Westhues*, 318 Mo. 928, 2 S. W. (2d) 612 (1928); *In re Hubbard*, 201 N. C. 472, 160 S. E. 569 (1931) (warrant does not preclude defendant from proving no flight)

⁶¹ Proposed Unif. Extra. Act § 10. See *Lee Gim Bor v. Ferrari*, 55 F. (2d) 86, 84 A. L. R. 329 (1932) and note (*John Doe* indictment. Unless a demand describes the person demanded so that he may be identified, no warrant of arrest can properly issue); *Ex parte Jowell*, 87 Tex. Cr. 556, 223 S. W. 456 (1925) (evidence as to identity always admissible).

⁶² Proposed Unif. Extra. Act § 10. Cases, *supra* note 57.

⁶³ N. Y. CODE CRIM. PROC. § 827.

⁶⁴ Notes 21, 63, *supra*. Proposed Unif. Extra. Act § 25 provides that a person brought into this state on extradition is privileged from personal service in civil actions, arising from the same facts as the crime for which he is being returned, until he has been convicted in the criminal proceeding or if acquitted, until he has had ample opportunity to return to the state from which he was extradited." This modifies the New York law which permits personal service for any cause and at any time. *Netograph v. Scrugham*, 197 N. Y. 377, 90 N. E. 962 (1910). See *A. B. C. of Extradition*, N. Y. L. J., Oct. 16, 1934, at 1274.

⁶⁵ REPORT OF LAW REVISION COMMISSION (1935) 153.

¹ 48 STAT. 195 (1933), 15 U. S. C. A. § 701 (1934); 48 STAT. 200, 201 (1933), 40 U. S. C. A. §§ 401, 402, 403 (1934).

² Executive Order No. 6252, 40 U. S. C. A. § 414 (1934).

³ 48 STAT. 203 (a) (1933), 40 U. S. C. A. § 403 (1934).