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Torts - Effect of Marriage - Right of Wife to Sue Divorced Husband for Tort Committed Prior to Marriage

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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.

as a result of the divorce was insufficient cause to vacate dismissal. The dissent reasoned the marriage merely disabled the wife's cause of action while the parties continued as husband and wife, and the divorce should have dissipated the plaintiff's non-ability to sue. *Greenberg v. Owens*, 157 A.2d 689 (N. J. 1960).

At common law, a wife and husband were considered a single legal entity; therefore, a cause of action for a tort committed during coverture did not arise.¹ Although the various Married Women's Acts have secured for the wife a separate legal identity from her husband and a separate legal estate in her own property,² the majority of courts adhere to the common law rule as to tort liability between spouses.³ Strict construction of the Married Women's Acts is one of the reasons for following the common law rule.⁴ Other reasons for denying a cause of action to the injured spouse are that these suits will disrupt the domestic tranquility of the home⁵ and will result in collusive suits against insurance companies.⁶

An increasing minority of states hold that by the enactment of the Married Women's Acts one spouse may sue the other for tort,⁷ relying on liberal interpretation of these Acts⁸ and rebutting the doctrine of disruption of domestic tranquility⁹ and the danger of collusive suits against insurance companies.¹⁰

In antenuptial tort actions the majority of the courts also disallow recovery on the basis that the subsequent marriage extinguishes any right of action.¹¹ The courts following the minority rule as to torts committed during coverture between spouses allow recovery for an antenuptial tort reasoning that a woman

1. *Thompson v. Thompson*, 218 U.S. 614 (1910); *Peters v. Peters*, 156 Cal. 32, 103 Pac. 220 (1909); *Holman v. Holman*, 73 Ga. App. 205, 35 S.E.2d 923 (1945); *Kaczorowski v. Kalkosinski*, 321 Pa. 438, 184 Atl. 663 (1936).

2. See PROSSER, TORTS § 101 (2d ed. 1955).

3. *Peters v. Peters*, 156 Cal. 32, 103 Pac. 220 (1909); *Corren v. Corren*, 47 So.2d 774 (Fla. 1950); *Hinter v. Livingston*, 125 Ind. App. 422, 123 N.E.2d 912 (1955); *Furstenburg v. Furstenburg*, 152 Md. 247, 136 Atl. 534 (1927); *Lubowitz v. Taines*, 293 Mass. 39, 198 N.E. 320 (1936); *Strom v. Strom*, 98 Minn. 427, 107 N.W. 1047 (1906); *Austin v. Austin*, 136 Miss. 61, 100 So. 591 (1924); *Browner v. Browner*, 327 S.W.2d 808 (Mo. 1959); *Conley v. Conley*, 92 Mont. 425, 15 P.2d 922 (1932); *Romero v. Romero*, 58 N.M. 201, 269 P.2d 748 (1954); *Courtney v. Courtney*, 184 Okla. 395, 87 P.2d 660 (1938); *Comstock v. Comstock*, 106 Vt. 50, 169 Atl. 903 (1934); *Poling v. Poling*, 116 W.Va. 187, 179 S.E. 604 (1935); See, *Edleman v. Edleman*, 183 Ga. 778, 189 S.E. 835 (1937).

4. *Corren v. Corren*, 47 So.2d 774 (Fla. 1950). See, *Taylor v. Patten*, 2 Utah2d 404, 275 P.2d 696, (1954) (dictum); *McKinney v. McKinney*, 59 Wyo. 204, 135 P.2d 940 (1943).

5. *Sink v. Sink*, 172 Kan. 217, 239 P.2d 933 (1952); *Patenaude v. Patenaude*, 195 Minn. 523, 263 N.W. 546 (1935).

6. See *Harvey v. Harvey*, 239 Mich. 142, 214 N.W. 305 (1927).

7. *Brandt v. Keller*, 413 Ill. 503, 109 N.E.2d 729 (1952); *Brown v. Gosser*, 262 S.W.2d 480 (Ky. 1953); *Prosser v. Prosser*, 114 S.C. 45, 102 S.E. 787 (1922). See *Fontaine v. Fontaine*, 205 Wis. 570, 238 N.W. 410 (1931).

8. *Brandt v. Keller*, 413 Ill. 503, 109 N.E.2d 729 (1952); *Prosser v. Prosser*, 114 S.C. 45, 102 S.E. 787 (1922); *Scotvold v. Scotvold*, 66 S.D. 53, 298 N.W. 266 (1941).

9. *Courtney v. Courtney*, 184 Okl. 395, 87 P.2d 660 (1938).

10. See *Rains v. Rains*, 97 Colo. 19, 46 P.2d 740, 743 (1935).

11. *Spector v. Weisman*, 40 F.2d 792 (D.C. Cir. 1930); *Carmicheal v. Carmicheal* 53 Ga. App. 663, 187 S.E. 116 (1936); *Henneger v. Lomas*, 145 Ind. 287, 44 N.E. 462 (1896); *Scales v. Scales*, 168 Miss. 439, 151 So. 551 (1934); *Wolfer v. Oehlers*, 8 N. J. Super. 434, 73 A.2d 95 (1950); *Fury v. Fury*, 193 Va. 727, 71 S.E.2d 191 (1952); *Stats v. Co-operative Transit Co.*, 125 W. Va. 473, 24 S.E.2d 916 (1943); *Buckeye v. Buckeye*, 203 Wis. 248, 234 N.W. 342 (1931). See *Raines v. Mercer*, 165 Tenn. 415, 55 S.W.2d 263, 264 (1932).

retains whatever cause of action she had for injuries to her personal property before marriage.¹²

North Dakota follows the minority view, allowing a wife to bring an action for personal injuries caused by husband's negligence during coverture.¹³

In the cases regarding a divorce and subsequent action for a tort committed during coverture, it is generally held that the divorce does not dissipate the wife's non-ability to sue.¹⁴ However, in two recent decisions, one jurisdiction held that a wife may maintain an action for a tort committed during marriage after the final divorce decree,¹⁵ and another jurisdiction held that a wife can recover for an intentional tort committed during the interlocutory period of divorce.¹⁶

It is submitted that the unique situation of an antenuptial tort coupled with the subsequent divorce of the parties should permit the cause of action to be sounded. If subsequent marriage suppresses the right of action, subsequent divorce, by the same reasoning should revive it.

CHARLES R. HUDDLESON.

12. *Foote v. Foote*, 170 Cal. App.2d 435, 339 P.2d 188 (1959); *Hamilton v. Fulker-son*, 285 S.W.2d 642 (Mo. 1955) (the court allowed recovery for an antenuptial tort but stated that torts committed during coverture do not give rise to a cause of action). See *Shirley v. Ayers*, 201 N.C. 51, 158 S.E. 840 (1931).

13. *Fitzmaurice v. Fitzmaurice*, 62 N.D. 191, 242 N.W. 526 (1932).

14. *Henneger v. Lomas*, 145 Ind. 287, 44 N.E. 462 (1896) (this case involved a prenuptial tort instead of one committed during coverture); *Callow v. Thomas*, 322 Mass. 550, 78 N.E.2d 637 (1948); *Schultz v. Christopher*, 65 Wash. 496, 118 Pac. 629 (1911). See *Bandfield v. Bandfield*, 117 Mich. 80, 75 N.W. 287 (1898); *Strom v. Strom*, 98 Minn. 427, 107 N.W. 1047 (1906).

15. *Gremillon v. Caffey*, 71 So.2d 670 (La. 1954).

16. *Taylor v. Patten*, 2 Utah2d 404, 275 P.2d 696 (1954).