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The Desirability of Remedial Legislation with Respect to the New York Law of Perpetuities

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THE DESIRABILITY OF REMEDIAL LEGISLATION WITH RESPECT TO THE NEW YORK LAW OF PERPETUITIES

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Presented for the Degree of

Master of Laws

-By-

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Cornell University

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The Suspension of the Power of Alienation and the result of the suspension of the power of alienation, popularly known as a perpetuity, have for centuries commanded the alienation of legal minds. The experiences of men and nations have demonstrated that the circulation of currency and property among the inhabitants of a state or country with the least possible number of restrictions consistent with a wise public policy, is one of the most potent factors in advancing the grade of intelligence and promoting the commercial welfare of the people. In countries where position in society is regulated by the caste system, the main desire of those of royal blood is to have their estates continue in the possession of their descendants throughout all time, if possible, and to accomplish their purposes, they, realizing the probability of the profligacy of future generations and desiring to annihilate the possibility of prospective poverty, endeavored to tie up their estates by suspending the absolute power of alienation for long periods. The laws of primogeniture and estates tail were their valuable and necessary assistants, and the equilibrium of their social system was maintained by them, conscientiously perhaps, but with immeasurable injustice to their fellow men.

With the increase of civil liberty the strength of the bulwarks of the caste system and its concomitants diminished, and the
lower classes of society were relieved of many of the irksome burdens which had been heaped upon them by the wealthier position of the people. The rigors of the feudal system, so familiar to students of English law and history, need not be rehearsed here, but imposing and formidable as was that system, oppressing the poor beyond the warrant of either nature or necessity, and sustaining the cupidity of avaricious men, it was not invulnerable to the continuous canonading of the strong and righteous principles of liberty; and were it not for the pen of the historian we could almost convince ourselves that it never existed. In the present treatise I shall endeavor to give a brief and concise history of the "rule against perpetuities" with especial reference to New York cases and statutes, and incidentally I shall notice the condition of the law in other States.

No apology is offered for the writer's views and opinions as to what changes should be made in the present state of the law in New York, as none is considered necessary beyond a statement of existing deficiencies which should be remedied.

May 2, 1893.  
Edward L. A. Brooks.
CHAPTER I.

The Power of Alienation.

Of all human rights there are few, if any, which are more ancient than the right to convey one's title to property, real and personal; but this right, like most other right, has been subordinated to the public policy of nations as expressed or carried out in their laws and customs. It has been the policy of England and the United States to gradually remove restrictions upon the power of alienation, in order that the welfare of the general public should be conserved and the occurrence of hardships rendered as improbable as human wisdom can make them. Thus, at the real common law married women could not alien their property, as their marriage vested the title to it in their husbands, but at the present time a married woman has the title to her real property and personal property and may dispose of the same by gift, grant, assignment or devise, the same as if she were unmarried. ( Laws N.Y. 1862, ch. 172; 3 ed. R.S. vol. 4, page 2603, sec. 3; Draper v. Steuvenal, 35 N.Y. 507; Gage v. Daughy, 34, N.Y. 293.)

Under the feudal system as it formerly existed in England a tenant in tail was restrained from conveying his estate, but in the reign of Edward IV. it was decided in Taltaramum's case that where a tenant in tail suffered a common recovery, the estate in tail would be destroyed thereby. During the reign of Henry VIII
laws were passed permitting a tenant in tail to make certain leases that were not prejudicial to the issue, and also making a fine levied by the tenant a total bar to the continuance of the estates. (32 Henry VIII, ch. 28, ch. 35; Blackstone's Com. 117-8; Chase's Ed. Black. 300-1)

