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Criminal Law--Jurisdictional Facts--Whether for Court of Jury

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CRIMINAL LAW — JURISDICTIONAL FACTS — WHETHER FOR COURT OR JURY. — D was indicted in Pike County, Kentucky, for the murder of one X. The deceased was killed on a bridge that spans Tug river, a boundary stream between West Virginia and Kentucky. At the instigation of two West Virginia lawyers the trial judge dismissed the indictment for want of jurisdiction without the aid of a jury. Upon appeal by D this dismissal was held premature on other grounds. *Slater v. Commonwealth*.¹

The case raises an interesting question as to whether it is necessary to leave facts upon which jurisdiction depends to a jury. The general conception is that all questions of fact are for the jury. This, however, depends upon the purpose for which they are considered. Many preliminary questions of fact are decided by the judge such as those relating to the competency of a witness. A question of jurisdiction may be one of fact, but is it a fact that should be decided by the jury? The usual way to take advantage of the want of jurisdiction is under the general issue raised by plea of "not guilty".² However, the question of jurisdiction may be raised by a motion for instruction, by demurrer, by a motion in arrest of judgment on the general issue, or by writ of error.³

Obviously jurisdiction is of fundamental importance in any case. A conviction or acquittal by a court without jurisdiction will not stand. Jurisdiction of the offense can never be waived although venue may be.⁴ But it is not perceived that for present purposes any distinction should be observed between jurisdiction and venue. The majority view seems to be that questions of venue are for the jury to decide. The Kentucky court has held that where there is conflicting testimony as to the place of the crime it is a question for the jury.⁵ Determining the issue of venue on the preponderance of the evidence under correct instructions was held to be the province of the jury.⁶ The Supreme Court of the United States has decided that the fact of the bound-

¹ 40 S. W. (2d) 389 (Ky. 1931).

² *Knight v. State*, 15 Ga. App. 474, 83 S. E. 797 (1914); *Fitch v. Commonwealth*, 92 Va. 324, 24 S. E. 272 (1896).

³ *Ryan v. Commonwealth*, 80 Va. 385 (1885).

⁴ Thus one may waive constitutional right to trial in the county of the crime. *Ex parte Mote*, 98 Kan. 804, 160 Pac. 233 (1916).

⁵ *Davis v. Commonwealth*, 201 Ky. 537, 257 S. W. 719 (1924). See *Marshall v. State*, 22 Ala. App. 223, 114 So. 361 (1927); *Stubbs v. State*, 41 Ga. App. 836, 155 S. E. 100 (1930).

⁶ *Oakes v. State*, 135 Ark. 231, 205 S. W. 305 (1918). See *People v. Kongeal*, 212 Mich. 307, 180 N. W. 636 (1920); *Bufkins v. State*, 20 Ala. App. 457, 103 So. 902 (1924).

ary of a state, where jurisdiction hinged upon such fact, was for the determination of the jury.⁷ However, the Louisiana court, apparently standing alone on the proposition, has held that a question of venue in a criminal case was one of fact which could be determined by the judge on a special plea preceding the trial.⁸

Whether the question of jurisdiction should be decided by the jury or not seems to depend upon how the question is raised. Logically the question is one of preliminary character and if so presented there is no reason why it should not be determined by the court. But if raised under the general issue we have a situation where the fact of jurisdiction is immediately relevant to the question of guilt or innocence. In this state of the case the jurisdictional fact would be made a material fact in the determination of the case on its merits. And thus the determination of this fact would be for the jury just as would any other material question of fact under the general issue.

—LOYD C. HAYNES.

EQUITY — INJUNCTIONS — TEMPORARY INJUNCTION DIS-
SOLVED WHERE ANSWER DENIED SUBSTANCE OF BILL. — In a chan-
cery suit to establish title to standing timber *P* obtained a tem-
porary injunction restraining *D* from cutting and removing the
timber. *P* claimed title through a sale October 29, 1929 by a
special commissioner upon a decree in a general creditors suit
against *K* Co. Since *D*, though not a party to the suit, proved a
claim *P* contended that *D* was bound by the orders and decrees in
the said suit which *P* claimed adjudicated title to the timber in
controversy in *K* Co. *D* claimed title to the timber by virtue of
a deed from *S* after an alleged forfeiture of the timber rights
under an agreement with *K* Co. whereby the latter upon payment
of \$1000.00 yearly in advance had the right for twelve years to
enter and cut the timber. The agreement contained the stipulation
that failure so to pay on the date named would forfeit the benefits
of the agreement. Upon default in payment *S*, relying on the
forfeiture, sold the timber to *D* on August 23, 1929, but it did

⁷ *U. S. v. John Canoe*, 66 U. S. 225 (1862).

⁸ *State v. Prudhomme*, 171 La. 143, 129 So. 736 (1930). See *State v. Moore*, 140 La. 281, 72 So. 965 (1916). Although the question in what parish the offense was committed is a question of fact it does not pertain to the guilt or innocence of the accused and may be decided by the judge.