

Argument of Appellants.

It is to be borne in mind that the case below was decided upon a demurrer to the bill. The defendants cannot here be allowed to deny the plaintiff's allegations of fact. If they can do so fairly, they should do so legally. The only method recognized by the law in this behalf is a plea or answer. To stand upon a demurrer and yet deny the averments of our bill is to experiment with the law. The plaintiffs do not mean by this line of remark to contend that matters of legal construction stated in the bill are conceded, but they do insist that a demurrer admits every statement of fact and every deduction of law or of fact properly to be drawn from the admission. If from the tangled mass called a Will and Codicils brought up on this record anything intelligible can be deduced, the following propositions will be found to be undeniable.

I.

The paper termed "Additional Codicil," dated April 18, 1867, undertakes to dispose of the entire estate after paying certain annuities; it recites a former devise of the *greater part*, and then adds:—"Now I direct my said executor to expend the *whole* remainder," etc.

So far as the residue is concerned, and we are here contending only for the residue, this Codicil devising the *whole* remainder must, of necessity, revoke antecedent directions. It stands then alone. It devises this whole remainder to a company. In the language of the bill the legatee has "*declined to accept*" the bequest. The demurrer admits this averment. The *additional Codicil* contains no limitation over providing for this contingency. Here, then, is a case in which the donee refuses the gift. There is no provision for this; the gift refused is the residue, and hence it must go to the heir-at-law. This is so clear that further argument would be as useless as an attempt to verify the multiplication table.