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Charles R. Hamm
University of Kentucky

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RESTRICTIVE COVENANTS—USE, MAINTENANCE OR GRANT OF RIGHT OF WAY ACROSS RESTRICTED PROPERTY

It is believed that the legal problems to be discussed in this note may best be introduced by assuming a hypothetical fact situation which will present the question involved. The problem will be discussed then in the light of the hypothetical situation set up.

With this view in mind, assume the following: Subdivision I and Subdivision II are adjacently located in X County, Kentucky. Each of these subdivisions contains a street named South Ridge Drive. Between these streets, and in Subdivision I, lies a lot designated as Lot No. 3, Block B. Plaintiff owns Subdivision I and is a lot holder therein. Defendant is the owner of Subdivision II. When the owner of Subdivision I subdivided his land and recorded a plat thereof, he formulated a set of uniform restrictions and covenants as a common scheme for the benefit of all future owners of lots in that subdivision. Among these restrictions was the covenant that "no lot in Subdivision I shall be used for other than residential purposes," and he represented to prospective purchasers that one of the attractive features of Subdivision I would be the lack of through traffic. Plaintiff inserted these restrictions and covenants in most of the deeds by which he conveyed the respective lots in his subdivision and most of the deeds referred to the recorded plat. Lot No. 3, Block B (mentioned above) was conveyed to "A" and the deed by which this conveyance was made contained the above restrictions and was duly recorded. "A" subsequently conveyed this lot to the defendant who owned the lots in Subdivision II. This deed to defendant did not contain the above restrictions, but there is substantial evidence that defendant had actual notice of the restrictions when he purchased the lot, although neither actual notice nor the presence of the restrictions in his chain of title is necessary in order for the restrictions to bind his lot.¹ Defendant claims the right to construct a street across Lot No. 3, Block B of Subdivision I, making the street known as South Ridge Drive a through street, thus connecting Subdivisions I and II. The owners of the other lots in Subdivision I, are contesting this right.

This fact situation immediately raises the following question: Is the grant, use, or maintenance of a right of way over property restricted to residential purposes a violation of a valid restrictive covenant such as will give adjacent land owners a right of action in equity?

It is the purpose of this note to stress that portion of the question

¹ Harp v. Parker, 278 Ky. 78, 128 S.W. 2d 211 (1939).

concerning the specific type of violation evidenced in the assumed fact situation, but it is believed that for the purposes of clarity a preliminary general discussion concerning the nature and validity of restrictive covenants is necessary.

General Rules Concerning Restrictive Covenants on Land. Although covenants restricting the free use of land are looked upon with some disfavor in the courts of this country, they are generally sustained² when reasonable³ and not contrary to public policy.⁴ The Kentucky court in *Highland Realty Co. v. Graves* expressed the general rule as follows:

While such conditions as impose a restraint upon the free use or alienation of real estate are looked upon with disfavor by the courts, and are rather strictly construed, inasmuch as they detract from the freest use of the fee simple, and are annoying to owners and intended purchasers, being somewhat at variance, too, with the system in vogue in this country which regards real estate as an article of commerce, still they are upheld when not repugnant to some plain provision of the law, and are not unreasonable in themselves.⁵

Since, even while sustaining reasonable restrictive covenants, the courts do look upon them with disfavor, it would obviously follow that such covenants restricting the free use of land should be strictly construed.⁶ This rule should not, however, be applied in such a way as to defeat the plain and obvious purposes of the contractual instrument or restriction—primarily the question is one of intention.⁷

In the case of subdivisions where a common grantor conveys to different parties a number of lots burdened by a restrictive covenant the problem arises as to whether or not one purchaser may enforce the restrictive covenant against his neighbor, another purchaser.

Obviously in the absence of some special mutuality of covenant, one who receives a deed from a grantor who imposes restrictions on the land conveyed to him cannot enforce corresponding restrictions against his grantor as to the latter's remaining land, and consequently

² *Christie v. Lyons*, 173 Okla. 158, 47 P. 2d 128 (1935); *Bauby v. Krasow*, 107 Conn. 109, 139 A. 508, 57 A.L.R. 331 (1927); *Stahl v. Dyer*, 235 Mich. 355, 209 N.W. 107 (1926); *Starck v. Foley*, 209 Ky. 332, 272 S.W. 890 (1925).

³ *Stevenson v. Spivey*, 132 Va. 115, 110 S.E. 367 (1922).

