The judgment of the Court was delivered by GARROW, J.A.: —The residuary clause is the only one now calling for attention.

The judgment is reported in 4 O.W.N. 1360, and at p. 1361 the residuary clause, as it appeared to the learned Judge, is set forth, but, as the appellants contend, improperly omitting the very material word "my" immediately before the words "three nieces and five nephews."

The will had been duly proved in common form in the proper Surrogate Court, and in the probate copy certified by that Court the word "my" appears, as part of the contents of the will. This conclusion, while it stands unrecalled by the Surrogate Court, is, I think, conclusive upon all parties to this proceeding as to the contents of the will. And the construction of the clause in question must, therefore, be as if this word "my" immediately preceded the words "three nieces and five nephews."

Upon a question of construction the original will may be looked at, not to vary or cut down the words of which probate has been granted, but simply to enable such words to be interpreted by the Court. See In re Harrison, 30 Ch. D. 390. And, looking at the original will, which was produced, apparently without objection, at the hearing and again before us, it is at least apparent, I think, how the learned Judge came to omit the word in question. There had, it appears, on the face of the will been an extensive erasure immediately preceding the word in question, and the erasing stroke extended to and in part upon the word "my" but did not actually pass through it, and the learned Judge apparently assumed, without referring to the probate copy, that the word was included in the erasure.

It is obvious that the introduction of the word "my" presents such a wholly different case from that which the learned Judge considered, that no good purpose would now be served by entering upon a full consideration of his reasons for the conclusions at which he arrived. I shall rather, as more to the purpose, deal with the question—not a difficult one, it seems to me—as if it was, as in fact it is, now presented for the first time.

The facts are very few and uncomplicated. The testator was unmarried. He left two brothers surviving, namely, Barry S. Cooper and William F. S. Cooper. Barry S. Cooper had eight children, of whom three were females and five males. William F. S. Cooper, so far as appears, was unmarried. The testator also left other nephews and nieces to the number of