At the present time an estate tail may be aliened by the tenant in tail both in England and in the United States by deed. (3&4 Williams IV, ch. 74; Washburn on Real Prop. vol. 1, p. 11; 4th, Ed.) In New York state every estate which would at common law have been adjudged a fee tail, is converted by statute into a fee simple, in case there is a valid remainder limited upon it; but if there is no such remainder, such an estate is held to be a fee simple absolute. (8Ed. R.S. vol. IV, page 2431, sec. 3, 1 R.L. page 52, sec. 1; Nellis v. Nellis, 99 N.Y. 511.) One rule of estates tail in their halcyon days was that the lord of the fee, the owner of the reversion could, could not convey his interest in the estate without the consent of the tenant. This rule and the one preventing the tenant from conveying went a great ways in protecting the rights of the respective parties. It was well to render the assent of the tenant necessary to the validity of a transfer by the owner of the reversion of his interest in the lands, in order that he might not be compelled to serve under a lord whom he disliked. It was equally as well to make the lord's consent requisite to a valid conveyance of the tenant's interest, because the great land owners of England chose such tenants as
would make valiant soldiers and defenders of their vast estates, consequently, it would injure them greatly, if the tenant should convey his estates to a person who possessed no military prowess. By the rule under consideration the lord of the estates was given an opportunity to estimate the martial ability of a prospective tenant and thus protect his interests. But as the years accumulated and the country settled down to enjoy an era of peace and commercial prosperity, the reason for these rules disappeared, and the rules themselves were soon after consigned to a state of innocuous desuetude by the willing hands of parliament and the judiciary. (2 Blackstone 57; Chase's Ed. Black 252) (434-5) When a tenant gave his consent to a change in the ownership of the lands he attorned to the new owner, that is, he acknowledged himself to be the vassal of the grantee of the lands; but if the tenant refused to attorn to the grantee, the conveyance was void. The statutes by means of which the rigors of the ancient laws were relaxed began with the statute of Westminster 2nd, which allowed a man to charge debts upon his lands to the extent of one half the value of the same; and under the statute de mercatoribus the whole estate might be charged and levied upon and sold under execution. From this time, 1235, the restraints upon alienation were gradually eliminated by judicial legislation. The statute of Westminster II, 3 Edw. I, was originally designed to prevent the tenants in tail from alienating their estates and
thus barring the entail. Such alienations could only be validly made by the tenant after issue was born, but when that condition was fulfilled, an alienation by the tenant barred not only his own heirs, but cut off the reversion which previously existed in the grantor. It is natural, therefore, that the lords and barons looked upon such alienations with disfavor and apprehension, and their sentiments became crystallized in the statute, commonly known as the Statute De Donis Conditionalibus. When this statute came before the courts for construction, the latter being desirous of promulgating and extending the freedom of conveying, invented fictitious suits, by means of which the force and power, as well as the purposes of the statute were rendered ineffectual. The great landowners perceiving the futility of trying to cut off the powers of alienation instituted a system of fines for alienating, and managed by this means to secure a profitable source of revenue. The fine had to be paid by the purchaser.

Blackstone tells us that out of the statute of Westminster the second came the system of estates tail. Prior to the passage of that statute when a grant was made to a man and the heirs of his body, the tenant could convey absolutely after the birth of an heir; but the courts in construing the statute, declared that the tenant in such a grant did not take a fee simple conditioned on the birth of issue, as was the case before the passage of the statute, but that the estate consisted of two parts, viz., a life estate in the tenant, and a remainder to his heirs, or
upon a failure of heirs, the estate reverted to the donor. This new species of estate came to be known as an estate in fee tail. (2 Bl. Com. 112, Chase's rd. 2979)

The tenant at first was unable to alien his estate so as to bar the issue and the reversioner; but as has been previously stated, the fetters which this statute (de donis) placed upon the tenant were soon removed by ingenious methods which emanated from the minds of those high in authority. The reigning sovereign desired to have estates change ownership with but little restriction, for such changes tended to weaken the power of the lords or feudal barons. The latter naturally resisted every attempt made against their land system; but gradually their power and influence lessened as the facilities for conveying estates increased, until at the present time alienation is as free in England as it may well be and continue consistent with an enlightened public policy. At common law the deeds of married women were voidable, as were also those of infants, confirmed drunkards and idiots. This rule of law has only been changed by the statutes in this country with regard to married women, who now hold their real estate in nearly all of the states, as if they were unmarried. In the cases of conveyances by persons under a disability, as infancy, idiocy etc., if the person fail to repudiate the conveyance within a reasonable time after the removal of the disability, he will be held to have ratified the conveyance. In case the conveyance is rescinded equity will compel the grantor to restore
to the grantee the consideration, unless the circumstances are such that the consideration has passed out of the possession of the grantor and could not be reproduced by him without great hardship. If, however, the rescinding party is so situated that he is able to put the grantee in statu quo, the court will demand that he do so in accordance with that fundamental maxim of equity, that "he, who seeks equity, must do equity." Under the laws relating to homesteads the rule in many states is that a husband cannot alien any property belonging to him to which the homestead right attaches unless he gains the written consent of his wife and incorporates it into the deed of conveyance. Her signature and acknowledgment is sufficient to satisfy the requirements of these statutes, in the majority of the states. In Illinois it is not enough to have the fact of release of the homestead right stated in the body of the deed or mortgage, but it must also appear in the acknowledgment of the instrument. (Connor v. Nichols 31 Ill. 148; Boyd v. Cudderback, id. 113; Thurston v. Boyden, id. 200) For a complete statement of the rules of the various states with regard to "how far homestead rights prevent alienation," see Washburn on Real Prop. 5th, ed. vol. 1, pages 428-456 inclusive.

