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Courts--Place For Holding Session

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biguous as attested by the acts of the parties and the fact that the circuit court found the lease ambiguous. It is submitted that the court is placing a serious limitation on the doctrine of practical construction by holding that there was no ambiguity in this lease. After all is said and done the function of the court is to enforce the contract or lease the parties enter into and not write a new agreement for them. It is submitted that the interpretation the parties place on an agreement is the most accurate and just method of ascertaining what the parties intended by their words.

R. B. T.

COURTS—PLACE FOR HOLDING SESSION.—Defendant was convicted in the intermediate court of Ohio County of breaking and entering. The testimony of one of the State's witnesses was taken at the home of the witness, in the presence of the jury, trial judge, prosecuting attorney, court reporter and defendant and his counsel. The witness' home was located in Ohio County a few miles distant from the Ohio County courthouse. The witness was ill and unable to attend court at the courthouse. Held, on writ of error, that the action of the trial court in taking the testimony of the witness, over objection of defendant, at a place other than the courthouse of the county, constituted reversible error. State v. Burford, 67 S.E.2d 855 (W. Va. 1951). Reversed.

A judgment is void if there is a failure to comply with such requirements as provide for the exercise of power by the court. Restatement, Judgments § 8 (1942). Even though the court has jurisdiction of a cause, of the subject matter and of the parties, it is still limited in its modes of procedure and in the extent and character of its judgments. Generally a departure from established modes of procedure, as to time and place of session, will render the judgment void, for the existence and legal constitution of a court is an inseparable part of its jurisdiction, and it has no power to hear and determine causes except at times and places authorized by law. Austin v. Knight, 124 W. Va. 189, 20 S.E.2d 897 (1942); Johnston v. Hunter, 50 W. Va. 52, 40 S.E. 448 (1909).

The place at which the court shall sit is fixed by statute. The circuit court, county court and other courts of record of any county shall be held at the courthouse of such county, except where some other place is prescribed by law or lawfully appointed. W. Va. Code
c. 51, art. 3, § 7 (Michie, 1949). When it is necessary that the place be changed, it is explicitly provided by statute that the county court, or under certain circumstances the governor, shall appoint the new place of sitting. W. Va. Code c. 51, art. 3, §§ 7, 8 (Michie, 1949).

Therefore it seems clear that the principal case was rightly decided. But there are two court practices which, as passed on by the West Virginia court, seemingly conflict with the decision of this principal case. They are: (1) allowing any place, matter or thing relating to the controversy between the parties to be viewed by the jury outside the courtroom. Frampton v. Consolidated Bus Lines, 62 S.E.2d 126 (W. Va. 1950); (2) demonstrations made before the jury elsewhere than at the place prescribed for the conducting of court. Tarr v. Keller Lumber & Construction Co., 106 W. Va. 99, 144 S.E. 881 (1928).

Although there is an apparent conflict among the West Virginia cases on whether a view by the jury is to be considered as real evidence, Hardman, Evidentiary Effect of a View, 53 W. Va. L. Rev. 103 (1951), yet allowing such a view is undoubtedly proper as it is provided for by statute. W. Va. Code c. 56, art. 6, § 17 (Michie, 1949). It has been held that a view by the jury can not be had except under this code provision. State v. Henry, 51 W. Va. 288, 41 S.E. 489 (1902). Thus such a view may be considered as a statutory provision as to where the court may sit.

There is very little authority on the propriety of allowing demonstrations to be made outside the courtroom. Tarr v. Keller Lumber & Construction Co., supra, allowing such conduct, seems to be the only West Virginia case in point. It is beyond question that it is competent for trial courts to admit in evidence the result of experiments germane to the case on trial and performed out of court, or to allow the making of tests and demonstrations before the jury in the courtroom, for the purpose of throwing light upon the issues involved. The admissibility of such evidence is at the discretion of the trial court. State v. Newman, 101 W. Va. 356, 182 S.E. 729 (1926). At common law the trial court, in its discretion, might also direct the conducting of appropriate experiments or demonstrations during a view by the jury. 4 Wigmore, Evidence § 1164 (3d ed. 1940). Yet it would seem that allowing demonstrations outside the courtroom is at variance with the rule that the place of sitting, as prescribed by statute, is a jurisdictional require-
ment. Although the variance is apparent, other courts have held as did the West Virginia court and extended the discretion of the trial court to the point of allowing it to permit demonstrations outside the courtroom when it was impossible to have them conducted inside. *Dobbin v. Little Rock R.R.*, 79 Ark. 85, 95 S.W. 794 (1906); *Clayton v. Southern R.R.*, 110 S.C. 122, 96 S.E. 479 (1918). The courts, by this extension of the trial court's discretion, have created a judicial exception to the rule that conducting court at the authorized place is a jurisdictional requirement. The only reasons ever extended to justify this exception are that the circumstances of the situation demand such a procedure, *State v. O'Day*, 188 La. 169, 175 So. 838 (1937); and that it is the "triumph of practical common sense over narrow technical traditions." 4 *Wigmore, Evidence* § 1164 (3d ed. 1940), 6 id. § 1802.

Yet it would seem that if the court in one instance can judicially create an exception to this jurisdictional requirement it can do so in other situations. Perhaps if the necessity of the situation and the practical benefits to be derived from it are brought to the attention of the court, it will allow other inroads into the rule which makes sitting at the prescribed place necessary to the court's jurisdiction. The principal case perhaps indicates that such further inroads will be made sparingly.

S. F. B.

**DEDICATION—RIGHT OF MUNICIPALITY TO DEVIATE FROM INTENDED USE.**—Plaintiff, a municipal corporation, petitioned for judgment by the court of common pleas of Ohio declaring whether the city was entitled to use property previously dedicated to it for a market house, for erection thereon of a public office building and prison. *Held*, that, in view of the right given by statute to appropriate property for certain specified purposes, including public halls and prisons, and since the originally intended purpose had become obsolete, the municipality could "appropriate" such property and hold the same in trust for a public use different than the one originally intended. *Zanesville v. Zanesville Canal & Mfg. Co.*, 100 N.E.2d 739 (Ohio, 1951).

While from the standpoint of public convenience the result reached is a desirable one, the method used by the court in reaching the decision is, perhaps, questionable. Although it is not entirely