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between the strong-arm clause and the other provisions of the Bankruptcy Act, restores a proper balance between the conflicting interests of secured and unsecured creditors, and reduces the unwarranted interference by the Federal and State governments in each other's affairs. Its main beneficial aspect, aside from policy considerations discussed by the Court, is that it eliminates the worst of the bad effects the Bankruptcy Act could have upon increases in state homestead exemptions.[46] As previously suggested[47] however, no great equitable benefits flow from the *Lewis* decision, though certainly no great inequities are produced. Its practical result will be to ease the strain on secured transactions and to create a somewhat greater risk in unsecured transactions. Perhaps the most valid criticism of *Constance v. Harvey* is that it injected unnecessary uncertainty into the law. The great virtue of the *Lewis* case is that it removes this uncertainty. Secured transactions can now be entered into without the former nagging concern over whether or not, at some undetermined time in the future, the security will be disallowed in bankruptcy. All concerned can now breathe more easily.

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STANDING TO OBJECT TO AN UNLAWFUL SEARCH AND SEIZURE

A subject of constituional and criminal law which has received much serious consideration during the past 50 years is unlawful search and seizure. Since the advent of the automobile with the resultant transient society which characterizes life in the United States today, search and seizure has acquired a complexity not exceeded by any other aspect of criminal law.

The U.S. Constiution 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. . . ."[1] The right to object to unreasonable search and seizure is considered a personal right and can only

46. Supra note 15. Although the overruling of Constance removes the most lethal of the trustee's weapons for invalidation of state exemptions in bankruptcy, it by no means assures that all exemptions will now be honored therein. Where filing is not completed, though required for perfection of the exemption, the trustee can still invalidate the exemption in bankruptcy through his status as lien creditor under the strong-arm clause. Sampsell v. Straub, 194 F.2d 228 (9th Cir. 1951), cert. denied, 340 U.S. 815. Further. where there are actual general creditors, however small, prior to the exemption or to an increase therein, the trustee can avoid *in toto* the exemption or increase under section 70e(1) and the doctrine of Moore v. Bay, 284 U.S. 4, 52 S.Ct. 3, 76 L.Sd. 133, e.g., England v. Sanderson, 236 F.2d 641 (9th Cir. 1956) in view of the later case of Miller v. Sulmeyer, 263 F.2d 513 (9th Cir. 1959).

47. Supra note 35. As there suggested, Constance could produce inequitable results with respect to security interests entered into before Constance. The same reasoning would lead to the conclusion that a windfall to secured creditors who became such after Constance has resulted from the Lewis case, in that the Constance produced risk was discounted in those transactions, a risk that no longer exists.

1. U.S. Const., Amend. IV. Cf., identical langlage in Wyo. Const., Art. I, § 4. This note is concerned with federal courts and those states whose rules of evidence provide for a motion to suppress or return of evidence seized as the result of an illegal search and seizure.

be exercised by the person whose rights are being or have been violated.[2] Under Rule 41 (e) of the Federal Rules of Criminal Procedure:

> A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without a warrant, (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, and (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. . . .[3]

If the defendant disclaims any interest whatsoever in the property seized at the time of the search, he cannot later object to its introduction into evidence on the grounds that the search was illegal.[4] If he does claim some interest in the property, what character of interest must he show in order to give him standing to object?

> The formula stated and repeated . . . is that, in order to complain of an illegal search and seizure, a person must own or lease or control, or lawfully occupy or rightfully possess, or have an interest in the premises or property searched and taken.[5]

Courts have carefully scrutinized how the party who is objecting came into custody of the premises. Willful trespassers lose the requisite standing to object if the owner, after notice of their presence, treats them as trespassers.[6] However, a violation by a lessee of a covenant not to sublet the premises does not deprive the sublessees of standing to object if they can show that the landlord had constructive notice of their presence and did not object.[7] Therefore, knowledge of the owner is crucial in determining whether the people occupying the premises have standing, since acquiescence, with knowledge, takes them out of the category of trespassers.[8] Mere silence or acquiescence by the landlord, after he has notice, may be enough to prove lawful occupancy.

