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COMMENTS

THE *BROADDUS* CASE

THE recent case of *Broaddus v. Grout*[1] seems to have clarified a much unsettled phase of the law of deeds in Texas. The case concerns the adequacy of a description of property conveyed. Justices Wilson and Culver wrote separate dissenting opinions criticising both the result and the reasoning of the majority opinion. Particular conclusions of the majority are certainly surprising in the light of previous cases involving similar descriptions, and the ultimate result is probably destined to arouse some comment among the authorities in this field of the law.

The deed involved in the case was executed in Beaumont, Texas, on June 11, 1937, and was acknowledged before a notary public of Jefferson County. It was filed for record in Hardin County about three months after its execution. Homer Vaughn and his wife, Lois Vaughn, executed the deed as grantors with E. A. Grout as grantee. Now, sixteen years later, Mr. Grout brought suit to quiet title and to resolve an alleged ambiguity in the description within the deed against Mrs. Lois Vaughn Broaddus, as grantor, who was, at the time of the execution of the deed, Mrs. Lois Vaughn. The only important issue was whether or not the description in the deed was sufficient to identify the property conveyed.

The deed was headed "The State of Texas, County of Jefferson," and then proceeded:

> That I, Homer Vaughn, joined by my wife, Lois Vaughn, of the County of Jefferson, State of Texas, do grant, sell and convey, unto the said E. A. Grout of the County of Jefferson, State of Texas, *our undivided interest* amounting to 1/7th of the below described tract or parcel of land as follows:
>
> Beginning at a stake in the west line of said 160-acre survey

[1] ....Tex.........., 258 S.W. 2d 308 (1953).

172.8/11 varas from the northwest corner. Thence south with the west line of said survey from corner 86.4/11 varas to a stake in the west line of said survey from corner. Thence east 950 varas to east line of said survey, stake for corner. Thence north with said east line 86.4/11 varas to south east of lot No. 2, thence west with said south line of lot No. 2, 950 varas to place of beginning, containing 14.6/11 acres of land. Said land is undivided.

There were certain particulars concerning the description which must be noted as pertinent to the present discussion. First, the description failed to designate the town, county, or state wherein the tract of land was located. Secondly, the description did not indicate the name of the survey in which the tract was situated, nor did it reveal the names of any adjoining surveys. However, in a more favorable light as far as upholding the description is concerned, it should be noted that the grantors expressly said that they were conveying "our undivided interest," and the enclosing boundaries were clearly shown by a perfect metes and bounds description. Lastly, though the residence of grantors was in Jefferson County and though the deed was executed in Jefferson County, the fact that the deed was put on record in Hardin County is vitally pertinent. The above facts, plus those revealed by extrinsic evidence in the trial court, formed the basis of the issues confronting the court.

In the trial court evidence was allowed to show that the grantor, at the time of the execution of the deed, owned an undivided 1/7th interest in a 14 6/11-acre tract which possessed the identical metes and bounds description as did the property described in the deed. This tract of land was Lot No. 3 out of the Isaac Gore 160-Acre Survey in the O. C. Nelson League in Hardin County, Texas. The trial court held that the property described in the deed was one and the same as Lot No. 3 of the Isaac Gore Survey in Hardin County and that the description was sufficient, since extrinsic evidence indicated that the grantors owned no other tract of that particular acreage and metes and bounds description in any other

state in the Union or any other county in Texas. The judgment of the trial court was affirmed by the court of civil appeals.[2]

The majority of the supreme court, in an opinion written by Justice Smedley, reversed and rendered judgment for the defendant, declaring the deed to be invalid and of no effect because the description was insufficient. The majority recognized the rule of *Wilson v. Fisher*[3] as the test in determining the sufficiency of a description in both deeds and contracts to convey land, to-wit:

> The writing must furnish *within itself*, or by reference to some other existing writing, the *means or data* by which the particular land to be conveyed may be identified with reasonable certainty.[4]

