

8-1956

Conflict of Laws – 1956 Tennessee Survey

John W. Wade

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



Part of the [Conflict of Laws Commons](#), and the [Jurisdiction Commons](#)

Recommended Citation

John W. Wade, Conflict of Laws – 1956 Tennessee Survey, 9 *Vanderbilt Law Review* 940 (1956)
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol9/iss5/5>

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—1956 TENNESSEE SURVEY

JOHN W. WADE*

JURISDICTION OF COURTS

Personal Jurisdiction: In *State v. Perry*,¹ the Tennessee Department of Public Welfare, which had paid sums for the support of dependents of certain nonresidents, brought an action against the nonresidents for reimbursement and for an order to pay money in the future. No personal service was had on the defendants, and the court held that the Tennessee statute does not authorize the court "to enter a personal judgment against a non-resident husband-father upon the ex parte petition, when that husband-father is not personally before the Court, and afforded no opportunity to be heard."² It correctly implied that such a proceeding would be unconstitutional.³

The usual method of acquiring jurisdiction over a person is by service of process on him in the state. The nonresident-motorist cases, however, are not explainable on this basis. The currently accepted explanation of these cases is that the doing of an act within the state causing injury is sufficient to give jurisdiction over the motorist and that the provisions of the nonresident-motorist statutes are to meet the procedural requirements of due process.⁴ Two cases involved construction of the Tennessee nonresident-motorist statute.⁵ *Bertrand v. Wilds*⁶ holds that the statute "applies to the operation of motor vehicles upon public highways by nonresidents and also to the operation of such vehicles on private property, as a necessary incident to public travel upon the streets and highways of this State."⁷ An accident on a driveway on the grounds of the Veterans Hospital in Memphis therefore came within the statute. In *Oliver v. Altsheler*⁸ the provision that the Secretary of State can accept service for one year was held not to be affected by the general statute giving a plaintiff an additional period of a year to bring suit after a judgment is entered against him "not concluding his right of action."⁹

*Dean, Vanderbilt University School of Law; member, Tennessee Bar.

1. 280 S.W.2d 919 (Tenn. 1955).

2. *Id.* at 921.

3. Compare *Barger v. State*, 280 S.W.2d 911 (Tenn. 1955), holding that an order might constitutionally be issued to a person not to leave the state without complying with a court order to support a child. See Brockelbank, *Multiple-State Enforcement of Family Support*, 2 ST. LOUIS U.L.J. 12 (1952); Paulsen, *Support Rights and Duties between Husband and Wife*, 9 VAND. L. REV. 709 (1956).

4. See generally, GOODRICH, *CONFLICT OF LAWS* §§ 72-73 (3d ed. 1949).

5. TENN. CODE ANN. §§ 20-224 to -228 (1956).

6. 281 S.W.2d 390 (Tenn. 1955).

7. *Id.* at 396.

8. 278 S.W.2d 675 (Tenn. 1955).

9. TENN. CODE ANN. § 28-106 (1956). This holding is in accord with the

Divorce Jurisdiction: In order for a court to have jurisdiction to hear an action for divorce at least one of the parties must be domiciled in the state. In *Bowdon v. Bowdon*,¹⁰ where the parties misrepresented the fact that they were nonresidents, criminal contempt proceedings were held appropriate.

Custody Proceedings: In *Alexander v. Alexander*,¹¹ a husband and wife, originally from Tennessee, had lived in Michigan for some years. The husband brought an action for divorce in Michigan. The wife filed a cross bill and sought custody of the child. The husband returned to Tennessee. While the wife was temporarily visiting in the state, he seized the child and placed her with his parents. This bill was by the husband's parents to prevent both parties from interfering with the child. In the meantime the Michigan court had granted a divorce to the wife, awarding her custody of the child. The Tennessee court held that the Michigan decree would be controlling. Since the husband had sought the jurisdiction of Michigan court he could not contest it now. The child's domicile was therefore still in Michigan and there was no indication of change of circumstances. The decision can be based either on the ground that the Tennessee court did not have jurisdiction to hear the case or on the ground that it should not exercise jurisdiction under these facts.

