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Appellant : Drew

Respondent : Thaw

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U.S. Supreme Court Drew v. Thaw, 235 U.S. 432 (1914)

Drew v. Thaw

No. 514

Argued December 11, 1914

Decided December 21, 1914

235 U.S. 432

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW HAMPSHIRE

SYLLABUS

A state may enact that a conspiracy to accomplish what an individual is free to do shall be a crime.

The New York Penal Law, 580, 583, making an agreement to commit any act for the perversion of justice or the due administration of the laws a misdemeanor if an overt act is committed, may include the withdrawal by connivance of a person from an insane asylum to which he had duly been committed by order of court as a lunatic.

A party to a crime who afterwards leaves the state is a fugitive from justice; and, for purposes of interstate rendition, it does not matter what motive induced the departure.

The purpose of the writ of habeas corpus is not to substitute the judgment of another tribunal upon the facts or the law of the matter to be tried.

The federal Constitution peremptorily requires that, upon proper demand, the person charged with crime shall be delivered up to be removed to the state having jurisdiction of the crime. There is no discretion allowed, nor any inquiry into motives; nothing is said in regard to habeas corpus, and the technical sufficiency of the indictment is not open.

Questions as to the sufficiency of an indictment charging an admittedly insane person with having committed a crime are for the courts of the state having jurisdiction of the crime to determine according to the law of that state. They cannot be determined by the courts of another state on habeas corpus proceedings in interstate rendition.

The constitutionally required surrender of an identified fugitive from justice on a demand made in due form is not to be interfered with by the summary process of habeas corpus upon speculation as to what ought to be the result of a trial in the place where the Constitution provides for its taking place.

The facts, which involve questions arising out of a demand made by the governor of one state upon the

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Governor of another state for the rendition of a fugitive from justice who had been indicted by the demanding state for conspiracy to effect his own escape from the state asylum to which he had been committed as a lunatic by order of the court, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an appeal from a final order discharging the appellee on habeas corpus. Thaw was held upon a warrant from the Governor of New Hampshire for his extradition to New York in pursuance of a demand of the governor of the latter state. He was alleged to be a fugitive from justice, and a copy of an indictment found by a New York grand jury accompanied the demand. The indictment alleged that Thaw had been committed to the Matteawan State Hospital for the insane under an order of court reciting that he had been acquitted at his trial upon a former indictment on the ground of insanity, and that his discharge was deemed dangerous to public safety. It then alleged that, being thus confined, he conspired with certain persons to procure his escape from the hospital, and did escape, to the obstruction of justice and of the due administration of the laws. By the New York Penal Law, an agreement to commit any act for the perversion or obstruction of justice or of the due administration of the laws is a misdemeanor if an overt act beside the agreement is done to effect the object. Penal Law, 580, 583.

In the wide range taken by the argument for the appellee, it was suggested, among other things, that it was not a crime for a man confined in an insane asylum to walk out if he could, and that therefore a conspiracy to do it could not stand in any worse case. But that depends on the statute. It is perfectly possible, and even may be rational, to enact that a conspiracy to accomplish what an individual is free

to do shall be a crime. An individual is free to refuse his custom to a shop, but a conspiracy to abstain from giving custom might and in some jurisdictions probably would be punished. If the acts conspired for tend to obstruct the due administration of the laws, the statute makes the conspiracy criminal, whether the acts themselves are so or not. We do not regard it as open

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to debate that the withdrawal, by connivance, of a man from an insane asylum to which he had been committed as Thaw was did tend to obstruct the due administration of the law. At least the New York courts may so decide. Therefore the indictment charges a crime. If there is any remote defect in the earlier proceedings by which Thaw was committed, which we are far from intimating, this is not the time and place for that question to be tried.

If the conspiracy constituted a crime, there is no doubt that Thaw is a fugitive from justice. He was a party to the crime in New York, and afterwards left the state. It long has been established that, for purposes of extradition between the states, it does not matter what motive induced the departure. *Roberts v. Reilly,* 116 U. S. 80 ; *Appleyard v. Massachusetts,* 203 U. S. 222 , 203 U. S. 226 -227. We perceive no ground whatever for the suggestion that, in a case like this, there should be a stricter rule.

The most serious argument on behalf of Thaw is that, if he was insane when he contrived his escape, he could not be guilty of crime, while if he was not insane, he was entitled to be discharged, and that his confinement and other facts scattered through the record require us to assume that he was insane. But this is not Thaw's trial. In extradition proceedings, even when, as here, a humane opportunity is afforded to test them upon habeas corpus, the purpose of the writ is not to substitute the judgment of another tribunal upon the facts or the law of the matter to be tried. The Constitution says nothing about habeas corpus in this connection, but peremptorily requires that, upon proper demand, the person charged shall be delivered up to be removed to the state having jurisdiction of the crime. Art. IV, 2. *Pettibone v. Nichols,* 203 U. S. 192 , 203 U. S. 205 . There is no discretion

allowed, no inquiry into motives. *Kentucky v. Dennison,* 24 How. 66; *Pettibone v. Nichols,* 203 U. S. 192 , 203 U. S. 203 . The technical sufficiency of the indictment is not open. *Munsey v. Clough,* 196 U.S.

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364, 196 U. S. 373 . And even if it be true that the argument stated offers a nice question, it is a question as to the law of New York which the New York courts must decide. The statute that declares an act done by a lunatic not a crime adds that a person is not excused from criminal liability except upon proof that at the time "he was laboring under such defect of reason as 1, not to know the nature and quality of the act he was doing, or 2, not to know that the act was wrong." Penal Law, 1120. *See* 34. The inmates of lunatic asylums are largely governed, it has been remarked, by appeal to the same motives that govern other men, and it well might be that a man who was insane and dangerous nevertheless in many directions understood the nature and quality of his acts as well, and was as open to be affected by the motives of the criminal law as anybody else. How far such considerations shall be taken into account it is for the New York courts to decide, as it is for a New York jury to determine whether, at the moment of the conspiracy, Thaw was insane in such sense as they may be instructed would make the fact a defense. *Pierce v. Creecy,* 210 U. S. 387 , 210 U. S. 405 ; *Charlton v. Kelly,* 229 U. S. 447 , 229 U. S. 462 . When, as here, the identity of the person, the fact that he is a fugitive from justice, the demand in due form, the indictment by a grand jury for what it and the Governor of New York allege to be a crime in that state, and the reasonable possibility that it may be such all appear, the constitutionally required surrender is not to be interfered with by the summary process of habeas corpus upon speculations as to what ought to be the result of a trial in the place where the Constitution provides for its taking place. We regard it as too clear for lengthy discussion that Thaw should be delivered up at once.

Final order reversed.