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POLICE SCIENCE LEGAL ABSTRACTS AND NOTES

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The Uniform Criminal Extradition Act was the subject of an interesting opinion in the case of *English* v. *Matowitz, Chief of Police, et al.*, .. Ohio ...; 72 N. E. (2d) 898, (1947). Petitioner, seeking a writ of habeas corpus, had been arrested in Ohio upon a warrant of extradition issued by requisition of the Governor of Pennsylvania. He was charged with the crime of "accessory before the fact to robbery, and robbery" and alleged to be a "fugitive from justice." The extent of petitioner's participation in the crime was the lending of a deadly weapon to the actual perpetrator with knowledge of its intended use. The robbery was committed in Pennsylvania but petitioner at no time left Ohio.

The Supreme Court of Ohio supported petitioner's contention that since he did not *flee* from Pennsylvania he was not a "fugitive from justice," and therefore was not subject to extradition under the provisions of Section 2, Article IV of the Federal Constitution, or the supplemental federal law, 18 U. S. C. A. 662. But the court adopted the respondent's claim that Section 109-6, General Code, generally known as "the Uniform Criminal Extradition Act," governed the case and held that even though petitioner was not a "fugitive from justice" he could be extradited under it. To the petitioner's charge that the statute was unconstitutional the court pointed out that neither the Constitution nor the federal enactments even impliedly covered the situation in the instant case. The Uniform Act is merely supplementary to the federal laws. The statute is as follows:

> "The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 3 (General Code § 109-3) 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, and the provisions of this act not otherwise inconsistent, 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."

Thirty-one states, including Pennsylvania, have adopted the statute. (See 8 Ohio State L. Jour., 255, 256 (1942).

Evidence Obtained by Unreasonable Search of Automobile—The case of *Robertson et al.* v. *State*, ... Tenn. ..., 198 S. W. (2d) 633 (1947), involves the power of arrest and inspection by the State Highway Patrol and abuse of that power. Two Tennessee patrolmen noticed defendant's car ahead of them and their attention was particularly attracted when a passenger kept staring through the rear window at them. They checked their list of stolen cars but none of the descriptions applied to the car they were following. Finally they stopped the car, on suspicion, and checked the driver's operator's license. The license was in proper order but, while the patrolmen were standing by the car, they

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saw a carton of whiskey behind the seat. The defendants were tried and convicted for unlawfully transporting alcoholic beverages. On appeal defendants claimed the court below erred in admitting the patrolmen's testimony in evidence on the ground that it was obtained by an illegal search and seizure. The Supreme Court of Tennessee reversed the case in favor of the defendants. The court emphasized that by statute a warrant for arrest and for search and seizure is required and that since highway patrolmen are excepted from this rule, in-so-far as they may stop any car and demand to see the license of the operator, their unusual power should be strictly construed and made to stay within its proper bounds. The authority is solely of statutory origin and is sanctioned by revenue necessities and the protection of the public against reckless or unqualified drivers. But here the court was of the opinion that the right was used as a pretext for an inspection of the contents of the automobile. Such a "fishing expedition" conducted by state patrolmen was considered as a clear violation of their limited authority and evidence obtained in this manner cannot be made the basis of a conviction. (For a case note on the right to search an automobile see 22 J. Crim. L. & Criminology 284; and for recent comment on the "Recent United States Supreme Court Interpretations of the Law of Searches and Seizures," 37 J. Crim. L. & Criminology 413.)

Mann Act Extended to Outlaw Transportation of Plural Wives Across State Lines by Members of Religious Sect Practicing Polygamy—In *Cleveland et al.* v. *U. S.*, ... U. S. ..., 67 S. Ct. 13 (1946), the United States Supreme Court, in effect, reaffirmed the controversial result of *Caminetti* v. *U. S.*, 242 U. S. 470; 37 S. Ct. 192 (1917), by holding that the scope of the Mann, or White Slave Traffic Act, is not restricted to commercialized vice, and that the practice of polygomy is even a worse influence in society than the isolated immoral practice involved in the *Caminetti* case.

