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Abstracts of Recent Cases

accompanying values, there is a direct challenge presented by the newly-devised reciprocal procedure. In and of itself the Act is no panacea. However, it does represent a reasonable effort to alleviate one of the more troublesome areas of the enforcement of rights and duties across state lines. Therefore, now that the law-makers have acted, it is incumbent upon law enforcement officials and the judiciary to energize the Act's provisions and to afford a realistic protection to the individual rights which it seeks to protect. To this end it is manifest that the utmost co-operation, coupled with a good-faith effort to understand the problems of a collaborating official, is necessary to insure the successful operation of the URESA.

The following bibliography, containing citations to articles, notes and comments relating to reciprocal legislation in the field of non-support, is offered as a research aid to law enforcement officials who become involved in litigation under one of the uniform acts.

5 ALA. L. REV. 228 (1953). LEE, *Alabama's Reciprocal Nonsupport Legislation.*

37 A.B.A.J. 93 (1951). BROCKELBANK, *The Problem of Family Support: A New Uniform Act Offers a Solution.*

3 AM. J. COMP. L. 543 (1954). COMMENT, *The United Nations Draft Conventions on Maintenance Claims.*

42 A.L.R.2d 768 (1955). Anno., *Support-Reciprocal Enforcement.*

5 ARK. L. REV. 349 (1951). BROCKELBANK, *Uniform Reciprocal Enforcement of Support Act.*

33 B.U.L. REV. 217 (1953). Comment, *The Uniform Enforcement of Support Act in Massachusetts.*

16 BROOKLYN L. REV. 104 (1949). (Short commentary on the Uniform Support of Dependents Law).

41 CALIF. L. REV. 106 (1953). CONTINI, *International Enforcement of Maintenance Obligations.*

42 CALIF. L. REV. 382 (1954). EHRENZWEIG, *Interstate Recognition of Support Duties.*

CURRENT TRENDS IN STATE LEGISLATION 164 (1952), VON OTTERSTADT, *Reciprocal Support Legislation.*

67 HARV. L. REV. 1435 (1954) (Casenote on *Commonwealth v. Mong.*).

45 ILL. L. REV. 252 (1950). Comment, *The New Uniform Support of Dependents Act.*

17 MO. L. REV. 1 (1952). BROCKELBANK, *Is the Uniform Reciprocal Enforcement of Support Act Constitutional?*

29 N.Y.U.L. REV. 1480 (1954) (Casenote on *Commonwealth v. Mong*).

29 N.C.L. REV. 423 (1952)(Short commentary on passage of initial act in North Carolina).

31 ORE. L. REV. 97 (1952). BROCKELBANK, *Is the Uniform Reciprocal Enforcement of Support Act Constitutional?*

2 ST. LOUIS U.L.J.12 (1952). BROCKELBANK, *Multiple-State Enforcement of Family Support.*

1 SO. TEXAS L.J. 144 (1954). TASER, *Uniform Reciprocal Enforcement of Support Law: Like Reciprocal Enforcement of Support Law.*

5 SYR. L. REV. 275 (1954)(Casenote on *Commonwealth v. Mong*).

25 TEMP. L.Q. 336 (1952). Comment, *The Uniform Support Law.*

26 TEMP. L.Q. 223 (1953). RUTHERFORD, *Pennsylvania's Uniform Support Law.*

29 TUL. L. REV. 512 (1955). CRIHFIELD, *Current Status of Reciprocal Support Acts.*

23 U. CIN. L. REV. 75 (1954). Comment, *The New Reciprocal Non-Support Act.*

3 U. KAN. L. REV. 44 (1954). Comment, *The Uniform Reciprocal Enforcement of Support Act.*

[1952] WIS. L. REV. 544. Comment, *Nonsupport Laws in Wisconsin.*

Woman's Home Companion, Sept. 1949. Woodbury, *Runaway Husbands.*

8 WYO. L.J. 237 (1954). Comment, *The Uniform Enforcement of Support Act in Wyoming.*

ABSTRACTS OF RECENT CASES

Modification of Sentence on Court's Own Motion—In a proceeding in the United States District Court for the Southern District of California the defendant pleaded guilty to robbery and was sentenced to five years in the Federal penitentiary. Such a sentence would have enabled the defendant to be released after 48 months upon good behavior, following which he would be under supervision for an additional period of 12 months. While incarcerated in the

Federal prison a warrant of arrest was issued by a California magistrate at the request of local authorities. The warrant was then forwarded to the warden of the Federal prison and held as a detainer against the prisoner. The net effect of such a detainer is to foreclose the possibility of parole and other rehabilitory measures. When informed of these facts, the federal district judge, Judge Tolin, who had sentenced the prisoner wrote to both the Chief of Police and the District Attorney of Los Angeles, explaining to them his position in the matter and requested that they reconsider their action and remove the detainer. After receiving no reply from the Chief of Police and an unsatisfactory reply on a form letter from the office of the District Attorney, Judge Tolin reopened the case on his own motion. *United States v. Candelaria*, 131 F.Supp. 797 (S.D.Calif. 1955).

