

February 1933

## Venue--Action or Suits Against Public Corporations

Donald F. Black

*West Virginia University College of Law*

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Civil Procedure Commons](#)

---

### Recommended Citation

Donald F. Black, *Venue--Action or Suits Against Public Corporations*, 39 W. Va. L. Rev. (1933).

Available at: <https://researchrepository.wvu.edu/wvlr/vol39/iss2/15>

This Recent Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact [ian.harmon@mail.wvu.edu](mailto:ian.harmon@mail.wvu.edu).

has been so intense and extended as to be definitely provable<sup>8</sup> or where there has been an intentional public humiliation falling short of actionable defamation.<sup>9</sup> This is to a less extent true of the telegraph cases, which otherwise are somewhat anomalous.<sup>10</sup>

By dictum in the principal case had the injury been the consequence merely of negligence there would have been no liability. The negligence situation is affected by additional considerations,—the peculiar requisites of tortious negligence such as foreseeability, and the absence of the element of intent. At best this makes a weaker case.

—BONN BROWN.

---

VENUE — ACTIONS OR SUITS AGAINST PUBLIC CORPORATIONS. —

The West Virginia venue statute provides that an action or suit may be brought in the county where the cause of action arose, if the defendant or, if there be more than one defendant, one or more defendants is a corporation.<sup>1</sup> The plaintiff was injured in Monongalia county by an automobile owned by the defendant county court and operated by the sheriff and a deputy of the defendant county. Suit was brought in Monongalia county in reliance upon the statute. The court sustained a plea in abatement, on behalf of the county court. *Edmonson v. County Court of Hancock County*.<sup>2</sup>

It is the majority rule that a county court must be sued in its home county,<sup>3</sup> unless by express statutory provision it may be

---

<sup>8</sup> *Great Atl. and Pac. Tea Co. v. Roch*, 160 Md. 189, 153 Atl. 22 (1930); *May v. Western Union*, 157 N. C. 416, 72 S. E. 1059 (1911).

<sup>9</sup> *Nickerson v. Hodges*, *supra* n. 7; *Davis v. Tacoma Ry. Co.*, 35 Wash. 203, 77 Pac. 209 (1904). *Contra*: *Terwilliger v. Wands*, 17 N. Y. 54 (1858).

<sup>10</sup> In five states recovery has been allowed on common law principles for such injury. *Mentzer v. Western Union Tel. Co.*, 93 Ia. 752, 62 N. W. 1 (1895); *Chapman v. Western Union Tel. Co.*, 90 Ky. 265, 13 S. W. 880 (1890); *Barnes v. Western Union Tel. Co.*, 27 Nev. 438, 76 Pac. 93 (1904); *Young v. Western Union Tel. Co.*, 107 N. C. 261, 11 S. E. 1044 (1889); *Hale v. Bonner and Eddy*, 82 Tex. 33, 17 S. W. 615 (1891). *Contra*: *Davis v. Western Union Tel. Co.*, 46 W. Va. 48, 32 S. E. 1026 (1899).

Mental distress is a normal reaction to non-delivery, for example, of a death message. Two courts, however, have seen fit to allow recovery where the message was not one pertaining either to death or serious illness. *Barnes v. Western Union Tel. Co.*, *supra*; *Green v. Western Union Tel. Co.*, 136 N. C. 489, 49 S. E. 165 (1904).

---

<sup>1</sup> W. VA. REV. CODE (1931) c. 56, art. 1, § 2.

<sup>2</sup> 166 S. E. 117 (1932).

<sup>3</sup> *Fleming v. Floyd County*, 131 Ga. 545, 62 S. E. 814 (1908); *Cullman County v. Blount County*, 160 Ala. 319, 49 So. 315 (1909).

sued elsewhere.<sup>4</sup> The county is a local subdivision of the state and cannot be sued except as expressly provided by statute.<sup>5</sup> On grounds of public policy it is deemed necessary that public officials and governmental agencies remain close to their duties, and not be required to journey to neighboring counties to defend litigation. There is abundant authority, based on the same policy and reasons, to the effect that a municipal corporation may be sued only in the county in which the municipality is situated.<sup>6</sup> The rule, however, is not universal. In some jurisdictions general venue statutes are deemed applicable to counties.<sup>7</sup>

When a municipal corporation is sued in the county other than that in which it is located, the courts vary as to the effect. In some jurisdictions the want of jurisdiction is considered fundamental and thus not curable by appearance, consent, or in any other way.<sup>8</sup> Other courts allow a waiver of the venue objection by pleading to the merits.<sup>9</sup>

The West Virginia Revised Code provides for suit in the circuit court of any county wherein any of the defendants may reside.<sup>10</sup> Would this statute require a different decision in *Edmonson v. County Court of Hancock County*,<sup>11</sup> assuming one of the natural defendants to have been a resident of Monongalia county? It would seem not. The reasoning of the court is based solely on principles of public policy. It would be difficult to label this statute special legislation as to county courts. The Code further provides that if the defendant be a corporation suit may be brought in the circuit court wherein its principal office is, or wherein its mayor, president or other chief officer resides.<sup>12</sup> This section would seem to cover the case of incorporated cities and towns.

The Virginia Code provides that, in suits wherein it is proper to make a school board or other public corporation a defendant,

<sup>4</sup> *Mullins v. County Court of Greenbrier County*, 166 S. E. 116 (W. Va. 1932).

<sup>5</sup> *Parker v. Spaulding County*, 134 Ga. 69, 67 S. E. 404 (1910). *Moore v. Lawrence County*, 143 Ky. 448, 136 S. W. 1031 (1911).

<sup>6</sup> *Piercy v. Johnson City*, 130 Tenn. 231, 168 S. W. 765 (1914); *Goldstein v. New Orleans*, 38 Fed. 626 (E. D. La. 1889).

<sup>7</sup> *Sweeney v. Jackson County*, 93 Ore. 96, 178 Pac. 365 (1919); *Howe v. Whitman County*, 120 Wash. 247, 206 Pac. 968 (1922).

<sup>8</sup> *St. Francis Levee Dist. v. Bodkin*, 108 Tenn. 700, 69 S. W. 270 (1902); *Callahan v. New York*, 66 N. Y. 656 (1876).

<sup>9</sup> *Goldstein v. New Orleans*, *supra* n. 7.

<sup>10</sup> W. VA. REV. CODE (1931) c. 56, art. 1, § 1.

<sup>11</sup> *Supra* n. 2.

<sup>12</sup> *Supra* n. 10.

the action or suit shall be brought only in the City of Richmond.<sup>10</sup> Evidently the Virginia legislature is far from wedded to the policy notion relied upon in the principal case and in these days of rapid communication it is apparent that the policy argument is somewhat wanting in persuasiveness.

—DONALD F. BLACK.

---

<sup>10</sup> VA. CODE ANN. (Michie, 1930) § 6049.