# THE LAMPSON WILL CASE.

William Lampson, a resident of LeRoy, N. Y., died February 14, 1897, at the age of fifty-seven years. Seven weeks before his death he executed his last will and testament. His personal property amounted to over $400,000, and he left real estate of the value of about $100,000. The entire estate, except about $35,000, is given to Yale University, the disposing clause beginning, "I give and bequeath unto my alma mater, the corporation of Yale College." Mr. Lampson was a bachelor and his nearest relative is an aged aunt, Mrs. Laura A. Brooks, residing in Minnesota. Under the New York statute of distributions she would be entitled in case of intestacy to the entire personal estate, and consequently to the amount represented by any invalid bequest. The heirs at law, besides this aunt, consist of more than fifty cousins and descendants of deceased cousins. The testator had known but few of these cousins and had seen very little of any of them. He had known little of his aunt and had not seen her for many years.

A contest arose upon the probate of the will, and the request made by the Editor of the YALE LAW JOURNAL for a statement of the questions involved can be best complied with by explaining quite fully the claim made in behalf of the contestant, Mrs. Brooks, and by quoting at some length from the opinion prepared by the writer in disposing of the case.

Section 2624 of the New York Code of Civil Procedure confers upon Surrogate's Courts power to determine the validity of testamentary gifts of personal property, but no such power exists as to devises. Should the title to the real estate ever be tested it must be in the Supreme Court by an action in ejectment brought by the heirs at law against the devisee. In case the bequests to Yale should be sustained by the higher courts, such decision will, although indirectly, effectually dispose of the validity of the devise, since the same principle would apply in the disposition of the real estate as in the case of the personal property. It was conceded upon the hearing that the will must be admitted to probate and letters testamentary issued. The single ground upon which the gifts to Yale University are assailed is that the will was executed less than two months be-

fore the death of testator. The statute which it is claimed is contravened is Section 6 of Chapter 319 of the Laws of 1848. The Act is entitled, "An Act for the incorporation of benevolent, charitable, scientific and missionary societies." The law provided that societies formed thereunder might take property by gift or will. The closing paragraph of Section 6 directs that "no devise or bequest shall be valid in any will which shall not have been made and executed at least two months before the death of the testator."

The case of Hollis *v.* Drew Theological Seminary and The Wesleyan University, 95 N. Y. 166, decided in 1884, was relied upon by both parties to the controversy. The will was executed less than two months before testator's death, and contained bequests to the two defendants named, one a New Jersey, the other a Connecticut corporation. The opinion was written by Judge Earl. Stated concisely, the case holds (*a*) that the two-months restriction contained in Section 6 applies only to corporations formed under the act of which the section forms a part, and cannot be extended to societies organized under other general laws or by special charters; (*b*) that the said section has no application whatever to corporations chartered by other States; (*c*) that bequests to foreign corporations for humanitarian purposes are not against public policy: and (*d*) that there is no public or legislative policy against bequests made within two months of death.

With respect to all these matters the decision was clear and unequivocal, but a single observation made by the learned Judge who wrote the opinion has been seized by the contestant and made the foundation of the present controversy. These are the words referred to: "*If there were a general law in this State that no bequest to any of such corporations should be valid, unless contained in a will made at least two months before the death of the testator, that would indicate a general public policy which the courts of this State would enforce against foreign corporations which might come into this State, although such a limitation was not imposed by the laws creating them.*"

Reference must now be made to certain recent legislation in this State, which the contestant insists marks a departure in the policy of our laws so radical that bequests made within two months must now be deemed as so opposed to public and legislative policy that the courts must enforce the restriction even against foreign corporations.

On the 27th day of April, 1892, the University Law was passed. This law, like the numerous other enactments which

have been prepared by the Statutory Revision Commission of this State, gathered together, with many additions and modifications, the laws which had been passed from time to time on this subject, and which were scattered through the statute books. In this way one comprehensive and harmonious statute took the place of a large number of imperfect laws and amendments, often difficult to find and in some measure conflicting. By the provisions of this law, sixty-six acts of the Legislature, passed in almost as many different years, besides considerable portions of the Revised Statutes, were repealed, the repealed portions having been so far as was desired reënacted in the new law. The statute defines the term "University" as meaning the University of the State of New York, and Section 24 of the act provides, "The institutions of the University shall include all institutions of higher education which are now or may hereafter be incorporated in this State."