Having discussed briefly the restraints put upon alienation by the operation of law, the next topic in order is restraints upon alienation resulting from the acts of individuals; and at this point we come to the investigation of the theme of these commentaries.
A perpetuity is a suspension of the absolute power of alienation for a period longer than that which the law allows. (McArthur v. Scott, 113 N.S. 382; Lewis on Perp. 164, Rand on Perp. 48.) The statute says that the "power of alienation is suspended, when there are no persons in being, by whom an absolute fee in possession can be conveyed." The same section prevents any doubts from arising as to what will be the status of the estate or estates which are to commence in future and which suspend the absolute power of alienation for a time longer than that prescribed in the two following sections, it declares them to be "void." It will be remembered that at common law the absolute power of alienation might be suspended for any number of lives in being and twenty one years thereafter; New York and a great many of the states have limited the number of lives to two, with the single exception that "a contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, shall die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain their full age." (N.Y.R.S. vol. iv, page 2432 sec. 14 to 16 inclusive;
It has been settled in this state that even though it is possible for the suspension of the power to alienate to end during the prescribed period, two lives in being and twenty-one years thereafter, if there is any way by which it might be made to extend beyond that time, it violates the statute and the limitation is void. However, where there are alternative devises, the one to take effect in case the other does not, and the one which does take effect is a valid one, it will be sustained even though its alternate could not have been in consequence of its legal extension of the period of suspension. (Schettler v. Smith 41 N.Y. 328, Peet v. Lee 2 How. Prac. (N.S.) 76; Fowler v. Ingersoll, 127 N.Y. 472.) Where there are various provisions in a will some of which are valid and others invalid, if it is possible to separate the valid portion from that which is void and enforce it without doing violence to the intention of the testator, the courts will do so.

A testator directed in his will that his executrices should convert his real estate into personalty within ten years after the death of his widow. During the life of the latter the executrices were to receive the rents and profits of the estate and apply them to the use of the widow and themselves or the survivor of them. After the death of the widow and until the conversion of the real property into money the executrices were to apply the income to their own use. Upon the sale of the property the proceeds were to be divided into four equal parts and distributed as follows: One part to each of the two executrices, and the
remaining two parts were to be retained by the executors as trustees for the purpose of paying the income thereof to the other daughters of the testator during their lives, and at the death of either, the principal, of which she had been receiving the interest, should go to her heirs. An action was brought by the daughters to whom the life interests had been given to have partition of their father's estate, and it was held that the trust for the life of the widow was valid and could be sustained, but the statute forbade the limiting of a trust which suspended the power of alienation to a definite number of years, however short, therefore, the testator died intestate as to all of his property except the life estate given to the widow. (Underwood v. Curtis, 127 N.Y., 523; Savage v. Burnham 17 N.Y. 561, Manice v. Manice 43 N.Y. 303.) In the case last cited a large number of interesting questions were involved and a careful consideration of a few of them will doubtless be profitable. Here the testator created a trust to continue during the life of his wife. At her death the residuary estate was to be divided into twelve equal parts and distributed among specified beneficiaries in stated proportions, as follows; three twelfths to each of two sons and two twelfths to be invested for the use and benefit of each of three daughters. It was contended that these interests in the residuary estate would not vest until the widow had died and the property had been converted into money and the various shares ascertained, also that during this period subsequent to the death of the wife and
prior to the final distribution of the shares the power of alienation would be suspended illegally, as the time would not be measured by human lives and might exceed more lives than the statute allowed. The will directed that these shares should be ascertained by the trustees named therein and that they should make the distribution. It is obvious that if the trust term were really intended to continue during the life of the wife and up to the time of the distribution of the shares that the contention of the contestants of the will would have been unanswerable, but the court declared that it was unable to find in any of the provisions of the will any expression of such an intention, and that in such a case it would not impute to the testator an illegal intention, such as would be necessary to support the position taken by the contestants. The court cited the following authorities in support of the view which it announced; Roper on Legacies, 5 A l, 8 ed.; Pearson v. Lane, 17 Ves. 101; Collin v. Collin, 1 Barb. ch., 630; Clason v. Clason, 6 Paige 541; S.C., 18 Wend., 369; Haydon v. Rose, L.R. 10 Eq. Cas., 224; Dubois v. Ray, 35 N.Y., 165, 167, 175; Reilly v. Fowler, Wilmot's Opinions, 293. Tucker v. Tucker, 1 Seld., 408; Post v. Hover, 33 N.Y., 601. In construing the will the court held that the trust term was to last only during the life of the wife, and that at her death the beneficiaries took vested interests in their respective shares. These interests being alienable the absolute power of selling was only suspended during the continuance of the widow's life and was such a
suspension as the law allows. The court placed considerable
stress upon the absence from the will of any clause providing for
the ownership of the shares during the period which would naturally
come between the death of the widow and the final distribution of
the shares, and reasons from that fact that the testator evidently
intended the ownership to be in the persons specified as legatees
from the time of such death.

