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Present: Bertram C.J. and Shaw J.

BULNER *v.* SHOCKMAN.

405—D. C. Colombo, 53,649.

Falsa demonstratio non nocet—*Sale under the Civil Procedure Code—Inaccuracies in notice as to extent, boundaries, and ward number.*

Certain premises were advertised for sale, and sold in pursuance of the Civil Procedure Code as being the property of the plaintiff. They were described with reference to their boundaries, their extent, and their ward numbers, but none of these descriptions was quite accurate.

Held, as no one could make a mistake as to what property was intended to be referred to in the notice, the inaccuracies in regard to orientation, extent, and ward number were not fatal to the validity of the notice.

THE facts appear from the judgment of the District Judge (P. E. Pieris, Esq.):—

On two Fiscal's transfers of July, 1914, the plaintiff purchased two adjoining blocks of land at Galkapanawatta. The first block is described in the transfer P 4 as "that part of low ground now used as a ferry, bearing Municipal assessment No. 50." Its extent is given, with reference to the old plan P 5, as of 1 rood 12½ square perches. The boundary is given as being on the north-east the road leading to Urugodawatta. As a matter of fact, that road, though on P 5, it might be mistaken for the north-east, and in reality is the northern boundary, is not the north-east. As a town plan (P 2) shows, there has been a deviation of the road since P 5 was prepared in 1869. The second transfer P 6 describes the land as formerly bearing assessment No. 54, now 51, and gives the area as 3 roods 39 96/100 perches. It refers to a plan (P 7) of 1839, and, once again, misdescribes the directions of the boundaries.

It seems a pity that these modern transfers are not supported by more recent surveys. The total acreage as shown in the old surveys is just about 5 roods and 12 perches. The price paid by the plaintiff was only Rs. 140, and the two blocks were subject to a mortgage of Rs. 10,000. In 1918 the present defendant, who held a judgment against the plaintiff, issued writ and caused these premises to be seized. Admittedly, the notices of seizure were posted on those premises. The plaintiff has no other land at Galkapanawatta. Certain boundaries appear in the notice, a copy of which is marked P 1. Reading these with the plan D 2, it will be seen that these boundaries err in the same manner as those given in P 4 and P 6. The explanation is quite simple. The boundaries do not run in the direction of the cardinal points. What runs from north-west to south-east is described as the eastern boundary. Then must follow the southern boundary, and so a boundary is named as being on the south, when, as a matter of fact, it is the eastern boundary. This is a common error, but the four boundaries are correct in the description, though not in the direction. The notice further described the land as being in extent about 3 roods. That is, and is meant to be, merely approximate.

Further, the notice said that the premises bore the assessment No. 1110/53. The first of these numbers represents what is called the ward number. These ward numbers were introduced in 1908, and appear not to have been changed since. The second number is the street number, which is subject to revision from time to time. There can hardly be a doubt in view of the evidence of the inspector, Mr. de Soyza, that the numbers shown in the notice are correctly applicable, not to the premises seized, but to a small lot two doors off. The premises seized should correctly bear two sets of numbers, namely, 1112/50 and 1113/51. It may even be that four years ago there were such numbers actually fixed on the premises seized, but the inspector has no knowledge in respect of the last four years.

The Fiscal's clerk who conducted the sale says that he verified the number at the sale, and that it was as it appeared in the notice. I do not know why he should have troubled to verify the number, as at the time there was no question regarding the number. He says the number was fixed on a doorpost.

The Fiscal's officer who carried out the seizure was familiar with the premises, for it was he who had seized them on the previous writ, when the plaintiff became the purchaser, he says the number was given to him by the Fiscal, and he found it on the doorpost. The defendant it was who had given instructions in regard to the seizure. He says he visited the premises, noted the number to be 1110/53, and so wrote to his proctor. The number, he says, was on the door frame, and was there at the time of the sale.

On the other hand, the plaintiff swears that the numbers on his premises were actually 50 and 51. He admits that one of the numbers was fixed to a door frame, and says the other was on a coconut tree. He can point to the mark on the door frame, for the number itself disappeared some time ago. The coconut tree, he says, died three months ago. It was No. 50 which was on the coconut tree, and that the tree was fifty yards from the house where the number was. The coconut tree died, he says, after the sale, but before the purchaser was put in possession. It withered from the top, and the plaintiff had it cut down. At the same time he had the number plate removed and struck up on the cattle shed. The No. 51, he says, was on one of the tenements, but there was no number at the store which he had on the land.

Cooray says he was occupying the premises on a verbal lease from the plaintiff. He declares that the number 50 was on the building which he occupied, whereas No. 51 was on the door frame of the store. Nicholas may be regarded as a joint employé of plaintiff and of Cooray. He says No. 50 was on the door frame of the house which he occupied, and that for two years No. 51 was affixed to a post at the ferry. It is possible that a skilled mathematician might find a still further permutation of these numbers and posts. The evidence placed before me by the plaintiff in regard to these numbers cannot be accepted. One point is beyond dispute. There was a number on a doorpost. The writholder, the Fiscal's clerk, and peon, were not going to gain anything by inserting a false number. The notices were affixed on the land itself. I think it is very possible that the number appearing on the notice actually was on the premises seized, though according to the Municipal numbering it refers to certain other premises. The land was sold to the plaintiff for Rs. 400 subject to a mortgage of Rs. 8,000. It cannot be said that it fetched less than should be expected in the case of a forced sale.

