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Extra-Jurisdictional Power of Bail

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NOTE

EXTRA-JURISDICTIONAL POWER OF BAIL

The American public has never grasped the legal status of the professional bondsman. While some persons understand his role in posting bond pending trial, they are generally unaware of the bondsman's powers over his principal during the time of the bail before the trial. In some respects the bondsman's powers over the principal's person exceed those held by governmental authority. It is the purpose of this note to point out the power of the bondsman to pursue his absconding principal into another state, apprehend and forcibly return him, without resort to legal process.

One of the leading cases construing this power is *In re Von der Ahe.*[1] In that case, the bondsman had pursued his principal from Pennsylvania into Missouri where he apprehended him by authority of his Pennsylvania bailpiece and returned him to Pennsylvania. The principal contended that he had been deprived of his constitutional rights under article V and the amendments to the Constitution of the United States. The court, however, held that no rights of the appellant were abridged. The court reasoned that had this return been effected by the government, then such return would have been unjustified unless there was resort to legal process of extradition. The court distinguished the power of the bondsman to return his principal on the grounds that the bondsman acts not by authority of the state or of the court, but by virtue of his relationship to the principal. An arrest under warrant depends upon court process, and therefore has no extra-jurisdictional effect, but an arrest upon the bailpiece is made by virtue of contract and is, therefore, not confined to any jurisdiction or locality.

This distinction was observed in the case of *Nicolls v. Ingersoll,*[2] in which the Supreme Court of New York said:

> The power of taking and surrendering is not exercised under any judicial process, but results from the nature of the undertaking by the bail. The bailpiece is not a process, nor anything in the nature of it, but is merely a record or memorial of the delivery of the principal to his bail on security given. . . . According to this view of the subject, it would seem necessarily to follow that, as between the bail and his principal, the controlling power of the former over the latter, may be exercised at all times and in all places; this appears to me indispensable for the safety and security of the bail.[3]

1. 85 Fed. 959 (1898).
2. 7 Johns. Cas. 111 (1810).
3. *Id.* at 156.

Following this decision and similar holdings in Massachusetts[4] and Connecticut,[5] the Supreme Court of Vermont in *Worthen v. Prescott*[6] held that:

> bail may take the principal in another jurisdiction or another state, on the ground that a valid contract made in one state is enforceable in another, according to the law there. . . . This shows that the authority need not be exercised by process, but that it inheres in the bail itself; and that they may exercise it personally or depute another to exercise it for them.[7]

This power of the bondsman has long been recognized in Pennsylvania. Judge Agnew stated in a case, not found in the State Reports, but rather in *Mason's Petition*:[8]

> It is well settled that bail from another state may arrest his principal in this state upon a bailpiece, or depute another to do it, and take him out of the state for the purpose of surrendering him in discharge of his recognizance.

In the case of *Respublica v. Gaoler of Philadelphia*,[9] the court recognized the right of the bondsman but placed a limitation upon its exercise. In that case the principal was sued in Virginia, and a bondsman had posted bail in the sum of 28,000 dollars. The principal then came to Pennsylvania where he incurred debts which eventually resulted in a lawsuit. The sheriff acquired custody of the principal but permitted him to go at large. The Virginia bondsman then sent a deputy to apprehend the principal and return him to Virginia. The deputy also acquired custody. In a hearing to decide who had the right to custody of the principal, the court held that since the bail and his deputy had permitted the principal to go at large within Pennsylvania, they must be charged with knowledge that he might incur debts within the state; therefore, the principal must be remanded to the custody of the sheriff. The court indicated, however, that this was but a *limitation* on the recognized right of the bondsman to pursue and apprehend his principal for return and surrender.

Another Pennsylvania case[10] imposed a further limitation, although under modern bankruptcy law such would probably fail. The court in that case held that the bail could not return the principal from Pennsylvania to Delaware by a bailpiece on a suit in debt where the principal had subsequently been declared insolvent under a Pennsylvania Insolvency Act and discharged from his debts. The court recognized, however, that ordinarily

4. Commonwealth v. Brickett, 8 Pick. 138 (1829).
5. Parker v. Bidwell, 3 Conn. 84 (1819).
6. 60 Vt. 72, 11 Atl. 690 (1887).
7. *Id.* at —, 11 Atl. at 693.
8. 6 Leg. Gaz. 110 (Pa. 1874).
9. 2 Yeates 203 (Pa. 1798).
10. Commonwealth v. Riddle, 1 S. & R. 311 (Pa. 1815).

the bondsman would have had the power to seize and return the principal to Delaware. Another limitation was imposed in *United States v. Bishop*,[11] where the court held that the power of the bondsman could be exercised only after the termination of certain court-martial proceedings against his principal in Virginia.