This case is easily distinguished from the later case of
Underwood v. Curtis, 127 N.Y. 523, because in the latter case
there was no doubt that a trust was created to run during the
life of the widow and for not more than ten years after her demise.
It may be said that the court might have held the trust to termi-
minate at the death of the widow, and that title immediately vested
in the beneficiaries leaving no title in the trustees, but simply
a power to ascertain the shares of the respective parties and
distribute the same within the time specified. This however, could
not be done in view of the language of the will, which expressed
the testator's designs so clearly that it was practically im-
possible to place a construction upon them different from the one
given to them in that case by the court; and where the intention
is clear and apparent the court is bound to take the language as
it finds it. (Elwin v. Elwin 8 Ves. 547; Schooler on Wills, p.
501, sec.463; 2 Jarmon on Wills (8th, ed.) 773 sec. 16, Christie
v. Phyre, 19, N.Y. 348.)
A case of considerable importance is that of Genet v. Hunt 113 N.Y. 158, there a feme sole in contemplation of marriage executed a trust deed, by which she gave all of her real and personal property to certain persons to hold the legal title to the same, and apply the income as it accrued to the use of the grantor during her life. The right to dispose of the property by will was reserved by the grantor. The marriage occurred, and after the lapse of several years, the grantor died leaving two children her surviving. During the coverture she had executed a will by which the trust property was given to her executors to hold in trust for the benefit of the two children, and apply the income to their maintenance. Upon the death of either of the children, the survivor was to receive the entire income for life, while the principal was to be given to his heirs and next of kin. The validity of the devise was attacked on the ground that the absolute power of alienation was suspended for more than two lives in being. The court sustained the attack and based its conclusion on the following findings. It declared that the trust deed executed prior to the coverture created a valid trust, and that the property conveyed by it had gone from the grantor so completely that her power to sell it during her life was extinguished. The court also held that the reservation of the jus disponendi was insufficient to prevent the suspension of the right to alienate. It further found that trusts created by the will were to continue through the two lives of the beneficiaries, and that, consequently, the absolute power of alienation would be suspended.
during three lives, if the provisions of the will were permitted to have the effect intended by the testatrix. Such a term being manifestly illegal, the provisions of the will which created it were held to be void and of no effect.

Testators frequently frustrated their own plans and purposes by their inaptitude in endeavoring to express their wants and wishes on paper. No questions are more perplexing to the courts, nor is there any species of legal problems more numerous than those relating to wills. It has been the aim of the courts from time immemorial to carry out the intentions of testators as far as would be consistent with the existing rules of law. Courts have always regarded testators as protegees, and in their endeavors to ascertain the intentions of the makers of wills have frequently relaxed the rigor of legal rules, and guided only by the "pole star" have succeeded in producing an elaborate maze of complicated decisions. In early common law times a fee could not be limited upon a fee, nor a remainder limited upon a life estate in a term of years, nor an estate made to commence in the future without a precedent estate to support it, by persons who desired to create such estates by gift, grant, or livery of seizin but they could be created by the same persons by executory devise or will.

