

**Criminal Actions Transfer Of. Transfer, of Criminal Actions.
New Counties, Transfer of Actions to.**

All criminal actions pending in an old county at the time of the division thereof may be tried in such old county unless motion for the transfer thereof is seasonably made.

March 13, 1912.

Honorable B. L. Powers,
County Attorney,
Ft. Benton, Montana.

Dear Sir:

I am in receipt of your letter of the 9th inst., submitting the question:

As to where criminal actions commenced in Chouteau county prior to the division thereof should be tried?

Sec. 12, Chapter 112, Laws of 1911, which Chapter relates to county division makes certain provisions relative to transfer of actions pending at the time of the county division, but in every instance therein mentioned the transfer is made "on motion." Sec. 16, Art. III, State Constitution, provides in part that the person accused of crime shall be tried "by an impartial jury of the county or district in which the offense is alleged to have been committed." Subdivision 5, Sec. 8915, Revised Codes, contains the same provision as the Constitution.

Where the action was commenced prior to the division of the county and the crime was alleged to have been committed within the territory then constituting Chouteau county, the jurisdiction to try and finally determine the matter became vested in the district court of Chouteau county and such court retains that jurisdiction until it has been divested thereof by some proceedings taken in a manner authorized by law. Sec. 12, of said Chapter 112, of the Laws of 1911, prescribes the manner of making such transfer, that is,—“on motion.” Until this motion is made the jurisdiction is still vested in the district court of Chouteau county and the action may be tried there.

No one has vested interest in county lines, nor is there any

guarantee given by law or otherwise that county lines will not be changed. The defendant in the criminal action is given the right under said Section 12 to have his case transferred to the new county. If he fails to make the necessary motion he has there by elected to subject himself to the jurisdiction of the present Chouteau county and to be tried by a jury from that county. Hence, unless a motion is made for a transfer of the case, all criminal actions pending in Chouteau county at the time of the division thereof may be tried therein and by a regular jury of the present Chouteau county, and this also applies to cases remanded for new trial.

Yours very truly,

ALBERT J. GALEN,

Attorney General.