⁴ *Moore v. Stevens*, 90 Fla. 879, 106 So. 901 (1925); *Fusha v. Dacono Town-site Co.*, 60 Colo. 315, 153 P. 226 (1915); *Cowell v. Springs Co.*, 100 U.S. 55 (1879).

⁵ *Highland Realty Co. v. Groves*, 130 Ky. 374, 377-8, 113 S.W. 420, 421 (1908).

⁶ *Fischer v. Reissig*, 143 S.W. 2d 130 (Tex. 1940); *Wing v. Forrest Lawn Cemetery*, 15 Cal. 2d 472, 101 P. 2d 1099 (1940); *Christie v. Lyons*, 173 Okla. 158, 47 P. 2d 128 (1935).

⁷ *Hannula v. Hacienda Homes, Inc.*, 34 Cal. 2d 442, 211 P. 2d 302, 19 A.L.R. 2d 1268 (1949); *Brown v. Hofnacki*, 270 Mich. 557, 259 N.W. 152 (1935); see also *Dorsey v. Fisherman's Wharf Realty Co.*, 306 Ky. 445, 207 S.W. 2d 565 (1948).

cannot enforce such restrictions against subsequent grantees of that land or part of it. . . . But in the case of platted subdivisions, where the lots are sold under similar restrictions, each deed referring to the plat, and are sold under a general plan of development for restricted purposes, there is a mutuality of quasi covenant which enables each lot owner to enforce the restrictions against each other lot owner.⁸

It has also been held that the fact that a common grantor fails to include the restrictions contemplated in a portion of the conveyances will not defeat the general plan where the transferee has notice of such restrictions. The Michigan court in *Allen v. City of Detroit* stated the rule as follows:

The law is well settled that building restrictions . . . are in the nature of reciprocal negative easements, and may be created upon a division, and conveyance in severalty to different grantees, of an entire tract. That a portion of the conveyances do not contain the restrictions will not defeat the same. Although some of the lots may have written restrictions imposed upon them and others not, if the general plan has been maintained from its inception, if it has been understood, accepted, relied on, and acted upon by all in interest, it is binding and enforceable upon all inter se. It goes with the land, and is equally binding on all purchasers with notice.⁹

The right of purchasers of lots in a subdivision subject to restrictions, to enforce those restrictions against adjacent lot owners seems, by the weight of authority, to be based on the theory that such owner has a property right which he may assert to enforce compliance with the restriction. It should be remembered that restrictive covenants generally give the party benefited thereby a property right enforceable against all parties including the state and its agencies. Nevertheless these property rights are subject to eminent domain.¹⁰

Applying these general rules to the hypothetical fact situation posed, it would seem that here there is a restriction which is not unreasonable and not contrary to public policy, and one therefore that should be enforceable by at least the original grantor. Here, also, there is a platted subdivision, where the lots were sold under similar restrictions in compliance with a general plan of development—this would give the necessary quasi-mutuality to allow the adjoining lot owners to join with the original grantor in enforcing this covenant. True, though it is, that the restriction here was not included in the deed by which the lot in question was conveyed to defendant, it has already been established that since the restrictions were created by

⁸ 19 A.L.R. 2d 1274, 1278 (1951).

⁹ *Allen v. Detroit*, 167 Mich. 464, 133 N.W. 317, 319 (1911); see also *Tulk v. Moxhay*, 47 Eng. Rep. 1345 (1848).

¹⁰ *Town of Stamford v. Vuono*, 108 Conn. 359, 143 A. 245 (1928); *Flynn v. New York W. and B. Ry. Co.*, 218 N.Y. 140, 112 N.E. 913 (1916); *Allen v. Detroit*, *supra* note 9.

a previous deed from the common grantor they were binding as to the defendant. Lastly, the right of eminent domain is not here concerned, since no political entity or public utility is asserting the right to construct this street across restricted property, but rather a private person in his individual capacity.

Thus it would seem that the original question posed has resolved itself into the following limited question: Does the maintenance, use or grant of a right of way across restricted property violate a covenant limiting the use of such property to residential purposes only? There are comparatively few cases involving this precise question, and the remainder of this note will be concerned with examining, comparing and differentiating these pertinent cases.

