

cases where the Courts are asked not to strike out something from, but to add something to the will.

Jarman, 6th ed. vol. 2 (at p. 1706), in dealing with the same question, says: "It often happens, that a gift to children describes them as consisting of a specified number, which is less than the number found to exist at the date of the will. In such cases, it is highly probable that the testator has mistaken the actual number of the children; and that his real intention is, that all the children, whatever may be their number, shall be included. Such, accordingly, is the established construction, the numerical restriction being wholly disregarded. Indeed unless this were done, the gift must be void for uncertainty, on account of the impossibility of distinguishing which of the children were intended to be described by the smaller number specified by the testator." And at p. 1708: "The ground on which the Court has proceeded is that it is a mere slip in expression, and the circumstance that the testator knows the true number of children is not a sufficient reason for departing from the rule."

The testator may have been aware of the number of the children of his brother Barry S. Cooper; it is not clear that he knew the number of this brother's nephews and nieces. Barry S. Cooper himself, from his affidavit filed, seems to have some doubt of the exact number of his nephews and nieces.

My conclusion is, therefore, that on the true reading and construction of this will, the residue is to go to the nephews and nieces of Barry S. Cooper, living at the time of the testator's death, irrespective of the fact that the number named by the testator, namely, three nieces and five nephews, may be more or less than the real number at that time.

Costs of the parties out of the estate, those of the executors as between solicitor and client.