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DEEDS — DESCRIPTION — LATENT AMBIGUITY — PAROL EVIDENCE, *Mudd et al.* v. *Dillon,* 65 S. W. Rep. 973. (Supreme Court of Missouri, December 17, 1901.)— Of the several points involved in the decision of this case there is but one that we desire to notice. The following abstract from the facts will disclose it:

The grantor, John S. Dillon, under whom the defendant claims, in July, 1890, was the owner of 440 acres of land in sections 12 and 13, township 50, of range 4, in the county of Montgomery, state of Missouri. By the deed upon which the defence rested he purported to convey "80 acres, the E. ½ of the N. E. ¼ and 60 acres off of the E. side of the W. ½ of the N. E. ¼ of Sec. 12, and 80 acres of the E. ½ of the N. E. ¼ of Sec. 13, in the county of Montgomery, state of Missouri." It will be observed that the township and range were omitted.

The plaintiffs claimed that no land passed by the deed, because none was sufficiently described. Against this the defendant con-

tended that the omission of the township and range raised only a latent ambiguity which could be explained by proof of what land the grantor owned and other extrinsic evidence. The court (opinion by Burgess, J., all concurring), took judicial notice of the fact that there were fourteen different sections of land numbered 12, and thirteen numbered 13 in the county where the land was situated, and *held* that consequently there was a patent ambiguity in the deed which could not be cured by evidence *aliunde*.

The familiar rule that a latent ambiguity in a document can be cured by parol evidence, while a patent ambiguity cannot, was derived from one of Lord Bacon's maxims (Bac. Max. Reg. 25 or 23). That when he said, "*Ambiguitas verborum latens verificatione suppletur, nam quod ex facto oritur ambiguum verificatione facti tollitur,*" he referred to the verification in pleading and not to evidence, was long ago lost sight of, and the confusion resulting therefrom seems to increase with each expression of judicial opinion involving the question.

To show how the courts have treated this distinction between latent and patent ambiguity; to inquire how far it is a valid and valuable distinction; to arrive at a conclusion as to how it should be interpreted and applied, and to test the decision in this case by that conclusion will be the object of this note.

The following have been held to be patent ambiguities:

IMPERFECT OR INDEFINITE DESCRIPTION OF PERSON OR THING. —*Doe* v. *Tyrrell,* 4 M. & S. 550, 1816, description of land; *Chambers* v. *Ringstaff,* 69 Ala. 140, 1881; *Mesick* v. *Sunderland,* 6 Cal. 297, 1856, grant of 220 town lots; *White* v. *Hermann,* 51 Ill. 243, 1869, omission of "North of base line," and range. Rule disregarded! *Grimes Ex'r.* v. *Harman,* 35 Ind. 198, 1871, bequest to Orthodox Protestant clergymen,—no such corporation; *Baldwin* v. *Kerlin,* 46 Ind. 426, 1874, contract for "640 acres of land in A. Co., Kan."; *Craven* v. *Butterfield,* 80 Ind. 503, 1881, "27 acres in fractional section 15, V. County"; *Fenwick* v. *Floyd,* 1 Har. & G. 172, Md. 1827, "Part of Resurrection Manor"; *Huntt* v. *Gist,* 2 Har. & J. 498, Md., 1809, "120 acres of Park's Death Knot," the latter being a much larger tract; *Dashiell* v. *Atty. General,* 6 Har. & J. 1 Md., 1823, bequest to "poor children of C. County"; *Stokeley* v. *Gordon,* 8 Md. 496, 1855; *Palmer* v. *Albee,* 50 Ia. 429, 1879, "20 acres of land"; *McNair* v. *Toler,* 5 Minn. 453, 1861; *Brown* v. *Guice,* 46 Miss. 299, 1872, "Part of Sec. 18, Tp. 7, range 2, E. 180 acres"; *Webster* v. *Atkinson,* 4 N. H. 21, 1827, whether deed conveyed two-thirds interest, joint or several; *Cripps* v. *Holt,* 5 Jones Eq. 153, N. Car., 1859; *Norris* v. *Hunt,* 51 Tex. 609, 1879; *McKinzie* v. *Stafford,* 8 Tex. Civ. App. 121, 1894; *Pingrey* v. *Watkins,* 17 Vt. 379, 1845; *Pitts* v. *Brown,* 49 Vt. 86, 1876.