Justice Baldwin of the Supreme Court of the United States, sitting in the Pennsylvania circuit, said by way of obiter in a case[12] dealing with a runaway slave that:

> The bail in a suit entered in another state, have a right to seize and take the principal in a sister state, provided it does not interfere with the interest of other persons who have arrested such principal.[13]

It is apparent then that the power of the bondsman over his principal is recognized in Pennsylvania, but is soundly limited in that the exercise of the power must not interfere with or violate the interests of other persons within the Commonwealth who obtained custody over the principal before apprehension by the bail.

The court in the *Von der Ahe* case[14] followed *Taylor v. Taintor*[15] and pointed out that the custody of the bail over the principal was in effect a continuance of the original imprisonment. Therefore, the bail may at any time seize the principal and place him in prison until the time for surrender under the bond. Moreover, this power could be exercised in person or by agent and carries with it the right to arrest on the Sabbath and to break and enter the principal's home for the purpose of apprehension. The court analogized this power to the right of rearrest by a sheriff of an escaping prisoner.

In *Fitzpatrick v. Williams*,[16] the principal was arrested by the police in New Orleans on affidavits charging him with having committed an offense in the state of Washington, and with being a fugitive from justice. While the principal was in the custody of the sheriff of New Orleans, the bonding company, who had been bail in Washington, intervened stating that it was bail on a 1500 dollars bond furnished by the principal in the state of Washington, and since the principal had fled that state, it had a right to his custody for the purpose of returning him to Washington for surrender.

The principal then filed a writ of habeas corpus for his release. The court denied the writ and ordered the sheriff to surrender the principal to the bonding company or its agent. The court held that the right of a

11. 3 Yeates 37 (Pa. 1800).
12. 13 Fed. Cas. 841 (No. 7, 416) (C.C.E.D. Pa. 1833).
13. *Id.* at 846.
14. *Supra* note 1.
15. 16 Wall. (83 U.S.) 366 (1873).
16. 46 Fed. 2d 40 (5th Cir. 1931).

surety of bail to capture his principal is not a matter of criminal procedure, but arises from private rights established by the bail contract between the principal and his surety. The court differentiated between the rights of the bondsman and those of the state as follows:

> If the state desires to reclaim a fugitive from its justice, in another jurisdiction, it must proceed by way of extradition in default of a voluntary return. It cannot invoke the right of a surety to seize and surrender his principal, for this is a private and not a governmental remedy. It is equally true that the surety, if he has the right, is not required to resort to legal process to detain his principal for the purpose of making surrender.[17]

The court also reasoned that the bonding company would have no contractual benefit if its rights of seizure of the principal were not accompanied by corresponding rights of return to the state in which the bond was furnished. This reasoning, of course, further emphasizes the contractual nature of the bail bondsman's power in derogation of any theory of subrogation of the rights of the state. The court in *Fitzpatrick* states uncategorically that bail does not acquire the right of seizure and surrender from the state through subrogation, because the state never had such powers.

A recent case construing the power of a bondsman to bring back an absconding principal is that of *Golla v. State*.[18] The Supreme Court of Delaware, in an appeal on a habeas corpus proceeding, held that where a prisoner was taken into custody in Pennsylvania by Delaware police acting as agents for a bondsmen under authority of a bailpiece issued in Delaware, extradition proceeding in Pennsylvania were not required prior to the prisoner's removal to Delaware. The court stated that it was not setting new policy, but that it was declaring existing law when it held:

> In our opinion, no extradition was necessary, since the prisoner was taken into custody by agents of his bondsman, acting under authority of a bail piece. It seems to be well established that a bondsman seeking to deliver custody of the person for whom he is responsible and who has obtained a bail piece, may pursue the fugitive to any place within the jurisdictional limits of the United States and take him into custody. Such arrest is not an action by the state, and therefore no extradition is required.[19]

It would seem then that the doctrine is well established. Strangely enough, however, the historic reason for the vesting of such powers over in the bail has long since disappeared. Originally, the bail would have had to undergo any penalty or suffer any damages assessed against the principal if

17. *Id.* at 40.
18. — Del. —, 135 A.2d 137 (1957).
19. *Id.* at —, 135 A.2d at 139.

the bail failed to produce the principal at the time for surrender.[20] Today, the power is justified as a contractual right and is defended on the grounds that if this power is not conceded, bail would be discouraged. Accordingly, it would be impossible to regain one's freedom after arrest pending trial or hearing. Hence, regardless of the legal theory utilized to sustain this power in the bail, its foundation on public policy is the real reason for its existence.

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20. 2 POLLOCK & MAITLAND, THE HISTORY OF ENGLISH LAW 518 (2d ed. 1898).

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