the seas only excepted," where it was articulated in the answer, that there was an established usage, in the trade in question, that the ship owners should see the merchandise properly secured and stowed, and that this being done, they should not be liable for any damages not occasioned by their own neglect; it was held that this article was incompetent, in point of law, to be admitted to proof.[1]

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[1] The Schooner Reeside, 2 Sumn. 567. In this case the doctrine on this subject was thus briefly but energetically expounded and limited by Mr. Justice Story. "I own myself," said he, "no friend to the almost indiscriminate habit, of late years, of setting up particular usages or customs in almost all kinds of business and trade, to control, vary, or annul the general liabilities of parties under the Common Law, as well as under the Commercial Law. It has long appeared to me, that there is no small danger in admitting such loose and inconclusive usages and customs, often unknown to particular parties, and always liable to great misunderstandings and misinterpretations and abuses, to outweigh the well known and well settled principles of law. And I rejoice to find, that, of late years, the Courts of Law, both in England and in America, have been disposed to narrow the limits of the operation of such usages and customs, and to discountenance any further extension of them. The true and appropriate office of a usage or custom is, to interpret the otherwise indeterminate intentions of parties, and to ascertain the nature and extent of their contracts, arising, not from express stipulations, but from mere implications and presumptions, and acts of a doubtful or equivocal character. It may also be admitted to ascertain the true meaning of a particular word, or of particular words in a given instrument, when the word or words have various senses, some common, some qualified, and some technical, according to the subject-matter to which they are applied. But I apprehend, that it never can be proper to resort to any usage or custom, to control or vary the positive stipulations in a written contract, and, à fortiori, not in order to contradict them. An express contract of the parties is always admissible to supersede, or vary, or control a usage or custom; for the latter may always be waived at the will of the parties. But a written and express contract cannot be controlled, or varied, or contradicted by a usage or custom; for that would not only be to admit parol evidence to control, vary, or contradict written contracts; but it would be to allow mere presumptions and implications, properly arising in the absence of any positive expressions of intention, to control, vary, or contradict the most formal and deliberate written declarations of the parties." See also Taylor *v.* Briggs, 2 C. & P. 525; Smith *v.* Wilson, 3 B. & Ad. 728; 2 Stark. Evid. 565; Park on Ins. ch. 2, p. 30–60; Post, Vol 2, § 251.

§ 293. The reasons which warrant the admission of evidence of usage in any case, apply equally, whether it be required to aid the interpretation of a *statute*, a *public charter* or a *private deed;* and whether the usage be still existing or not, if it were contemporaneous with the instrument.[1] And where the language of a deed is doubtful in the *description of the land conveyed*, parol evidence of the practical interpretation, by the acts of the parties, is admissible to remove the doubt.[2] So, evidence of former transactions between the same parties, has been held admissible to explain the meaning of terms in a written contract, respecting subsequent transactions of the same character.[3]

§ 294. Upon the same principle, parol evidence of usage or custom is admissible "*to annex incidents*," as it is termed, that is, to show what things are customarily treated as incidental and accessorial to the principal thing, which is the subject of the contract, or to which the instrument relates. Thus, it may be shown by parol, that a heriot is due by custom, on the death of a tenant for life, though it is not expressed in the lease.[4] So, a lessee by a deed may show that, by the custom of the country, he is entitled to an away-going crop, though no such right is reserved in the deed.[5] This evidence is

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[1] Withnell *v.* Gartham, 6 T. R. 388; Stammers *v.* Dixon, 7 East, 200; Wadley *v.* Bayliss, 5 Taunt. 752; 2 Inst. 282; Stradling *v.* Morgan, Plowd. 205, ad. calc.; Haydon's case, 3 Co. 7; Wells *v.* Porter, 2 Bing. N. C. 729, per Tindal, C. J.; Duke of Devonshire *v.* Lodge, 7 B. & C. 36, 39, 40; Chad *v.* Tilsed, 2 B. & B. 403; Atto. Gen. *v.* Boston, 9 Jur. 838; 2 Eq. Rep. 107, S. C.; Farrar *v.* Stackpole, 6 Greenl. 154.

[2] Stone *v.* Clark, 1 Metcalf's R. 378; Cook *v.* Booth, Cowp. 419. This last case has been repeatedly disapproved of, and may be considered as overruled; not, however, in the principle it asserts, but in the application of the principle to that case. See Phil. & Am. on Evid. 747, note (1); 1 Sugd. Vend. 255, (10th ed.); Cambridge *v.* Lexington, 17 Pick. 222.