MEANING OF WORDS.—*England.*—*Cheyney's Case* 5 Coke Rep.

68, 1592, "They or any of them shall not alien"; *Strode* v. *Russell,* 2 Vern. 621, 1708, "out of settlement."

Canada.—Connolly v. *Provincial Ins. Co.,* 3 Q. L. R. 6, Quebec, 1876, "vessel to go out in tow."

Alabama.—Johnson v. *Johnson,* 32 Ala. 637, 1858, "vest absolutely"; *Abercrombie's Ex'r* v. *Abercrombie's Heir,* 27 Ala. 489, 1855, antecedent of pronoun "their."

Illinois.—Doyle v. *Teas,* 5 Ill. 202, 1843, "a certain sum"; *Panton* v. *Tefft,* 22 Ill. 366, 1859, "also"; *Griffith* v. *Furry,* 30 Ill. 251, 1863, "$245, ten per cent."

Indiana.—Richmond Tr. & Mfr. Co. v. *Farquar,* 8 Blackf. 89, 1846, book entry.

Massachusetts.—Storer v. *Freeman,* 6 Mass. 453, 1810, "shore"; *King* v. *King,* 7 Mass. 495, 1811, "mill privilege"; *Comstock* v. *Van Deusen,* 5 Pick. 163, 1827, "right of way across."

Michigan.—Rood v. *School Dist. No.* 7, 1 Dougl. 502, 1844, whether "P." and "D." on docket entry stood for plaintiff and defendant.

New York.—Mann v. *Mann,* 1 Johns. Ch. 231, 1814, "moneys"; *Blosburg R. R. Co.* v. *Tioga R. R. Co.,* 1 Keyes, 486, 1864, "additional charges by way of discrimination, etc."

Tennessee.—Nashville Life Ins. Co. v. *Matthews,* 8 Lea, 499, 1881, non-forfeiting clause in life insurance policy.

North Carolina.—Taylor v. *Maris,* 90 N. C. 619, 1884, "etc."

Virginia.—Gatewood v. *Burns,* 3 Call. 194, 1802, "etc."

Omissions.—*Newcomer* v. *Kline,* 11 Gill & Johnson, 457, Md., 1841; *Clark* v. *Lancaster,* 36 Md. 196, 1872; *Hyatt* v. *Pugsley,* 23 Barb. 285, N. Y., 1856; *Vandervoort* v. *Dewey,* 42 Hun, 68, 1886; *Noyes* v. *Staff,* 5 Ore. 455, 1875.

Double Meanings.—*Saunderson* v. *Piper,* 5 Bing. N. C. 425, 1839, figures on draft expressing one sum, words, another; *Hollier* v. *Eyre,* 9 Cl. & F. 1, 1840, annuity granted as principal or surety? *Brandon* v. *Leddy,* 67 Cal. 43, 1885, map referred to in deed shows two lots answering description; *Cadwallader* v. *Nash,* 73 Cal. 43, 1887, reference applying equally to two different maps; *Bisbee* v. *Woodbury,* 8 Ill. App. 336, 1880, *nol. pros.* entered on note applying equally to two; *Mithoff* v. *Byrne,* 20 La. Ann. 363, 1868, party contracting as agent or principal; *Brauns* v. *Stearns,* 1 Ore. 367, 1861, deed, A. called maker, executed by B.; *Wright* v. *Weakley,* 2 Watts, 89 Pa., 1833, joint note signed by one obligor as agent; *Stecher* v. *Com.,* 6 Whart. 60, Pa., 1840, doubtful balance in auditor's report.