Cases In Which the Use, Maintenance or Grant of Right of Way Was Held To Violate the Restrictive Covenant. It has been held in several cases that the maintenance, use or grant of a right of way for public purposes across property violates a covenant restricting the use of such property to residential purposes only. In *Duggan v. Buckner*¹¹ an owner of acreage had subdivided it into blocks, lots, and driveways and recorded a plat thereof. He conveyed these lots by deeds containing stringent residential restrictions. The plat showed a small irregular lot at the end of a dead end street. The court held that testimony of the grantees of the two large lots between which this small irregular lot was situated, to the effect that their purchases had been induced by the owner's verbal representations that the dead end street would so remain was not inconsistent with the plat but served to clarify that which the plat might have otherwise left ambiguous. The court then held that the evidence authorized a permanent injunction restraining the owner from using the small lot as a passageway so as to open the dead end street and continue it across his adjoining land. This case is analogous to the hypothetical situation posed herein, in that both cases concern a subdivision restricted to residential purposes and in both cases the original owner induced prospective purchasers to purchase lots therein by verbally assuring them that there would be no through street across the subdivision. Likewise, in *Luhman v. New York W. and B. Ry. Co.*,¹² it was held that a railroad which had constructed a line across lots subject to the restriction that nothing other than private residences costing not less than \$3000 each

¹¹ 155 S.W. 2d 661 (Tex. Civ. App. 1941); see also *Dewar v. Carson*, 259 Pa. 599, 103 A. 343 (1918).

¹² 81 Misc. 537, 142 N.Y.S. 860 (1913), *affd. without op.* 163 App. Div. 964, 148 N.Y.S. 1127 (1914), *affd. without op.* 221 N.Y. 550, 116 N.E. 1058 (1917). See also *Flynn v. New York, W. and B. Ry. Co.*, 218 N.Y. 140, 112 N.E. 913 (1916).

should be erected on said lots had violated the restriction, and though the railroad could not be enjoined due to its right of eminent domain it must compensate the adjoining lot owners for any damages suffered by them. It has further been held that the maintenance, use or grant of a right of way across property, the use of which is restricted to residential purposes, violates the restrictive covenant where the right of way is to be used as an incident to a use other than residential.¹³ This rule is based on the theory that even though such a covenant does not prohibit any use of the property reasonably consistent with its use for residential purposes, it clearly implies that the restricted property is not to be put to any use incident to a forbidden business or enterprise even though such business or enterprise is situated on adjacent unrestricted land.

Applying the above rules to the hypothetical situation it would appear safe to assume that the defendant in his proposal to construct a street through the restricted lot in question, so as to make South Ridge Drive a through street and thus join his unrestricted land to the restricted subdivision, was motivated by a desire to increase the value of his land by increasing access thereto rather than by any desire to render a public service. And since his land is unrestricted is it not reasonable to grant the adjacent landowners in Subdivision I, the restricted subdivision, an injunction against this proposed use of the lot in question on the theory that (1) as an individual having no right of eminent domain the defendant has no standing to violate the covenant restricting the property to residential uses, or (2) that to allow this use would afford the defendant the opportunity of using this right of way as an incident to some use other than residential?

It is acknowledged that there are numerous cases which have held that a use, maintenance or grant of a right of way over restricted property was not in violation of a restrictive covenant. However, it is believed that these cases may be distinguished on their facts from the assumed hypothetical situation. The following portion of this note will deal with these cases and constitute an endeavor to distinguish them.

Cases In Which the Use, Maintenance or Grant of a Right of Way Was Held Not To Violate the Restrictive Covenant. As has been said, since covenants restricting the free use of land are looked upon with disfavor by the courts of this country, such covenants should be strictly construed, and the courts in construing them should base their

¹³ *Starmount Co. v. Greensboro Memorial Park Inc.*, 233 N.C. 613, 65 S.E. 2d 134 (1951); *Mellitz v. Sunfield Co.*, 103 Conn. 177, 129 A. 228 (1925); *Laughlin v. Wagner*, 146 Tenn. 647, 244 S.W. 475 (1922).