[3] Bourne *v.* Gatliff, 11 Cl. & Fin. 45, 69, 70.

[4] White *v.* Sayer, Palm. 211.

[5] Wigglesworth *v.* Dallison, 1 Doug. 201; 1 Smith's Leading Cas. 300; 1 Bligh, 287; Senior *v.* Armytage, Holt's N. P. Cas. 197; Hutton *v.* Warren, 1 M. & W. 466.

admitted on the principle, that the parties did not intend to express in writing the whole of the contract, by which they were to be bound, but only to make their contract with reference to the known and established usages and customs relating to the subject-matter. But in all cases of this sort, the rule for admitting the evidence of usage or custom must be taken with this qualification, that the evidence be not repugnant to or inconsistent with the contract; for otherwise, it would not go to interpret and explain, but to contradict that which is written.[1] This rule does not add new terms to the contract, which, as has already been shown,[2] cannot be done; but it shows the full extent and meaning of those which are contained in the instrument.

§ 295. But in resorting to usage for the *meaning of particular words* in a contract, a distinction is to be observed between local and technical words, and other words. In regard to words which are purely technical, or local, that is, words which are not of universal use, but are familiarly known and employed, either in a particular district, or in a particular science or trade; parol evidence is always receivable, to define and explain their meaning among those who use them. And the principle and practice are the same in regard to words which have two meanings, the one common and universal, and the other technical, peculiar, or local; parol evidence being admissible of facts tending to show that the words were used in the latter sense, and to ascertain their technical or local meaning. The same principle is also applied in regard to words and phrases, used in a peculiar sense by members of a particular religious sect.[3] But beyond this the

[1] Yeates *v.* Pim, Holt's N. P. Cas. 95; Holding *v.* Pigott, 7 Bing. 465, 474; Blackett *v.* The Royal Exch. Assur. Co. 2 C. & J. 244.

[2] Ante, § 281.

[3] The doctrine on this subject has recently been very fully reviewed, in the case of Lady Hewley's charities. This lady, who was a non-conformist, in the year 1704, conveyed certain estates by deeds, in trust, for the benefit of "poor and godly preachers of Christ's Holy Gospel," and their widows, and

principle does not extend. If, therefore, a contract is made in ordinary and popular language, to which no local or technical

"for the encouraging and promoting of the preaching of Christ's Holy Gospel," &c.; with the usual provision for preserving a perpetual succession of trustees. Afterwards, in 1707, by other deeds to the same trustees, she made provision for the erection and support of a hospital or almshouse, for certain descriptions of poor persons, ordaining rules for the government of the house, and appointing the trustees as the visitors, &c.; and disposing of the surplus funds as in the deeds of 1704. The rules permitted the admission of none but such as were poor and piously disposed, and of the Protestant religion, and were able to repeat the Lord's Prayer, the Creed, and the Ten Commandments, and Mr. Edward Bowles's Catechism. It was alleged that Lady Hewley, and all the trustees, whose religious opinions could be ascertained, believed in the doctrine of the Trinity, the Atonement, and Original Sin. In the course of time, however, the estates became vested in Trustees, the majority of whom, though calling themselves Presbyterians, professed Unitarian opinions, and the funds had for some years been applied, to a considerable extent, for the support of a seminary, and for the benefit of poor preachers, of that denomination. When the charity was founded, the stat. 9 & 10 W. 3, c. 32, against blasphemy, was in force, by which those persons, who by preaching denied the doctrine of the Trinity, were liable to severe penalties. The object of the suit was, in effect, to take this trust out of the hands of the Unitarians, and to obtain a declaration, that it should be managed and applied by and for none but Orthodox Dissenters; and the controversy turned chiefly on the question, whether certain evidence was admissible, which was offered to show what sort of persons were intended, in the deed of 1704, by "godly preachers of Christ's Holy Gospel," &c. This evidence, in addition to the deed of 1707, consisted principally of the will of Lady Hewley, the sermon of Dr. Coulton, one of the trustees, which was preached at her funeral; and the will of Sir John Hewley, her husband; all containing passages, showing, that she and the trustees were Presbyterians, believing in the Trinity, the Atonement, and Original Sin; together with the depositions of persons, conversant with the history and language of the times, when the deeds were executed, defining the meaning then commonly attached to the words in question, by persons of the donor's faith; and it was argued, that the persons whom she intended to designate as beneficiaries could have been only those of her own faith. The Vice-Chancellor admitted this evidence, and decreed, that preachers of the Unitarian doctrine, and their widows, were not entitled to the benefit of this charity; and he ordered that the existing trustees should be removed and others appointed, and that the charity should in future be applied accordingly. This decree Ld. Ch. Lyndhurst, assisted by Patteson, J., and Alderson, B., afterwards affirmed. An appeal