The following have been held to be latent ambiguities:

Subject Wrongly or Imperfectly Described.—*Miller* v. *Travers,* 8 Bing. 244, 1833; *Patch* v. *White,* 117 U. S. 210, 1885; *Allen* v. *Lyons,* 2 Wash. 475, U. S., 1811; *Cato* v. *Stewart,* 28 Ark. 146, 1873; *Piper* v. *True,* 36 Cal. 606, 1869; *Blair* v.

Bruns, 8 Col. 397, 1885; *Lyman* v. *Gadney,* 114 Ill. 388, 1885; *Decker* v. *Decker,* 121 Ill. 341, 1887; *Breckenridge* v. *Duncan,* 2 A. K. Marsh. 50, Ky., 1817; *Breeding* v. *Taylor,* 13 B. Mon. 287, Ky., 1852; *Haydon* v. *Ewing,* 1 B. Mon. 111, Ky., 1840; *Tudor* v. *Terrel,* 2 Dana, 47, Ky., 1834; *Mead* v. *Parker,* 115 Mass. 413, 1874; *Cleverly* v. *Cleverly,* 124 Mass. 314, 1878; *Riggs* v. *Myers,* 20 Mo. 239, 1854; *Hardy* v. *Matthews,* 38 Mo. 122, 1886; *Greenleaf* v. *Kilton,* 11 N. H. 530, 1841; *Winkley* v. *Kaime,* 32 N. H. 268, 1855; *French* v. *Hayes,* 43 N. H. 30, 1861; *Griscom* v. *Evans,* 40 N. J. L. 402, 1878; *Doe* v. *Roe,* 1 Wend. 541, N. Y., 1828; *Mann* v. *Mann,* 1 Johns. Ch. 234, N. Y., 1814; *Merrick* v. *Merrick,* 37 Ohio St. 126, 1881; *Caldwell* v. *Carthage,* 40 Ohio St. 453, 1884; *Busby* v. *Bush,* 79 Tex. 656, 1891.

Object Wrongly or Imperfectly Described.—*Brewster* v. *McCall,* 15 Conn. 274, 1842; *Beardsley* v. *Home Miss. Soc.,* 45 Conn. 327, 1877; *Bowen* v. *Slaughter,* 24 Ga. 339, 1857; *Walker* v. *Wells,* 25 Ga. 141, 1858; *Richards* v. *Miller,* 62 Ill. 417, 1872; *Hinkley* v. *Thatcher,* 139 Mass. 477, 1885; *Howard* v. *Am. Bible Soc.,* 49 Me. 288, 1860; *Taylor* v. *Tolen,* 38 N. J. Eq. 91, 1884; *Gallup* v. *Wright,* 61 How. Pr. 284, N. Y., 1881; *Lefevre* v. *Lefevre,* 59 N. Y. 434, 1875; *Gardner* v. *Heyer,* 2 Paige, 11, N. Y., 1829; *Vernor* v. *Henry,* 3 Watts, 385, Pa., 1834; *Washington University's Appeal,* 111 Pa. 572, 1886; *Newell's Appeal,* 24 Pa. 197, 1855; *Hawkins* v. *Garland,* 76 Va. 149, 1882.

Description Applicable to More Than One Person or Thing.—*England.—In re Kilvert's Trusts,* L. R. 12 Eq. 183, 1871; *Grant* v. *Grant,* L. R. 5 C. P. 380, 1870; *Doe* v. *Beynon,* 12 Ad. & El. 431, 1840; *Fleming* v. *Fleming,* 1 H. & C. 242, 1862; *Webber* v. *Corbett,* L. R. 16 Eq. 515, 1873; *In re Gregory's Settlement,* 34 Beav. 500, 1865; *In re Wolverton's Estate,* 7 Ch. Div. 197, 1877; *Doe* v. *Lyford,* 4 M. & S. 550, 1816.

United States.—Deery v. *Cray,* 10 Wall. 263, U. S., 1869; *Gilmer* v. *Stone,* 120 U. S. 588, 1886.