construction upon the intention of the parties. Therefore it would seem obvious that if the maintenance, use or grant of a right of way across restricted property could reasonably be held not to be a violation of the restrictive covenant within the intention of the parties, such use, maintenance or grant should not give rise to injunctive relief. In *Bohnsack v. McDonald*¹⁴ it was held that a covenant against conducting upon the premises any noxious, offensive, or dangerous trade or business would not prevent the grantee from constructing and maintaining a temporary railroad to remove materials excavated by him in the course of construction of a public reservoir. However, the plaintiff was awarded damages by reason of the existence of a nuisance. The court in this case reasoned that the covenant was not broad enough to prohibit the use of the premises as a right of way but was merely meant to prohibit the establishment of trades or businesses of the expressed nature. In like manner it was held in *Smith v. Government Realty, Inc.*¹⁵ that the owner of a lot in a subdivision restricted to residential use and subject to building line restrictions was not entitled to enjoin an adjacent lot owner's proposed opening of a private alleyway. The court held that this would not be such a use of the adjoining lot as would be prohibited by the restrictive covenant. These cases seem to say that if the use, maintenance or grant of a right of way is not such use of the property as is, within the contemplation of the parties, denied by the expressed restriction, then such use or grant of a right of way does not give an adjoining lot owner any right to injunctive relief. However, in the assumed fact situation the original grantor represented to prospective purchasers that an attractive feature of his subdivision was the lack of a through street. Is it not safe then to assume that the intention of the parties in the fact situation here involved was that the restriction was meant to deny the grant or use of such a right of way as the defendant proposes? And therefore, is not the fact situation originally assumed distinguishable from the above cases by reason of this intention?

In *Cook v. Murlin*¹⁶ the court refused to enjoin the use of a private driveway across a lot forming part of a tract restricted to residential purposes, constructed for the benefit of other lands of the owner lying outside the restricted subdivision, but so refused only because subsequent to defendant's purchase of the lot in question it appeared that

¹⁴ 26 Misc. 493, 56 N.Y.S. 347 (1899).

¹⁵ 172 Md. 547, 192 A. 341 (1937); See also *Threedy v. Brennan*, 131 F. 2d 488 (1942); *Rabinowitz v. Rosen*, 269 Pa. 482, 112 A. 762 (1921); *Leonard v. Hotel Majestic Co.*, 17 Misc. 229, 40 N.Y.S. 1044 (1896).

¹⁶ 202 App. Div. 552, 195 N.Y.S. 793, *Affd.* 236 N.Y. 611, 142 N.E. 304 (1922).

all the parties interested in the restricted land had agreed to remove the specific restriction against such a driveway in so far as it concerned the defendant's land. Thus, though the situation would at first glance appear to be almost identical to the hypothetical situation herein assumed, the added fact of the subsequent agreement obviously makes this case distinguishable from the assumed situation.

There is another group of cases concerning restrictive covenants on land, where certain types of buildings or structures are prohibited. It has been held that in such a case the use or maintenance of a right of way to permit ingress or egress cannot be said to be a violation of the restrictive covenant since such a right of way cannot be said to be such a building or structure as is expressly prohibited.¹⁷ In this connection the Michigan court, in *Johnson v. Fred L. Kircher Co.*,¹⁸ was faced with the following situation: The owner of a lot in a subdivision subject to a restriction that "no shop, factory, store, saloon or business house of any kind, no asylum, hospital, or institute of like or kindred nature shall be maintained upon any portion . . ." of the lot involved, granted the city, for use as a public alley, a strip through the center of his lot from the street to an adjoining lot also owned by him. The second lot was outside the restricted area and was used for business purposes. The court held that this restriction only prohibited the enumerated uses and did not specify that the use of lots in this subdivision should be for residential purposes only, and further rejected the contention that the use of the alley would extend the grantor's business conducted on the unrestricted lot to the restricted lot. It is submitted that these cases may also be distinguished from the hypothetical case set up in this note. The restriction in the hypothetical situation is a general prohibition against using the land for any purpose other than residential, and it would seem obvious that using land so restricted as a public right of way would clearly be a breach of this general restriction. In the cases just cited the restriction ran only to specific uses, and a public right of way was not one of these specific uses.

It must be recognized that certain political entities, public utilities, etc., may, under our law, assert the right of eminent domain. The general rule seems to be that such a political or corporate entity possessing

¹⁷ *Hemenway v. Barteveian*, 321 Mass. 226, 72 N.E. 2d 536 (1947); *Lugg v. Stirnweis*, 43 N.Y.S. 2d 475 (1943); *Wilson v. Middlesex Co.*, 244 Mass. 224, 138 N.E. 699 (1923).

