

mentioned by the testator. Except that there is (or may be) an error in stating 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 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 corresponds with the number of Barry S. Cooper's children is not in itself sufficient to shew that 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 that 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. . . .

[Reference to *In re Stephenson, Donaldson v. Bamber*, [1897] 1 Ch. 75, per Lord Russell of Killowen, C.J., at p. 81; per Lindley, L.J., at p. 83; per A. L. Smith, L.J., at p. 84; *Jarman*, 6th ed., vol. 2, pp. 1706, 1708.]

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