Connecticut.—Coit v. *Starkweather,* 8 Conn. 389, 1830; *Doolittle* v. *Blakesley,* 4 Day, 265, 1810; *Brewster* v. *McCall,* 15 Conn. 274, 1842; *Dunham* v. *Averill,* 45 Conn. 61, 1877.

Illinois.—Dougherty v. *Purdy,* 18 Ill. 206, 1856; *Clark* v. *Powers,* 45 Ill. 283, 1867; *Bybee* v. *Hageman,* 66 Ill. 519, 1872; *Billings* v. *Kankakee Coal Co.,* 67 Ill. 489, 1872; *Bradley* v. *Rees,* 113 Ill. 327, 1885; *Bradish* v. *Yocum,* 130 Ill. 386, 1889; *School Trustees* v. *Rodgers,* 7 Ill. App. 33, 1880.

Kentucky.—Cromie v. *Louisville Orph. Home,* 3 Bush, 386, Ky., 1867; *Shelby* v. *Teris,* 14 S. W. Rep. 501, 1890.

Maine.—Emery v. *Webster,* 42 Me. 204, 1856; *Howard* v. *American Peace Society,* 49 Me. 288, 1860; *Tyler* v. *Fickett,* 73 Me. 410, 1882.

Massachusetts.—*Gerrish* v. *Towne,* 3 Gray, 82, 1852; *Woods* v. *Sawin,* 4 Gray, 322, 1855; *Davis* v. *Sherman,* 7 Gray, 291, 1856; *Bodman* v. *Am. Tract Society,* 9 Allen, 447, 1864; *Sargent* v. *Towne,* 10 Mass. 303, 1813; *Hurley* v. *Brown,* 98 Mass. 545, 1868; *Putnam* v. *Bond,* 100 Mass. 58, 1868; *Chester Emery Co.* v. *Lucas,* 112 Mass. 424, 1873; *Mead* v. *Parker,* 115 Mass. 413, 1874; *Hoar* v. *Goulding,* 116 Mass. 132, 1874; *Flagg* v. *Mason,* 141 Mass. 64, 1886; *Thornell* v. *Brockton,* 141 Mass. 151, 1886;

Michigan.—*Waldron* v. *Waldron,* 45 Mich. 350, 1881.

Minnesota.—*Slosson* v. *Hall,* 17 Minn. 95, 1871.

Missouri.—*Hardy* v. *Matthews,* 38 Mo. 121, 1866; *Schreiber* v. *Osten,* 50 Mo. 513, 1872; *Goff* v. *Roberts,* 72 Mo. 570, 1880; *Coe* v. *Ritter,* 86 Mo. 277, 1885.

New Hampshire.—*Claremont* v. *Carlton,* 2 N. H. 369, 1821; *Clough* v. *Bowman,* 15 N. H. 504, 1844; *Hall* v. *Davis,* 36 N. H. 569, 1857; *Goodhue* v. *Clark,* 37 N. H. 525, 1859; *Tilton* v. *Am. Bible Soc.,* 60 N. H. 377, 1880.

New Jersey.—*Den* v. *Cubberly,* 12 N. J. L. 308, 1831; *Opdyke* v. *Stephens,* 28 N. J. L. 83, 1859; *Curtis* v. *Aaronson,* 49 N. J. L. 68, 1886.

New Mexico.—*Gentile* v. *Crossan,* 7 N. Mex. 589, 1894.

New York.—*Jackson* v. *Goes,* 13 Johns. 518, 1876; *St. Luke's* v. *Association, etc.,* 52 N. Y. 191, 1873.

North Carolina.—*Lowe* v. *Carter,* 2 Jones Eq. 377, 1856; *Clarke* v. *Cotton,* 2 Dev. Eq. 51, 1831.

Ohio.—*Black* v. *Hill,* 32 Ohio St. 313, 1877.