The majority then proceeded to apply this test by saying that the description in the case at bar furnished no "means or data" by which the property described could be identified. The majority also discussed a long line of Texas cases which hold a description sufficient where it contains words to the effect that the grantor is conveying his own property, this rule being clearly set out in the language of *Pickett v. Bishop*,[5] to-wit:

> The settled rule in this state is that such a description, by reason of the use in the memo or contract of such words as "my property," "my land," or "owned by me," is sufficient when it is shown by extrinsic evidence that the party to be charged and who has signed the contract or memorandum, owns a tract and only one tract of land answering the description in the memo.[6]

However, the court qualified this rule by construing it to apply only when there is some other element of identification accompanying the recital of ownership, and the court pointed out that this additional element was present in the *Pickett* case and other similar cases such as *Sanderson v. Sanderson*[7] because the counties

[2] 253 S.W. 2d 74 (1952).
[3] 144 Tex. 53, 188 S.W. 2d 150 (1945).
[4] *Id.* at 56, 188 S.W. 2d at 152. Emphasis added.
[5] 148 Tex. 207, 223 S.W. 2d 222 (1949).
[6] *Id.* at 208, 223 S.W. 2d at 223.
[7] 130 Tex. 264, 109 S.W. 2d 744 (1937).

wherein the properties were situated were named in the descriptions. The majority concluded that such additional element is not present where there is only a metes and bounds description without naming the state, county or survey.

Justice Wilson wrote a lengthy dissenting opinion, reasoning that the Parol Evidence Rule and the Statute of Frauds[8] had no application in the case and that a distinction should be made between "identifying" land in the instrument and "locating" land on the ground. He concluded that there was no substantial difference between locating "my" lands in a named county, as was done in the *Pickett* and *Sanderson* cases, and locating the county and survey in which lies a tract described by accurate metes and bounds, as was done by the trial court and the court of civil appeals in this case.

Justice Culver asserted that the additional element of identification referred to by the majority was present according to a line of cases headed by *Easterling v. Simmons.*[9] This case set forth the rule:

> The county in which the land so described is situated may be inferred from the residence of the grantor, the place of acknowledgment, *and the place of the filing and recording of the instrument,* where the grantor has property in such county to which the description given in the instrument is reasonably applicable.[10]

Justice Culver pointed out that with the county and state clearly established by inference from the recording of the instrument in the county records, the case then fell squarely within the doctrine expressed in the *Pickett* case.

The guides and tests for determining the sufficiency of a description in a deed are not made definite and certain by a review of the cases. The terms applied by the courts in defining the guides are

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[8] TEX. REV. CIV. STAT. (Vernon, 1948) art. 3995.

[9] 293 S.W. 690 (Tex. Civ. App. 1927) *er. ref.*

[10] *Id.* at 692. Emphasis added.

often used loosely and ambiguously, and are usually susceptible of more than one meaning. Jurisdictions other than Texas seem to use the same guides as do the Texas courts, but frequently the results are different. There is general agreement on the broad principles which are the guide and standard in this realm of property law, and when a case can be decided by easy application of these principles, the courts are almost uniform in their decisions. However, when the cases become more involved and demand a finer and more sensitive interpretation of these principles, then the courts sometimes differ widely in their conclusions.

The long established and most frequently cited test in Texas for determining the sufficiency of a description is the rule declared by the supreme court in *Wilson v. Fisher.*[11] This is the general test followed in the majority of jurisdictions, although it is sometimes expressed differently. For instance, the rule set out by *Corpus Juris Secundum* is as follows:

> In general, any description in a conveyance of property is sufficient if it identifies the property, or if it affords the means of identification, as by extrinsic evidence.[12]

Many cases are cited in support of this.[13] *American Jurisprudence,* citing another authority,[14] says the general rule is that the land granted and intended to be conveyed must be described with sufficient definiteness and certainty to locate and distinguish it from other lands of the same kind.[15]

All courts agree that a description will be upheld if by any reasonable rule of construction, aided by extrinsic evidence, it is at all possible to identify the property intended.[16] The courts are reluctant to hold a deed void for insufficient description.

