brother or sister of the testator, except the said brother William Grant, had a child named Joseph Grant. The testator at the time of making the will and codicil, and up to his death, had neither child, grandchild, or other lineal descendant.* In 1838, he married Jane Scott, widow, formerly Jane Grant, spinster, who was his first cousin, and the defendant, Joseph Grant, is the son of Joseph Grant, a brother of the testator's said wife. The last-mentioned Joseph Grant, the father of the defendant, died about twenty-two years ago, leaving a widow, and his son, the defendant, then a boy of three years old. The widow died about fifteen years ago, whereupon the testator took the defendant into his own house, and brought him up, and he lived as an inmate of the testator's house till the death of the testator, and assisted him in the management of the business of a marine store dealer. The testator's brother, William, the father of the plaintiff, has a large family, of which the plaintiff is one of the younger children; and the testator had not been on good terms with or visited his said brother, who lived about twelve miles from him, for many years before his death. He did not know how many children his said brother had, and at the time he made his will did not know of the plaintiff's name or existence.

The testator was in the habit of calling the defendant his nephew, both to the other members of the family and to persons not related to him; and the testator on several occasions expressed his intention of leaving his house and business to the defendant, and also on several occasions expressed his intention that neither his brother William, nor the family of his brother William, should have any of his property.

The will was prepared by Mr. Fuller, a solicitor at Rugby, who took his instructions from testator on his death-bed, and who did not know any of the testator's relations except the Joseph Grant who lived with him; and in giving him instructions to prepare the will the testator said that it was his intention that neither his brother William, nor any of his family, should have anything, as he had lent both him and his elder sons money which had not been repaid, and he considered they had had their share of his property in that way. He also told Mr. Fuller that he wished to give his nephew Joe the house in which the testator lived, his stock-in-trade, and £500, to enable him to carry on the business, and wished him to be his executor. Mr. Fuller asked the testator if by his nephew Joe he meant the person who lived with him, and helped him in his business; and he said, "Yes. I mean him down stairs;" and that he wished to give him the house and business as he had lived so long with him and helped him so much in his business. Mr. Fuller asked the testator if the person he called Joe was his nephew, and the testator replied that he was.*

The Court was at liberty to draw inferences of fact. The facts above stated between the asterisks were stated after protest by the plaintiff that they should not have been inserted in the case, and the question of admissibility of the whole or any part of such facts was reserved for the decision of the Court.

The question for the opinion of the Court was whether Joseph Grant, the plaintiff, was entitled to the said dwelling-house and premises under the above devise.

Chapman (*Quain, Q.C.*, with him), for the plaintiff, admitted that precisely similar words in the same will—viz, "I appoint my said nephew Joseph Grant executor"—had already been construed by Lord Penzance in the Probate Court adversely to the present plaintiff (see 18 W. R. 230, L. R. 2 P. & D. 8); but contended that "nephew" in its primary sense meant brother's or sister's son, and not the son of a brother or sister of a wife or husband, and referred to the dictionaries of Bayley, Johnston, and Richardson. If in all other instances in a will, the testator uses the word in its primary sense, resort cannot be had to extrinsic evidence to show that in a particular instance he used it in a wider sense. The plaintiff here fully answers the description in the will, and the defendant does not do so in an equal degree, and there is, therefore, no ambiguity, and evidence was not admissible to show the testator meant the defendant: Wigram on Wills, proposition 2; 2 Blacks. Com. 207; *Miller* v. *Travers*, 8 Bing. 244; *Richardson* v. *Watson*, 4 B. & Ad. 799; reported also, and rather differently, in 1 Nev. & M. 569; and it seems that Wigram, V. C., preferred the latter report. Lord Penzance in his judgment relied on the case as reported in 4 B. & Ad.

Field, Q. C. (*Wills*, with him), for the defendant, contended that the word "nephew" had no strict primary meaning, citing the use of the word in the authorized translation of the Bible, and in Shakspeare, and that the case, therefore, fell, not within the 1st or 2nd, but within the 3rd proposition of Wigram, and extrinsic evidence was admissible to clear up the latent ambiguity and show who the testator really meant: Hawkins on Wills, proposition 4. [BRETT, J., referred to Wigram, pp. 160, 161.]

Chapman in reply.—The son of a brother pays less legacy duty than the son of a wife's brother. [BRETT, J.—But the word "nephew" is not used in the Act.]

Cur. adv. vult

The judgment of the Court (BOVILL, C. J., MONTAGUE SMITH, J., and BRETT, J.) was now delivered by

BOVILL, C. J.—The question raised in this case has already been decided by Lord Penzance in the Probate Court in favor of the defendant, but there is an appeal against his judgment, and the plaintiff has required the decision of this Court in the present action of ejectment, which affects the title to the real estate. The determination of the question really depends upon the admissibility of, and the effect to be given to, the parol evidence, and this evidence is of two kinds, one class of evidence being offered for the purpose of showing that there is in the will a latent ambiguity, and the other class for the purpose of explaining and removing it. The devise of the testator was to "my nephew Joseph Grant," and the point at issue is whether these words apply to the plaintiff or to the defendant. The language of the will itself is clear, and free from ambiguity on the face of it; but, as in most cases of wills parol evidence is necessary, and, therefore, admissible to identify the party intended to be described, just in the same way as such