Pennsylvania.—*Vernor* v. *Henry,* 3 Watts, 385, 1875; *Brownfield* v. *Brownfield,* 12 Pa. 136, 1849; *McCullough* v. *Wainwright,* 14 Pa. 171, 1850; *Hetherington* v. *Clark,* 30 Pa. 393, 1858; *Koch* v. *Dunkle,* 90 Pa. 264, 1879; *Place* v. *Proctor,* 2 Penny, 264, 1882.

Tennessee.—*Gass* v. *Ross,* 3 Sneed, 211, 1855; *Snodgrass* v. *Ward,* 3 Hayw. 40, 1860; *Mumford* v. *Memphis, etc.,* 2 Lea, 393, 1819.

Texas.—*Early* v. *Sterrett,* 18 Tex. 116, 1856; *Hamman* v. *Keigwin,* 39 Tex. 34, 1873; *Bassett* v. *Martin,* 83 Tex. 339, 1892.

Vermont.—*Townsend* v. *Downer,* 23 Vt. 225, 1851; *Button* v. *Amer. Tract Society,* 23 Vt. 336, 1851.

Virginia.—*Mound* v. *M'Phail,* 10 Leigh, 189, 1839.

Washington.—*Read* v. *Tacoma Bldg. Assoc.,* 2 Wash. 198, 1891.

Wisconsin.—*Morgan* v. *Burrows,* 45 Wis. 211, 1878; *Begg* v. *Begg,* 56 Wis. 534, 1882; *Meade* v. *Gilfoyle,* 64 Wis. 18, 1885; *Begg* v. *Anderson,* 64 Wis. 207, 1885; *Webster* v. *Morris,* 66 Wis. 366, 1886.

Canada.—*Clark* v. *Bonnycastle,* 3 U. C. Q. B. (O. S.) 528, 1834.

MISCELLANEOUS.—MISDESCRIPTION IN LOCATION OF PROPERTY.—*Sullivan* v. *Collins*, 20 Colo. 528, 1895; *McLennan* v. *Johnston*, 306, 1871; *Chicago Dock Co.* v. *Kinzie*, 93 Ill. 428, 1879; *Sharp* v. *Thompson*, 100 Ill. 448, 1881; *Mason* v. *Merrill*, 129 Ill. 503, 1889; *Abbott* v. *Abbott*, 51 Me. 575, 1863; *Crafts* v. *Hibbard*, 4 Met. 438, Mass., 1842; *Morton* v. *Jackson*, 1 Smed. & M. 494, Miss., 1843; *Edwards* v. *Tipton*, 77 N. Car. 222, 1837; *Webb* v. *Frazar*, 29 S. W. Rep. 665, Tex., 1895; *Thompson* v. *Jones*, 4 Wis. 106, 1855.

TWO DOCUMENTS APPLYING TO SAME PROPERTY.—*Fisk* v. *Fisk*, 12 Cush. 150, Mass., 1853; *Thayer* v. *Torrey*, 37 N. J. L. 339, 1875.

TWO MODES OF PERFORMANCE OF CONTRACT.—*Smith* v. *Aikin*, 75 Ala. 209, 1883; *Collins* v. *Driscoll*, 34 Conn. 43, 1867; *Manchester Paper Co.* v. *Moore*, 104 N. Y. 680, 1887; *Cole* v. *Wendel*, 8 Johns. 116 N. Y., 1811.

WHAT THE COLORING ON MAP TO ACCOMPANY DEED MEANT.—*Board of Education* v. *Keenan*, 55 Cal. 642, 1880.

REFERENCE IN DEED TO A LOST PLOT.—*Deery* v. *Cray*, 10 Wall. 263, U. S., 1869.

WRITTEN WORDS ON PRINTED DOCUMENT NOT AGREEING WITH A DOCUMENT REFERRED TO IN THE PRINT.—*The Wanderer*, 29, Fed. 260, U. S. D. C., Eastern Dist. So. Car., 1886.

WHETHER A PARTY SIGNED CONTRACT AS PRINCIPAL OR AS AGENT.—*Shuetze* v. *Bailey*, 40 Mo. 69, 1867.