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[11] See quotation at note 4 *supra.*
[12] 26 C. J. S., *Deeds,* § 30, p. 210.
[13] Including Krueger v. W. K. Ewing Co., 139 S.W. 2d 836 (Tex. Civ. App. 1940).
[14] See Note, 123 A. L. R. 908 (1939).
[15] 16 AM. JUR., *Deeds,* § 260, p. 584.
[16] 4 TIFFANY, REAL PROPERTY (3d ed. 1939) 114.

Where the description omits the name of the locality wherein the property is situated, the rule generally applied in Texas is well stated by *Texas Jurisprudence:*

> It is a well settled proposition that, if a deed furnishes other sufficient means of identifying the property conveyed, it is not invalid because it fails to state the survey or town, county or state wherein the land it situated.[17]

Undoubtedly, this is the rule elsewhere, as noted in an outstanding treatise,[18] where it it said that although the name of the state, county, or town in which the property is located is omitted, title may nevertheless pass where the deed recites other descriptive particulars and provides other means of identification.[19]

Thus, in the deed in the principal case, if the description is to be held sufficient, some other means of identification must be found, unless the county and state can be inferred in some way.

In determining what are "other means of identification" and to what extent extrinsic and parol evidence is admissible, the courts frequently differ. For instance, many courts state that parol evidence may not be used to identify the property where there is within the description a patent ambiguity but that parol evidence may be used where there is a latent ambiguity in the description. A patent ambiguity is defined as an ambiguity that appears on the face of the instrument, while a latent ambiguity is defined as one that appears in applying the description to the ground.[20]

However, these definitions by no means limit the courts in the admission of parol evidence, but seem merely to be used as a justification for refusing or allowing the evidence. This is done in a great many cases where the county, state or town (or other subdivision) has not been designated. For instance, a great many

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[17] 14 TEX. JUR., *Deeds,* § 212, pp. 1100, 1002. See, *e.g.,* Miller v. Hodges, 260 S.W. 168, 170 (Tex. Comm. App. 1924).

[18] 6 THOMPSON, REAL PROPERTY (Perm. ed. 1940) § 3265.

[19] And see Comment, 25 Ore. L. Rev. 195 (1946).

[20] Norris v. Hunt, 51 Tex. 609, 614 (1879).

Texas cases, beginning with *Norris v. Hunt*,[21] determine the sufficiency of descriptions where the locality has not been designated by distinguishing between patent and latent ambiguities. *American Law Reports* discusses the problem of patent and latent ambiguity thoroughly and concludes that no matter what language is used, the majority of the courts follow the rule that "where there is a description in the deed or mortgage sufficient to point out with some definiteness the land intended to be conveyed, the fact that there is a failure to designate town or township or range, etc., does not vitiate the instrument, and parol evidence is admissible to identify the land."[22]

The terms "locating" and "identifying" are often confused. Justice Wilson made the following distinction:

> Thus the word *identify* is used to mean segregate and enclose a definite tract from immediate surrounding land. The word *locate* is used to mean that which takes a searcher to that tract.[23]

All the cases seem to make some similar distinction although frequently these terms are used interchangeably.

Most courts consider the *identity* of the land the thing that must be revealed by the written instrument, and then, once the identity has been established, the land may be *located* on the ground by extrinsic evidence. *Bates v. Harris*,[24] a Kentucky case, uses the following language:

> Extrinsic evidence is not admissible to identify the property which the parties had in mind when making the contract, as the writing must identify it when read in the light of the facts; but the extrinsic parol evidence is admissible to designate the property which has been identified in the minds of the parties as expressed in the writing.

