**Criminal Law—Extradition—Scope of Inquiry by State from Which Extradition Sought**—[New York].—The relator, a resident of New York, was convicted of burglary in Pennsylvania, where he was sentenced to serve consecutively two six-year terms. Having served one term, he was paroled with permission to return to New York. Later he was accused of having violated his parole, and the governor of Pennsylvania issued a requisition for his extradition so that a hearing on the charges might be held by the Pennsylvania parole board. The relator was arrested by order of the governor of New York. Upon petition for a writ of habeas corpus,[1] *held*, the relator should be discharged, as the accusations of parole violation were admittedly false, and it was doubtful whether the relator would receive just treatment from the Pennsylvania parole board. *People ex rel. Pahl v. Pollack.*[2]

In habeas corpus proceedings to determine whether a relator should be held for extradition to answer a criminal charge, he is permitted to show only that he is not a fugitive from justice, or that he is not charged with a crime, or that he is not the person whose extradition is requested.[3] Where extradition of a parolee is demanded, the scope of inquiry by the court of the asylum state should be limited to considerations of whether relator is the parolee whose extradition is requested. Whenever a parolee who has left the demanding state is wanted there, he is considered a fugitive from justice;[4] and although he has been released from prison, he is charged with the crime until his sentence has expired.[5] Thus, in the instant case, while claiming to be acting to prevent a miscarriage of justice, the court indulged in considerations beyond the scope of its authority[6] when it considered whether relator had violated the terms of his parole,[7] or whether the charges against him were true,[8] or whether the Pennsylvania parole board would act justly.[9]

[1] N.Y. Civ. Prac. Ann. (Gilbert-Bliss, 1926) § 1230. [2] 22 N.Y.S. (2d) 413 (S.Ct. 1940).

[3] People ex rel. Higley v. Millspaw, 281 N.Y. 441, 24 N.E. (2d) 117 (1939); People v. Butts, 14 N.Y.S. (2d) 881 (S. Ct. 1939); People ex rel. Whitfield v. Enright, 117 Misc. 448, 191 N.Y. Supp. 491 (S. Ct. 1921).

[4] Beavers v. Lowry, 186 Ga. 557, 198 S.E. 692 (1938); State ex rel. Cooney v. Hoffmeister, 336 Mo. 682, 80 S.W. (2d) 195 (1935); In re McBride, 101 Cal. App. 251, 281 Pac. 651 (1929); Ex parte Hamilton, 41 Okla. Crim. 322, 273 Pac. 286 (1929).

[5] People ex rel. Hutchings v. Mallon, 218 App. Div. 461, 218 N.Y. Supp. 432 (1926); Hughes v. Pflanz, 138 Fed. 980 (C.C.A. 6th 1905).

[6] Drew v. Thaw, 235 U.S. 432 (1914). In the instant case the relator who was a parolee was accorded more consideration than a person whose extradition is requested upon charges of a crime based on an indictment or affidavit.

[7] Ex parte Hamilton, 41 Okla. Crim. 322, 273 Pac. 286 (1929).

[8] People ex rel. Carr v. Murray, 357 Ill. 326, 192 N.E. 198 (1934); People ex rel. Gottschalk v. Brown, 237 N.Y. 483, 143 N.E. 653 (1924); Pettibone v. Nichols, 203 U.S. 192 (1906); N.Y. Code Crim. Proc. (McKinney, 1938) § 849; Spear, Extradition 361 (3d ed. 1885). But cf. Ex parte Maddox, 55 Okla. Crim. 114, 25 P. (2d) 1111 (1933); Ex parte Owens, 34 Okla. Crim. 128, 245 Pac. 68 (1926); Matter of Bruchman, 28 N.D. 358, 148 N.W. 1052 (1914); People ex rel. Wegener v. Magerstadt, 34 Chicago L. News 194 (Cook County Cir. Ct. 1902). In these cases the court of the asylum state inquired into questions of guilt and innocence and motive where extradition requested was based on affidavits and it appeared that the only purpose of the extradition was to subject the relator to civil process in the demanding state.

[9] Ex parte Paramore, 95 N.J. Eq. 386, 123 Atl. 246 (1924), aff'd 96 N.J. Eq. 397, 125 Atl. 926 (1926); In re Ray, 215 Mich. 156, 183 N.W. 774 (1921).

The parole system was devised as a practical method of reinducting a convict into society under conditions which will protect the community.[10] To make this system effective, administrative machinery has been set up[11] with better facilities than most courts of general jurisdiction to determine whether a parolee's conduct is such as to warrant his reimprisonment. In both New York[12] and Pennsylvania[13] it is not necessary that the parolee have committed a crime before his case can be considered by the parole board, but only that he be accused of showing a tendency toward antisocial conduct. In the principal case had the relator not been permitted to leave Pennsylvania, he would have been subject to detention for hearings before the parole board whenever they were deemed necessary,[14] and no court could have interfered.[15] The relator obtained through the instant proceedings a court determination not only as to whether the Pennsylvania parole board should be permitted to consider his case, but also as to whether he had violated the terms of his parole. Yet in both Pennsylvania and New York no appeal can be taken from a finding of the parole board,[16] and thus in no case can a court consider the merits of an alleged parole violation. It is difficult to see how the relator acquired such rights merely by being permitted to leave the state.

Decisions like that in the principal case tend to impede efficient parole administration and thus to destroy the legislative safeguards set up to protect society from the release of unsupervised criminals.[17] To avoid this danger, conscientious parole boards may refuse to permit parolees to leave their state, if, in the discharge of their parole duties, opposition might be encountered from the courts of other states. Consequently this view may result in the denial of parole to many eligibles who are capable of finding employment only outside the state.

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**Divorce—Estoppel—Second Spouse Not Estopped from Pleading Invalidity of Wife's Former Divorce in Suit for Separate Maintenance**—[New York].—In 1913 the plaintiff-wife secured a divorce in Pennsylvania, falsely alleging her domicil there. Her husband, a resident of New York, was not personally served with notice. In 1918, the plaintiff married the defendant, and since that time they have lived in New York. The plaintiff brought an action for separate maintenance,[1] and the defendant answered by alleging the invalidity of their marriage inasmuch as her prior divorce is

[10] La Roe, Parole with Honor 9, 10, and 16 (1939); Kolaski and Broecher, The Pennsylvania Parole System in Operation, 2 J. Crim. Law 427 (1932).

[11] 1 U.S. Dept. of Justice, Attorney General's Survey of Release Procedures 968, 970–72 (1939).

[12] New York, Annual Rep. Division of Parole of the Executive Dept. 17 (1938).

[13] 1 U.S. Dept. of Justice, op. cit. supra note 11, at 972.

[14] Pa. Stat. Ann. (Purdon, Supp. 1940) tit. 61, § 309.

[15] Commonwealth ex rel. Menke v. Reno, 46 Dauph. Co. Rep. [Pa.] 391 (1939).

[16] Pa. Stat. Ann. (Purdon, 1930) tit. 61, § 310, where the procedural set up for determining parole violations contains no provision for court appeal; People ex rel. Ross v. Lawes, 242 App. Div. 638, 272 N.Y. Supp. 169 (1934); Hogan v. Canavan, 246 App. Div. 734, 283 N.Y. Supp. 875 (1935); Ex parte Butler, 40 Okla. Crim. 434, 269 Pac. 786 (1928).

[17] Cockrell, Successful Justice 556 (1939)

[1] N.Y. Civ. Prac. Ann. (Gilbert-Bliss, 1926) § 1161.