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Equity Jurisdiction--Church Factions--Disposition of Property

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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.

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

continue to hold the property? In *Venable v. Coffman*, 2 W. Va. 310, the court held that, "An unorganized church cannot be divested of its property even though a majority of its members enter into a new organization." By the weight of authority, custody of property is awarded to the faction adhering to the original tenets of the church. *Mack v. Kime*, 129 Ga. 1, 58 S. E. 184, 24 L. R. A. (N. S.) 688. Where property of a Lutheran church was in dispute it was held that, "No majority even though it embraces all members but one can use the corporate property for advancement of a faith antagonistic to that for which the church was established." *Lundstrom v. Tell*, 131 Minn. 203, 154 N. W. 969. In accord, *Stallings v. Finney*, *supra*; *Mt. Helm Baptist Church v. Jones*, 79 Miss. 488, 30 So. 714. In the principal case custody of the property was awarded to the majority faction primarily on the ground that the evidence was insufficient to establish a departure by it from the accepted practices and beliefs of the church.

—C. P. H.

CONTRACTS—MADE FOR BENEFIT OF THIRD PARTY—CONSTRUCTION OF STATUTE—The City & Elm Grove Railroad Co. sold corporation property to the Wheeling Public Service Co., which company as part consideration for the transfer assumed liability for the corporate indebtedness of the railroad company. A holder of overdue interest coupons on bonds of the railroad company secured by mortgage of property, sues the public service company at law for interest. *Held*, plaintiff cannot recover from the public service company at law. Only sole beneficiary can sue on third party beneficiary contract. *Hamilton v. Wheeling Public Service Co. et al.*, *Caldwell v. Wheeling Public Service Co.*, 107 S. E. 401 (W. Va. 1921).

The court in the principal case, following the syllabus of *King v. Scott*, 76 W. Va. 58, 84 S. E. 954, holds in paragraph two of the syllabus, "Section 2, Chapter 71, Code 1913, does not authorize one not a party to a contract made for his benefit to sue thereon in a court of law, unless such contract was made for his sole benefit." This section of the Code so far as material reads: "and if a covenant or promise be made for the sole benefit of a person with whom it is not made, or with whom it is made jointly with others, such person may maintain, in his own name, any action thereon