The Kentucky court merely used the word "designate" in lieu of the word "locate." This distinction is often explained by use of

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[21] *Id.* at 614, 615.
[22] See Note, 68 A. L. R. 4, 96 (1929).
[23] 258 S. W. 2d at 314.
[24] 144 Ky. 399, 138 S. W. 276, 36 L. R. A. (n.s.) 154 (1911).

the words "apply" and "supply." For illustration, it is said that an omission of the county, state, and city, town or village wherein the property is located renders the writing insufficient when it contains nothing from which the omitted statements may be inferred and extrinsic evidence is necessary for the purpose of *supplying*, as distinguished from *applying*, the description.[25]

The courts have consistently applied the same tests in determining the sufficiency of description in contracts to convey as they have in determining the sufficiency of deeds of conveyance. This point was made in Justice Wilson's dissent,[26] and he probably was correct in stating that the tests have become rules of property in Texas. There is an obvious justification for a distinction because two different statutes, the Statute of Frauds[27] and the Statute of Conveyances,[28] are involved. But it appears that the courts have emphasized the determination of the problem of whether there is sufficient description from the standpoint of the *intention of the parties to the instrument*, as is done in all contracts including contracts to convey land, rather than from the standpoint of whether third parties are adequately put on notice of the precise tract of land conveyed.[29] *Texas Jurisprudence* says that when the court, by placing itself in the situation of the parties, can ascertain what they meant, and the land referred to can be identified, then there is no patent ambiguity.[30]

Indeed, the case from which the majority derived their test for determining the sufficiency of a description involved a contract to convey.[31] Every case they cited,[32] except *Carter & Brothers v.*

[25] 27 C. J., *Deeds*, § 321, p. 273.
[26] 258 S. W. 2d at 211-213.
[27] TEX. REV. CIV. STAT. (Vernon, 1948) art. 3995.
[28] TEX. REV. CIV. STAT. (Vernon, 1948) art. 1292.
[29] Davis v. Duncan, 102 S. W. 2d 287 (Tex. Civ. App. 1937) *er. dism.*
[30] 14 TEX. JUR., *Deeds*, § 207, pp. 995, 996.
[31] Wilson v. Fisher, 144 Tex. 53, 54, 188 S. W. 2d 152, 153 (1945).
[32] Hoover v. Wukasch, ...Tex.........., 254 S.W. 2d 507 (1953); Phillips v. Burns, ...Tex.........., 252 S.W. 2d 927 (1952); Pickett v. Bishop, cited *supra* note 5; Sanderson v. Sanderson, 130 Tex. 264, 109 S.W. 2d 744 (1937).

Ewers,[33] involved a contract to convey rather than a deed of conveyance. One of the few jurisdictions that make a distinction between a conveyance and a contract to convey is California. The recent case of *United Truckmen, Inc., v. Lorentz*[34] quotes the California Supreme Court case of *Johnson v. Schimpf*[35] to the following effect:

> It is now the general and well established rule that less strictness in the description of property is demanded in a contract than in a deed of conveyance.[36]

The opinion goes on to say that the courts have been most liberal with the construction of contracts and will do all that they can to give effect to the intention of the parties.

This distinction, as adopted by California, has been criticised by Burby, who says that the test of sufficiency of description in a contract and in a deed should be the same.[37] In one California case, *Preble v. Abrahams,*[38] the description in a contract to convey was "forty acres of the eighty-acre tract at Biggs." The Supreme Court of California allowed parol evidence to show the particular forty acres intended by the parties. This holding was justified by the court in the *United Truckmen* case because of the fact that a *contract* instead of a *deed* was involved.[39]

This result is, of course, contrary to the rule of the majority of jurisdictions, including Texas.[40] Most courts, in cases involving either deeds or contracts to convey, seek to ascertain what property the parties intended to convey rather than whether a third party would be put on notice by the bare instrument itself. In the *Broaddus* case the majority based their reasoning, at least in part, on the

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[33] 133 Tex. 616, 131 S.W. 2d 86 (1939).
[34] 114 Cal. App. 2d 26, 249 P. 2d 352 (1952).
[35] 197 Cal. 43, 239 Pac. 401 (1925).
[36] *Id.* at 48, 239 Pac. at 403.
[37] BURBY, REAL PROPERTY (Perm. ed. 1943) § 275, p. 414.
[38] 88 Cal. 245, 27 Pac. 99 (1891).
[39] 249 P. 2d at 357.
[40] 14 TEX. JUR., *Deeds*, § 208, p. 996.