¹⁸ 327 Mich. 377, 42 N.W. 2d 117 (1950); See also *Mairs v. Stevens*, 268 App. Div. 922, 51 N.Y.S. 2d 286 (1944), *affd. without op.* 294 N.Y. 806, 62 N.E. 2d 238 (1945); *Neekamp v. Huntington Chamber of Commerce*, 99 W. Va. 388, 129 S.E. 314 (1925).

this right is not bound by a building restriction or restrictive covenant to the extent that it may be kept off the restricted premises entirely, but that such an entity may enter the restricted area and destroy its exclusive character if it makes just compensation for the rights taken.¹⁹

In this connection, then, the problem herein posed will be somewhat changed if the following assumption is added to the hypothetical situation originally suggested. Suppose that the defendant dedicated the restricted lot in question to the county and now contends that this action should be brought against the county since any street constructed would be under the auspices of that political body. Obviously then the defendant would not be asserting any right in his individual capacity to breach the restrictive covenant. The question which would then face the court would seem to be as follows: Can the owner of land, restricted to residential purposes only, defeat this restrictive covenant by dedicating the land to the county for purposes prohibited by the restriction?

In *Anderson v. Lynch*²⁰ the Georgia court dismissed a bill seeking an injunction which would restrain a county from constructing a public road across a lot which the owner had agreed to sell to the county and which was subject to covenants restricting its use to "residence purposes only. . . ." The court also held that the adjoining land owners were not even entitled to notice or other compliance with the law as to condemning property for such public purpose. Likewise, in *Friesen v. Glendale*,²¹ the California court denied an injunction, sought by adjoining land owners, which would restrain a municipality from constructing a public street across a portion of a lot restricted to "residence purposes only" and which the owners had deeded to the municipality for street purposes. In *Doan v. Cleveland Short Line R. Co.*²² the Ohio court denied damages for the construction of a railroad on lots similarly restricted and which the railroad had purchased. And in *Ward v. Cleveland R. Co.*²³ the Ohio court, in a case involving a similar fact situation, denied an injunction restraining the construction of the railroad. All these decisions were based primarily on two theories: (1) that covenants restricting the use of land to residential purposes cannot operate to prevent any party, politic or corporate, having the right

¹⁹ *Flynn v. New York*, *supra* note 10; *Luhman v. New York, W. and B. Ry. Co.*, *supra* note 12; *Hayes v. Waverly and P. R. Co.*, 51 N.J. Eq. 345, 27 A. 648 (1893).

²⁰ 188 Ga. 154, 3 S.E. 2d 85 (1939).

²¹ 209 Cal. 524, 288 P. 1080 (1930); See also *United States v. Certain Lands*, 112 F. 622 (1899).

²² 92 Ohio St. 461, 112 N.E. 505 (1915).

²³ Ohio St. 461, 112 N.E. 507 (1915).

of eminent domain, from devoting the property to a public use, since the right of eminent domain rests upon public necessity, and any covenant which would prevent the exercise of this right would be contrary to public policy; and (2) that restrictive covenants as to the use of land, which are enforceable as between parties thereto and their successors with notice, do not convey any property right to those parties in whose interest they are made which would entitle such parties to compensation under the theory of eminent domain. It cannot be denied that those parties, politics or corporate, which have the right of eminent domain may devote restricted property to public use even though to do so would breach the restrictive covenant.²⁴ However, even under the theory of eminent domain such parties may not condemn and put to public use an individual's property without making due compensation to the individual whose property right is injured. Thus it would seem that the first theory upon which these cases rest is dependent upon the validity of the second theory—namely that restrictive covenants as to the use of land create no property rights in those parties in whose interest they are made. However it has already been recognized herein that the weight of authority in this country is that the right of parties in whose interest restrictive covenants are entered into arises out of a property right and not out of a mere contract right.²⁵ Assuming this to be true it would then seem that even though those parties possessed of the right of eminent domain could not be prevented from putting restricted property to public use, they would be infringing upon the property right of the owner of the restricted lot, and also would be infringing upon a property right belonging to any adjacent land owner in whose interest the restrictive covenant was entered into. This being so, the party possessed of the right of eminent domain should be forced to pay compensation to any such adjoining land owners to the extent of the injury inflicted upon their property right, and thus these last few cases would seem to be based on a theory of only minority usage.

Further it might be said that in all these cases just mentioned, the owner of the property to be put to public use had either deeded, sold, or agreed to sell the property in question to the political entity or corporation having the right of eminent domain, while in the hypothetical situation herein posed the defendant-owner of restricted property has only (with the added assumption) stated a *desire* to dedicate the property to the county. The county has not accepted the dedication nor has it asserted any right thereunder. Thus it would seem

²⁴ *Supra* note 19.

