

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 20, 2010 Session

**STATE OF TENNESSEE EX REL. ARLIE “MAX” WATSON, ET AL. v.
LARRY WATERS, ET AL.**

**Chancery Court for Sevier County
Nos. 08-8-295, 08-9-368 David R. Duggan, Judge**

No. E2009-01753-COA-R3-CV FILED AUGUST 20, 2010

Charles D. Susano, Jr., J., concurring.

I concur in the majority opinion. I write separately to further bolster that portion of the majority opinion addressing the interplay between Tenn. Code Ann. § 29-35-110(a) (2000) and the code section – Tenn. Code Ann. § 29-35-109 (2000) – immediately preceding Section 110. The history of Sections 109 and 110(a) clearly demonstrates, as held by the majority, that the first word in Section 110 – “It” – refers back to Section 109.

The historical note following Section 109 traces its origin back to “Code 1858, § 3412 (deriv. Acts 1845-1846, ch. 55, § 5).” The historical note with respect to Section 110 traces that section to “Code 1858, §§ 3413, 3414 (deriv. Acts 1845-1846, ch. 55, § 6).” In reviewing the Tennessee Code of 1858, the correctness of the majority conclusion as to the meaning of the word “It” in Section 110 becomes crystal clear. The relevant sections are shown in the Code of 1858 without annotations and are as follows:

3412. The suit is brought by the Attorney General for the district or county, when directed so to do by the General Assembly, or by the Governor and Attorney General of the State concurring.

3413. *It* is also brought on the information of any person, upon such person giving security for the costs of the proceedings, to be approved by the clerk of the court in which the bill is filed.

3414. When the suit is brought at the relation of a private individual, it shall be so stated in the bill and proceedings, and such individual is responsible for costs in case they are not adjudged against the defendant.

(Emphasis added.)

The appellants' view that the word "It" refers to something else in the statutory scheme is clearly wrong.

CHARLES D. SUSANO, JR., JUDGE