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## Criminal Law--Convicts--Crime Committed by Prisoner

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CRIMINAL LAW—CONVICTS—CRIME COMMITTED BY PRISONER.—Defendant committed murder in Braxton County and was there tried and sentenced to life imprisonment. He escaped from the penitentiary, killed a fellow prisoner while so doing, and fled to Mason County where he committed a third murder. He was apprehended, tried in Marshall County, the site of the penitentiary, convicted and sentenced a second time to life imprisonment. Later defendant was indicted for murder in Mason County. Question, whether statute providing that criminal proceedings against convicts are to be held in Marshall County prevents trial in Mason County, certified to Supreme Court. *Held*, an escaped convict committing a felony may be tried in the county where the offence is committed. *State v. Griffith*, 107 S. E. 302 (W. Va. 1921).

At early common law a felon was deemed civilly dead and a plea of *autrefois attain*, former attainder, was a bar to prosecution for any felony except treason. In England this doctrine has been done away with by statute. 7 & 8 GEO. IV. c. 28, § 4. It was recognized at an early date in America. *State v. Fayetteville*, 6 N. C. 371. But the courts have generally repudiated it without legislation. *Singleton v. State*, 71 Miss. 782, 16 So. 295, 13 C. J. 919. A criminal may be convicted of murder committed while in confinement in the penitentiary under sentence of imprisonment for life. *State v. Connell*, 49 Mo. 282. The Constitution of West Virginia, Art. 3, § 14, states that trials of crimes shall be in county where offence was committed. A crime can be prosecuted only in the county where committed. *State v. McAllister*, 65 W. Va. 97, 63 S. E. 758. The West Virginia statute states that all criminal proceedings against convicts in the penitentiary shall be in Marshall County. CODE, c. 165, § 1. A person sentenced to confinement in the penitentiary is, until expiration of term or pardon, in contemplation of law, in the penitentiary. *Ruffin v. Commonwealth*, 21 Gratt. (Va.) 790. The result reached by the last mentioned case applied to the principal case would be that an escaped convict committing a crime in a county other than Marshall could not be tried in Marshall County because contrary to the constitution and could not be tried in the county where the crime was committed because he is in contemplation of law in Marshall County, *i. e.*, the convict would have a complete legal alibi. The Supreme Court took the view that one entirely at liberty, as an escaped convict, cannot be

deemed, actually or constructively, within the penitentiary. To limit the application of the statute to crimes committed in Marshall County seems correct. But it is submitted that the court might have reached a different conclusion on the ground that the prisoner was in a condition of penal servitude which deprived him of all his civil and political rights and, therefore, could have been tried in Marshall County for the crime committed in Mason County.

—R. G. K.

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EQUITY JURISDICTION—CHURCH FACTIONS—DISPOSITION OF PROPERTY.—The Hinton Baptist Church divided into two factions, each claiming the right to control the church property. The minority faction, by an *ex parte* council, composed of ministers and laymen of the various Baptist churches of West Virginia, determined that the majority faction had departed from the orthodox tenets and practices of the Baptist faith. *Held*, courts of equity assumed jurisdiction of the controversy because it was necessary to determine property rights, though it necessitated an inquiry into the doctrines of the church. *Woodrum v. Burton*, 107 S. E. 102 (W. Va. 1921).

The Baptist form of government is congregational and independent of other associations and ruling bodies which act as judicatories in the settlement of discords and in the determination of property rights. Hence there being no higher church authority with binding force, a court of equity will determine the relative claims of the litigants, even though it is necessary to inquire into religious doctrines, but this equitable jurisdiction to determine ecclesiastical matter flows from the right to make proper disposition of the property. "A court of equity will not interfere with the internal affairs of a religious organization where no property rights are involved, for the reason that civil courts have no jurisdiction of such matters." *Gibson v. Singleton*, 149 Ga. 502, 101 S. E. 178. In accord, *Watson v. Garvin*, 54 Mo. 353; *Stallings v. Finney*, 287 Ill. 145, 122 N. E. 369. Though the Baptist church is congregational and a majority vote is conclusive as to church polity, yet there remains the question as to the final disposition of property when claimed by both factions. Can a majority faction which has repudiated the teachings and practices of the church