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CRIMINAL LAW AND PROCEDURE - EXTRADITION OF A JUVENILE DELINQUENT

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CRIMINAL LAW AND PROCEDURE — EXTRADITION OF A JUVENILE DELINQUENT — The state of Georgia, by an acting justice of peace of a county, charged a thirteen-year-old boy with the crime of assault with intent to murder. Under the Georgia Criminal Code the offense was punishable by imprisonment in the penitentiary for a term of two to ten years.[1] The boy was found in the state of New York, whereupon the governor of Georgia sent a requisition for extradition to the governor of New York. The boy defendant brought a habeas corpus proceeding in a New York court to obtain release from custody under the extradition warrant. *Held*, the defendant could not be extradited as a "criminal," because he could be tried solely as a juvenile delinquent under the laws of Georgia.[2] *People v. Butts*, (S. Ct. 1939) 14 N. Y. S. (2d) 881.

The federal extradition statute provides that a person may be extradited upon proof that he is a fugitive from justice and that he is legally charged with a crime in the demanding state.[3] A person is legally charged with a crime when the courts of the demanding state have jurisdiction to try him for the specific offense.[4] In the principal case, the New York court refused to allow extradition of the defendant on the ground that he was not legally charged with a crime since the laws of Georgia permit him to be tried only as a juvenile delinquent. Under the Georgia code the juvenile court has exclusive jurisdiction over every child under sixteen who commits any act for which he could be prosecuted in a criminal proceeding; and an adjudication by the juvenile court does not denominate the child a criminal.[5] Therefore, it is true that under these two sections

[1] Ga. Code (1933), § 26-1403: "An assault with intent to murder shall be punished by imprisonment and labor in the penitentiary for not less than two years nor more than 10 years."

[2] Ga. Code (1933), § 24-2401: "In counties having a population of 60,000 or more, juvenile courts are created and established with original and exclusive jurisdiction of all cases coming within the terms and provisions of this Chapter." Sec. 24-2402: "This Chapter shall apply to every child under 16 years of age (a) Who violates any penal law or any municipal ordinance, or who commits any act or offense for which he could be prosecuted in a method partaking of the nature of a criminal action or proceeding. . . ." Sec. 24-2412: "No adjudication under the provisions of this Chapter shall operate as a disqualification of the child for any office . . . and such child shall not be denominated a criminal by reason of any such adjudication, nor shall such adjudication be denominated a conviction."

[3] 1 Stat. L. 302 (1793), 18 U. S. C. (1934), § 662; Roberts v. Reilly, 116 U. S. 80, 6 S. Ct. 291 (1885); Hyatt v. Corkran, 188 U. S. 691, 23 S. Ct. 456 (1903).

[4] Ex parte Morgan, (D. C. Ark. 1883) 20 F. 298; State ex rel. Myers v. Allen, 83 Fla. 655, 92 So. 155 (1922); Matter of Strauss, 197 U. S. 324, 25 S. Ct. 535 (1905); 81 A. L. R. 552 (1932).

[5] Ga. Code (1933), §§ 24-2401, 24-2402, 24-2412. Supra, note 2.

of the code the juvenile court of Georgia does have jurisdiction over the defendant, not as a criminal, but as a delinquent; and that in a juvenile court proceeding a delinquent is not charged with or tried for a crime.[6] But the Juvenile Act has been interpreted to recognize the exclusive jurisdiction of the superior courts of Georgia to try persons under the age of sixteen for criminal offenses, even though such an interpretation is contrary to the express words of the act, in order to uphold its constitutionality.[7] The constitution of the state of Georgia declares that the superior court shall have exclusive jurisdiction over crimes for which the offender is subject to confinement in the penitentiary.[8] Therefore, it follows that the superior court, which is a court of general criminal jurisdiction, also has jurisdiction over the boy, not as delinquent, but as a criminal. It would seem that to say that the boy cannot be extradited because he is not legally charged with a crime and can be tried only as a juvenile delinquent is to go contrary to the provisions of the Juvenile Act, the constitution and the decisions of the supreme court of the state of Georgia. It is not for the courts or the governor of the state requisitioned to decide whether the boy is to be treated as a delinquent or as a criminal but for the courts of the demanding state.[9] Logically it would seem that the boy should have been extradited upon the demand of the governor of Georgia.

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[6] 8 MINN. L. REV. 167 (1924); Cinque v. Boyd, 99 Conn. 70, 121 A. 678 (1923); In re Powell, 6 Okla. Cr. 495, 120 P. 1022 (1912); Sylvester v. Commonwealth, 253 Mass. 244, 148 N. E. 449 (1925); Leonard v. Licker, 3 Ohio App. 377 (1914). These courts all say that the Juvenile Act is an assertion of the state's power as *parens patriae* and its right to exercise proper parental control over minors and that the main purpose of the act is to protect and save the child.

[7] Ga. Code (1933), § 24-2416 provides that the "court may, in its discretion, in any case of a delinquent child brought before it as herein provided, permit such child to be proceeded against in accordance with the laws that may be in force governing the commission of crime, and in such case the petition, if any, filed under this Chapter shall be dismissed and the child shall be transferred to the court having jurisdiction of the offense." Notwithstanding the words "in its discretion," the courts of Georgia have interpreted the act as giving the discretion to decide how the child is to be tried not to the juvenile courts but to the superior courts of Georgia. Hicks v. State, 146 Ga. 706, 92 S. E. 216 (1917); Thomas v. State, 174 Ga. 654, 163 S. E. 734 (1934); Johnson v. State, 43 Ga. App. 474, 159 S.E. 295 (1931); Williams v. Davidson, 147 Ga. 491, 94 S. E. 564 (1917).

Other states also recognize that the juvenile court's jurisdiction does not deprive the criminal courts of their jurisdiction over the child committing a crime. The Illinois court in People v. Lattimore, 362 Ill. 206 at 209, 199 N. E. 275 (1935), said that "It was not intended by the legislature that the juvenile court should be made a haven of refuge where a delinquent child of the age recognized by law as capable of committing a crime should be immune from punishment for violation of the criminal laws." Tipton v. Commonwealth, 221 Ky. 363, 298 S. W. 990 (1927); State v. Tweed, 63 Utah 176, 224 P. 443 (1924).

[8] Ga. Code (1933), § 2-3201: "The Superior Courts shall have exclusive jurisdiction . . . in criminal cases where the offender is subjected to loss of life, or confinement in the penitentiary. . . ."

[9] Drew v. Thaw, 235 U. S. 432, 35 S. Ct. 137 (1914); State ex rel. Burnett v. Flournoy, 136 La. 852, 67 So. 929 (1915).