

## Sec. 2—Interstate Comity

## Cl. 2—Interstate Rendition

the demands of those laws may be satisfied before the duty of obedience to the requisition arises.<sup>228</sup> But, in *Kentucky v. Dennison*,<sup>229</sup> the Court held that this statute was merely declaratory of a moral duty; that the Federal Government “has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it,”<sup>230</sup> and consequently that a federal court could not issue a mandamus to compel the governor of one state to surrender a fugitive to another. Long considered a constitutional derelict, *Dennison* was finally formally overruled in 1987.<sup>231</sup> Now, states and territories may invoke the power of federal courts to enforce against state officers this and other rights created by federal statute, including equitable relief to compel performance of federally imposed duties.<sup>232</sup>

***Fugitive From Justice Defined.***—To be a fugitive from justice within the meaning of this clause, it is necessary that, in the regular course of judicial proceedings, one have been charged with a crime, but it is not necessary that one have left the state *after* having been charged. It is sufficient that, having been charged with a crime in one state, one is found in another state.<sup>233</sup> And the motive that induced the departure is immaterial.<sup>234</sup> Even if a fugitive were brought involuntarily into the state where found by requisition from another state, he may be surrendered to a third state upon an extradition warrant.<sup>235</sup> A person indicted a second time for the same offense is nonetheless a fugitive from justice by reason of the fact that after dismissal of the first indictment, on which he was originally indicted, he left the state with the knowledge of, or without objection by, state authorities.<sup>236</sup> But a defendant cannot be extradited if he was only constructively present in the demanding state

<sup>228</sup> *Taylor v. Taintor*, 83 U.S. (16 Wall.) 366, 371 (1873).

<sup>229</sup> 65 U.S. (24 How.) 66 (1861); *cf.* *Prigg v. Pennsylvania* 41 U.S. (16 Pet.) 539, 612 (1842).

<sup>230</sup> 65 U.S. (24 How.) 66, 107 (1861). Congress in 1934 plugged the loophole created by this decision by making it unlawful for any person to flee from one state to another for the purpose of avoiding prosecution in certain cases. 48 Stat. 782, 18 U.S.C. § 1073.

<sup>231</sup> *Puerto Rico v. Branstad*, 483 U.S. 219 (1987). “*Kentucky v. Dennison* is the product of another time. The conception of the relation between the States and the Federal Government there announced is fundamentally incompatible with more than a century of constitutional development.” *Id.* at 230.

<sup>232</sup> 483 U.S. at 230.

<sup>233</sup> *Roberts v. Reilly*, 116 U.S. 80, 95 (1885). *See also* *Strassheim v. Daily*, 221 U.S. 280 (1911); *Appleyard v. Massachusetts*, 203 U.S. 222 (1906); *Ex parte Reggel*, 114 U.S. 642, 650 (1885).

<sup>234</sup> *Drew v. Thaw*, 235 U.S. 432, 439 (1914).

<sup>235</sup> *Innes v. Tobin*, 240 U.S. 127 (1916).

<sup>236</sup> *Bassing v. Cady*, 208 U.S. 386 (1908).