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Searches and Seizures - Search Warrants and Execution Thereof - Description of Places, Persons, or Things in Affidavits or Warrants

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The vendor, in an executory contract, holds the legal title as security for enforcing the conditions of the contract.¹³ Thus, since he is entitled to discharge the obligation when payment is made,¹⁴ he should also be enabled to execute a marketable title pursuant to the contract.¹⁵

Although the question raised has not been resolved in this jurisdiction, the North Dakota Title Standards Committee has ruled that since there is a divergence of authorities in other states raising a reasonable doubt about the validity of a conveyance by the survivor, the surviving co-tenant does not possess a marketable title.¹⁶ It is submitted that this ruling should not be relied upon by North Dakota lawyers as it is contrary to the holdings of the better reasoned decisions. Furthermore, it seems that the tendency of this jurisdiction is in the direction posited herein.¹⁷

FREDRICK R. ALM III.

SEARCHES AND SEIZURES — SEARCH WARRANTS AND EXECUTION THEREOF — DESCRIPTION OF PLACES, PERSONS, OR THINGS IN AFFIDAVITS OR WARRANTS. — Defendant was convicted of possession of liquor in a dry area for purpose of sale. He appealed to the Court of Criminal Appeals contending that the search warrant authorized search of the "Cotton Club" located on "Slaton Highway No. 84", and although there was but one Cotton Club in the county, said highway did not exist, and the misdescription rendered the warrant invalid. The court *held* that all that is required to validate a search warrant is that there be sufficient definiteness to enable the officer to locate the property and distinguish it from other places in the community. The dissenting judge argued that if both state and federal constitutional guarantees against unreasonable and unlawful search and seizure are yet in force, the erroneous description in the search warrant precluded the receipt in evidence of the results of the search.¹ *McCormick v. State*, 331 S.W.2d 307 (Tex. 1960).

The Constitution of Texas requires the person or thing seized to be described "as near as may be".² Both the Constitution of the United States and the Constitution of North Dakota require "particularly describing" the

trator, beneficiaries, heirs or creditors of the husband . . . the clear implication—relating to titles is disastrous . . . if the majority opinion prevails, these titles (executed by surviving grantor-joint tenants) are now highly suspect."

13. *Schauble v. Schulz*, 137 Fed. 389 (8th Cir. 1905), where the court states, ". . . it is also the accepted rule in the state of North Dakota . . . that the vendor holds the legal title in trust. . . ." *Accord*, *In re Briebach's Estate*, 132 Mont. 437, 318 P.2d 223 (1957) (vendor holds the title of the realty as security); *Semmler v. Beulah Coal Mining Co.*, 48 N.D. 1011, 188 N.W. 310 (1922) "In equity, the estate is measured as a fee subject to the vendor's lien."

14. *McArthur v. Weaver*, 129 App. Div. 743, 113 N.Y.Supp. 1095 (1909); see *Swenson & Degnan, Severance of Joint Tenancies*, 38 Minn. L. Rev. 466 (1954).

15. See authorities cited in note 14, *supra*.

16. N.D. State Bar Title Standards Committee § 1.12 (1954). For a sharp criticism of this point, see *Swenson & Degnan, Severance of Joint Tenancies*, 38 Minn. L. Rev. 466 (1954).

17. *In re Kaspari's Estate*, 71 N.W.2d 558 (N.D. 1955) (" . . . title to the house . . . vested in Inez Mae Kaspari as the surviving joint tenant under the joint tenancy survivorship deed. . . ."); *cf. Johnson v. Johnson*, 85 N.W.2d 211, 224 (N.D. 1957) (citing *In re Kaspari's Estate, supra*).

1. Judge Davidson relied on *Balch v. State*, 134 Tex. Crim. 327, 115 S.W.2d 676 (1938) wherein the warrant described the premises to be searched as "302 East Robbins St", while the premises searched were at "304 Robbins St." See also: *Ervin v. State*, 165 Tex. Crim. 391, 307 S.W.2d 955 (1957); *Childress v. State*, 163 Tex. Crim. 479, 294 S.W.2d 110 (1956).

