

J. R. Code, for executors.

H. T. Beck, for Barry S. Cooper and his adult children.

J. Tytler, K.C., for Margaret J. Fulton, Annie Fulton and James B. Fulton.

J. R. Meredith, for infant, Annie K. Cooper.

HON. MR. JUSTICE KELLY:—My opinion is that he intended the money in the last named institution as well as the moneys in the other two places of deposit to go to his brother Barry S. Cooper.

(2) The residuary clause in the will is in these words: "All the rest and residue of my estate not heretofore disposed of for payment of necessary expenses, I direct my executors and trustees to divide equally between three nieces and five nephews of Barry S. Cooper, share and share alike."

The testator died in Toronto on June 14th, 1912, and probate of his will, which bears date May 20th, 1912, was issued on August 14th, 1912, to his executors Rev. Robert James Moore and William Payne.

Testator was a bachelor and he left surviving him two brothers, Barry S. Cooper and William F. S. Cooper, and several nephews and nieces, children of his deceased brothers and sisters, as well as eight other nephews and nieces, the children of his brother Barry S. Cooper.

So far as it is shewn William F. S. Cooper was then a bachelor. Barry S. Cooper's nephews and nieces then numbered more than eight; it is not made clear what was their exact number. The executors appear to have doubts as to who is entitled to the residue.

Dealing first with the contention that the three daughters and five sons of Barry S. Cooper are the persons intended by the testator to be benefited, to adopt that view it would be necessary to read into the will a word or words not used by the testator. For instance, the insertion of the word 'children' after the words 'five nephews' would aid in arriving at that result, but in doing so the meaning of the will as made by the testator would be altered, and a meaning given to it altogether different from that which the language used by him conveys. The chief ground for urging this view is that the number of Barry S. Cooper's children (three daughters and five sons) corresponds with the number of nephews and nieces of Barry S. Cooper mentioned by the testator. Except that it is (or may be) in error in stating