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Recent Cases

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CONCURRENT ESTATES IN MISSOURI—SUFFICIENCY OF WORDS USED TO CREATE A JOINT TENANCY—SECTION 442.450, RSMo 1959

Powers v. Buckowitz[1]

In June 1952 a widow, the mother of one daughter, found herself preparing to remarry. In contemplation of the marriage the woman conveyed her residential property by quit-claim deed to a straw party. The straw immediately reconveyed the property to mother and daughter "as tenants by entirety and to the survivor of them."[2] The mother died in 1957, five years after she had remarried. It was clear that mother and daughter could not hold as tenants by the entirety since that form of concurrent ownership is available only to husband and wife. The mother's widower contended that the 1952 quit-claim deed created a tenancy in common in mother and daughter and he brought a partition action for his marital share of his deceased wife's undivided one-half interest in the property. The daughter maintained that a joint tenancy was created between her and her mother, and that as survivor she took the whole. Both parties agreed that the result depended on the meaning of Section 442.450 of the Revised Statutes of Missouri of 1949 which has been carried verbatim into the 1959 compilation:

> Every interest in real estate granted or devised to two or more persons, other than executors and trustees and husband and wife, shall be a tenancy in common, unless expressly declared, in such grant or devise, to be in joint tenancy.

The Supreme Court of Missouri found a joint tenancy in mother and daughter. The court concluded that the statute required "that the granting instrument expressly declare *or by plain implication* manifest the intention of the parties to create an estate with the incidence of survivorship."[3] In determining the intention of the parties, the court made it clear that much weight was given to the phrase "and to the survivor of them."[4]

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1. 347 S.W.2d 174 (Mo. 1961). See also, the discussion of this case in Eckhardt, *Property Law in Missouri*, 27 Mo. L. Rev. 65, 70-72 (1962). Professor Eckhardt's discussion is principally from the title examiner's point of view.

2. *Id.* at 175. The deed was to mother and daughter "as tenants by entirety and to the survivor of them." The grant and quit-claim were to them as "tenants by entirety and to the survivor of them" and the habendum clause "as tenants by entirety or survivor of them and to their heirs and assigns forever."

3. *Id.* at 175 (emphasis added).

4. *Id.* at 176. "A conveyance to two or more persons, as to mother and daughter from mother, and to the survivor of them is an affirmative expression of intention to create that class or character of an estate, a joint tenancy with right of survivorship."

The court was faced with two basic questions in the *Powers* case. First, what does the statute require in order to create a joint tenancy? Second, did this deed satisfy the statutory requirement and thus create a joint tenancy in mother and daughter?

A look at Missouri cases construing the statute involved is profitable at this point. The first case involving the statute was *Rodney v. Landeau*.[5] There the court found that:

> American Law is opposed to survivorship . . . [and this is] clearly indicated in our statutes. While joint tenancies are not abolished in this state, still to create such a tenancy there must be an express declaration to that effect in the deed or will creating the estate . . . .[6]

A Maryland case involving substantially the same statute was cited as authority.[7] A reading of the Maryland decision finds the discussion on the statute to be dictum and not determinative of the result. The view taken in the *Rodney* case was likewise adopted in *Lemmons v. Reynolds*.[8] There the court re-emphasized that it was an inflexible rule or requirement of the law that a grant or devise that did not expressly declare a joint tenancy would not be given effect as such.[9]

Perhaps the case which voices most loudly the Missouri Supreme Court's interpretation of the statute prior to *Powers* is *State ex rel. Ashauer v. Hostetter*.[10] There we find a testamentary disposition of land by a father to his two daughters "as tenants by the entirety," providing that if daughter A survived daughter B she should hold the estate for her sole and separate use and benefit.[11] In finding the devise to the daughters created a tenancy in common and not a joint tenancy the court discussed the statute at length.