The reason for this is found in the fact that not infrequently testators found themselves almost at the verge of the grave without their property not yet willed and being physically and
mentally debilitated, wills often have to be written under circumstances not favorable for an accurate and comprehensive execution of the same. These facts the courts took cognizance of and allowed for in construing wills; all of them tried to effectuate the purposes of the testators whenever and wherever possible, but there has for centuries been one particular ravine which the courts have seldom tried and even less frequently succeeded in crossing, namely, that of perpetuities. The English Parliament and some of the state legislatures have permitted the creation of perpetuities in favor of certain charitable and religious corporations, but as between private natural persons such a rule does not now obtain in England or America.

Accumulations of the income of real estate may be arranged for by a testator, but the accumulations must be made for a period not longer than the minority or minorities of the beneficiary or beneficiaries for whom they are intended. If they are made to commence at the time of the creation of the estate, they can only apply to persons then in being; but, if the accumulations are not to begin at the time of the creation of the estate, they must commence "within the time permitted for the vesting of future estates and during the minorities of the persons for whose benefit they are directed, and shall terminate at the expiration of such minority." Any accumulation that may be directed which in any way violates the statute is invalid. R.S. Part II, ch I, sec. 54 and 37.
The only express trusts that can be legally created are the following: "to sell lands for the benefit of creditors; to sell, mortgage or lease lands for the benefit of legatees or for the purpose of satisfying any charge thereon; to receive the rents and profits of lands and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in the first article of this title; (and) to receive the rents and profits of lands and to accumulate the same, for the purposes and within the limits prescribed in the first article of this act." (N.Y.R.S. (3th, ed.) page 2437, sec. 55)

By the courts of New York state and a majority of the other states of the Union, it is held that the absolute power of alienation shall not be suspended for any period not measured by lives in being, making the single exception which the statute allows in the case of the limitation of a contingent remainder in fee on a prior remainder in fee; that these holdings are in accordance with the terms of the various statutes which they construe is not disputed, but that there is a need for remedial legislation with respect to those statutes is evident, is a fact which is apparent to any one who has familiarized himself with the decisions. In the case of Cruikshank v. Home of the Friendless, 113 N.Y. 337, the testator left property to be used for the establishment and endowment of a charitable institution, which het-
directed his executors to form and have the same incorporated by the legislature within ten years after his death. The court held that this provision was invalid and that the residuary estate, for which it was, should go to the legatees specified by the testator to take it in case his other provision should be held invalid. Here, it was said, the legislature might refuse to incorporate the society proposed by the testator and a perpetuity would be created. But where a decedent left a will directing his executors to pay the income of his estate to his wife during her life and at her death to divide the principal into eight parts, four of such parts to be given to certain religious associations not yet incorporated, it was held that the association could take at the time their interests were to vest, i.e., at the death of the widow, provided that they were incorporated during the widow's life. (Shipman v. Rollins, 98 N.Y. 311.) A similar case is that of Burrill v. Boardman, 43 N.Y. 254, where a testator bequeathed the residue of his estate to trustees, for the purpose of founding a hospital within two years after his death, provided that two persons named in the will lived that long. The court concluded that the words "within two years" were unnecessary, and held that the future corporation could take if created by an act of the legislature during the two lives named in the will.

As illustrating the rule that the suspension of the absolute power of alienation is void if by any possibility such suspension might exceed the statutory period, see the cases of Schottler v.
Smith, 41 N.Y. 32 and Underwood v. Curtis, 127 N.Y. 523.)