On the 18th day of May, 1892, the General Corporation Law was enacted. As its name indicates, this law is general in character, classifying the different kinds of corporations, providing for the methods of formation, the limitation of powers, the acquisition of property, besides various other matters such as would naturally be included in a law of this description. Section 11 is in part as follows: "Grant of general powers. Every corporation as such has power, though not specified in the law under which it is incorporated: 3, to acquire by grant, gift, purchase, devise or bequest * * * subject to such limitations as may be prescribed by law."

Among the kinds of corporations provided for by the general corporation law of 1892 are membership corporations; and in 1895 the Legislature, following out the scheme of the revision commission, passed the Membership Corporation Law. At the end of this act, as in the case of the other laws prepared by the commission, there is appended a schedule of laws repealed. This schedule includes 114 acts of the Legislature repealed in full and eighteen repealed in part. In the latter class is found the act hereinbefore referred to for the incorporation of benevolent, charitable, scientific and missionary societies, which is set down in its chronological order in the schedule as follows: "1848—Chapter 319. All except Section 6."

The claims advanced by counsel were to the effect that the repealing schedule of the Membership Corporation Law having preserved Section 6 of the Act of 1848, while repealing the rest of the law, this section is to be deemed as engrafted upon and

made a part of the law which thus saved it from repeal, and that the General Corporation Law of 1892, by providing that corporations formed under it might take by devise or bequest "subject to such limitations as may be provided by law" must now be construed as including Section 6 as among such "limitations." It was therefore claimed in behalf of contestant that the retention of Section 6 under the circumstances referred to marked so general a change in the legislative policy of the State that the prohibition against bequests made within two months of death must, in spite of the decision in Hollis *v.* Drew Theological Seminary, be extended to an educational institution chartered by another State. In order to render this claim of any force, it was further contended that all colleges, being non-stock corporations, are therefore under the classification of the General Corporation law, membership corporations, and are to be classed among the corporations provided for by the Membership Corporation Law of 1895. The claim was distinctly made that Yale University is such an institution as, if organized under the laws of the State of New York, would be a membership corporation.

Stated more concisely, and condensed into a single proposition, the contestant sought to maintain that the recent legislation referred to, taken together, amounts to a general law that bequests to corporations of the kind provided for by the Act of 1848 shall be invalid unless contained in a will made more than two months before death, and that the courts in the enforcement of a supposed public policy must now apply the principle suggested in the italicized quotation from the Hollis case, and extend the prohibition to foreign corporations of the same class.

Discussing the main proposition advanced by contestant, the opinion states:

"The proposition that Section 6 has become 'a part of the Membership Corporation Act' and has acquired added force by the manner of its retention and by virtue of the repeal of the remainder of the Act of 1848, is vital to the contention made by the contestant, for it is only upon this theory that the force of the decision in Hollis *v.* Drew can be met or overcome. I am wholly unable to discover any reason or authority for the claim that this section is to be given any different force or effect under or by reason of the circumstances of its repeal, than it would have been entitled to had a separate and distinct law been enacted for the sole purpose of repealing Chapter 319 of the Laws of 1848, excepting Section 6. The doctrine is new and surprising that where an act of the Legislature is all repealed

except one section, such section becomes by virtue of the exception a constituent part of the repealing law, or obtains any new or different force or effect by reason of the obliteration of the sections which had formed part of the original act. The learned counsel for the contestant in a brief evincing the greatest labor and research, wholly fails to cite a decision or authority promulgating or suggesting any such doctrine or containing an intimation that such has ever been recognized as the law.