MEANING OF "RECD. ON SETTLEMENT TO DATE."—*Clay* v. *Field*, 138 U. S. 464, 1890.

WHO WAS CORPORATION OBLIGOR ON BOND.—*Franklin Av. German Sav. Inst.* v. *Town of Roscoe*, 75 Mo. 408, 1882.

LOCATION OF VARIABLE BOUNDARY.—*Waterman* v. *Johnson*, 13, Pick. 261, Mass., 1832.

INCONSISTENT DEVISES IN SAME WILL.—*Brown* v. *Brown*, 43 N. H. 17, 1861.

The subject of patent and latent ambiguities and the rule regulating the admission of evidence to explain them, has received but little legislative attention. The Georgia Code, however, has this provision relative thereto: "Parol evidence is admissible to explain all ambiguities, both latent and patent." This was enacted in the Code of 1882, Section 3,801, and was reenacted in the Code of 1895, Section 5,202, which would seem to indicate that the abolition of the distinction had met with general approval. Decisions under this provision are: *Ferrell* v. *Hurst*, 68 Ga. 132, 1881; *Turner* v. *Berry*, 74 Ga. 481, 1885; *Jennings* v. *Athens Nat. Bank*, 74 Ga. 782, 1885; *Riley* v. *Hicks*, 81 Ga. 265, 1888; *American Exchange Nat. Bank* v. *Ga. Construction Co.*, 87 Ga. 651, 1891; *Neal* v. *Reams*, 88 Ga. 298, 1891; *Wheelwright* v. *Aiken*, 92 Ga. 394, 1895.

So much for the first point, that is, the way in which courts

and legislative bodies have treated the rule derived from Lord Bacon's maxim. We turn now to a critical examination of the theory of the rule.

It is believed that in nearly all cases of so-called ambiguity the facts can be thrown into the following classification:

I. Where the document read alone or with the aid of extrinsic evidence has no, or more than one equally clear, logical meaning.

II. Where the document read alone apparently has no, or more than one, such meaning; but proof of some extrinsic fact shows it to have one, and only one, logical meaning.

III. Where the document, however read, has such a meaning; but proof of some extrinsic fact shows no, or more than one, way in which to effect it.

IV. Where the document, however read, has such a meaning, and proof of some extrinsic fact shows no, or more than one, way in which to effect it; but proof of additional facts shows that one, and only one, way of effecting it could have been meant.

A close examination of these possible combinations reveals the fact that there are really two different kinds of *meaning* involved. The first may be called the *logical;* the second, the *executable* meaning. The question in the first instance is, does the document convey *any* idea; in the second, granted that it does convey an idea, is it one which can be carried into effect. The first is obtained by reading the document generally, as language; the second, by reading it particularly, as language applicable to certain subjects and objects.

Now since ambiguity may signify either of *doubtful* meaning or of *double* meaning, it appears that from the two kinds of meaning indicated above we may derive four kinds of ambiguity, viz:

(1) Where it is doubtful whether the document has any logical meaning or not.

(2) Where there is a question as to which of two or more logical meanings is the proper one.

(3) Where it is doubtful whether the document has any executable meaning or not, and

(4) Where there is a question as to which of two or more executable meanings is the proper one.

Any one or all of these questions may arise in the determination of the meaning of any document; indeed, the first and the third must always be settled in the affirmative before the document can be given any force. They may be answered unconsciously; but they must, nevertheless, be answered.

