

out altogether in order to give the proposed meaning to the word "heirs." That would be making a new will, and as it seems to me rejecting a plain meaning used in order to do so. I think the widow is not entitled to participate in the fund.

The costs of all parties will be paid out of the general residuary estate. Trustees' bill to be taxed as between solicitor and client.

---

### NEW BRUNSWICK.

#### SUPREME COURT IN EQUITY.

BARKER, C.J.

SEPTEMBER 21ST, 1909.

#### CLARK v. CLARK ET AL., EXECUTORS.

*Will—Residuary Clause—Construction—Gift—Inter Vivos—Declaration of Trust—Testamentary Gift—Wills Act.*

A. O. Earle, K.C., and James A. Belyea, K.C., for the plaintiff.

Daniel Mullin, K.C., John A. Barry, J. McMillan Trueman, for defendants.

BARKER, C.J.:—The question upon which the direction of the Court is asked arises under a clause in the will of the Reverend John A. Clark, who died April 15th, 1907, leaving him surviving a widow and three children, two daughters and a son. Hannah Gertrude Clark, one of the daughters, died on the 14th of November, 1908, before these proceedings were instituted, and we are therefore without her evidence. Mr. Clark's will, which is dated March 13th, 1906, contains the following residuary clause: "All the rest and residue of my estate, real and personal, excepting only such personal property as may be found in my private cash box, or in my box in the vaults of the Bank of New Brunswick, St. John, and which I had already given to my daughter Hannah Gertrude, to meet the immediate personal necessities of herself and her sister Jean, I give in trust to my executors to apply all net increase to the support and mainten-