TAYLOR v. TAINTOR, 83 U.S. 366 (1872)

TAYLOR *v.* TAINTOR, TREASURER.

DECEMBER TERM, 1872.

1. When the bail of a party arrested by order of a State court of one State on information for a crime, and released from custody under his own and his bail's recognizance that he will appear at a day fixed and abide the order and judgment of the court on process from which he has been arrested, have suffered him to go into another State, and while there he is, after the forfeiture of the recognizance, delivered up (under the second section of the fourth article of the Constitution and the act of February 12th, 1793, passed to give effect to it) on the requisition of the governor of a third State for a crime committed (without the knowledge of the bail) in *it*, and is tried, convicted, and imprisoned in such third State, the bail are not discharged from liability on their recognizance

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on suit by the State where the person was *first* arrested. There has been no such "act of the law" in the case as will discharge bail. The law which renders the performance impossible, and therefore excuses failure, must be a law operative in the State where the obligation was assumed, and obligatory in its effect upon her authorities.

2. The fact that there has been placed in the hands of the bail, by some one, not the person arrested nor any one in his behalf, nor so far as the bail knew, with his knowledge, a sum of money equivalent to that for which the bail and himself were bound, has no effect, in a suit against the bail, on the rights of the parties.

IN error to the Supreme Court of Errors of the State of Connecticut; in which court William Taylor, Barnabas Allen, and one Edward McGuire were plaintiffs in error, and Taintor, Treasurer of the State of Connecticut, was defendant in error. The case arose under that clause of the Federal Constitution[fn*] which ordains that

"A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime,"

and under the act of Congress passed February 12th, 1793, to carry into effect this provision, and which makes it the duty of the executive of the State or Territory to which a person charged with one of the crimes mentioned has fled, upon proper demand to cause the fugitive to be arrested and delivered up.

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Article 4, section 2.

Where a demand is properly made by the governor of one
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State upon the governor of another, the duty to surrender is not absolute and unqualified. It depends upon the circumstances of the case. If the laws of the latter State have been put in force against the fugitive, and he is imprisoned there, the demands of those laws may first be satisfied. The duty of obedience then arises, and not before. In the case of Troutman, cited *supra*, the accused was imprisoned in a civil case. It was held that he ought not to be delivered up until the imprisonment had legally come to an end. It was said that the Constitution and law refer to fugitives at large, in relation to whom there is no conflict of jurisdiction.

The law which renders the performance impossible, and therefore excuses failure, must be a law operative in the State where the obligation was assumed, and obligatory in its effect upon her authorities. If, after the instrument is executed, the principal is imprisoned in another State for the violation of a criminal law of that State, it will not avail to protect him or his sureties. Such is now the settled rule.[fn*]

When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge; and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another State; may arrest him on the Sabbath; and, if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the rearrest by the sheriff of an escaping prisoner.[fn†] In 6 Modern[fn‡] it is said: "The bail
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have their principal on a string, and may pull the string whenever they please, and render him in their discharge." The rights of the bail in civil and criminal cases are the same.[fn*] They may doubtless permit him to go beyond the limits of the State within which he is to answer, but it is unwise and imprudent to do so; and if any evil ensue, they must bear the burden of the consequences, and cannot cast them upon the obligee.[fn†]

In the case of *Devine* v. *The State*,[fn‡] the court, speaking of the principal, say, "The sureties had the control of his person; they were bound at their peril to keep him within their jurisdiction, and to have his person ready to surrender when demanded. . . . In the case before us, the failure of the sureties to surrender their principal, was, in the view of the law, the result of their own negligence or connivance, in suffering their principal to go beyond the jurisdiction of the court and from under their control." The other authorities cited are to the same effect.

The plaintiffs in error were not entitled to be exonerated for several reasons:

When the recognizance was forfeited for the non-appearance of McGuire, the action of the governor of New York, pursuant to the requisition of the governor of Maine, had spent its force and had