

Supreme Court, May General Term 1858.

Edme J. Genet
agent
Gerard R. Beckman
& others.

Mr Genet for Plff
Mr Clinton for the defendants.

Sutherland J. I think the learned judge at Special Term attached too limited a meaning to the word "share of my estate &c" as used in the Codicil of the will. I think the testator intended by the Codicil to devise to the Trustees the whole share or portion of his estate given by the will directly to his son Gerard, as well the ten thousand dollars legacy, as his share of the plate, household goods &c, and of the residuary estate.

The value of the residuary estate is not alleged in the complaint. It is not even alleged in the complaint, that there was any residuary estate. The principal object in making the Codicil appears to have been to place the testator's son Gerard's share of his estate in the hands of trustees, so that the rents, issues and profits thereof could be applied to his support and maintenance.

free and clear of any debts then by him
owing or due to be contracted &c;
The word of the Codicil "I give, devise and
bequeath all that certain portion of my
estate real and personal mentioned in and
described in my said last will and tes-
tament, as the share of my estate intended
to be devised and bequeathed to my
said son Gerard &c" are certainly broad &
enough to carry the ten thousand dollar
legacy &c, as well as the share of the said
my estate; and it would seem to be in-
consistent with the principal apparent
object of the testator in making the codi-
cil at all, to give those words a construction
which leaves the ten thousand dollars to be seized
for his sons debts.

It does not appear that the sum of twenty thousand
dollars given by the will to the two sons to be
divided equally between them, was a particular
fund set apart for them, but that it was to
come out of the bulk of the estate. The intention
of the testator by his codicil should be carried
out, so far as the law will permit it to
be carried out.

The judgment of the special term for the
Plaintiff on the Remuner should be reversed
and the Defendant have judgment on the

dinner with Cost.

September 9.

I submit the opinion expressed
by me at Special Term and dissent from
the conclusions to which my brethren have
arrived.

M. Supreme Court

Edw. J. Lench
at

Gerald R. Buchanan
&c

Copy Opinion of
General Term May 26
1838. - . . .

Andrew Hudson & Stafford
Attys for Deft
Bayles & Hibbard.