and peculiar meaning is attached, parol evidence, it seems, is not admissible to show that, in that *particular case*, the

being taken from the judgment of Ld. Lyndhurst, to the House of Lords, the House, after taking the opinions of the Common Law Judges, upon certain questions proposed to them, dismissed the appeal. The first and principal of these questions was, whether the extrinsic evidence adduced, or what part of it was admissible for the purpose of determining who were entitled, under the terms "godly preachers of Christ's Holy Gospel," "godly persons," and the other descriptions contained in the deeds of 1704 and 1707, to the benefit of Lady Hewley's bounty. The other questions, which were five in number, were framed to ascertain, if such evidence should be deemed admissible, what descriptions of persons were, and what were not, the proper objects of the trusts. Of the seven learned Judges, who answered these questions, six were of opinion, but on various grounds, that Unitarians were excluded. *Maule*, *J.* was of opinion that none of the evidence offered was admissible; and that the religious opinions of the founder of a charity, even if certainly known, could have no legal effect in the interpretation of an instrument, in which no reference is made to his own religious opinions or belief. *Erskine*, *J.* was also of opinion that none of the evidence was admissible, for the purpose for which it was offered; but that the sense of the words in question might be ascertained from contemporaneous writings, and the history of that day; and that from these sources, already open to the House, it was easy to collect, that the words were applicable to none but Trinitarian Dissenters. *Coleridge*, *J.* and *Gurney*, *B.* were of opinion, that the evidence was admissible, to show the opinions of those with whom the founder lived in most confidence, and to what sect she in fact belonged; and that the phraseology of that party might be ascertained from other sources. *Williams*, *J.* thought that the words employed were so indefinite and ambiguous, that she must be presumed to have used them in a limited sense; and that this sense might be ascertained from her opinions; for which purpose the evidence was admissible. *Parke*, *B.* and *Tindal*, *C. J.* were of opinion, that, though it might well be shown, by competent evidence, that the words employed had a peculiar meaning at the time they were used, and what was that meaning; and that the deeds were to be read by substituting the equivalent expressions, thus ascertained, instead of those written in the deeds; yet, that evidence of her own religious opinions was not admissible, to limit or control the meaning of the words. Upon this occasion, the general doctrine of the law was stated by Mr. Baron *Parke*, in the following terms. — "I apprehend that there are two descriptions of evidence, 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

words were used in any other than their ordinary and popular sense.[1]

as the Court does not understand, is it 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 any 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 the 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 of 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 have been written." — Ld. Ch. J. *Tindal* expounded the same doctrine as follows. — "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

[1] 2 Stark. Ev. 566; Ante, § 277, 280. But see Gray *v.* Harper, 1 Story's R. 574, where two booksellers having contracted for the sale and purchase of a certain work at "cost," parol evidence of conversations between them, at the time of making the contract, was held admissible, to show what sense they attached to that term. See also Selden *v.* Williams, 9 Watts, 9.

§ 295 *a*. It is thus apparent, as was remarked at the outset, that in all the cases in which parol evidence has been ad-

might be controlled, and the clearest title undermined, if, at some future period, parol 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 langage; in the case of ancient instruments, where, by the lapse of time and 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 parol 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

mitted in exposition of that which is written, the principle of admission is, that the Court may be placed, in regard to the surrounding circumstances, as nearly as possible in the situation of the party whose written language is to be interpreted; the question being, what did the person, thus circumstanced, mean by the language he has employed?

