"Although the third (by which, together with the last clause of the fourth article, the rents of the offices in the basements of the hotel are disposed of) and other articles will stand necessarily in connection with the first, it is the first that embodies the main features of the settlement." On page 10. "But in as much as the testator in this article (second article of the will) looks only to a sale of the realty, the hotel buildings and grounds, omitting all notice whatever of the personalty, the furniture and chattels, the inference is strong, if not irresistible, that he had in contemplation a probable sale, resulting from the failure of the first article by reason of its invalidity." On page 12. "This conflict can only be reconciled upon the ground that the children and other legatees were to take life estates in the rents under the first and third articles, and that they had no disposable ownership in the property itself. If the testator's views in the first article should then be disappointed and a sale take place, his instructions as to the proceeds could then be carried out under the second, in which life estates are expressly given to all the children with remainders to the grandchildren or descendants per stirpes"

From all which it cannot be doubted, that, in the opinion of the Court of Appeals, the third and fourth articles or clauses of the will fall with the first article or clause, and that the second article or clause becomes operative, and embraces not only "the hotel part" of the property, but "the hotel buildings and grounds" I do not mean to say that the views of the Court of Appeals are not subject to the criticism of the learned counsel for the defendant, but simply that they are to govern this Court, when ascertained by a careful examination of the opinion. The decree will therefore be for the sale of the "City Hotel buildings and grounds" including therein the rooms and offices mentioned in the third and fourth articles or clauses of the will.



2. The next question that occurs is, does the second article embrace the lot of Mrs Ann Barnum, referred to in the first article? I am of opinion that it does not. By the first article, Mrs Barnum was to be paid by the trustee the sum of three hundred dollars a year, in quarterly instalments in consideration of her ownership of this lot, and of its use in connection with the Hotel. But in the second article, directing an investment of the proceeds of any future sale of the hotel, no mention is made of this lot, and no provision whatever to recompense her for the loss of the annuity of three hundred dollars, which by the first article was to be paid to her for the use of the lot. She is to receive one-third of the income of the investment during her life, as under the first article she was to receive one-third of the rents of the hotel. The decree will therefore be for the sale of the "City Hotel buildings and grounds," excepting therefrom the lot referred to in the proceedings, as Mrs Ann Barnum's lot, and that as to the said lot or piece of ground the bill of complaint of the complainants be dismissed.

3. The next question is in regard to rents and profits. It appears to me that there is nothing in the facts of this case, as developed by the pleadings and the proof to entitle the complainants to the extraordinary claim set up in their behalf to a share of the profits actually realized by the defendants, or those whom they