The right to use a certain chattel or real property may give the user the right to object to a search and seizure regardless of the technical legal relationship, if any, thereby created between owner and user. For example, a person's exclusive right to use a certain desk in an office room of a government agency gave the user standing to object to a search of the desk even though the desk was the property of the government and her immediate superior gave the agents express permission to search the desk.[9]

2. Edwards v. State, 94 Okla. Cr. 11, 228 P.2d 672 (1951).
3. Federal Rules of Criminal Procedure, Rule 41 (c), 18 U.S.C.A.
4. Gaskins v. United States, 218 F.2d 47 (D.C. Cir. 1955).
5. Kapler v. State, 194 Md. 580, 582, 71 A.2d 860, 862 (1950). The same rule is stated in Powell v. Commonwealth, 282 S.W.2d 340 (1955), Brown v. United States, 83 F.2d 383 (3d Cir. 1936).
6. Carter v. Commonwealth, 234 Ky. 695, 28 S.W.2d 976 (1930).
7. Klee v. United States, 53 F.2d 58 (9th Cir. 1931). Tenants not considered trespassers when neither lessor or lessee made any demand that they leave.
8. Steber v. United States, 198 F.2d 615 (10th Cir. 1952).
9. United States v. Blok, 188 F.2d 1019 (D.C. Cir. 1951), Contra, United States v. Ebeling, 146 F.2d 254 (2d Cir. 1944).

Here the agents were looking for private property of a personal sort. Standing to object to the search in cases such as these seems to depend on nature of the object seized, and the purpose of the search. If the search of an employer's premises and subsequent seizure of some object is for the purpose of obtaining evidence against the employee, then the employee may be given standing to object to the search. On the other hand, an employee having mere physical custody and control of an illegal business cannot raise the objection of the seizure being unreasonable, because he cannot be aggrieved by the seizure of the employer's property.[10]

The court hearing the motion for suppression or return of the evidence seized will also look at the "degree" of possession in determining whether the person objecting to a search and seizure has standing to object. A lawful bailee of an automobile has been held to have interest of sufficient substance to fall within the constitutional protection even though his possession is only temporary.[11] But a person who has home furniture in a cabin does not have a sufficient interest to establish dominion over the cabin so he can object to a search of the cabin.[12] However, if the property seized on another's premises is property belonging to the defendant, he is allowed standing to object even though he is not an occupant of the house where the seizure took place.[13] Such cases as these can be reconciled by observing what interest was subject to the search and subsequent seizure. If the objecting party's interest was not affected, then he lacks standing, whereas a person whose property is actually seized can prove standing.

Standing to object exists if the person objecting can adequately demonstrate to the court's satisfaction that his interest in the property is as great as that of another person also lawfully using the property. Therefore, where defendant's property was seized in a building owned by his brother, but used by the defendant and his brother jointly, this was enough to prove standing even though title to the real estate was in the brother's name and the defendant was not a tenant in the strict sense.[14] In a Wyoming case[15] where the defendant's sheep were seized on government land, the defendant's right to object was sustained on the ground that his right to be on the property was as great as that of the public generally, including the officer who made the seizure.[16] The court, without explicitly stating that the defendant had standing, assumed he did because the court felt it was necessary to inquire into the reasonableness of the seizure.[17] As can readily be observed, any fact concerning the manner by which the objector obtained possession may be material to

10. Connolly v. Medalie, 58 F.2d 629 (2d Cir. 1932), Kelley v. United States, 61 F.2d 843 (8th Cir. 1932).
11. Ellsworth v. State, 295 P.2d 296 (Okla. 1956), State v. Hoover, ___ Ore. ___, 347 P.2d 69 (1959); Contra, Lee v. State, 148 Tex. Cr. 220, 185 S.W. 978 (1945), Pruitt v. Commonwealth, 286 S.W.2d 551 (Ky. 1956).
12. Grainger v. United States, 158 F.2d 236 (4th Cir. 1946).
13. Jeffers v. United States, 187 F.2d 498 (D.C. Cir. 1951), Wood v. State, 156 Tex. Cr. 419, 243 S.W.2d 31 (1951).
14. Rausch v. State, 75 Okla. 299, 131 P.2d 133 (1942).
15. State v. George, 32 Wyo. 223, 231 Pac. 683 (1924).
16. Ibid.
17. Id. at 32 Wyo. 223, 240, 231 Pac. 683, 688.

the issue of whether the person making the objection has standing to object.

