calling him his nephew Joseph Grant In all cases of wills, the surrounding circumstances as they existed at the time of the will, including the state of the testator's family and the nature of his property, may generally be proved in order to place the court as nearly as possible in the same condition as the testator, so that they may understand the language of his will, and apply it in the same sense in which he used it. We are of opinion that evidence may be given of a testator having been in the habit of using expressions in a particular sense; though whether such evidence will affect the will, or its application, will depend upon the particular circumstances and the language of the devise in each case; and it would not generally be admissible to alter the natural meaning and legal effect and construction of the words, where they have a definite and clear meaning. In *Richardson* v. *Watson*, 4 B. & Ad. 799, where a question arose as to what was intended under a devise of "the close in the occupation of Watson," Lord Wensleydale said, "Generally speaking, evidence might be given to show that the testator used the word, 'close' in the sense which it bore in the county where the property was situate, as denoting a farm;" though in the particular case it was held that such evidence was not admissible, because the other parts of the will showed that the testator had used the expression in its ordinary sense, as denoting an enclosure only. This subject was much considered by the Court of Exchequer in the case of *Doe d. Hiscocks* v. *Hiscocks*, 5 M. & W. 363, and the following passage occurs in the judgment at page 368: "Again, the testator may have habitually called certain persons or things by peculiar names, by which they were not commonly known. If these names should occur in his will, they could only be explained and construed by the aid of evidence to show the sense in which he used them, in like manner as if his will were written in cypher, or in a foreign language. The habits of the testator in these particulars must be receivable as evidence to explain the meaning of his will." In *Crosthwaite* v. *Dean*, 16 W. R. 355, where a devise was to Charlotte Lee, evidence was admitted by the present Lord Chancellor to show that a person who originally bore that name, but had married a person of the name of Antrim, from whom she was afterwards separated, was habitually called by the testator by her maiden name of Lee. In *Goodinge* v. *Goodinge*, 1 Ves. Sen. 231, where the devise was to certain "poor relations," evidence was admitted of the testator having poor relations in Salop, and that he knew thereof; and Lord Hardwick thus referred to another case—"As where the testator described a legatee by a wrong name, which she never bore, parol evidence was allowed by the Master of the Rolls to show that the testator knew such a person, and used to call her by a nickname." In *Beachcroft* v. *Beachcroft*, 1 Mad. 438, the case thus referred to is said to be the case of *Beaumont* v. *Fell*, 2 P. Wms. 140, where the bequest was to Catharine Earnley, and a person named Gertrude Yardley claimed to be the person described; evidence was admitted to show that the testator usually called Gertrude "Gatty," and that, whilst giving instructions for his will, he spoke in so feeble a voice that the attorney's clerk might easily have mistaken the names. In *Beachcroft* v. *Beachcroft* (*ubi supra*), the bequest was, "to my children the sum of pounds sterling 5000 each." It was contended that this could apply only to legitimate children, and that, as the testator died unmarried, the legacy did not take effect. But evidence was admitted that the testator had illegitimate children, born in India previous to the making of the will; that he was much attached to them, and had sent them to England to be educated. Upon this, the Vice-Chancellor decreed that the legacies applied to them. He says, "If there is a latent ambiguity, evidence is admissible to show who the testator was in the habit of considering in the character described in the will." When it appeared on the face of the will itself that, in some parts of it, the testatrix had used the term "nieces" to describe her great nieces, a similar construction was placed upon the words "nephews and nieces" in another part of the same will, so as to include great nephews and nieces, though in that case it did not depend upon extrinsic evidence: *James* v. *Smith*, 14 Sim. 214. If then this head of evidence be admissible, as we think it is, it distinctly appears from the case, that the testator was in the habit of calling the defendant his nephew; and, as his name was Joseph Grant, he would in this view also answer the description in the testator's will of "my nephew Joseph Grant." The defendant has thus, as it seems to us, satisfactorily shown that the words of the will may apply either to him or to the plaintiff; and then, as there is nothing in the will itself, or upon the evidence to which we have hitherto adverted, to show which of them was the person intended to be described, and to whom the testator intended the words to apply, the further parol evidence as to the testator's knowledge and other circumstances became admissible, and upon such of that evidence as was properly admissible it is not disputed that the defendant was in fact the person intended to be described by the testator. Under these circumstances, the parol evidence being admissible for the purposes and in the manner which we have pointed out, we think it exposed a latent ambiguity, and equally removed it, and enables us to understand the language of the will, and to apply it as the testator is clearly shown to have intended it, that is, in favor of the defendant. This view is in accordance with the decision of Lord Penzance, and we give our judgment for the defendant.

Judgment for the defendant.

UNITED STATES REPORTS.

REGISTER'S COURT.

In re Estate of George A. Alter, Deceased.

A husband and wife made wills in each other's favor, but by mistake each signed the will of the other. After the death of the husband an act of Assembly was passed, giving the Register's Court the power of a Court of Chancery, and authorizing it, at the petition of the wife, to reform the paper and admit it to probate on proof of the alleged mistake. On the filing of the petition authorized, *Held:*

1. That the jurisdiction of Chancery would only attach after probate.
2. That it has jurisdiction only to construe or reform an instrument already made; it cannot execute one.