2. Tex. Const. art. I, § 9.

premises.³ It has been said that the latter is to be reasonably interpreted as meaning that the place is to be designated with sufficient accuracy to prevent the officer from searching the premises of one person under a warrant directed against those of another, and does not necessarily require a minute and detailed description of the property to be searched.⁴

With reference to these constitutional provisions, authorities, in challenging the validity of search warrants, have applied the following tests: The officer must have been able to locate the premises with certainty,⁵ reasonable certainty,⁶ definitely and with certainty,⁷ with reasonable effort,⁸ without the use of his discretion,⁹ or without outside assistance.¹⁰ Similarly a warrant has been held valid if clear of ambiguity,¹¹ or if it pointed out the place to the exclusion of others and led the officer unerringly to it.¹²

Although North Dakota has no case in point, it is submitted that they will honor the more liberal view in giving effect to a search warrant wherein the description of the premises is erroneously stated.

THEODORE KESSEL, JR.

TORTS — EFFECT OF MARRIAGE — RIGHT OF WIFE TO SUE DIVORCED HUSBAND FOR TORT COMMITTED PRIOR TO MARRIAGE. — Plaintiff was injured while riding with defendant and brought action for personal injuries. Upon subsequent marriage of parties, action was dismissed without prejudice. Two years later the husband obtained a divorce. Plaintiff appeals from trial court's refusal to grant plaintiff's motion to reopen the original action. The Supreme Court of New Jersey *held*, two justices dissenting, that plaintiff could not institute her original action. Without reaching the question whether the divorce revives an action for a pre-nuptial tort which was barred by marriage of the parties, the majority decided the change in relationship between the parties

3. U.S. Const. amend. IV. N.D. Const. art. I, § 18 provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons and things to be seized".

N.D. Rev. Code § 29-2906 (1943) employs the phrase "reasonable particularity" rather than "particularly describing".

4. *State v. Nejin*, 140 La. 793, 74 So. 103 (1917).

5. *State v. John*, 103 W. Va. 148, 136 S.E. 842 (1927).

6. *Thompson v. State*, 197 Tenn. App. 112, 270 S.W.2d 379 (1954); *Chruscicki v. Hinricks*, 197 Wis. 78, 221 N.W. 394 (1928) (Correct owner's name, but incorrect range and section numbers, held, valid).

7. *United States v. Borkowski*, 268 Fed. 72 (S.D. Ohio 1920).

8. *Steele v. United States*, 267 U.S. 498 (1925).

9. *Stone v. State*, 276 P.2d 799 (Okla. 1954); *Wallace v. State*, 89 Okla. Crim. 365, 208 P.2d 190 (1949). See *Rose v. State*, 171 Ind. 662, 87 N.E. 103 (1909); *People v. Musk*, 221 Mich. 578, 192 N.W. 485 (1923) (Accused was released due to use of discretion on part of officer).

10. *Hedges v. State*, 97 Okla. Crim. 402, 265 P.2d 737 (1954); *Dawson v. State*, 90 Okla. Crim. 30, 210 P.2d 209 (1949) wherein range 19W as contained in the warrant did not exist; the intended range being 19WIM—West of Indian Meridian. Held, description sufficient, because the officer was able to locate the place without the aid of any information save that contained in the warrant. See *Cotton v. State*, 83 Okla. Crim. 349, 177 P.2d 155 (1947).

11. *Dolen v. State*, 187 Tenn. App. 663, 216 S.W.2d 351 (1948) (The court said particularly means absence of ambiguity); *Thompson v. Carson*, 186 Tenn. App. 170, 208 S.W.2d 1019 (1948).

12. *Jackson v. State*, 87 Fla. 262, 99 So. 548 (1924); *Bonner v. State*, 210 Ga. 475, 80 So.2d 683 (1955) wherein the warrant included Pensacola as part of the address of the premises to be searched, where, in reality, said premises were outside city limits, held, description valid.