In his opinion, Judge Tolin recognized that the "two sovereignties" concept has been held to be constitutional and to permit punishment of the same person for the same crime by both federal and state governments. See *United States v. Lanza*, 260 U.S. 377 (1922). However, he noted that this concept follows merely the letter and not the spirit of the Constitution and the common law. In further examining the California Constitution and statutes he expressed the opinion that the law of California itself bars a subsequent prosecution in state courts after conviction in a federal court. However, since the action of issuing the detainer was taken by state authorities he assumed for the purpose of the case that an actual prosecution would follow the prisoner's release from the Federal prison.

Aside from the deleterious effect which a detainer has upon effective rehabilitation, Judge Tolin also posed the problem of whether the action taken by the District Attorney was not a judicial rather than an executive function in that it "will alter the entire course of treatment of the prisoner and keep him from receiving much of what the sentencing Judge intended when the length of term was prescribed." In view of all these considerations, Judge Tolin concluded: "Since local officials have obstructed Federal efforts to properly punish and correct, they may pursue the prosecution they have commenced by their Detainer. The Clerk will present a modified judgment, fixing the term of imprisonment at sixty days."

Felony-Murder Rule Applied—The defendant perpetrated an armed robbery of a dry-cleaning store, knocking out the owner before leaving. Approximately four to six minutes elapsed before the owner regained consciousness and called a police officer who was standing nearby. Sighting the defendant, the officer gave chase during which defendant shot and killed his pursuer. Defendant was indicted for felony murder. Appealing from a conviction of murder in the first degree the defendant argued that he could not be guilty of a felony murder since the robbery which he had admittedly committed was consumated prior to the time when the pursuit began. The Court of Appeals for the District of Columbia held that a robbery is in progress so long as asportation continues and that asportation continues until the robber reaches a place of seeming security. The question of whether or not a robbery is still in progress is one of fact for the jury. In this case the finding of the jury that the robbery was still in progress was supported by the evidence. *Carter v. United States*, 223 F.2d 332 (D.C.Cir. 1955).

Corroborative Circumstances Established by Prosecutrix' Testimony Held Sufficient to Sustain Conviction for Rape—The United States Court of Appeals for the District of Columbia recently liberalized its rule that no person can be convicted in a prosecution for rape on the basis of the prosecutrix' testimony alone. In *Walker v. United States*, 223 F.2d 613 (D.C.Cir. 1955), the court affirmed a rape conviction in a case in which the sole testimony relating to the identity of the accused and the element of penetration by force was elicited from the prosecutrix. Although the court stated that it would continue to adhere to the minority rule requiring extrinsic corroborative evidence of the prosecutrix' testimony, followed in Idaho, Illinois, Iowa, Nebraska and New York, it indicated that circumstances disclosed in the testimony of the prosecutrix are of themselves sufficient to fulfill the requirement of circum-

stantial corroboration. In addition, the fact that the direct testimony of the prosecutrix remained unshaken upon cross-examination and also the evasive attitude of the defendant who testified in his own behalf were considered as corroborative circumstances tending to support the direct testimony of the prosecutrix.

A vigorous dissent by Judge Bazelon took the position that the majority opinion was a departure from the settled rule in the District of Columbia, and, in effect, an adoption of the majority rule that no corroborative evidence is required unless the prosecutrix' story is inherently unbelievable or directly controverted by other evidence. Judge Bazelon was of the opinion that corroborative evidence, offered by the prosecution in addition to the testimony of the prosecutrix, must be introduced as to both the corpus delecti and the identity of the accused. Absent corroboration on these two points there can be no conviction as a matter of law, according to the dissenting opinion.

Denial of Defendant's Right to Assistance of Counsel Renders Conviction Void—In 1939 the petitioner pleaded guilty to an indictment for mail theft in a federal court. In 1950 he pleaded guilty to attempted burglary in a New York state court and was sentenced as a second offender. In 1952 he applied to a federal district court for a writ of error coram nobis on the ground that the 1939 conviction was void in that he was not advised of his right to counsel nor represented by counsel at that time. From a denial of the writ he appealed to the Court of Appeals for the Second Circuit which reversed the district court. "Under the Sixth Amendment (as distinguished from the Fourteenth), a defendant's right to the assistance of counsel in a criminal trial is an absolute constitutional requirement.... A conviction in a case where the defendant has not enjoyed that fundamental right is void." Accordingly the sentence imposed in the state court upon the petitioner should not have been of the severity usually awarded to a second offender. To "wipe out the record of conviction [in the federal court] and its consequences" a writ of error coram nobis will issue. *United States v. Morgan*, 222 F.2d 673 (2d Cir. 1955).