In any one of these cases extrinsic evidence *may* be admitted for the purpose of dispelling the ambiguity in the document. An example of the first may be found in the case of *Kell* v. *Charmer,* 23 Beav. 195, 1856, in which a testator gave i. x. x.

pounds to one son and o. x. x. pounds to another son. It was proved extrinsically that according to his business price-mark these seemingly meaningless symbols meant respectively £100 and £200, and the will was given effect accordingly. Another illustration would be the case put by Wigram (Extr. Ev. s. 79). Suppose a legacy to one of the children of A., by her late husband B. Apparently this has no logical meaning, since one cannot give to one of several without designating which one; but if it appear extrinsically that A. had only one son by B., and that the fact was known to the testator, "No principle or rule of law would," he says, "preclude a court from acting upon the evidence of facts by which the meaning of an apparently ambiguous will would, in such a case, be reduced to a certainty." Similar would be the case put by Elphinstone (Interp. of Formal Documents, 3 Jurid. Soc. Pap. p. 266), "I give my dog Ranger to my nephew John or Thomas." This appears meaningless for the reason given above; but if it appear that John and Thomas are but two names by which the same person was known to him at the time, the ambiguity disappears.

An illustration of the second sort of ambiguity named above is put by Eyre, L. C. B., in *Gibson* v. *Minet,* 1 H. Bl. p. 615, 1791. A grant by two, one in possession, the other in reversion, is interpreted, in view of the facts, as the grant of the first and the confirmation of the second. So also Coke points out that *dedi* or *concessi* may amount to a grant, a feoffment, a gift, a lease, a release, a confirmation, a surrender, etc., according to the condition of the parties appearing extrinsically, Coke, Litt. 301, b.

As an illustration of the third sort of ambiguity the case of *Miller* v. *Travers,* 8 Bing. 244, 1833, is cited. The document contained a logically expressed devise of all the testator's estates in the county of Limerick. The fact that he owned practically no estates in that county, but did own large estates in the county of Clare, was allowed to appear; and it finally settled, in the negative, the doubt whether the will could be given effect or not.

Extrinsic facts were admitted to aid the court in deciding the fourth sort of ambiguity in the case of *Tilton* v. *The Amer. Bible Soc.,* 60 N. H. 377, 1880. Here there was a bequest "to The Bible Society," and it appeared in evidence that there were several Bible Societies in existence. Evidence *dehors* the will was admitted to show which one was meant.

Extrinsic facts being admissable in all of these cases to reduce the ambiguity to a certainty, it must be determined whether all such facts can be admitted.

Since it is always the object of the court to obtain the author's meaning in the document, and not *dehors* the document, other expressions of his intention are received only upon the greatest necessity. The admission of such expressions of intention is

generally limited to cases containing an ambiguity of the fourth kind, *Bradley* v. *Rees,* 113 Ill. 327, 1885.

Now since an ambiguity as to the logical meaning of a document must appear if at all upon the face of the document, it follows that the facts admissible as evidence are only such as tend to reduce the meaning to certainty. This applies to kinds of ambiguity number 1 and number 2 as indicated above. In the interpretation of any document there must always arise from the mere reading of the document a doubt as to whether it can be given any effect or not (Ambiguity No. 3, *supra*). This is well expressed by Holmes, J., in *Doherty* v. *Hill,* 144 Mass. p. 468, 1888. He says, "In every case the words used must be translated into things and facts by parol evidence." It is evident that in this process of translation one of three conditions may appear: the document may have one clear application to persons or things; or it may have no clear application; or it may have more than one equally clear application. If the first appears there is no difficulty, and there is nothing to do but go ahead and give effect to this meaning. If the second appears evidence is admissible to show that what apparently has no clear application to persons or things in reality has such an application. If the third appears, evidence, even to the extent of the author's intent *dehors* the document, is admissible. This is the fourth kind of ambiguity noted above.

It is apparent from the foregoing that when either ambiguity number 3 or ambiguity number 4 is to be dealt with, there are two classes of facts to be considered: the first, which tend to raise the ambiguity; and the second, which tend to dispel it. The first class of facts must always be admitted, for without them the document cannot at all be applied to extrinsic matter; the second class of facts may always be admitted when the proof of the facts of the first class does, indeed, raise a doubt as how to apply it.

