

the number composing the class to be benefited, the language of the will is clear as to where the residue is to go. The effect of so changing or adding to the language so used by the testator would be to divert the residue from one class named by him and give it to another class. That would be making a will for the testator, and not declaring what his will means. What the Court has to do is to determine from the language used by the testator what was his intention. The expressed intention in this will is to give the residue to the nephews and nieces of Barry S. Cooper. Perhaps the testator had in mind a different intention, perhaps he meant to say 'children of Barry S. Cooper,' but he did not say that or express such different intention, perhaps he was wrong in stating the number of Barry S. Cooper's nephews and nieces—that is the number composing the class intended to be benefited—he does, however clearly indicate the class. The fact that the number of nephews and nieces he mentions corresponds with the number of Barry S. Cooper's children is not in itself sufficient to shew he meant the children of Barry S. Cooper, or a justification for importing into the will, in order to give it that meaning, a word or words not used by the testator.

Nor do I think the residuary clause is void for uncertainty as has been suggested. The testator shewed an intention of benefiting a certain class, and where the Court as a matter of construction, arrives at the conclusion that a particular class of persons is to be benefited according to the intention of the testator, if there has been an inaccurate enumeration of the persons composing that class, the Court will reject the enumeration. *Re Stephenson, Donaldson v. Bamber*, [1897] 1 Ch. 75 (at p. 81), Lord Russell, C.J.

Lindley, L.J., in his judgment in the same case, at p. 83, puts it this way: "If the Court comes to the conclusion, from a study of the will, that the testator's real intention was to benefit the whole of a class, the Court should not and will not defeat that intention because the testator has made a mistake in the number he has attributed to that class. The Court rejects an inaccurate enumeration."

A. L. Smith, L.J. (at p. 84), states the same conclusion, and then goes on to draw a distinction between the cases in which something is struck out from the will, and those