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If it be assumed that the number 53/1110 was not affixed to his land, I am not prepared to hold that the sale is therefore void. The action is brought on the footing that the transfer in favour of the defendant (D 1), conveyed no title to the premises. It may be that on certain proceedings the sale could have been cancelled. No action was taken to have this done. I am not prepared to hold that the notice was wrong when it described the land as bearing "assessment No. 1110/53." On the evidence it is not possible to say that such a number was not on the land. The question whether the Municipality intended that number for another set of premises will make no difference. The balance of evidence seems to me to favour the probability that that number actually was affixed to the land.

Plaintiff says that the defendant, holding this transfer which gave him no title, had his goods ejected from the plaintiff's store on the land. In doing this plaintiff says the defendant was a trespasser. I hold that the defendant was not a trespasser, and that in removing outside the land the property of the plaintiff which defendant had not purchased the defendant acted correctly and legally. If it is held that the defendant's act was illegal, then arises the question of the quantum of damages.

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A. St. V. Jayawardene, for plaintiff, appellant.

E. W. Jayawardene (with him *W. H. Perera*), for defendant, respondent.

July 7, 1920. BERTRAM C.J.—

This is an action for damages based upon an alleged illegal execution. The judgment-debtor comes before this Court and says: "The judgment-creditor, who bought the land which purported to be sold in execution, has not succeeded in buying my land. He has no title to it, he has turned me out, and is responsible in damages." It appears that certain premises were advertised for sale, in pursuance of the Civil Procedure Code, as being the property of the plaintiff in the present action. They were described with reference to their boundaries, their extent, and their ward numbers. None of these descriptions was quite accurate. The evidence as to the ward number is not very specific. But there seems to be little doubt that a mistake was made, and that the premises which belonged to the present plaintiff bear ward Nos. 50/1112 and 51/1113, whereas the ward number stated both in the notice under section 237 and the advertisement under section 256 appears to have been 53/1110. This same number still appears in the plan attached to the Fiscal's transfer and the description. So much for the ward number. The extent, too, is inadequately described. As to the boundaries, they are not properly orientated. What is described as "east" ought more accurately to have been described as "north." What is described as "west" ought more accurately to have been described as "north-west." Nevertheless, any person looking at

the boundaries, and either acquainted with this spot or examining the spot, would realize that these boundaries could only refer to the particular land from which the plaintiff was ejected.

Damages are claimed in this case on the ground that the property which belonged to the plaintiff was numbered 50 and 51, whereas the property sold was described as bearing the number 53. What we really have to decide is what was the property which was proclaimed for sale under section 237 and advertised under section 256. There seems no question that that is the basis of any subsequent transaction. That is settled by the Indian case *Balvant v. Hirachand.*[1] Batty J. lays down the law as follows :—

> A sale is a transaction, and consists, as all transactions do, of an offer and acceptance. The offer is made by the Court exercising, in the place of the judgment-debtor and on behalf of his creditor, the disposing power which the judgment-debtor had for the property. This offer is advertised or published by means of the proclamation of sale, which section 287 requires to specify the property intended to be sold. An advertisement of this nature is an offer to such persons as shall fulfil the required conditions as to the highest bid by depositing 25 per cent. of purchase money and punctual payment at the prescribed date and other prescribed conditions; and so far as concerns the identification of the property to be offered for sale, it is the only declarations which is authorized or required.

Accepting that position, then we have to ask ourselves what was the property referred to in the notice and in the advertisement.

I think that this is a case to which the maxim *falsa demonstratio non nocet* applies. Mr. E. W. Jayawardene has referred us to one of the latest cases in which that maxim is discussed : *Eastwood v. Ashton.*[2] I take the following statement of the principle, as explained by Romer J. in another case, from the judgment of Lord Sumner in that case :—

> In construing a deed purporting to assure a property, if there be a description of the property sufficient to render certain what is intended, the addition of a wrong name or an erroneous statement as to quantity, occupancy, locality, or an erroneous enumeration of particulars will have no effect.

In this case it seems that the *corpus* was sufficiently identified by the enumeration of the boundaries. It is quite true that these boundaries require re-orientation in order to be absolutely correct. But persons who are identifying property by boundaries only have a very vague idea of the points of the compass, unless there is something very definite in the local circumstances to inform them of the correct situation of these various points. No one, I think, could make a mistake as to what property was intended to be referred to in the notice, and therefore, I think, the inaccuracies in

[1] (*1903*) *27 Bom. 334.*

[2] (*1915*) *Appeal Cases 900.*

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regard to the orientation, in regard to the extent, and in regard to the ward number are not fatal to the validity of the notice. I do not think it is necessary to discuss the various questions of incidental fact that are referred to in the evidence and in the judgment. In my opinion the appeal must be dismissed, with costs.

SHAW J.—I agree.

Appeal dismissed.