The Act makes a felony the transportation in interstate commerce of "any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose." (Mann Act § 2, 18 U. S. C. A. § 398). The decision is couched in the phrase "for any other immoral purpose" as was the *Caminetti* case.

Defendant argued, (1) that polygamy was a form of marriage and could not be classified with prostitution or debauchery; (2) that the legislative history (H. R., Rep. No. 47, 61st Cong. 2nd Sess., Ser. No. 886 (1910), 9-10) contained no indication that the act was aimed at polygamy; (3) that interstate transportation did not further the defendant's purposes. The Court rejected these pleas and concluded with the warning that if such practice were upheld it would place beyond the law any act done under claim of religious belief. Three justices, in a vigorous dissent, supported the defendant's contentions and one justice, in a concurring opinion, stated that although the earlier *Caminetti* decision was still the law it really extended the coverage of the Mann Act beyond the Congressional intent and purpose. (See 56 Yale L. J. 720 for a complete account of this line of cases.)

The Weight to Be Given to the Testimony of Police Officers in Murder Trial—The defendant was convicted of first degree murder. One specification of error, on appeal, was the trial court's refusal to give the

following instruction: "The court instructs the jury that certain police, state and county officers have testified in this case on behalf of the state, and that, in weighing their testimony greater care should be used, because of the natural and unavoidable tendency of such persons in procuring and stating evidence against the defendant." The Supreme Court of North Dakota, although it reversed the case and ordered a new trial on other grounds, held the trial judge properly refused the instruction since (1) there was no prejudice or bias shown, (2) the only ground for the request was the official positions held by these witnesses, (3) none of them were special investigators in the case, (4) the officers' duty was as much to protect the innocent as to apprehend and convict the guilty and they are presumed to have acted in furtherance of their duty. *State* v. *Maresch,* ... N. D. ...; 27 N. W. 2nd 1 (1947).

Pre-Arraignment Confessions, Later Used in Juvenile Court, Held Admissible in Subsequent Proceedings—In *State* v. *Lowder,* ... Ohio App. ...; 72 N. E. 2nd 785 (1946), three minors were arrested as murder suspects, and signed confessions were obtained from each of them before any charges were filed. The confessions were used in Juvenile Court, from which the case was referred to the Common Pleas Court. There the defendants were indicted, tried and convicted. Two questions as to the admissibility of the confessions presented themselves on appeal: (1) Were they admissible even though the accused were not taken *immediately* before the Juvenile Court as directed by Section 1639-27 General Code?; (2) Did the fact that they were used in Juvenile Court render them inadmissible, under Section 1639-30 General Code, in further proceedings?

The question of confessions obtained before arraignment, especially when detention by the police is prolonged, has troubled not only the trial and appellate courts of the country but also the Supreme Court of the United States. (See 36 J. Criminal L. & Criminology, 222.) The Ohio Court of Appeals in the instant case made no attempt to reconcile the federal decisions and chose *State* v. *Collett,* 58 N. E. (2d) 417, and *People* v. *Alex,* 265 N. Y. 192, 192 N. E. 289, 94 A. L. R. 1033, as governing precedents. The length of time before arraignment was not revealed by the facts but the court, after reviewing the evidence, found the confessions to have been voluntarily made and therefore admissible.

The second question was answered in the negative and Section 1639-30, General Code, was held inapplicable to the present situation. The section, which is a portion of the Juvenile Court Code, provides in part: "The disposition of a child under the judgment rendered or any evidence given in the court shall not be admissible as evidence against the child in *any other case or proceeding in any other court.*" (Italics supplied.) The court held that since no judgment had been rendered by the Juvenile Court and the case was referred to Common Pleas through the normal procedural channel, it was still the *same case* and the *same proceeding* and not "*any other case or proceeding in any other court.*"
