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HON. MR. JUSTICE KELLY.

MAY 26TH, 1913.

RE FRANCIS COOPER ESTATE.

4 O. W. N. 1360.

*Will—Construction—“Cash in Bank”—Moneys on Deposit in Loan Company—Inclusion of—Gift to Enumerated Class—Wrongful Enumeration—Disregard of—Suggested Mistake of Testator as to Description of Class.*

KELLY, J., held, that a gift by a testator to a legatee of “all my cash in bank” passed certain moneys on deposit in the Canada Permanent Mortgage Corporation as well as other moneys in deposit in two chartered banks.

That a gift to the three nieces and five nephews of B. S. C., the brother of the testator, where B. S. C. had three daughters and five sons and several nephews and nieces (but not eight precisely) was a gift to the latter class and not to the children of B. S. C., the wrongful enumeration being disregarded.

*Re Stephenson, Donaldson v. Bamber, [1897] 1 Ch. 75, followed.*

Application to have it determined, first, whether under the direction by a testator, Francis Cooper, to his executors to pay to his brother Barry S. Cooper “all my cash in bank,” Barry S. Cooper was entitled to moneys of deceased deposited in the Canada Permanent Mortgage Corporation; and, secondly, who were entitled to the residue of the testator’s estate.

(1) The provision in the will disposing of cash in bank was 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 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.