§ 296. There is another class of cases, in which parol evidence is allowed by Courts of Equity to affect the operation of a writing, though the writing on its face is free from ambiguity, which is yet considered as no infringement of the general rule; namely, where the evidence is offered to *rebut an equity*. The meaning of this is, that where a certain presumption would, in general, be deduced from the nature of an act, such presumption may be repelled by extrinsic evidence, showing the intention to be otherwise.[1] The simplest instance

instances, could not be met or countervailed 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." See Attorney General *v.* Shore, 11 Sim. R. 592, 616–627, 631, 632. Though, in this celebrated case, the general learning on this subject has been thus ably opened and illustrated; yet the precise question, whether the religious opinions of the founder of a charity can be received as legal exponents of his intention, in an instrument otherwise intelligible in its terms, and in which no reference is made to his own opinions or belief, can hardly be considered as definitively settled; especially as a majority of the learned Judges, in coming to the conclusion in which they concurred, proceeded on grounds which rendered the consideration of that point wholly unnecessary. The previous judgment of Lord Ch. Lyndhurst, in the same case, is reported in 7 Sim. 309, n. 312–317. See Attorney General *v.* Pearson, et al. 3 Meriv. 353, 409–411, 415; and afterwards in 7 Sim. 290, 307, 308, where such evidence was held admissible. But how far this decision is to be considered as shaken by what fell from the learned Judges, in the subsequent case of The Attorney General *v.* Shore, above stated, remains to be seen. The acts of the founder of such a charity may be shown in aid of the construction of the deed; but his opinions are inadmissible. Attor. Gen. *v.* Drummond, 1 Drury & Warren, 353, per Sugden, C. But see Attor. Gen. *v.* Glasgow College, 10 Jurist, 676.

[1] 2 Poth. on Obl. by Evans, App. No. xvi. p. 184; Coote *v.* Boyd, 2 Bro. C. C. 522; Bull. N. P. 297, 298; Mann *v.* Mann, 1 Johns. Ch. 231.

of this occurs, when two legacies, of which the sums and the expressed motives exactly coincide, are presumed not to have been intended as cumulative. In such case, to rebut the presumption, which makes one of these legacies inoperative, parol evidence will be received; its effect being not to show that the testator did not mean what he said, but, on the contrary, to prove that he did mean what he has expressed.[1] In like manner parol evidence is received to repel the presumption against an executor's title to the residue, from the fact that a legacy has been given to him. So, also, to repel the presumption, that a portion is satisfied by a legacy;[2] and, in some cases, that the portionment of a legatee was intended as an ademption of the legacy.[3]

§ 296 *a*. Courts of Equity also admit parol evidence to contradict or vary a writing, where it is *founded in a mistake* of material facts, and it would be unconscientious or unjust to enforce it against either party, according to its expressed terms. Thus, if the plaintiff seeks a specific performance of the agreement, the defendant may show that such a decree would be against equity and justice, by parol evidence of the circumstances, even though they contradict the writing. So, if the agreement speaks, by mistake, a different language from what the parties intended, this may be shown in a bill to *reform the writing* and correct the mistake. In short, wherever the active agency of a Court of Equity is invoked, specifically to enforce an agreement, it admits parol evidence to show that the claim is unjust, although such evidence contradicts that

1 Gresley on Evid. 210; Hurst *v.* Beach, 5 Madd. R. 360, per Sir J. Leach, V. C.

2 5 Madd. R. 360; 2 Poth. on Obl. by Evans, App. No. xvi. p. 184; Ellison *v.* Cookson, 1 Ves. Jr. 100; Clinton *v.* Hooper, Ib. 173.

3 Kirk *v.* Eddowes, 8 Jur. 530. As the farther pursuit of this point, as well as the consideration of the presumed revocation of a will, by a subsequent marriage and the birth of issue, does not consist with the plan of this treatise, the reader is referred to 1 Roper on Legacies, by White, p. 317–353; Gresley on Evid. p. 209–218. See also *post*, Vol. 2, § 684, 685.

which is written. Whether Courts of Equity will sustain a claim to reform a writing, or to establish a mistake in it by parol evidence, and for specific performance of it when corrected in one and the same bill, is still an open question. The English authorities are against it; but in America their soundness is strongly questioned.[1] So also, if a grantee *fraudulently* attempts to convert into an absolute sale that which was originally meant to be a security for a loan, the original design of the conveyance, though contrary to the terms of the writing, may be shown by parol.[2]