> [It is] plain that a joint tenancy can be created in grantees or devisees, who are not executors, trustees or husband and wife, in one way only, and that is to expressly say so, by using the term "joint tenancy." The statute says "expressly declared." The word expressly is the adverb; express is the adjective which directly and distinctly stated; expressed, not merely implied or left to inference.[12]

The court in the *Powers* case, in supporting a decision clearly contrary to the above extract from the *Ashauer* case, took the view that this part of *Ashauer* was dictum, not necessary to a determination of the case.[13] The court cites a law review note which pointed out that *Ashauer* "applies the statute 'with severity'"

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5. 104 Mo. 251, 15 S.W. 962 (1891). Testator willed to wife for life, then to be joint property of son and daughter. The court held that son and daughter took vested remainders as tenants in common, not as joint tenants.
6. *Id.* at 259, 15 S.W. at 964.
7. Purdy v. Purdy, 3 Md. 547 (1850).
8. 170 Mo. 227, 71 S.W. 135 (1902). Mother willed land to two sons, James and John. The court found no express declaration of joint tenancy so ruled a tenancy in common was created.
9. *Id.* at 233-34, 71 S.W. at 136.
10. 344 Mo. 665, 127 S.W.2d 697 (1939).
11. *Id.* at 668, 127 S.W.2d at 698.
12. *Id.* at 670, 127 S.W.2d at 699.
13. 347 S.W.2d at 175-76.

and that it failed to consider the "plain intention of the testator."[14] The author of that note indicated that he could not tell whether or not the court's language regarding the statute was dictum,[15] and a definite conclusion on that point cannot be drawn.

In light of the preceding discussion it is interesting to note the general content of the parties' briefs in the *Powers* case. Husband Powers relied solely on *Rodney*, *Lemmons*, *Ashauer* and the statute to support his contention that a tenancy in common had been created in mother and daughter.[16] The daughter, among other things, contended that the *Rodney*, *Lemmons* and *Ashauer* cases were "in the clear minority and should no longer be followed."[17] Thus it seems that though the court in the *Powers* case did not admit to taking a new position on the interpretation of the statute, the result compels that conclusion. The reasonableness of such a result with respect to similar statutes in other states has never been seriously questioned.

After determining what was needed to create a joint tenancy under the statute the court went on to find that "it was the manifest intention of the parties" to create a joint tenancy.[18] This met the statutory requirements as found by the court and the deed was held to create a joint tenancy.

Virtually every state has by statute abolished the common law rule favoring a joint tenancy with its incident of survivorship. Although the language may vary, these statutes provide in effect that grants and devises to two or more persons will be construed to create estates in common and not in joint tenancy unless declared to be in joint tenancy.[19] The Missouri statute is an example of those which require an express declaration of joint tenancy. "The view usually taken under statutes providing that a joint tenancy shall not be created other than by express declaration is that formal declaratory language is not required."[20] Prior to the *Powers* case Missouri was recognized as the only jurisdiction clearly adopting a contrary or minority viewpoint.[21] Typical of the interpretation given by other states having a statute like Missouri's is this language from a Maryland case: "The requirement is only one of clear manifestation of intention, not of particular words."[22]

The intention of the parties was the other problem confronting the court in *Powers*. The court made it plain that the phrase "tenants by entirety" did not

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14. *Id.* at 176.
15. 5 Mo. L. Rev. 114, 118 (1940).
16. Brief for Appellant, p. 4.
17. Brief for Respondent, p. 17.
18. 347 S.W.2d at 176.
19. 14 Am. Jur. *Cotenancy* § 12 (1938); 48 C.J.S. *Joint Tenancy* § 2 (1947); Annot., 46 A.L.R.2d 523 (1956).
20. Annot., 46 A.L.R.2d 524 n.13 (1956); Also see Mustain v. Gardner, 203 Ill. 284, 67 N.E. 779 (1903); Marshall v. Security Storage & Trust Co., 155 Md. 649, 142 Atl. 186 (1928); Kemp v. Sutton, 233 Mich. 249, 206 N.W. 366 (1925); *Re* Walker's Will, 195 Misc. 793, 89 N.Y.S.2d 826 (1949).
21. Annot., 46 A.L.R.2d 524, 525 n.16 (1956).
22. Marshall v. Security Storage & Trust Co., 155 Md. 649, 653, 142 Atl. 186, 187 (1928).

