the same was held by him at the time of the execution of the will, subject only to the legal estate devised by the will to the trustees named therein for the purposes of carrying out the views of the testator in relation to the City Hotel, but which do not affect the right or estates devised to said children.

It may however be asked, what effect the language used in the second clause of the will would have on this devise to the children? And which would appear at a first glance to reduce what was clearly an estate in perpetuity, to a life estate, in the event of a sale "judicially or otherwise" of the City Hotel. In answer it may be observed, that it was not the intention of Mr Barnum that the Hotel should be sold at all; it was repugnant to his wishes that it should be. His express desire was, that it should be retained, and used as a Hotel, and he speaks of a sale of it as a disappointment of his views. He says "Should my views on the above first article of this will be disappointed, so that judicially or otherwise, a sale shall take place of said City Hotel &c"; thus showing that he was far from contemplating, or desiring a sale, but earnestly wished to avoid such an event, and looked to it as a contingency which would break up and frustrate his views. And although he provides for such a possibility, he manifests a desire that it should be avoided, his intention clearly expressed in his will, being to give his whole estate in the Hotel, whatever it might be to his children absolutely, subject only to Mrs Barnum's life estate in one third thereof, and subject also to the leasing power given to his trustees named in the will to ensure the continued use of it as a Hotel.

The provision made for a possible contingency cannot, it is conceived, have the effect of destroying the

estates which vested in Mrs Barnum's children under the devises; if it could, it would defeat his clearly expressed intention, which the law will always carry out, if it can be understood. But if there could be a doubt on the subject here, that doubt would be removed by the seventh clause of the will, which devises the residuum of his estate of every kind (subject to the estate bequeathed to Mrs Barnum) to and among all his children and their heirs, as tenants in common.

Taking therefore the whole of the will together, considering the object the testator had in view in reference to the property known as the City Hotel, and which, if I may use the expression he desired to perpetuate as a public hotel for the benefit of his family. I fully concur in the opinions of Messrs Johnson and Mayer that the children of Mr Barnum took the same estate as tenants in common in the City Hotel as he himself had therein, and the provision for a possible contingency, evidently regarded with aversion by him, cannot and does not interfere with the rights and estates vested in them by the first and seventh clauses of the will.

If the above stated opinion be a correct one, and I have no reason for doubting it, as a matter of course it follows, that either of the children of Mr Barnum could sell and dispose of his or her share of the property so devised, and by such sale or disposition vest an absolute in the purchaser to the extent of the interest held by the seller. The deed from Mrs Stannard and her husband to Mr Andrew McLaughlin, conveying to him her undivided share, interest, and estate in the City Hotel must, and does, in my opinion, operate as a convey to him of an absolute estate in perpetuity to the extent of her share in the property in question.