In the case of Booth et al v. Baptist Church, 126 N.Y. 215, a devise was made to trustees to utilize for the purpose of an asylum, to be under the control of a corporation not yet in esse. The trustees were directed to secure the incorporation of the asylum management and they obtained the passage of an act incorporating the same within four months after the testator's decease. The decision of the court in the case was against the validity of the provisions of the will which related to the asylum, because of the absence of the measuring lives, and once again was the high and noble purpose of a generous man frustrated by the merciless power of the law. His vain endeavor to institute and establish a place where the homeless might receive shelter and nourishment is a sad commentary on the humanitarian sentiments of the present generation. That the courts of justice should be compelled to lend their assistance to avaricious individuals whose pernicious energies are directed toward nullification of the liberal gifts of benevolent relatives to associations incorporated for the purpose of lessening in some degree the sufferings of humanity, is a state of affairs which reflects discredit upon our legislators, whose main work should be the production and passage of measures calculated to benefit their constituents. Why should the arbitrary rule of our statute that the absolute power of alienation shall not be suspended for any longer period
than two lives in being, and in one case twenty-one years there-
after, be construed so strictly as to prevent the good intentions
of testators and grantors from being carried into effect? I am
free to admit that it is necessary to have a rule with which to
regulate dispositions of property, and I am also ready and willing
to concede that perpetuities are deleterious in their effects
upon finance and society, but, notwithstanding those concessions
I maintain that the doctrine that obtains in our courts to the
effect that the absolute power of alienation may not be suspended
for any whatever not measured by lives in being, is a blemish
upon the fair records of our jurisprudence, and is a powerful
impediment to the accomplishment of humane anticipations and to
the progress of the spirit of fraternity. The courts are not to
be censured because of the existence of the statute as it now
stands, and has stood for over a century, nor are they to be
blamed for construing it according to what they believe to be its
spirit, still the deplorable realities of both the statute and its
construction remain as accusatory evidences of the undesirable,
and I may add unjustifiable, disregard of the benevolent inten-
tions of testators, who, through partial or complete ignorance of
the statutory requirements and the holdings of the courts with
reference to the dispositions of estates, have unwittingly the
error of attempting to suspend the absolute of alienation of a
part or all of their property for a period of time measured by
something other than a life or lives in being. Under the present state of the law the designs of all such testators, no matter how philanthropic they may be, fall to the ground in consequence of their failure to receive legal sanction. That the right to sell property may, under our existing laws be suspended for terms which extend to fifty and even sixty years, provided the life or lives upon which the estate depends, continue that long, cannot be controverted, yet, while that is a fact, persons are prohibited from disposing of their property in such a way as to put the power of alienation in abeyance for any specific number of years, however short. If our public policy will not be impaired when an estate is created in such a way that its continuity is dependent upon a life or lives in being, but which circumstances permit to run for fifty years or more with the absolute power of alienation in nubibus, then why not allow a grantor or testator to dispose of his property in such a manner as to suspend the power of alienation for a period not exceeding twenty-one years? The argument may be advanced that the passage of a law permitting a suspension for a term of years would tend to increase the number of estates the absolute power of alienation of which would be in abeyance, and that the effect upon business would be of a detrimental character. The correctness of the former part of the argument will not admit of controversy, but to the latter portion I feel justified in declaring to be palpably erroneous. In what
possible manner could the suspension of the absolute power of alienation for a short term of years, twenty-one or less, render business stagnant? It would not seriously affect real estate agents for the persons in possession could convey their interests, and I believe there would be as many titles in the market for sale or exchange as there are under the present laws. The income and profits of the land would have to be invested and thus the financial world would have no cause for complaint. In fact, the only way that dealers in real property would be at all affected, and that is only a possibility, lies in the proposition that they would not receive as much commission for the sale of a fractional title as they might get for the sale of an absolute fee. But it is also possible that with the increase in number of fractional titles there would be a corresponding increase of sales, and the income of real estate agents would suffer no change in amount.

However, admitting that the law proposed would entail a slight financial loss upon dealers in real estate, and I only admit it for the sake of argument, when we consider the vast amount of good that could be done by rendering the inaptly expressed, but philanthropic intentions of benevolent grantors and testators effectual, the financial loss becomes insignificant in comparison.

Having considered the question in its varied aspects and phases, and realizing that the existing state of affairs will
bear an inestimable amount of improvement, also recognizing the fact that extensive changes like the one suggested require long periods of time for their complete consummation and accomplishment, yet, feeling as I do, that the harvest of benefits which would be reaped as a natural consequence of the proposed alteration of the New York law against perpetuities, would be of such vast magnitude as to render regret impossible, I appeal to the legislators of the great Empire State, the leader of her fellows in great legal reforms, to remedy the present deficiencies in our statute.

Finis.

Edward A. Brooks, LL.B.