for famed "City Hotel", and children of Augustus Barnum, also deceased, and one of the children and devisees named in the last will and testament of the said David.

Two of the respondents, Zenas Barnum and Andrew McSaughlin, (both of whom are now deceased) were the successors of the said David in the said City Hotel, under a lease provided for in a clause of the said will. Andrew McSaughlin having taken the opinion of eminent counsel, among them the late Charles F. Mayer, the draftsman of said will, that the children and devisees of said testator had the power and right under said will to sell and convey absolutely all interests and estate in said Hotel property, in fair faith purchased and paid for and took conveyance of all their, the said devisees, several interests and estate as supposed absolutely devised to them by said will and by said conveyances, believing himself to be the sole owner and proprietor of said property, absolutely purchased adjoining lots and expended large sums of money in enlarging the capacity, and in generally improving and fitting up the said Hotel property as a first class house of public entertainment.

Augustus Barnum, father of Complainants, one of McSaughlin's assignors under the will of David Barnum, died in 1853. In March 1861, the bill was filed in this cause, and alleges that the will of David Barnum gave a life estate only to his children, with remainder to his grand-children, &c, and prays for an account

of rents and profits &c. since the death of Augustus Barnum; and charging that the property cannot be advantageously partitioned among those entitled, prays a sale of the same and distribution of the proceeds &c.

The cause was argued on final hearing in this Court, and Judge Krebs, on the 25th of November 1862, filed an able and elaborate opinion, in which the right of the children of the testator to sell and convey under the will, and absolute estate was sustained, and the title of the respondent, McSaughlin, acquired by said conveyances held good, and the bill of Complaint was dismissed.

An appeal from the decree of this Court dismissing the bill, was taken by the Complainants. The Court of Appeals reversed the decree of this Court; held the first article of David Barnum's will void, as coming within the rule against perpetuities; and that the second article took effect, by which the children of the testator took a life estate only, and that the Complainants were entitled to relief, that is for an account of rents, &c, and for a sale of the property left by the testator, and remanded the case to this Court for further proceedings.

Pending the appeal, Andrew McSaughlin, one of the respondents, and purchaser of the interests of all the children of the testator, and by their conveyances, as he fairly supposed, sole owner of the City Hotel, departed this life, having previous to his death, by his skill and industry, and by the expenditure of large means, greatly increased