stand alone, but was followed by "and to the survivor of them."[23] The incident of survivorship is the outstanding characteristic of a joint tenancy.[24] It was unmistakably clear that the survivorship phrase influenced the court's decision no small amount. The importance of the survivorship phrase in an instrument of conveyance in determining the parties' intention is illustrated by the case of *Hunter v. Hunter*[25] decided by the Missouri Supreme Court in 1959. The court in *Powers* relied heavily on the *Hunter* case.[26] In *Hunter* the testatrix willed land to his mother and sister "as joint tenants with the right of survivorship."[27] The court found that testatrix intended this devise to create a joint estate for life in mother and sister and the survivor to take the fee.[28] The court refused to allow a conveyance by one of the joint devisees (mother) of her interest to defeat the remainder interest in the whole in the surviving joint devisee (sister). This was held to be contrary to the intention of testatrix. It is important to note that the court made clear that if the phrase "with the right of survivorship" had not been included in the instrument, the result would have been different.[29] It has been pointed out that the court in the *Hunter* case gave much more effect to the words "with the right of survivorship" than it gave to the words "as joint tenants" in determining the intention of testatrix.[30]

The result in the *Hunter* case was examined by the court in a case decided last year. In *McClendon v. Johnson*[31] the conveyance was by deed from father through a straw party to father and daughter

> as joint tenants and not as tenants in common, with right of survivorship . . . to have and to hold the same . . . as joint tenants and not as tenants in common, with right of survivorship, and to their heirs and assigns forever.[32]

Daughter claimed, on the authority of *Hunter v. Hunter*, that this created concurrent life estates in father and daughter and a contingent remainder in the whole in the survivor. The court distinguished *Hunter v. Hunter* and found that the above limitation created a joint tenancy in fee in father and daughter. The right of survivorship was lost by a conveyance of the interest of one of the joint tenants (father) to a third person. Following such a severance the former cotenant (daughter) and the third person became tenants in common.[33]

The court's decision was based on the use of the phrase, "and to their heirs and assigns forever," a phrase not contained in the *Hunter* limitation. This, the court decided, indicated an intention to convey an estate of inheritance in positive

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23. 347 S.W.2d at 176.
24. 2 AMERICAN LAW OF PROPERTY § 6.1 (1952).
25. 320 S.W.2d 529 (Mo. 1959); See Annot., 69 A.L.R.2d 1048 (1960).
26. 347 S.W.2d at 176.
27. 320 S.W.2d at 530.
28. See 24 Mo. L. REV. 456 (1959), for a full discussion of the court's opinion.
29. 320 S.W.2d at 533.
30. 24 Mo. L. REV. 456, 458 (1959).
31. 337 S.W.2d 77 (Mo. 1960).
32. *Id.* at 79.
33. *Id.* at 82. Also see 25 Mo. L. REV. 390, 391 (1960).

and unmistakable terms.[34] The words, "to the survivor of them," were treated as less important in determining the intention of the parties, and the emphasis was placed on the words of inheritance. Viewing the *Hunter* and *McClendon* cases together, it can be reasonably concluded that absent the words of inheritance, the survivorship phrase will be deemed of major importance in determining the intention of the parties. In *Powers v. Buckowitz* it will be remembered that the habendum clause was to mother and daughter "as tenants by entirety or survivor of them and to their heirs and assigns forever."[35] Had the deed been to mother and daughter *as joint tenants* followed by survivorship phrase and words of inheritance, the problem would have been substantially the same as in the *McClendon* case.

Thus it seems that in order to create a joint tenancy in Missouri an intent to do so must be clearly manifested in the instrument of conveyance. In finding such an intent the court will view the instrument as a whole. Words used in the limitation which indicate either survivorship in the whole to one of the parties or an estate of inheritance will be weighted heavily in the determination of estates intended to be created. The addition of phrases intended to be descriptive of only one element of the interest intended to be created may be interpreted otherwise by the Missouri courts.