This discussion and classification of the facts which are provable in cases of ambiguity has necessarily been *obiter.* To resume the discussion of the validity of the distinction between latent and patent: it would seem that if anything could be called a patent ambiguity, it would be the contents of a document which apparently had no logical meaning upon its face, to a person of ordinary intelligence. It is often defined as "That which appears to be uncertain upon the deed or instrument," *Craven* v. *Butterfield,* 80 Ind. 503, 1881, cited with approval in the principal case. But it has been shown above that in cases answering exactly to this definition extrinsic evidence has been properly admitted. It seems, therefore, that the rule as ordinarily stated does not contain a valid and valuable distinction, when it makes patency and latency the test of whether extrinsic evidence shall be admitted or not.

Broom, in his Legal Maxims, 612, seemed to understand the worthlessness of the distinction when he said that extrinsic evidence is undoubtedly admissible for showing that the uncertainty which exists on the face of the instrument does not in fact exist. But this is not, as he says, a qualification of the rule; it does away with the distinction altogether, for its effect is exactly contrary. It is saying that what is apparently uncertain, *i. e.*, patently ambiguous, may be rendered certain by means of extrinsic evidence; in other words, that a document as meaningless as pied type can be shown to have a clear, logical meaning by the proof that it is in a cipher which the author was accustomed to use.

Now there are undoubtedly cases in which no evidence can be admitted to clear up the ambiguity apparent in the document. Such a case is that of a document in which the name of the grantee or the donee is left blank, *Clayton* v. *Nugent,* 13 M. & W. 200, 1844. Another is the familiar case of a devise "to one of the sons of J. S." *Strode* v. *Russell,* 2 Vern. 624, 1708. Such also would be the imaginary case, sometimes put, of a devise, as follows: "To John, Whiteacre and Greenacre and Blackacre, to Thomas." But to say that the extrinsic evidence cannot be admitted because the ambiguity appears on the face of the instrument is going too far. It is because the court can take the document and say of it that no matter how read, or with the aid of whatever evidence, one, clear logical meaning could not be *derived from* it. With this limitation alone, it is submitted, the extrinsic evidence should be admitted. And the reason for this limitation appears clearly; to go farther is not to derive a meaning *from* the document, but to give a meaning *to* it.

To restate the conclusion; it is that when the document shows on its face that in the light of all possible facts it cannot possibly have one clear, logical meaning, then, and then only, may it be said to be "patently ambiguous," and the rule of exclusion be applied. It must be possible to say of the author of the document, *"Quod voluit non dixit."* Then the court will not allow other facts to come in to aid them in expressing a wish for him. It is against this possibility, namely, that the court will *create* and then express our intentions for the author of the document, instead of discovering his intent as expressed in the document, that these barriers are, and should be, so sedulously maintained; and it is this same possibility which makes it questionable whether any expressions of the author's intent, *dehors* the document and not part of the *res gestæ,* should ever be admitted in evidence to explain the document.

It remains to apply this conclusion to the facts of the present case, and test the decision thereby. It is believed that the decision is incorrect by the rule as generally broadly stated; *a fortiori* is it so by the limited construction placed upon the rule by the conclusion above deduced.

The description of the land in the grant in the immediate case was not patently ambiguous in its broad sense, because read alone it conveyed a perfectly clear logical idea, namely, that there were in that county certain numbered sections, parts of which were, by that deed transferred to other ownership. It was not until the extrinsic fact that there were more sections than one having the same numbers appeared, that any doubt as to its meaning could arise. It is submitted that the learned court was misled by reading its judicial notice of the fact of the existence of more than one section having the same number within the county into the document, and then deciding that it contained a patent ambiguity.

It is evident that the deed could, in view of all possible facts, have one clear, logical meaning. It was then a proper case in which to attempt to apply its provisions to extrinsic things in order to give them effect. It is true that the first step in this process, from the judicial notice above referred to, raised a doubt as to what land was intended to be conveyed; but because of this very doubt *raised by the extrinsic fact* it was a case of latent ambiguity, which evidence of the fact that the testator only owned land in one section 12 and in one section 13 of that county and therefore could have intended to convey that alone, would have immediately dispelled.

T. M. P.