idea that a third party would not be put on notice. This reliance is subject to criticism. Justice Wilson recognized this:

> The opinion is not bottomed upon the proposition that the parties themselves did not have a meeting of the minds to a common intent but rather upon the proposition that the deed itself is not sufficiently definite to serve notice upon the third parties.[41]

Consideration should be given four possible means of identification of land where state, county, town or other subdivision is not mentioned. They are:

(1) Identification by the use of a locally known name such as the "Old Whipple Place."

(2) Identification by reference to natural objects, such as rivers, mountains, etc.

(3) The doctrine of the *Pickett* case.

(4) The rule anounced in *Easterling v. Simmons, supra.*

There are other means of identification where the locality is not designated, such as by reference to another writing, but these methods are not pertinent here. The first two will be discussed briefly because many of the decisions cited by the majority and by Justice Wilson can be justified by one of these two methods.

The first two means are closely related to the doctrine of the *Pickett* case. *Phillips v. Burns*[42] explains the first method of designation. The supreme court was confronted with the question of the sufficiency of a description which, after designating the county and state, described the property as "The Old Whipple Place together with several tracts adjoining it. . . ." The court held that the description would have been sufficient had the phrase, "several tracts of land adjoining it," not been added because the designation of the farm as the "Old Whipple Place" was sufficient to identify the property. *Arthur v. Ridge*[43] is another example of a

[41] 258 S.W. 2d at 313.
[42] ....Tex........, 252 S. W. 2d 927 (1952).
[43] 89 S.W. 15 (Tex. Civ. App. 1905) *er. ref.*

description which was held sufficient where the deed excepted from a tract "the old place on Bear Creek." The court held that the designation was sufficient to identify the property excepted, even though there was no reference to the state or the county wherein the property described was located.

Many other cases uphold designations by familiar names *(e.g.,* "Snow Farm"[44] and "Knapp home property"[45]). However, this result is not usually reached unless there is either a designation of the county and state or a recital of ownership in addition to the designation by a locally known name. In the *Phillips* case there was a designation of the country and state, and in *Arthur v. Ridge* there was a recital of ownership. The first two methods of describing a tract are well discussed in *Wilson v. Calhoun.*[46] The case involved a written mortgage that described the property as the "Redmon Farm," bounded on the south by the "Hiwassee" (river) and "at present belonging to W. D. Calhoun," who was the grantor. There was no reference to town, county or state, but the Supreme Court of Tennessee held the description to be sufficient. The designation of the property as the "Redmon Farm" was accompanied by a recital of ownership and a reference to a natural object, and thus sufficiently identified the property.

References to natural objects are always sufficient when accompanied by a recital of whose property is conveyed, because most courts will take judicial notice of the location of natural objects.[47]

The third. and fourth means of identification mentioned above were directly in question in the principal case. The doctrine pronounced in the *Pickett* case is nothing new. It has been followed in almost every jurisdiction and dates back many years. In the *Pickett* case a memorandum described the property as "my prop-

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[44] Hollis v. Burgess, 37 Kan. 487, 15 Pac. 536 (1887).

[45] Toodenow v. Curtis, 18 Mich. 298 (1869).

[46] 157 Tenn. 667, 11 S.W. 2d 906 (1928).

[47] See cases cited *supra* notes 2 and 9; Slater v. Breese, 36 Mich. 77 (1877) (location of "River Tiffin" judicially noticed).

erty described on the opposite side hereof," and on the reverse side there appeared "20.709 acres out of John Stephens 640-acre survey in Tarrant County, Texas."[48]

A flagrant violation of the rule requiring definite description occurs where an undescribed tract is conveyed out of a larger tract. Even though the larger tract may be accurately described, it is consistently held that the designation of the smaller tract is insufficient. *Texas Jurisprudence* says that this is the type of case in which the courts most frequently hold the description to be insufficient.[49] However, the supreme court held that the description in the *Pickett* case was sufficient, declaring that where there is a recital of ownership, extrinsic evidence will be allowed to show whether or not the grantor owns only one tract fitting the description within the deed. If this can be shown, the description is sufficient.