Evidence of Prior Similar Transactions—The defendant was charged with forgery and during the course of the trial posited his defense primarily on the ground that he had signed another person's name to a promissory note with that person's authority. During the course of the trial the prosecution introduced into evidence over objection of the defendant three other documents of a similar nature executed shortly before the note in issue was executed. Counsel for the defendant argued that since the defendant admitted the signing that the only issue was whether he had done so with or without authority. Upon conviction of the crime of forgery the defendant prosecuted an appeal to the Court of Appeals of New York. The court held that where evidence of other crimes "is relevant to negative the existence of accident or mistake, or to show the intent or motive with which the defendant acted, or a common scheme or plan, its probative value is deemed to outweigh the danger of prejudice, and the rules dictating exclusion will yield." As to the defendant's theory that his admission of the signing rendered evidence of similar transactions inadmissible, the court held that such an admission merely required that the trial judge instruct the jury to consider the evidence solely in relation to the question of intent to defraud. *People v. Dales*, 127 N.E.2d 829 (N.Y. 1955).

Failure to Verify Original Petition for Extradition does not Void Subsequent Extradition Issued Pursuant to the Petition—The Governor of Georgia filed a petition of extradition with the Governor of Ohio who issued a writ of extradition in response to the petition. In a habeas corpus proceeding the parties named in the writ challenged the validity of the writ on the ground that the petition was not verified by affidavit as required by both Georgia and Ohio law. The Court of Appeals of Ohio, Montgomery County, held that since the original petition and the writ issued pursuant thereto conformed to the requirements set out in 18 U.S.C. §662 that the extradition issued by the Governor of Ohio was valid. "... [W]hen the federal and state laws are not the same, the law of this state [must] give way." The essential

elements in a requisition for extradition under the Federal law are set forth as being: (1) a demand for a certain person charging him with being a fugitive from justice; (2) enclosure of certified copies of the indictments charging felonies; and, (3) certification by the petitioning governor of the indictments as authentic. *State of Ohio v. Smith*, 127 N.E.2d 633 (Ohio App. 1953).

Right to De Novo Determination of Physical Coercion of Confession on Petition of Writ of Habeas Corpus after State Court Conviction—Plaintiff was tried and convicted in a state court. In that court he introduced evidence that his written confession should be excluded because it was obtained by physical coercion. Nevertheless the court admitted the confession and instructed the jury to consider it only if it had been made voluntarily. Following his conviction plaintiff petitioned the district court for a writ of habeas corpus supporting the petition with evidence of physical coercion.

Defendant state contended that the federal court had no right to retry the question and even if it had, plaintiff had not proved that the jury considered the confession in convicting him.

The district court granted the writ and the Court of Appeals for the Ninth Circuit affirmed. The court declined to follow the similar case of *Leyra v. Denno*, 347 U.S. 556 (1953) because it involved mental and not physical coercion, but held on the basis of *Brown v. Allen*, 344 U.S. 433 (1952), construing 28 U.S.C. §§2241 and 2254, that where a constitutional claim is involved a prisoner either in state or federal custody has the right to have an independent determination made of his petition for a writ of habeas corpus. On the second contention the court held that it would not make the plaintiff prove that the jury had considered his confession in convicting him as that was a burden impossible to discharge. Moreover, as the district court found that the confession was physically coerced, the Court of Appeals was bound to issue the writ regardless of whether the jury did or did not consider the confession in convicting the plaintiff. *Creanor v. Gonzales*, 24 U.S.L. WEEK 2109 (9th Cir. Aug. 22, 1955).

Admissibility of Hospital Record of Results of Chemical Test for Intoxication—The defendant was convicted of driving while under the influence of intoxicating liquor. During the course of the trial results of a chemical test of his blood were admitted into evidence over objection of the defendant's counsel. On appeal from the conviction, the appellate court held that a report purporting to show the results of a blood test, in order to be admissible, "must be shown to come from proper custody and to be an authentic record." Although a police officer had testified as to the custody and authenticity of the hospital report, the court held that such testimony was inadmissible as hearsay. However, in the instant case, the error was not deemed to be prejudicial since there was other evidence sufficient to sustain the finding that the defendant had been intoxicated and the trial had not been to a jury. *People v. Wyner*, 142 N.Y.S.2d 393 (Westchester County Ct. 1955).

Georgia Appellate Court Defines Proper Foundation for Admission of Mechanical Transcription into Evidence—In a civil action in tort for negligence, counsel for the plaintiff sought to introduce a Dictaphone recording containing questions propounded by defendant's counsel and answers by one of defendant's witnesses. In sustaining the ruling of the trial court excluding the recording, the appellate court made the following observations:

"Application of the principles that a proper foundation must be laid before such evidence as is here presented, as well as confessions, etc., is admissible, is elementary and fundamental. In addition to the principles always applied in such instances, we have here an additional element, i.e., what is the method of laying the proper foundation before a Dictaphone record, tape recording, and similar mechanical transcription devices may be reproduced in the presence of the jury? . . . A proper foundation for their use must be laid as follows: (1) It

must be shown that the mechanical transcription device was capable of taking testimony. (2) It must be shown that the operator of the device was competent to operate the device. (3) The authenticity and correctness of the recording must be established. (4) It must be shown that changes, additions, or deletions have not been made. (5) The manner of preservation of the record must be shown. (6) Speakers must be identified. (7) It must be shown that the testimony elicited was freely and voluntarily made, without any kind of duress." *Steve M. Solomon, Inc. v. Edgar*, 88 S.E.2d 167 (Ga.App. 1955).