Most courts, including the lower federal courts, have held that a guest or an invitee on real property does not ipso facto have sufficient interest or possession to give him standing to object to a search and seizure of property of the owner.[18] The basis of this rule is that the personal rights of the guest or invitee are not being violated.

The California Supreme Court, in *People v. Martin*,[19] following the so-called "Exclusionary Rule" of evidence, took the position that all evidence obtained through an unlawful search and seizure is inadmissible, regardless of whose constitutional rights were violated.[20] The court felt that the traditional rule that third parties could not object to an unreasonable search and seizure only inivted law enforcement officers to violate constitutional guarantees; and that the purpose of adopting the Exclusionary Rule was to discourage such abuse.[21]

As a result of the rule of the *Martin* case, a guest has standing to object to a search and seizure in California. The right of the moving party is no longer dependent upon minute distinctions as to interest, possession, or lawful occupancy. His standing is based on whether the search and seizure violated the constitutional rights of *anybody* affected by the search, and not necessarily the property rights of the objector.[22] Nor is it of any consequence that at the time of the search the defendant disclaimed possession or ownership of the property seized, or consented to the search. The courts of California can no longer dispose of the motion to suppress made by a guest or third party simply by stating that he has no rights which can be violated by the search of the owner's premises. Legality of the search and seizure is decided entirely without reference to "standing" to object in the traditional sense.

The *Martin* decision has merit in at least one respect: it throws the judicial spotlight on the methods employed by the police in making the search and seizure. But the Exclusionary Rule places a heavy burden on the police to make sure that every facit of the search, from the issuance of the warrant to introduction of the evidence in court, has been carefully and lawfully executed, and may allow a guilty person to escape because of failure to follow the rulebook exactly.

The United States Supreme Court, in the recent case of *Jones v. United States*,[23] noted that it had never passed on the question of the

18. State v. Smith, 118 So.2d 792 (Fla. 1960), Paige v. State, 161 Tex. Cr. 637, 279 S.W.2d 345 (1955), In re Nassetta, 125 F.2d 924 (2d Cir. 1942), Barnes v. Commonwealth, 312 Ky. 768, 229 S.W.2d 757 (1950).
19. 45 Cal.2d 755, 290 P.2d 855 (1955).
20. Ibid. Wolf v. Colorado, 338 U.S. 25, 93 L.Ed. 1782, 69 S.Ct. 1359 (1949), held that states could adopt the Exclusionary Rule although they were not required by the Fourteenth Amendment to exclude evidence heretofore admissible. California adopted the Exclusionary Rule in People v. Cahan, 44 Cal.2d 434, 282 P.2d 905 (1955).
21. Supra note 19.
22. People v. Colonna, 140 Cal.App.2d 705, 295 P.2d 490 (1956).
23. Jones v. United States, ___ U.S. ___, ___ L.Ed. ___, 80 S.Ct. 725 (1960).

degree of interest in a premises necessary to maintain a motion to suppress. The defendant, Jones, was a guest in the apartment of another when agents came and searched the apartment, finding narcotics on Jones's person and in the apartment. Jones testified that the narcotics were not his nor was the partment his. The defendant was in the contradictory position of having the evidence used against him, because he denied possession or interest in the narcotics, while at the same time he could not object to the search because he was a guest in the apartment.[24] In the course of the opinion, the Court stated:

> Distinctions such as those between "lessee," "licensee," "invitee," and "guest," often only of gossamer strength ought not to determinative in fashioning the procedures ultimately referable to constitutional safeguards.[25]

The Court then noted that it had done away with such distinctions in a case under the law of maritime torts in which it stated "for the admiralty law at this late date to import such conceptual distinctions would be foreign to its traditions of simplicity and practicality."[26] The Court noted no reason why the same could not be done as far as the administration of criminal law was concerned:

> No just interest of the government in the effective and rigorous enforcement of the criminal law will be hampered by recognizing that anyone on the premises where a search occurs may challenge its legality by way of a motion to suppress, when its fruits are purposed to be used against him.[27]

But the Court explicitly stated that people wrongfully on the premises could not object.

