

(1) The provision in the will disposing of "cash in bank" is as follows: "My said executors are also directed to pay to my brother Barry S. Cooper, of St. Louis, Mo., all my cash in bank, provided, however, that my trustees are at liberty to pay my funeral expenses out of said moneys in the bank as aforesaid; but my brother Barry S. Cooper is to be recouped out of the residue for any such advance for burial as aforesaid."

At the time of his death, the testator had moneys on deposit in the Dominion Bank, in the Home Bank of Canada, and in the Canada Permanent Mortgage Corporation.

My opinion is, that he intended the money in the last-named institutions, 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 the 14th June, 1912, and probate of his will, which bears date the 20th May, 1912, was issued on the 14th August, 1912, to his executors, the Rev. Robert James Moore and William Payne.

The 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