²⁵ *Supra* note 10.

doubtful that a transfer of any kind has been made to the county. At common law a dedication, like a contract, consisted of an offer and an acceptance, and the general rule today seems to be that a dedication is not binding and conclusive as to either party until acceptance.²⁶ A dedication without an acceptance is merely an offer to dedicate, and such offer does not impose any burdens or confer any rights.²⁷ Acceptance of a dedication may be either actual or implied; it is actual when formal acceptance is made by the proper authorities, and implied when a use is made of the property by the public for a reasonable length of time.²⁸ Thus in the proposed hypothetical situation, as amended, it would appear that here there is no valid dedication since there has been neither a formal acceptance by the proper county authorities nor an implied acceptance arising out of the fact that the land has been put to public use, because as yet the land in question has not been put to any public use whatsoever.

Conclusion. Considering the general rules concerning restrictive covenants on land, and the cases which have been cited and examined herein, it is submitted that in the hypothetical situation proposed the plaintiff should prevail. It is submitted that, considering all the facts as presented, a court faced with this problem should grant an injunction for several reasons.

It is admitted that covenants restricting the free use of land should be, and generally are, strictly construed. Where such covenants are open to more than one interpretation that interpretation which is consonant with the free use of the land should be adopted. However, as has been set forth, it is the intention of the parties as shown by the agreement and surrounding circumstances that should govern in construing any such covenant. Here the original owner of Subdivision I induced prospective purchasers to take lots in his subdivision by stating that there would be no through traffic. It is submitted, then, that it was the intention of all the parties interested in this property that the restrictive covenant under which the lots were sold prohibited exactly that extension of South Ridge Drive which the defendant has proposed; namely, to make it a through street connecting Subdivision II to Subdivision I.

²⁶ *Givens v. Commonwealth*, 244 S.W. 2d 740 (Ky. 1951); *Johnson v. Ferguson*, 329 Mo. 363, 44 S.W. 2d 650 (1931); *East Cairo Ferry Co. v. Brown*, 233 Ky. 299, 25 S.W. 2d 730 (1930); *Central Land Co. v. Central City*, 222 Ky. 103, 300 S.W. 362 (1927).

²⁷ *Town of Stratford v. Fidelity and Casualty Co.*, 106 Conn. 34, 137 A. 13 (1927); *Inyo County v. Given*, 183 Cal. 415, 191 P. 688 (1920).

²⁸ *Johnson v. Ferguson*, 329 Mo. 363, 44 S.W. 2d 650 (1931); *Inyo County v. Given*, *supra* note 27; *cf. Town of Stratford v. Fidelity and Casualty Co.*, *supra* note 27.

Assuming the above to be true—that this use, maintenance or grant of a right of way would be a breach of the restrictive covenant—an injunction may and should be granted if the requirements of mutuality and notice are met. It has been said above that, unless there is some mutuality of covenant, purchasers of lots in a restricted subdivision may not enforce the covenant as against one another. However, it has also been said that a recorded plat embodying the restrictions will be sufficient evidence of the quasi-mutuality of covenant necessary to allow such enforcement, and in the situation here being considered there was such a recorded plat. Further, it has been recognized that constructive as well as actual notice of the restriction is enough to bind a subsequent purchaser, and in the hypothetical situation it was assumed that the defendant had not only constructive, but actual, notice of the restriction.

Finally, under the original hypothetical situation the defendant proposed to act in his individual capacity and, therefore cannot rely on the right of eminent domain as a means of breaching the restrictive covenant. However, when the added fact is assumed that the defendant is only asserting a right to dedicate the lot in question to the county for the purpose of constructing the proposed extension to South Ridge Drive, the question of eminent domain does arise. As has been shown, however, it is very probable that this proposed dedication should be held invalid for lack of acceptance, and for that reason the necessity of challenging the county's right to eminent domain is averted.

CHARLES R. HAMM

CRIMINAL LAW—THE LAW AS TO CONCEALED DEADLY WEAPONS

Man, by instinct, has always been and always will be concerned with his own personal safety. Naturally, this concern has led to the development of numerous instruments which he has used both for offensive and defensive purposes. These instruments vary in description to such an extent that practically any object capable of inflicting bodily injury has been used as a weapon. However, they all usually have one common characteristic: they are relatively small and compact and capable of being carried on the person. In their evolutionary development an attempt has been made to obtain a maximum of killing power from the smallest possible weapon. In trying to reach this goal, man has used everything from a rock to the powerful hand guns of the present day.