MAURICE B. GRAHAM

CONVEYANCES—LANDLORD-TENANT—SUFFICIENCY OF LAND DESCRIPTIONS—EFFECT OF POSSESSION BY TENANT

Politte v. Coleman[1]

Plaintiff (landlord) and defendant (tenant) executed a written instrument which purported to lease "White City" to tenant for a period of thirty-six months; tenant immediately went into possession. Tenant occupied the premise for only four months and then subleased the premises for a short time to a third party, collected some of the rent and paid it to the landlord's agent. Landlord sued for the balance of the rent due under the thirty-six month term. Tenant denied the existence of the lease, claiming that the purported lease was void and invalid for indefiniteness in the description of the property leased. The description set forth in the alleged lease read as follows:

> The property commonly known as "White City" located on Hy 110, about 2½ miles East of De Soto, Mo., on South side of said Highway.[2]

The trial court entered judgment for landlord and tenant appealed. On appeal, *held,* affirmed. Where tenant, after execution of a written lease, was placed in possession of the premises and paid rent for his own occupancy and later subleased

34. 337 S.W.2d at 82.
35. 347 S.W.2d at 175.
1. 340 S.W.2d 129 (St. L. Ct. App. 1960).
2. *Id.* at 130.

the premises and collected some of the rent and paid it to landlord's agent, he was estopped from claiming that the description was so indefinite as to render the original lease void and thus excuse him from payment of rent for the full term.

The court properly held that tenant was estopped from claiming an insufficient description, but did not specifically decide whether the description *itself* was sufficient so as to make a valid lease regardless of estoppel. The purpose of this note is to take a closer look at this description and to reach some conclusion as to its sufficiency.

Descriptions in instruments affecting land may be evaluated from at least four points of view: (1) Is the description sufficient to be good at law as between the parties to pass legal title? (2) Is the description sufficient to be good in equity as between the parties in a suit for specific performance? (3) If the instrument is recorded, is the description sufficient to give constructive notice? (4) Is the description sufficient so as to render title marketable? The case will be discussed as it relates to these four standards. The points will be considered in reverse order.

I. Will the Description Render Title Marketable?

"Perfect" title has been described as "a title that is perfect and safe to a moral certainty . . . ."[3]

> It is not necessary, and it is not humanly possible, for the symbols of description, which we call "words," to describe in every detail the objects designated by the symbols. . . . [It is sufficient if] the few features mentioned do happen to suffice to fulfill the purpose of interpretation, namely, to enable us . . . to find the object designated, and to select it with fair certainty from others.[4]

Marketable title,[5] it would seem, requires a somewhat lesser degree of certainty than the so-called elusive, indescribable "perfect" title. One generally accepted definition of marketable title is that it must be of a character which a reasonable vendee, well informed as to the facts and their legal bearing, willing and anxious to perform his contract, would, in the exercise of that prudence which businessmen ordinarily bring to bear on such transactions, be willing to and should accept.[6]

It has been held that a title is not marketable where a defect in the record title can be supplied or cured only by resort to parol evidence.[7] Also, where the

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3. Birge v. Bock, 44 Mo. App. 69 (St. L. Ct. App. 1890). Marketable title includes both "good" and "merchantable" title; the meanings are synonomous.

4. 9 Wigmore, Evidence § 2476, at 251-52 (3d ed. 1940) (Emphasis deleted).

5. Rogers v. Gruber, 351 Mo. 1033, 174 S.W.2d 830 (1943); Reeves v. Roberts, 294 Mo. 593, 242 S.W. 956 (1922); Wiemann v. Steffan, 186 Mo. App. 584, 172 S.W. 472 (1915).

6. Smith v. Huber, 224 Iowa 817, 277 N.W. 557 (1938).

7. Union Planters' Bank & Trust Co. v. Corley, 161 Miss. 282, 133 So. 232 (1931), was an action for specific performance; plaintiff had agreed to furnish marketable title and defendant contended title to be unmarketable because there was a lien on the property in question resulting from a judgment in favor of a drainage district and the abstract furnished by plaintiff did not show this suit and judgment.

title depends for its validity on matters outside the record, the determination of which requires a judicial decree, it is not marketable and the vendee is not bound to accept it.[8]

In *Collins v. Martin*,[9] defendant agreed to furnish marketable title in a contract for sale of land and was given thirty days for correction of any defects found. Plaintiff objected to the land description, the land being described in a deed in the chain of title as

> a certain tract or parcel of land lying in Tarrant County, Texas, consisting of about 26-2/3 acres about a half mile south of Kennedale, and being the same land heired by the same James Gertrude Brashears from the estate of her father, Monroe Scott.[10]

The title was held to be unmarketable due to the insufficiency of description.