> As petitioner's testimony established Evan's consent to his presence in the apartment, he was entitled to have the merits of his motion to suppress adjudicated.[28]
>
> Even were this not a prosecution turning on illicit possession, the legally requisite interest in the premises was here satisfied, for it need not be as extensive a property interest as was required by the courts below.[29]

Since the Jones case arose in the federal courts, the decision is not binding on the states, and it would not be binding until the United States Supreme Court reached a similar decision on a case that arose in a state court. Clearly the decision of the *Jones* case does not preclude the states from adopting the decision as one of their rules of evidence.

In conclusion, the traditional rule is that standing to object to a search and seizure will depend on whether the moving party claimed or denied ownership or an interest in the premises at the time of the search, how he obtained possession, what property is being seized, and the object of the

24. Ibid.
25. Id. at 80 S.Ct. 725, 733.
26. Ibid. at p. 734.
27. Ibid.
28. Supra note 26.
29. Ibid. at p. 732.

search. Generally, under this rule one must claim some lawful interest in the subject being seized before he can object to the reasonableness and legality of the search.

Let us suppose that a defendant, who is objecting to the introduction into evndence of certain personal property, denies any right, title, or interest in the property seized, and further, that he was not on the premises at the time the allegedly illegal search and seizure took place. Under the California view, he would have standing to object if he could prove that someone's constitutional guarantees were violated in procurement of the evidence. However, under the Jones or Federal viewpoint, he would not have standing to object because the right is limited to those people who were *on the premises* at the time the search and seizure took place.

The view of the United States Supreme Court that the right to object should be limited to those people on the premises at the time of the search regardless of whether they are there as guests, invitees or licensees, is a desirable limitation. The Martin or California view seems impractical because it gives the defendant standing to object no matter what his proximity or relation to the case, as long as some one's constitutional guarantees have been violated. There is no logical reason why a guest should not have standing. It seems safe to predict that most states, including Wyoming, will fall in line with the Jones viewpoint.

ROBERT A. DARLING

EFFECT OF SATISFYING A JUNIOR LIEN ON STATUTORY RIGHT OF REDEMPTION

This article deals with the question of whether a purchaser at a foreclosure or execution sale can prevent "statutory redemption" by a junior lien holder by tendering payment of the debt which the lien secures.[1]

Because our concern is with the statutory right of redemption,[2] it is felt that equity of redemption should be distinguished; and that any

1. The principal question, so far as the author has been able to ascertain, has never been decided by a court of record.
2. The redemption statutes of the several states which have them are sufficiently similar, for purposes of this article, so that Wyoming's statutes will suffice as adequate refernce.

   § 1-480, W.S. 1957, provides that, "It shall be lawful for any person, his heirs, executors, administrators, assigns, or guarantors, whose lands or tenenments have been sold by virute of an execution, decree of foreclosure, or foreclosure by advertisement and sale, within six months from the date of sale to redeem. . . ."

   § 1-481, W.S. 1957, provides that, "After the expiration of six months and at any time before the expiration of nine months from date of sale . . . it shall be lawful for any judgment creditor of the person whose lands have been sold, or for any grantee or mortgagee of said lands and tenements so sold, to redeem the same. . . . If no redemption be made within nine months of the date of sale, the purchaser or his assignee is entitled to a sheriff's deed to the property, or if so redeemed, whenever thirty days has elapsed and no other redemption has been made, the last redemption or his assignee shall be entitled to a sheriff's deed."