In *Adams v. Abbott*[50] the description was, "my farm in Collin County, Texas," and this was held sufficient because extrinsic evidence indicated the grantor owned only one farm in Collin County. In the *Sanderson* case, *supra,* the grantor conveyed a tract known as "Mrs. Kelton's farm in Haskell County." The court held that the description was sufficiently definite if it could be shown that Mrs. Kelton owned only one farm in Haskell County.

In *Wilson v. Fisher, supra,* the two contracts in question described the property by street address without specifying the town, county or state. However, the court indicated that the description would have been sufficient despite the absence of designation of the locality if there had been a definite recitation that the grantor was conveying "his" land.

Morrison v. Dailey[51] specifically held that where the grantor de-

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[48] 148 Tex. at 207, 223 S.W. 2d at 223.

[49] 14 TEX. JUR., *Deeds,* § 208, p. 996.

[50] ....Tex.........., 254 S.W. 2d 78 (1952).

[51] 6 S.W. 426 (Tex. 1887).

scribed the property as "my place, known as 'the James Berry Tract of Land'," the description was sufficient even though there was no reference to the state or county of its location. The recitation of "my place" made admissible extrinsic evidence to show that the grantor owned only one tract known as the "James Berry Tract of Land." Thus, the county and state wherein the tract was situated could be ascertained.

The principle of the cases above discussed has been adopted in most jurisdictions. A learned author has said:

> In a number of other cases the court has referred to the fact of ownership by the grantor of particular land as tending to show that the conveyance, otherwise lacking in definiteness of description, was intended to apply to that land.[52]

As another example, *Coleman v. White*[53] held that two instruments describing the property as "lot and house in square 98" and "my house and lot" were sufficient without reference to the county or state.

A reference to ownership within a description is a powerful element in producing a sufficient description. One may conclude:

(1) Where reference to ownership is accompanied by a designation of the county, the description will be sufficient despite the fact that other defects appear, provided extrinsic evidence shows that the grantor owned no other similar tract within the locality.

(2) Where a reference to ownership is accompanied by a designation of the property by a familiar name or by a reference to a natural object, the description again will be sufficient despite the absence of designation of town, county and state, provided extrinsic evidence shows that the grantor owned no other tract with a similar name or near the natural object referred to.

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[52] 4 TIFFANY, REAL PROPERTY (3d ed. 1939) 117.
[53] 50 So. 2d 715 (Miss. 1951).

In the principal case a definite reference to ownership by the grantor was accompanied by a metes and bounds description, and the majority concluded that to hold this description sufficient was going one step too far even though extrinsic evidence indicated that the grantor owned only one tract fitting the description.

The majority may well have "drawn the line" at a proper place. There must be a limit somewhere to the indefiniteness of descriptions in deeds, or else the Statute of Conveyances has failed in its purpose. However, the court seems to have departed from the reasoning of prior cases by indicating that the principle upon which sufficiency is determined is whether or not a third person would be put on notice as to what property was conveyed by the deed. Heretofore the cases have demonstrated a definite tendency to follow the contract principle that the description must reasonably identify the property the parties *intended* to convey. If the description is required to be so definite that a third person will have complete notice, it would seem that a deed will have to describe the property in a manner such that no extrinsic evidence will be necessary either to identify or to locate the property conveyed.

Justice Wilson asked in his dissent:

> Is there a substantial difference between locating "my" property in a named county and locating the county and survey in which lies a tract described by accurate metes and bounds?[54]

If there is, the reasoning underlying the holding in cases like *Morrison v. Dailey, supra,* is now impliedly overruled.