It would seem, then, that if the description in the instant case were contained in a deed, the court would declare the description insufficient to render title marketable. The term "White City" gives no indication as to the exact area or quantity of land covered by the term, and to decide this question would involve the use of matters outside the record which would render title unmarketable.

Authorities in Missouri as to land descriptions affecting marketability of title are relatively scarce. The principal reason for this is that it is usually much cheaper to cure the defect by affidavits or other methods than to litigate the issue. About the only clear authority on the issue in Missouri is *Mitchener v. Holmes*,[11] where the court held that a title depending on a deed *fifty years old* containing a defective description was marketable. However, the age of the deed seemed to play a major part in the court's decision.

II. Will the Description Give Constructive Notice if Recorded?

According to *Gatewood v. House*,[12] for the record of a deed to constitute notice to subsequent purchasers, the description contained in the deed should be such as

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8. Geray v. Mahnomen Land Co., 143 Minn. 383, 173 N.W. 871 (1919). Plaintiff rejected defendant's tender of deed contending it was unmarketable and brought this action to recover downpayment. Plaintiff's objection was that defendant's title was founded wholly upon deeds from Indians to whom trust patents were issued by the United States, but where the trust patents on their face did not vest in the Indians the fee title.

9. 6 S.W.2d 126 (Tex. Civ. App. 1928).

10. *Id.* at 128.

11. 117 Mo. 185, 22 S.W. 1070 (1893). A contracted to sell land to B agreeing that unless a good title was offered contract would be void. A tendered the deed but B refused to accept because of certain errors in partition of land in question upon death of person through whom A claims (*i.e.*, the commissioners in their report used the wrong starting point in describing one share). The description was correct on the recorded plat, however.

12. 65 Mo. 663 (1877). A conveyed to B lands described as "the lands entered by [A] . . . at the office in Palmyra, State of Missouri, on the 19th of July, 1836, specified in [seven certificates by number and showing acreage, the land in question being a portion of lands included in one of the certificates] . . . ." A then conveyed the same lands to C, but before B had recorded his deed. C then conveyed to D after B had recorded his deed. Held: Insufficient to impart notice to D.

would enable such purchasers to identify the land by name, location, monuments, crossings, distances or numbers, or the deed should refer to some other instrument of record which does contain such means of identification.

While the *Gatewood* case does state that land may be described by name and possibly impart notice to subsequent purchasers, certainly it was meant that the name be of some permanence and commonly known throughout the community. Undoubtedly, a conveyance naming "Coney Island" Brooklyn, New York, or "Forest Park Highlands" St. Louis, Missouri, would give constructive notice since they are long established names with which most people are familiar, and which casual inquiry would identify.

The result is different, however, where the name refers to a small roadside tavern or an individual business which may have started out as "Ed's Place," then changed to "Joe's Place," then to "Bill's Place," and so on, changing names as often as owners. Describing this property by name only would not give constructive notice.

Each case depends on its individual set of facts, and there is not enough stated in the *Politte* case to decide conclusively either way as to the term "White City." It is questionable, however, that the name is so familiar and long established that it would impart constructive notice.

In *Ozark Land & Lumber Co. v. Franks*,[13] land was patented to A; A deeded to B describing the land as "S.E. quarter of section 26 in Range 5," omitting the township, but reciting A as patentee. The platbook on file in the county clerk's office showed A to be patentee in township twenty-five, and showed that he was not patentee of any other Southeast quarter of section twenty-six in range five. The deed was recorded and plaintiff claimed through this deed. A then conveyed the same land to C through whom defendant claimed title. The court held the description too indefinite to impart notice to C.

> A purported conveyance is not one in fact unless it contains a description from which a competent person can locate the land intended to be conveyed and can distinguish it from all other land. A description of less certainty will usually create rights as between the parties, but until reformed by decree, or correction deed—or in a few states, by affidavit—the intrument is not a conveyance. Even if good between the parties without reformation, the record of a conveyance containing a defective or erroneous description is likely to lack one necessary attribute of a good record, that of affording constructive notice of any rights of the grantee.[14]

Missouri courts have also held that a description omitting township and range does not impart notice to subsequent purchasers.[15]

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13. 156 Mo. 673, 57 S.W. 540 (1900).
14. 4 AMERICAN LAW OF PROPERTY § 18.34, at 710 (Casner ed. 1952).
15. Cass County v. Oldham, 75 Mo. 50 (1881). A to B, but mortgage omitted township and range. Then A to C of same land giving township and range. Court held record of mortgage to B was not notice to C.

