

1895.
October 18.

BABASURIYA v. CHARLES *et al.*

D. C., Mátara, 792.

Conveyance of land—Validity of it, for want of description by metes and bounds—Evidence.

A conveyance is not invalid for want of description of land by metes and bounds. Its identification and limits are provable by parol evidence.

THE facts of this case appear in the judgment of the Chief Justice.

Sampayo, for appellant.

Bawa, for respondent.

18th October, 1895. BONSER, C.J.—

In this case the plaintiff seeks to recover possession from the first defendant of a piece of land. The first defendant stated that he was merely a lessee—he cited his lessor, who was accordingly brought in and made second defendant in order to assert his title to the land.

The first defendant set up a claim to retain the land until the plaintiff had paid him the value of certain improvements which he alleged he had made on the land. He would be entitled to this if the improvements were really made. Evidence was gone into, which, as usual, was conflicting. The District Judge has found that the first defendant made no improvements, and I do not see how we can disturb that finding.

The second defendant disputes the title of the plaintiff. He says the land originally belonged to him, and was seized and sold by the Fiscal some eight years ago on a writ of execution against him, and purchased by the plaintiff. He contends that inasmuch as the Fiscal's transfer did not give a description of the land by metes and bounds the conveyance was invalid, and passed nothing. Mr. Sampayo attempted to support that contention, and he boldly stated that it was law in this Colony that, unless a conveyance contained a full description of the property by metes and bounds, it was void. He admitted that in the case of wills it was different—a demise was good without such description. He could not point out to us any special enactment of the Legislature of this Colony which laid down any such law as this, nor could he refer us to any decision of this Court. He did refer to the Registration Ordinance, but that Ordinance has nothing to do with the validity of conveyances.

It enacts that land specified in instruments which are registered are to be described in a particular manner. But non-registration does not make a deed void. This deed must be construed by the English Law of Evidence. The proposition asserted by Mr. Sampayo that oral evidence could never be used to identify property included in a conveyance is absolutely without foundation. It is difficult to conceive a case in which oral evidence will not be necessary even when the property has been fully described by metes and bounds. Such evidence cannot be admitted to contradict or vary a writing, but it is always admissible to explain a writing.

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Mr. Taylor, in his book on Evidence, section 1,082, states :
"It may be laid down as a broad and distinct rule of law that
"extrinsic evidence of every material fact which will enable the
"Court to ascertain the nature and qualities of the subject-matter
"of the instrument, or, in other words, to identify the persons and
"things to which the instrument refers, must of necessity be
"received." Again, he says : "If an estate be conveyed by the
"designation of Blackacre, parol evidence must be admitted to
"show what property is known by that name."

In the present case the conveyance was of a divided portion belonging to the judgment-debtor of a certain garden which is described. More than that, by reference to the plan which is attached to the deed it appears clearly what land was intended to be conveyed. The divided portion is denoted by the letter C, and is stated to be the property of the judgment-debtor.

The appeal will be dismissed.

WITHERS, J.—I quite agree.

The defendant's attack on plaintiff's title on the ground of misdescription is a very disingenuous one, in my opinion.