The last means of identification, where the county and state are not expressly named within the description, is derived from the rule announced in *Easterling v. Simmons, supra.* The failure of the majority opinion to discuss this rule is hard to understand. Simply stated, the rule is: "The county of location of the land may

[54] 258 S.W. 2d at 314.

also be inferred from the residence of the grantor, the place of acknowledgment, and the place of filing and recording the instrument. . . ."[55]

In the *Easterling* case the deed was acknowledged in Navarro County, stated that the grantors lived in Navarro County, and was recorded in Navarro County. The court held that these facts were sufficient for an inference that the property was located in Navarro County. The description had failed to designate the county and state but did provide an accurate metes and bounds description.

In the *Broaddus* case the deed was recorded in Hardin County where the property was located, but the acknowledgment was shown to have been taken in Jefferson County. (The residence of the grantors was also in Jefferson County.) Justice Culver, however, seemed to think that the fact that the deed was recorded in Hardin County was alone sufficient for an inference that the property was located in Hardin County. The *Easterling* case and other cases in Texas, as well as authority elsewhere, seemed to justify such reasoning.

In *Davis v. Duncan*[56] a quitclaim deed failed to name the county, state or survey in which the land was located, but the court held the description sufficient. One of the circumstances influencing the court was the place of recordation:

> The deed was promptly recorded in Leon county, which is a circumstance to show that the vendee understood that it conveyed land situated in that county. Under these circumstances we think the description was sufficient.[57]

The thinking of the court was along the line of determining sufficiency by ascertaining the intention of the parties to the deed, rather than along the line of ascertaining whether or not the description gave full notice to third parties.

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[55] 14 TEX. JUR., *Deeds*, § 212, p. 1002.
[56] 102 S.W. 2d 287 (Tex. Civ. App. 1937) *er. dism.*
[57] *Id.* at 288, 289.

Other cases support the rule of the *Easterling* case. For instance, in *Miller v. Hodges*[58] no county, town or state was designated in a deed, but the instrument was filed for record in Palo Pinto County. The court held that it could infer that the property was located in Palo Pinto County because:

> The courts of other states have held that location of land may be inferred from the residence of the grantor, the place of acknowledgment, and the place of filing and recording of the instrument, when these are consistent with the true facts as to ownership of the property.[59]

In *Langham v. Gray*[60] the court inferred the county from the facts that the dateline on a deed indicated that it was executed in "Beaumont, Texas," and recital was made that both grantor and grantee were citizens of such county. In *Goggans v. Green*[61] the court held that a description in a sheriff's deed was sufficient even though it designated no state or county because the county could be inferred from a recitation of the residence of the sheriff.

Most other jurisdictions are in line with the *Easterling* case. In Louisiana the case of *Harrill v. Pitts*[62] leaves no doubt on the matter. The court said that the circumstances that a deed showed the place of residence of the vendee and was acknowledged and recorded in the vendee's parish could be considered in determining the location of the property, where the state and parish had been omitted from the description. A learned author states:

> A deed may be valid even though it fails to specify the state and county in which the land is located, where the description given corresponds with that of the grantor's land in the county in which the deed is acknowledged and recorded.[63]

Holly's Executor v. Curry[64] demonstrated the West Virginia court's

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[58] 260 S.W. 168 (Tex. Comm. App. 1924).
[59] 260 S.W. at 170.
[60] 227 S.W. 741 (Tex. Civ. App. 1942).
[61] 165 S.W. 2d 928 (Tex. Civ. App. 1942).
[62] 194 La. 123, 193 So. 562 (1940).
[63] 6 THOMPSON, REAL PROPERTY (Perm. ed. 1940) § 3265, p. 429.
[64] 58 W. Va. 70, 51 S.E. 135 (1905).

approval of the *Easterling* rule when the county and state of the property conveyed were inferred from the fact that the deed "was acknowledged and recorded in Lincoln County."

