

6-1963

Conflict of Laws – 1962 Tennessee Survey

Elliott E. Cheatham

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Conflict of Laws Commons](#)

Recommended Citation

Elliott E. Cheatham, Conflict of Laws -- 1962 Tennessee Survey, 16 *Vanderbilt Law Review* 646 (1963)
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol16/iss3/10>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Law Review by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

Conflict of Laws—1962 Tennessee Survey

*Elliott E. Cheatham**

Jurisdiction of the federal courts in Tennessee over defendants outside the state was considered in four cases. They dealt with both the law that would determine jurisdiction, whether state law or federal law, and the extent of the activity in the state that would suffice to give jurisdiction.

Two cases involved non-resident individual defendants. *Robertson v. Cumberland Gap Fuel Co.*¹ was an action under a federal statute for unpaid minimum and overtime wages. The defendant employer, a Kentucky resident, carried on business under a trade name in Tennessee. After unsuccessful efforts to serve process on him in this state, substituted service was made upon the Secretary of State of Tennessee and certified copies of the papers were mailed to the defendant in Kentucky. In passing on the defendant's motion based on lack of jurisdiction, the court assumed the authority of the federal court in the case was no broader than that of a Tennessee state court, so it examined into the Tennessee law. The opinion distinguishes sharply three meanings of "jurisdiction of courts." The power of the State of Tennessee to authorize its courts to entertain the action was clear since "the trend of modern decisions is to sustain the power of a state to provide for bringing in a nonresident individual who is doing business in the state of the forum . . ."² The notice was adequate. The troubling question was whether the statutes of the state had authorized the courts to entertain an action against a non-resident individual doing business in the state. Well-known Tennessee statutes authorize actions against a foreign corporation and against an unincorporated association or organization doing business here. The statutes similarly authorize an action against a non-resident individual owner or operator of a motor vehicle as to Tennessee accidents. However, there is no general statute authorizing an action against a non-resident individual who carries on other activities in Tennessee. In articles cited in the opinion, Professor Overton has urged the Tennessee statutes be extended to non-resident individual defendants

*Professor of Law, Vanderbilt University; former President, Association of American Law Schools; co-editor, Cheatham, Goodrich, Griswold & Reese, *Cases and Materials on Conflict of Laws* (4th ed. 1957).

1. 202 F. Supp. 801 (E.D. Tenn. 1962).

2. 202 F. Supp. at 802, quoting *McDaniel v. Textile Workers Union of America*, 36 Tenn. App. 236, 248, 254 S.W.2d 1, 6 (E.S. 1952).

carrying on business in the state,³ and Judge Taylor's opinion stated such a change "would seem to be a salutary one." But in the absence of such a statute he held the action would not lie and granted the defendant's motion to dismiss.

The other case against a non-resident individual, *Davis v. Parrott*,⁴ arose out of an accident in an automobile driven by the defendant. Again the federal court assumed that "the case at bar is controlled by the law of Tennessee." It found the Tennessee non-resident motorists' statute was applicable, for the accident was on a way open to use and had a connection with traffic upon premises accessible to users of Tennessee highways.

Two cases were actions against foreign corporations. In *Smith v. Lancer Pools Corp.*⁵ the defendant was a New York corporation whose dealers and distributors, designated by it as independent contractors, sold swimming pools in Tennessee. In an action brought by a dealer, the defendant moved to dismiss the complaint on the ground there was no jurisdiction over it as it was not doing business in the state. The court denied the motion on the record before it, stating that the defendant's designation of its representative as an "independent contractor" was not conclusive on the court. The authorities cited were not Tennessee statutes or decisions but the leading United States Supreme Court cases on judicial jurisdiction.

The second case, *First Flight Co. v. National Carloading Corp.*,⁶ is notable because the court faced squarely the troubling question whether the jurisdiction of the federal court is to be determined in conformity with state law. The case is discussed fully elsewhere in this volume of the *Review*.⁷ Judge Wilson, accepting the reasoning of Professor Thomas F. Green in an article in an earlier volume of the *Review*,⁸ held that the judicial jurisdiction of the United States, limited as it is by the fifth amendment and not by the fourteenth amendment, extends throughout the territory of the nation and so reaches an American corporation no matter in which state the corporation was formed. Further, the court held that statutes and rules as to the authority of the federal courts and the territorial limits of service of their processes are determined by the standards set by federal law for the federal courts and not by the standards set by state law for state courts, except as the latter standards have been incorporated into

3. Overton, *Constitutional Law—1959 Tennessee Survey*, 12 VAND. L. REV. 1096, 1097 (1959); Overton, *Broadening the Bases of Individual in Personam Jurisdiction in Tennessee*, 22 TENN. L. REV. 237 (1952).

4. 201 F. Supp. 398 (E.D. Tenn. 1962).

5. 200 F. Supp. 199 (E.D. Tenn. 1962).

6. 209 F. Supp. 730 (E.D. Tenn. 1962).

7. 16 VAND. L. REV. 422 (1963).

8. Green, *Federal Jurisdiction in Personam of Corporations and Due Process*, 14 VAND. L. REV. 967 (1961).

federal law.

Two cases involved Tennessee decrees of custody of children which altered the rights of custody prescribed by earlier decrees in other states. In both cases⁹ the court of appeals held the foreign decrees were not conclusive on the Tennessee courts because of change of circumstances since they were rendered. One of the foreign decrees was not conclusive, it is believed, for the further reason that in the out-of-state proceeding the custody of the children was not litigated and was evidently based on the consent of the parents.¹⁰ At this term the Supreme Court of the United States held such a consent decree should not be res judicata in a case which "involved the custody of children where the public interest is strong,"¹¹ for "Unfortunately, experience has shown that the question of custody, so vital to a child's happiness and well-being, frequently cannot be left to the discretion of parents."¹²

9. State *ex rel.* Seldon v. York, 360 S.W.2d 931 (Tenn. App. M.S. 1962); Dearing v. Dearing, 362 S.W.2d 45 (Tenn. App. M.S. 1962).

10. Dearing v. Dearing, *supra* note 9.

11. Ford v. Ford, 371 U.S. 187 (1962).

12. *Id.* at 193.