uses," within the eleventh section of the statute, yet the latter declares that

"All disposition of property contrary hereto shall be void, and go to the *residuary legatee or devisee*, next of kin or heirs, according to law."

And it is obvious that if there be a residuary devisee, the next of kin or heirs cannot take. In his very last codicil, the testator speaks of "the motives which induced me to choose the Library Company as *the heir to my estate*" (record, page 73), showing that it was not his design to die intestate as to anything.

11. Even if no disposition were made of the residuary estate, yet any surplus would not go to the plaintiff, but would remain as a gift to charitable uses, to be applied under the statute.

This was settled in the case of the City *vs.* Girard's heirs, 9 Wright, 9. It was there argued that Mr. Girard never contemplated that his college would absorb all the income, and that there being a large surplus, it went to the heirs, and so the Court below decided; but this was reversed on writ of error. And if it be said that that case was decided apart from the act of 1855, yet that statute is express as to the duty of the courts and the legislature, and provides the machinery necessary for the purpose. (See the statute, *supra*, page 10).

15. The plaintiff is debarred by *laches*, and, by reason of lapse of time, no alleged invalidity of the codicils can now avoid the will.

The testator died May 26th, 1869, and the will and codicils were proved May 31st, 1869. This bill was filed February 15th, 1878.

The act of 22d April, 1856, section 7 (Purdon, 408), declares:—

"The probate by the register of the proper county of any will devising real estate, shall be conclusive as to such realty, unless within five years from the date of such