

position to claim alone this priceless custody. If the Arthurs' *Report* has done nothing else it will have defined better than any recent Canadian study the ultimate responsibility of law and lawyers, of Bench, Bar and law school, for using all of the resources of the intellect, whatever the discipline, to help societies fairly fashion and manage their legal orders without which there cannot be workable justice for all.

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INTERNATIONAL LAW—WRONGFUL REMOVAL—
EXTRADITION AND THE JAFFE CASE

To the Editor:

The Jaffe case has rightly caused a great deal of indignation in Canada and has apparently soured our relations with the United States sufficiently for the United States Secretary of State to make his government's concerns public. It also raises a number of complex issues in the law of extradition, the simplest of which has resulted in the surrender by the United States authorities of the bounty-hunters responsible for Mr. Jaffe's seizure.

There is, however, one point on which serious confusion is evident, namely the rights of a person wrongly removed, whether by kidnap or otherwise.

An extradition treaty is an international agreement between states, and only states incur duties or enjoy rights under it. The victim of an extradition demand or a wrongful seizure is only protected to the extent that a state acts on his behalf. In other words, he has no direct remedy against those who have authorized or committed the unlawful process.

There is a great deal of judicial practice from a number of countries, including the United Kingdom, the United States and Israel, to show that if a person has been wrongly seized in disregard of an extradition treaty he has no remedy at international law. While the government whose territory has been "invaded" may make diplomatic protests or secure the extradition of the wrongdoers, he himself will invariably stand trial and suffer punishment in the country to which he has been taken. His rights in that country, and the right of a local court to try him, will depend entirely on the law of that country. If it wishes to return him it is either as a matter of international

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courtesy or because the local law denies jurisdiction to the courts in such circumstances.

Perhaps the position in the common law countries was made most clear by Lord Goddard when Lord Chief Justice of England. Elliott was seized by British military personnel in Belgium and brought back to stand trial in England. He maintained that his seizure was illegal and Lord Goddard is reputed to have said: "This is my court, this is my dock, and you are in it." He stated the law as follows: "If a person is arrested abroad and he is brought before a court in this country charged with an offence which that court has jurisdiction to hear, it is no answer for him to say, he being then in lawful custody in this country: 'I was arrested contrary to the laws of the State of A or the State of B where I was actually arrested.' He is in the custody before the court which has jurisdiction to try him. . . . The circumstances in which the applicant may have been arrested in Belgium are no concern of this court."¹

Critics of the exercise of jurisdiction by the Florida courts—regardless of any just condemnation of the sentence and Jaffe's apparent victimisation—should be reminded of the Ontario case of *R v. Walton*² in which a Canadian court exercised jurisdiction over an accused wrongfully arrested in Buffalo and forcefully brought into Canada against his will and not under the provisions of the extradition treaty.

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¹ *R. v. O./C. Depot Battalion, ex parte Elliott*, [1949] 1 All E.R. 373.

² (1905), 10 C.C.C. 269.