

Extradition, Style of Rendition Warrant.

The rendition warrant issued by the governor upon surrendering fugitives found in this State should be styled "The Governor of the State of Montana to any sheriff, deputy," etc., instead of "The State of Montana to any sheriff, deputy," etc. Section 27, of Article VIII, of the State Constitution, providing for the style of process, does not apply to papers issued out of the executive department of the State.

April 4, 1905.

William L. Murphy, Esq., County Attorney, Missoula, Montana:

Dear Sir:—Your letter of the 31st ultimo, requesting an opinion of this office, to hand. You ask for an opinion as to whether the "Rendition Warrant" issued by the Governor of the State of Montana in extradition cases should be styled "The Governor of the State of Montana to any sheriff, deputy," etc., or, "The State of Montana to any sheriff, deputy sheriff," etc.

The authority for issuing requisition papers and arresting fugitives of one state who may be found in another is found in the United States Constitution and Section 5278 of the United States statutes, and is vested in the executive authority of the State. Accordingly the governor would have authority to act in such cases without the enactment of any state laws on the subject whatever. (Moore on Extradition, Sec. 542.)

Sections 2850 to 2863 of the Penal Code of our State are simply supplementary to and in aid of the United States constitution and laws of congress regarding extradition cases. The powers and authority in extradition matters is conferred by congress exclusively upon the **executives** of the various states, and "It is a general principle that the surrender of a fugitive criminal is an act of government to be performed by the executive authority." (Moore on Extradition, Sec. 359.)

Article VIII, Section 27, of the Constitution of Montana provides that "The style of all process shall be "The State of Montana" and all prosecution shall be conducted in the name and by the authority of the same." This section has been recently construed by our Supreme Court in the case of the City of Helena v. S. O. Kent, decided March 31, 1905, in which it was held that the process referred to in such section related only to writs, orders, etc., issued out of the offices and by the various officers provided for and defined by Article VIII of the State Constitution.

Our statute recognizes such power as being vested solely in the Governor, as Sec. 2862, of the Penal Code, reads:

"When the governor of this state, in the exercise of the authority

conferred by Section 2, Article IV, of the Constitution of the United States, or by the laws of this state, demands from the executive authority of any state of the United States, or of any foreign government, the surrender to the authorities of this state of a fugitive from justice, who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners, and paid out of the state treasury."

Therefore, it would seem that the issuance of rendition warrants by the Governor, being exclusively an executive function, would not be governed by said constitutional provision.

The extradition laws having been established by congress, and the states only having authority to pass laws in aid thereof, not in conflict with such acts of congress, any form of warrant which is sufficient under the laws of congress should be sufficient in this State.

I find that the extradition laws of New York are exactly the same as those of Montana; also that the rendition warrant is styled just the same as that of our state, to-wit: "The State of New York. Executive Department. Governor of the State of New York to any sheriff, deputy," etc. I also find that under the extradition statutes of the following states, which are very similar to those of our State, that the form of the rendition warrant is styled the same as the states of New York and Montana, to-wit: Alabama, Connecticut, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, New Hampshire, Ohio, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia and Washington.

Section 27 of Article VIII of our State Constitution, not applying to the executive department of the State, and the issuance of extradition papers, rendition warrants, etc., being exclusively within the executive authority of the State, I am of the opinion that the form of rendition warrant now used by the Governor is correct.

Respectfully yours,

ALBERT J. GALEN,

Attorney General.