

After making provision for the payment of debts, the printed form provides that all the testator's real and personal estate is devised and bequeathed "in the manner following." The conveyancer then inserted these words: "all to my wife Rebecca Piper, excepting only \$25,000 which I give as follows." Then follow five specific pecuniary legacies, amounting in the whole to twenty thousand dollars, leaving five thousand of the excepted twenty-five thousand undealt with. Then follows another printed clause: "All the residue of my estate not hereinbefore disposed of I give, devise and bequeath unto"; to which the conveyancer has added "my executrix and executor for the purposes of this my will." The wife and another are then appointed executors. Endorsed upon the will is a codicil: "I direct the legacy of \$5,000 to my sister Mrs. E. Sutton to be reduced to \$2,500." The effect of this is to increase the undisposed of amount from \$5,000 to \$7,500.

The widow claims that the exception from the general devise to her of the \$25,000 was for the purpose of providing for the specific legacies, and, these legacies amounting to less than the sum named, that the difference passes to her.

The applicant, on the other hand, claims that the gift to the wife is of all the testator's property except the sum of \$25,000, and, the testator having failed to dispose of the whole of this \$25,000, that there is an intestacy—or, more, accurately, that it would fall into the residual bequest to the executrix and executor, and, it being plain that this was not intended as a gift of a beneficial interest, and no purpose being declared, the executors hold in trust for the next of kin.

Before me the original will is produced, and the widow fortifies her position by pointing out that in the original draft of the will there were five legacies of \$5,000 each, that two of the legacies were changed from \$5,000 to \$2,500 by the testator, before the execution of the will, as he has initialled the change; and that the inference ought to be that it was by an oversight only that the \$25,000 was not changed to \$20,000.

Upon the argument an affidavit by the conveyancer was tendered for the purpose of shewing the intention of the testator. I rejected this evidence, as I do not think I can look beyond the document itself. See *Re Davis*, 40 N. B. 23. Nor do I think it is open to me to speculate as to the testator's intention. He may have intended to increase the benefit to