§ 297. Having thus explained the nature of the rule under consideration, and shown that it only excludes evidence of the language of the party, and not of the circumstances in which he was placed, or of collateral facts; it may be proper to consider the case of *ambiguities*, both *latent* and *patent*. The leading rule on this subject is thus given by Lord Bacon; *Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum, verificatione facti tollitur.*[3] Upon which he remarks, that "there be two sorts of ambiguities of words; the one is *ambiguitas patens*, and the other *latens*. *Patens* is that which appears to be ambiguous upon the deed or instrument; *latens* is that which seemeth certain and without ambiguity, for any thing that appeareth upon the deed or instrument; but there is some collateral matter out of the deed that breedeth the ambiguity. *Ambiguitas patens* is never holpen by averment; and the reason is, because the law will not couple and mingle matter of specialty, which is of the higher account, with matter of averment, which is of inferior account in law; for that were to make all deeds hollow and subject to averments, and so, in effect, that to pass without deed, which the law appointeth shall not pass but by deed. Therefore, if a man give land to J. D. and J. S. *et hæredibus*, and do not limit to whether of their heirs, it

1 1 Story, Eq. Jurisp. § 152–161; Gresley on Evid. p. 205–209.

2 Morris *v.* Nixon, 17 Pet. 109.

3 Bacon's Maxims, Reg. 23, [25.]

shall not be supplied by averment to whether of them the intention was (that) the inheritance should be limited." "But if it be *ambiguitas latens*, then otherwise it is; as if I grant my manor of S. to J. F. and his heirs, here appeareth no ambiguity at all. But if the truth be, that I have the manors both of South S. and North S., this ambiguity is matter in fact; and therefore it shall be holpen by averment, whether of them it was that the party intended should pass." [1]

§ 298. But here it is to be observed, that words cannot be said to be ambiguous, because they are unintelligible to a man who cannot read; nor is a written instrument ambiguous, merely because an ignorant or uninformed person may be unable to interpret it. *It is ambiguous only, when found to be of uncertain meaning, by persons of competent skill and information.* Neither is a Judge at liberty to declare an instrument ambiguous, because he is ignorant of a particular fact, art, or science, which was familiar to the person who used the words, and a knowledge of which is therefore necessary to a right understanding of the words he has used. If this were not so, then the question, whether a will or other instrument were ambiguous, might depend not upon the propriety of the language the party has used, but upon the degree of knowledge, general or even local, which a particular Judge might happen to possess; nay, the technical accuracy and precision of a scientific man might occasion his intestacy, or defeat his contract. Hence it follows, that no Judge is at liberty to pronounce an instrument ambiguous, until he has brought to his aid, in its interpretation, all the lights afforded by the collateral facts and circumstances which, as we have shown, may be proved by parol.[2]

[1] See Bacon's Law Tracts, p. 99, 100. Where a bill was drawn, expressing £200 in the body in words, but £245 in figures in the margin, it was held, that the words in the body must be taken to be the true amount to be paid; and that the ambiguity created by the figures in the margin was patent, and could not be explained by parol. Saunderson *v.* Piper, 5 Bing. N. C. 425.

[2] See Wigram on the Interpretation of Wills, p. 174, pl. 200, 201.

§ 299. A *distinction* is further to be observed, between the *ambiguity* of language and its *inaccuracy*. "Language," Vice Chancellor Wigram remarks, "may be inaccurate, without being ambiguous, and it may be ambiguous, although perfectly accurate. If, for instance, a testator, having one leasehold house in a given place, and no other house, were to devise his freehold house there to A. B., the description, though inaccurate, would occasion no ambiguity. If, however, a testator were to devise an estate to John Baker, of Dale, the son of Thomas, and there were two persons to whom the entire description accurately applied, this description, though accurate, would be ambiguous. It is obvious, therefore, that the whole of that class of cases in which an accurate description is found to be sufficient merely by the rejection of words of surplusage, are cases in which no ambiguity really exists. The meaning is certain, notwithstanding the inaccuracy of the testator's language. A Judge, in such cases, may hesitate long before he comes to a conclusion; but if he is able to come to a conclusion at last, with no other assistance than the light derived from a knowledge of those circumstances, to which the words of the will expressly or tacitly refer, he does in effect declare that the words have legal certainty, — a declaration which, of course, excludes the existence of any ambiguity. The language may be inaccurate; but if the Court can determine the meaning of this inaccurate language, without any other guide than a knowledge of the simple facts, upon which — from the very nature of language in general — its meaning depends, the language, though inaccurate, cannot be ambiguous. The circumstance that the inaccuracy is apparent on the face of the instrument, cannot, in principle, alter the case." [1] Thus, in the will of Nollekens, the sculptor, it was provided, that, upon his decease, "all the marble in the yard, the tools in the shop, bankers, *mod*, tools for carving," &c., should be the property of Alex. Goblet. The controversy was upon the word "*mod*;"

