

27. Before a Court of Construction extrinsic evidence is admissible for the purpose of determining the literal meaning of the words used and for no other purpose. In *Shore v. Wilson*, (1842) 9 Cl. and F. at page 555, Parke, B., says :—

I apprehend that there are two descriptions of evidence (the only two which bear upon the subject of the present inquiry) and which are clearly admissible in every case for the purpose of enabling a Court to construe any written instrument, and to apply it practically. In the first place, there is no doubt that not only where the language of the instrument is such as the Court does not understand, it is competent to receive evidence of the proper meaning of that language, as when it is written in a foreign tongue; but it is also competent, where technical words or peculiar terms, or indeed any expressions are used, which at the time the instrument was written, had acquired an appropriate meaning either generally or by local usage or amongst particular classes. This description of evidence is admissible, in order to enable the Court to understand the meaning of the words contained in the instrument itself by themselves, and without reference to the extrinsic facts on which this instrument is intended to operate. For the purpose of applying the instrument to the facts, and determining what passes by it, and who take an interest under it, a second description of evidence is admissible—viz., every material fact that will enable the Court to identify the person or thing mentioned in the instrument, and to place the Court whose province it is to declare the meaning of the words in the instrument, as near as may be in the situation of the parties to it.

From the context of the instrument and from these two descriptions of evidence, with such circumstances as by law the Court, without evidence, may of itself notice, it is its duty to construe and apply the words of that instrument; and no extrinsic evidence of the intention of the party to the deed, from his declarations, whether at the time of his executing the instrument, or before or after that time, is admissible; the duty of the Court being to declare the meaning of what is written in the instrument, not of what was intended to be written.

In the same case, at page 565, Tindal, C.J., says :—

The general rule I take to be, that where the words of any written instrument are free from ambiguity in themselves, and where external circumstances do not create any doubt or difficulty as to the proper application of those words to claimants under the instrument or the subject-matter to which the instrument relates, such instrument is always to be construed according to the strict, plain common meaning of the words themselves; and that in such case evidence *dehors* the instrument, for the purpose of explaining it according to the surmised or alleged intention of the parties to the instrument, is utterly inadmissible. If it were otherwise, no lawyer would be safe in advising upon the construction of a written instrument, nor any party in taking under it, for the ablest advice may be controlled and the clearest title undermined, if at some future period parole evidence of the particular meaning which the party affixed to his words, or of his secret intention in making the instrument, or of the objects he meant to take benefit under it, might be set up to contradict or vary the plain language of the instrument itself.

The true interpretation, however, of every instrument being manifestly that which will make the instrument speak the intention of the party at the time it was made, it has always been considered as an exception, or perhaps, to speak more precisely, not so much an exception from, as a corollary to the general rule above stated that where any doubt arises upon the true sense and meaning of the words themselves, or any difficulty as to their application under the surrounding circumstances, the sense and meaning of the language may be investigated and ascertained by evidence *dehors* the instrument itself; for both reason and common sense agree that by no other means can the language of the instrument be made to speak the real mind of the party. Such investigation does of necessity take place in the interpretation of instruments written in a foreign language; in the case of ancient instruments, where, by the lapse of time and the change of manners, the words have acquired in the present age a different meaning from that which they bore when originally employed; in cases where terms of art or science occur; in mercantile contracts, which in many instances use a peculiar language employed by those only who are conversant in trade and commerce; and in other instances in which the words, besides their general common meaning, have acquired, by custom or otherwise, a well-known peculiar idiomatic meaning in the particular country in which the party using them was dwelling, or in the particular society of which he formed a member, and in which he passed his life. In all these cases evidence is admitted to expound the real meaning of the language used in the instrument, in order to enable the Court or Judge to construe the instrument, and to carry such real meaning into effect.

But whilst evidence is admissible in these instances for the purpose of making the written instrument speak for itself, which without such evidence would be either a dead letter, or would use a doubtful tongue, or convey a false impression of the meaning of the party, I conceive the exception to be strictly limited to cases of the description above given, and to evidence of the nature above detailed; and that in no case whatever is it permitted to explain the language of a deed by evidence of the private views, the secret intentions, or the known principles of the party to the instrument, whether religious, political, or otherwise, any more than by express parole declarations made by the party himself, which are universally excluded, for the admitting of such evidence would let in all the uncertainty before adverted to; it would be evidence which in most could not be met or counterbalanced by any of an opposite bearing or tendency, and would in effect cause the secret undeclared intention of the party to control and predominate over the open intention expressed in the deed.