The Oregon view is said to be that when a doubtful description is to be construed, the court should endeavor to assume the position of the parties, and the circumstances of the transaction should be carefully considered.[65] In applying this rule, the Oregon court held that the county and state could be inferred from the fact that the land contract was dated at "Woodburn, Oregon."[66]

There are cases that clearly indicate that where only one of the circumstances in the *Easterling* case is present, the court may still infer the county in which the property is located. In *Calton v. Lewis*[67] the county was inferred from the mere fact that the deed was acknowledged in "Lawrence County, Tennessee." An Illinois case, *Garden City Sand Co. v. Miller*,[68] held similarly.

A Michigan case is very similar to the *Broaddus* case. In *Mee v. Benedict*[69] an instrument purporting to convey standing timber omitted the state and county where the timber was located. The deed was acknowledged in Chicago but was recorded in the county wherein the timber was located. The court said, referring to the bare circumstance that the instrument was recorded in the county where the timber was, "This we think sufficient evidence to identify the lands sought to be described."[70]

In *Gex v. Dill*[71] the Supreme Court of Mississippi held that the omission to name the state or county in which the lands lay, did not make a deed incompetent where the lands were found to be

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65 Comment, 25 Ore. L. Rev. 192, 196 (1946).
66 Bogard v. Barham, 52 Ore. 121, 124, 96 Pac. 673, 674 (1908).
67 199 Ind. 181, 21 N.E. 475 (1889).
68 157 Ill. 225, 41 N.E. 753 (1895).
69 98 Mich. 260, 57 N.W. 175 (1893).
70 *Id.* at 266, 57 N.W. at 178.
71 86 Miss. 10, 38 So. 193 (1905).

in the county where the instrument was executed, acknowledged, and placed on record.

Whether the Supreme Court of Texas, through the majority opinion in the *Broaddus* case, impliedly rejected all the authority just noted cannot be ascertained, since the rule in the *Easterling* case was not even discussed.

Justice Culver seemed to present the best solution to the problem in the *Broaddus* case. He contended that the doctrine of the *Pickett* case should be complemented by the rule in the *Easterling* case, that is to say, the state and county should be inferred from the fact that the deed was recorded in Hardin County. When this is done, the *Pickett* doctrine may be applied, since there was a recitation of ownership by the grantor within the deed and extrinsic evidence in the trial court revealed that the grantor owned no other property of this metes and bounds description elsewhere in the United States.

The propriety of combining two such rules of property may be questioned, since weird results may eventuate in some situations. But, as observed by Justice Wilson,[72] the courts are continually retreating from the formalism of the early English common law, so that many rules of property are applied elastically, especially where this is necessary to accomplish justice.

True, the line must be drawn somewhere, but was it properly drawn by the majority in the principal case? The deed had been on record in Hardin County for seventeen years, and during that time no question had been raised as to its validity.[73] By inadvertence the names of the county and state and survey in which the land was situated were omitted. Now the grantor succeeded in having the deed declared void in a suit by the grantee to quiet title.

No third party intervened. In effect, the suit was between the

[72] 258 S.W. 2d at 314.
[73] 258 S.W. 2d at 315.

original grantee and grantor. There seems to have been no doubt as to the property actually intended to be conveyed by grantor to grantee, and this common intention was manifested by the actions and words of the parties at the time the deed was executed. It may be that the supreme court is revealing an intention to construe descriptions with more formality and strictness hereafter. The court may feel that the Statute of Conveyances is not fulfilling the purpose for which it was passed, and that henceforward descriptions in deeds should be more definite than descriptions in contracts to convey, or, possibly, that they both should be more definite. The new standard may be one which puts third parties fully on notice, rather than one which manifests the common intention of the parties.

There is a policy to support a stricter standard. But if the Texas Supreme Court adopts it, the court will be going against the trend of authority. The trend is not a recent one but has firm support in the American common law and promotes the following policy:

> The sole purpose of a description of land, as contained in a deed of conveyance, being to identify the subject matter of the grant, a deed will not be declared void for uncertainty if it is possible, by any reasonable rules of construction, to ascertain from the description, aided by extrinsic evidence, what property it is intended to convey. . . .[74]

Benton Musslewhite.

[74] 8 R. C. L., *Deeds,* § 129, p. 1074.