III. Is the Description Good in Equity in a Suit for Specific Performance?

In *Herzog v. Ross*,[16] a contract for the sale of realty described the realty as "property situated in the city of St. Louis, state of Missouri, to wit; Property known as and numbered 6850 Plateau." The court held that this was a sufficient description (in an action for specific performance) and said that realty need not be fully and "actually" described in a contract for the sale of realty so as to be identified from a mere reading of the contract. For an action for specific performance to lie, the writing must afford means whereby identification may be made perfect and certain by parol evidence.

It was held in *Adrian v. Republic Finance Corp.*,[17] that a description of land in a suit for specific performance must enable the court to determine, *with admissible extrinsic evidence*, what property was intended by the parties to be covered thereby. It has also been held that if the description of land is sufficiently certain to enable the vendee to find and examine it, specific performance of the contract is justified.[18]

It would seem, then, that the description required in a contract for the sale of land to support an action for specific performance is relatively slight so long as the court can determine the definite descrpition by parol or extrinsic evidence. In fact, a contract which described plaintiff's land as "280 acres of land in St. Claire Co., Mo., belonging to the party of the second part," was held to describe sufficiently the land in order to permit the description to be made definite by parol evidence.[19]

It follows, then, that the description in the *Politte* case, if contained in a contract for the sale of land, would support an action for specific performance; even though the vendee had not gone into actual possession. The court would undoubtedly allow parol or extrinsic evidence to describe and make certain and definite the exact land and property covered by the term "White City."

There was an additional factor in the *Politte* case which weighed heavily in favor of the landlord; the tenant had actually gone into possession of the premises. Parties may, by their conduct under the contract, render certain what might otherwise be deemed uncertain.[20] In *Keepers v. Yocum*,[21] plaintiff agreed to ex-

16. 355 Mo. 406, 196 S.W.2d 268 (1946).
17. 286 S.W. 95 (Mo. 1962). In a suit to enforce an option to repurchase property, the property was described in the option as lots fourteen and fifteen of block *two*, but in the testimony by plaintiff and in the abstract was described as lots fourteen and fifteen of block *twenty*.
18. Koch v. Streuter, 218 Ill. 546, 75 N.E. 1049 (1905). In an exchange contract, appellee's land was described as "a certain fruit farm, known as the 'Ideal Fruit Farm' . . . and containing about 199½ acres, situated about one and a quarter miles northwest of West Salem, in Edwards County, Ill." Appellee contended that the description was too uncertain for specific performance to lie. Appellate court held description prima facie sufficient and reversed.
19. Ranck v. Wickwire, 255 Mo. 42, 164 S.W. 560 (1914).
20. 49 Am. Jur. *Specific Performance* § 115 (1943).
21. 84 Kan. 554, 114 Pac. 1063 (1911).

change land for a deed of trust and cash from defendant. Plaintiff placed defendant in possession of the land, but defendant refused to accept a tendered deed from plaintiff. The written instrument described the land as "his [J. C. Keeper's] 114 A. in Vernon Co., Mo." The court held that where a vendor puts his vendee into possession of real estate, an uncertainty of description in the contract of sale which otherwise might prevent specific performance of the contract is thereby cured.

IV. Is the Description Sufficient To Pass Legal Title?

It has been held that a deed will not be declared void for uncertainty if it is possible by any reasonable rule of construction to ascertain from the description, *aided by extrinsic evidence,* what property was intended to be conveyed.[22] And in *Tetherow v. Anderson,*[23] where land was described in a conveyance as "block 52, in DeKalb Co., Mo." and was known by that description by the parties and by residents in the neighborhood, the description was held sufficient to pass title.

In *Bimslager v. Bimslager*[24] the court held that a devise or grant would only be declared void for uncertainty where, after resort to oral proof, it still remained a mere matter of conjecture what was intended by the instrument.