[1] Wigram on the Interpretation of Wills, p. 175, 176, pl. 203, 204.

which was a case of *patent inaccuracy;* but the Court, with no guide to the testator's intention but his words, and the knowledge common to every working sculptor, decided that the word in question sufficiently described the testator's *models;* thus negativing the existence of any ambiguity whatever.[1]

§ 300. The patent ambiguity, therefore, of which Lord Bacon speaks, must be understood to be that which remains uncertain to the Court, after all the evidence of surrounding circumstances and collateral facts, which is admissible under the rules already stated, is exhausted. His illustrations of this part of the rule are not cases of misdescription, either of the person or of the thing, to which the instrument relates; but are cases, in which the persons and things being sufficiently described, the *intention* of the party in relation to them is ambiguously expressed.[2] Where this is the case, no parol evidence of expressed intention can be admitted. In other words, and more generally speaking, if the Court, placing itself in the situation in which the testator or contracting party stood at the time of executing the instrument, and with full understanding of the force and import of the words, cannot ascertain his meaning and intention from the language of the instrument thus illustrated, it is a case of incurable and hopeless uncertainty, and the instrument therefore is so far inoperative and void.[3]

§ 301. There is another class of cases, so nearly allied to

[1] Goblet *v.* Beachy, 3 Sim. 24; Wigram on the Interpretation of Wills, p. 179, 185. Parol evidence is admissible to explain short and incomplete terms in a written agreement, which *per se* are unintelligible, if the evidence does not contradict what is in writing. Sweet *v.* Lee, 3 M. & G. 452; Farm. & Mech. Bank *v.* Day, 13 Verm. R. 36.

[2] Wigram on the Interpretation of Wills, p. 179; Fish *v.* Hubbard, 21 Wend. 651.

[3] Per Parsons, C. J., in Worthington *v.* Hylyer, 4 Mass. 205; United States *v.* Cantril, 4 Cranch, 167; 1 Jarman on Wills, 315; 1 Powell on Devises, (by Jarman,) p. 348; 4 Cruise's Dig. 298, tit. 32, ch. 19, § 29.

these, as to require mention in this place, namely, those in which, upon applying the instrument to its subject-matter, it appears that in relation to the subject, whether person or thing, the description in it is true in part, but not true in every particular. The rule in such cases is derived from the Civil Law; — *Falsa demonstratio non nocet, cum de corpore constat.* Here so much of the description as is false is rejected; and the instrument will take effect, *if a sufficient description remains to ascertain its application.* It is essential, that enough remains to show plainly the intent. "The rule," said Mr. Justice Parke,[1] "is clearly settled, that when there is a sufficient description set forth of premises, by giving the particular name of a close, or otherwise, we may reject a false demonstration; but, that if the premises be described in general terms, and a particular description be added, the latter controls the former." It is not, however, because one part of the description is placed first and the other last, in the sentence; but because, taking the whole together, that intention is manifest. For indeed "it is vain to imagine one part before another; for though words can neither be spoken nor written at once, yet the mind of the author comprehends them at once, which gives *vitam et modum* to the sentence."[2] Therefore, under a lease of "all that part of Blenheim park, situate in the county of Oxford, now in the occupation of one S. lying" within certain specified abuttals, "with all the houses thereto belonging, which are in the occupation of said S.," it was held, that a house lying within the abuttals, though not in the occupation of S., would pass.[3] So, by a devise of "the farm called Trogue's Farm, now in the occupation of C.," it was held, that the whole farm passed, though it was not all in C.'s occupation.[4] Thus, also, where one devised all his freehold and real estate "in the county of Limerick and in the city of Limerick;" and the testator had no real estates

[1] Doe d. Smith *v.* Galloway, 5 B. & Ad. 43, 51.

[2] Stukeley *v.* Butler, Hob. 171.

[3] Doe d. Smith *v.* Galloway, 5 B. & Ad. 43.

[4] Goodtitle *v.* Southern, 1 M. & S. 299.