ENFORCEMENT OF FOREIGN CAUSE OF ACTION

Wrongful Death: An action was brought under the Kentucky wrongful death statute in *Citizens Fidelity Bank & Trust Co. v. Baese*¹² in the federal district court for Tennessee. The question was whether the Kentucky administrator could bring the action. The usual conflict of laws rule is that an administrator has no standing outside the jurisdiction that appointed him and cannot bring a suit in another state. But when the administrator holds the proceeds as a special fund for specifically named beneficiaries, he is usually treated as if he were a "trustee" and permitted to bring the suit without qualifying locally.¹³ The Kentucky statute was found in the *Baese* case to be of this nature; and the only obstruction to an action by the Kentucky administrator was the 1955 Tennessee statute providing that no nonresident "shall be appointed or allowed to qualify or act as personal representative" unless a resident is appointed to serve with him.¹⁴ The court determined that this provision was not applicable when the foreign administrator was not acting for the general estate and local creditors

earlier case of *Tabor v. Mason Dixon Lines, Inc.*, 196 Tenn. 198, 264 S.W.2d 821 (1953).

10. 278 S.W.2d 670 (Tenn. 1955).

11. 286 S.W.2d 104 (Tenn. App. M.S. 1955).

12. 136 F. Supp. 683 (M.D. Tenn. 1955).

13. See GOODRICH, CONFLICT OF LAWS § 104 (3d ed. 1949).

14. TENN. CODE ANN. § 30-119 (Supp. 1956).

could have no claim. "To require him in that event to qualify and to obtain the appointment of a local personal representative would be at most an idle ceremony of no benefit to Tennessee citizens or creditors and an undue hardship upon the beneficiaries of the recovery."¹⁵ The holding is a desirable one.

Defamation: In *Insurance Research Service, Inc. v. Associates Finance Corp.*,¹⁶ defendant sent an allegedly defamatory letter from Tennessee to plaintiff in Missouri. On the issue of publication as an element of a cause of action in libel Missouri law governed. The court found that the decisions of the intermediate appellate courts of Missouri were in conflict as to whether a civil action was created by the criminal statute providing that communication of the libel to the party libeled constitutes a publication; and in this unsettled state of the law it concluded that the Missouri Supreme Court would probably follow the majority rule and hold that no civil action is created.

The court went on, however, to say that even if a cause of action were created in Missouri it would not be enforced in Tennessee. Relying on the case of *Paper Products Co. v. Doggrell*,¹⁷ it declared that the Tennessee courts would hold that a civil claim under the Missouri statute is penal in character and therefore unenforceable in Tennessee. The *Doggrell* case was discussed at some length in a previous Survey,¹⁸ where it was pointed out that its definition of a penal claim for purposes of conflict of laws is at wide variance with the test recognized by a great majority of the courts,¹⁹ and that the holding may possibly be unconstitutional for failure to give full faith and credit to a statute.²⁰ There is even less reason for treating the claim in this case as a penal one under the majority test,²¹ and the possible objection of unconstitutionality may apply here too.

15. 136 F. Supp. at 687-88.

16. 134 F. Supp. 54 (M.D. Tenn. 1955).

17. 195 Tenn. 581, 261 S.W.2d 127, 42 A.L.R.2d 651 (1953).

18. Wade, *Conflict of Laws—1954 Tennessee Survey*, 7 VAND. L. REV. 755, 755-57 (1954).

19. In the leading case of *Huntington v. Attrill*, 146 U.S. 657, 673-74 (1892), the test laid down is "whether its purpose is to punish an offense against the public justice of the State, or to provide a private remedy to a person injured by the wrongful act."

20. The case was criticized in several law reviews. See 7 VAND. L. REV. 281 (1954); 38 MINN. L. REV. 536 (1954); 23 TENN. L. REV. 434 (1955); 40 VA. L. REV. 211 (1954).

21. While the claim arises through a criminal statute, the same may be said of any claim involving negligence per se. Both types of claims provide a remedy to the plaintiff for a damage he has received. Cf. Wade, *Tort Liability for Abusive and Insulting Language*, 4 VAND. L. REV. 63, 103-10 (1950).