Therefore in the *Politte* case in an action at law, as well as in a suit for specific performance, the description would be sufficient to pass title even if tenant had not gone into possession. Since tenant had taken actual possession, however, the effect of that act will be discussed briefly.

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22. 3 American Law of Property § 12.46 (Casner ed. 1952). In Hubbard v. Whitehead, 221 Mo. 672, 121 S.W. 69 (1909), plaintiff's father gave a deed to Platt purporting to convey lots 90 and 91 in block 13. The deed read "lots 90 and 91 in block 15" but the other boundaries given in the deed could only apply to block thirteen and not fifteen. Platt immediately took possession of lots ninety and ninety-one in block thirteen. Defendant, through mesne conveyances, acquired all title that Platt obtained through this deed. Plaintiff contended the deed was void due to the erroneous description. The court held for defendant saying deed was amply sufficient to carry title of plaintiff's father to Platt. Bollinger County v. McDowell, 99 Mo. 632, 13 S.W. 100 (1890), involved a conveyance describing land as follows: "Beginning on a Spanish Oak; thence south . . . 35 chains, to a hickory; thence . . . east, 63 chains, to a white oak; thence north . . . 35 chains, to a stake; and thence . . . west, 63 chains to the beginning . . . ." Appellate court held that evidence to show that the parcel of land was known as Henry Yount's land and had been conveyed in a similar manner before should have been admitted.

23. 63 Mo. 96 (1876).

24. 323 Ill. 303, 154 N.E. 135 (1926). Testator had inserted an additional "township 13" in the description of land in his will. The will read: "I devise . . . the west forty acres of the south half of the southwest quarter in township (13), in township (13), south, in range two . . . ." *Accord,* Sanderson v. Sanderson, 82 S.W.2d 1008 (Tex. Civ. App. 1935) where land where described as "the town house and all lots now owned by Mrs. Kelton, said lots and house located in Knox City." The court held that a deed is not void for uncertainty of description unless on its face the description cannot by extrinsic evidence be made to apply to any definite land.

It has been held that where the lessee or grantee has gone into actual possession of the premises, the defense of uncertainty of description will not stand.[25]

And the entry into possession of the demised premises under the lease has been given the legal effect of removing an uncertainty as to the property intended to be leased.[26]

The court held, in *Shepard Warehouses, Inc. v. Scherman*,[27] that where there is an entry into possession of certain space not definitely described in a lease, and payment of rent under the lease, the objection of uncertainty is removed as to the premises intended to be leased.

It would seem, then, that in the *Politte* case, the court, while holding quite properly on an estoppel basis, could have decided the issue in the alternative by saying as a matter of law that the description was sufficient as between the parties, and landlord was entitled to his relief.

WILLIAM B. WHARTON

25. Hoyle v. Bush, 14 Mo. App. 408 (St. L. Ct. App. 1883). Plaintiff leased premises to defendant for five years, the lease describing the premises as "those sub-cellars and basement above, under the building on southeast corner of Fourth and Elm Streets, known as Nos. 200 and 202 South Fourth Street, reserving from said basement a portion of the west end, and being the same premises now occupied by Isador Bush & Co." Defendant took possession and in a suit for rent contended that the description was so indefinite that a third person could not identify the premises without aid of parol evidence. The court held, defendant having taken passession under the lease, the contract had been wholly executed by plaintiff, and defendant could not remain in possession and enjoy the fruits of the lease and then defend on the ground that the premises were not described in the lease with such accuracy that a third person could identify them without the aid of parol evidence.

26. 32 AM. JUR. *Landlord-Tenant* § 40 (1941).

27. 63 N.Y. Supp. 2d 421 (Sup. Ct. 1946). Plaintiff sought to enjoin defendant from ousting it from a garage which it allegedly occupied as statutory tenant under the Emergency Commercial Space Law, 1945. In 1942 plaintiff entered into a written agreement with defendant for storage of its trucks on the second floor of a certain building, the agreement being in the form of a letter to defendant. Plaintiff occupied the premises and defendant attempted to cancel the agreement saying that the premises were not sufficiently described in the letter.