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## NOTES

## A SURVEY OF ACCESSORY AFTER THE FACT EXEMPTIONS

By

HOWARD NEWCOMB MORSE\*

There are several types of accessory after the fact statutes. First, there are the rendering statutes, those which provide penalties for persons rendering aid and comfort to fugitives from justice knowing them to be fugitives from justice. This type of statute is somewhat similar to the second category of treason in the definition of treason contained in the Constitution of the United States, namely ". . . adhering to their (the United States') enemies, giving them aid and comfort."<sup>1</sup> Second, there are the concealing *or* rendering statutes, those which also include penalties for persons having knowledge of a crime who conceal such knowledge from the authorities. There are no statutes of the concealing variety alone, apparently indicating that the law does not favor forcing a citizen to be an informer. Of course, misprison of treason statutes are of the concealing kind alone, but they are not general accessory after the fact statutes since they pertain to knowledge of a treasonable enterprise exclusively. Obviously, rendering includes concealing, but concealing does not include rendering.

Third, there are statutes exempting from being accessories after the fact persons occupying certain relationships to fugitives from justice. Of the twenty states having accessory after the fact exemptions only Arkansas<sup>2</sup> and Illinois<sup>3</sup> have concealing *or* rendering statutes. There are ten southern and ten northern states which have exemptions—Alabama,<sup>4</sup> Arkansas, Delaware,<sup>5</sup> Florida,<sup>6</sup> Kentucky,<sup>7</sup> Missouri,<sup>8</sup> Tennessee,<sup>9</sup> Texas,<sup>10</sup> Virginia,<sup>11</sup> West Virginia,<sup>12</sup> Illinois, Indiana,<sup>13</sup> Maine,<sup>14</sup>

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<sup>1</sup> U. S. Const., Art. III, sec. 3, clause 1.

<sup>2</sup> Ark. Stat. 1947 Ann., vol. 4, tit. 41, chap. 1, sec. 21.

<sup>3</sup> Smith-Hurd Ill. Ann. Stat. 1934, chap. 38, sec. 584.

<sup>4</sup> Ala. Code 1940, tit. 14, chap. 6, sec. 15.

<sup>5</sup> Del. Rev. Code 1935, chap. 155, sec. 5297.

<sup>6</sup> Fla. Stat. Ann., tit. 44, chap. 776, sec. 3.

<sup>7</sup> Ky. Rev. Stat. 1948, tit. 40, chap. 431, sec. 170.

<sup>8</sup> Mo. Rev. Stat. Ann., vol. 13, chap. 31, art. 9, sec. 4840.

<sup>9</sup> Williams Tenn. Code Ann. 1934, vol. 7, part 4, tit. 1, chap. 2, sec. 10766.

<sup>10</sup> Vernon's Tex. Penal Code Ann., vol. 1, tit. 3, chap. 4, art. 78.

<sup>11</sup> Va. Code 1942 Ann., tit. 40, chap. 188, sec. 4765.

<sup>12</sup> West Va. Code 1943 Ann., vol. 2, sec. 6118.

<sup>13</sup> Burns Ind. Stat. Ann. 1933, vol. 4, sec. 9-103.

<sup>14</sup> Maine Rev. Stat. 1944, vol. 2, tit. 13, chap. 132, sec. 3.

Minnesota,<sup>15</sup> Nevada,<sup>16</sup> Rhode Island,<sup>17</sup> Vermont<sup>18</sup> Washington,<sup>19</sup> Wisconsin,<sup>20</sup> and Wyoming.<sup>21</sup> In all of the foregoing states parents and children of fugitives from justice are exempted. In all of the foregoing states except Delaware, Indiana, Maine, and Minnesota, immediate collaterals are exempted, but in no state are any collaterals more remote than brothers and sisters exempted. In the case of Delaware this is rather ironical since servants are exempted but brothers and sisters, who bear the closest of all relationships of consanguinity, that of the whole blood, are not exempted. Texas, Virginia, and West Virginia also exempt servants, Texas, however, limiting her exemption to domestic servants. The only four states which exempt servants are all in the South, perhaps because social distinctions are more finely drawn there than elsewhere in the United States. The servant exemption is perhaps a holdover of the old common law petty treason distinction.

Grandparents and grandchildren are exempted in Florida, Kentucky, Missouri, Nevada, Rhode Island, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The relationships of parents and children and of grandparents and grandchildren are extended so as to include those of affinity as well as those of consanguinity in Florida, Missouri, Rhode Island, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Texas exempts ascendants and descendants in indefinite line.

There are no exemptions in the misprison of treason or receiving of stolen property statutes. The reason for general accessory after the fact statutes containing exemptions is the furtherance of individual family solidarity. The reason against general accessory after the fact statutes containing exemptions is the promotion of sovereign family, or state, solidarity. Of the forty-eight states, the scales tip in favor of the latter view, to the extent of eight states.

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<sup>15</sup> Minn. Stat. Ann., vol. 40, part 5, chap. 610, sec. 13.

<sup>16</sup> Nev. Comp. Laws 1929, vol. 5, sec. 9959.

<sup>17</sup> R. I. Gen. Laws 1938, chap. 622, sec. 1.

<sup>18</sup> Vt. Stat. 1947, tit. 41, chap. 375, sec. 8608.

<sup>19</sup> Remington's Wash. Rev. Stat. Ann., vol. 4, tit. 14, chap. 1, sec. 2261.

<sup>20</sup> Wis. Stat. 1947, vol. 2, chap. 353, sec. 8.

<sup>21</sup> Wyoming Comp. Stat. 1945 Ann., vol. 1, art. 1, sec. 9-115.