"On the other hand, how obvious is the purpose for the retention of Section 6. A large number of societies had been organized under this act during the course of forty-seven years. All were subject to the provisions against the validity of bequests made within two months of death. No good reason seemed to exist why these societies should be relieved from the restriction, which by the very terms of their organization had been assented to. Section 6 begins with the words, 'Any corporation formed under this Act.' The 'Act' having been repealed and the section left, as counsel for proponents describes it, 'floating and unattached,' it might be said to have no meaning and its retention to serve no purpose, except for the fact that the opening words of the section put the investigator to the inquiry as to what act is referred to, and his research is at once rewarded by the discovery that it is an act for the formation of benevolent, charitable, scientific and missionary societies. It would be further discovered that the section which had been saved from repeal, by its express words referred to corporations which could no longer be formed because of the repeal, and the one natural and logical reason which would be assigned for its retention, the one possible office to be fulfilled by it, would be to continue in force the restrictions which it contained as applied to corporations already formed under the act. The repeal of the law did not repeal the societies to which it had given birth, it simply prevented the organization of any more corporations under the law, and the preservation of the restrictive section simply held the societies already organized to the basis upon which they were originally formed."

The opinion cites Endlich on the interpretation of statutes; Bank for Savings, 3 Wallace, U. S. 495–513; and Ex parte Crow Dog, 109 U. S. 556–561, with the following comment:

"There is the highest authority for the doctrine that for the purpose of determining what force shall be given to portions of a statute excepted from repeal, resort should be had to the act itself as it stood at the time of the repeal, and the doctrine is of

the utmost value in the decision of this case, and in meeting, as it seems to me it does, the arguments made in behalf of contestant."

The opinion seeks to controvert the claim that Yale is an institution analogous to a membership corporation as defined by the Act of 1895. A portion of the discussion is here given:

"As I have already shown, even before the enactment of the General Corporation Law, the University Law had been passed, providing a comprehensive scheme for the formation and government of colleges and universities, and directing in explicit terms how all such institutions should be incorporated, by methods wholly outside the General or Membership Corporation Laws. The University Law was the work of the revision commission, and it seems apparent that having by the Act of April 27, 1892, provided a complete system for the incorporation of colleges and universities, it was not intended by the later Act of 1895 to include such institutions of learning along with societies so wholly different in character as those provided for by the Membership Corporation Law."

Upon the argument, counsel for Yale entered into an elaborate and learned discussion for the purpose of demonstrating that Yale was not such an institution as could at any time have been formed in this State under the Act of 1848. While in the main coinciding with this view, the opinion disclaims any intention to base the decision on this ground:

"It may well be doubted whether with the complete and harmonious system of law in this State for the formation of educational institutions and the stringent power of supervision which the law places in the hands of the Regents of the University, the Legislature ever intended that there should be in existence at the same time another law under which similar institutions might be formed free from these restrictions, and at liberty to confer degrees and award diplomas upon such terms and subject to such regulations only as the institutions might see fit to impose. It is sufficient to say that Yale University is not a domestic corporation; it was not incorporated under the Act of 1848; there is no public or legislative policy against bequests made within two months of death; Yale is not within the scope of the statute prohibiting such bequests; Section 6 has no greater force than before the repeal of the other sections of the same law; the phrase used in the General .Corporation Act, 'subject to such limitations as may be prescribed by law,' has no application to this case. It would only add another column

to the structure if it were to be said, as counsel for the university claim, that purely educational institutions were never intended to be incorporated and in no single instance have been incorporated under the Act of 1848. However strong the argument of counsel, and however correct their conclusions, I do not deem it best to base my decision on this ground."

The case of Vanderpoel *v.* Gorman, 140 N. Y. 563, discussed in the opinion, is of much interest, both on account of its direct bearing upon the question at issue, and as impairing the force and effect which should be given to the italicized quotation from the Hollis case in the attempt to apply it to the present controversy. The Vanderpoel case decides that the New York statute prohibiting transfers or assignments of property by corporations in contemplation of insolvency cannot be applied to a foreign corporation doing business in this State.

Although not discussed by counsel the court called attention to the fact that since the enactment of the Membership Corporation law of 1895, that being the law, as contended by counsel, which evinced a changed legislative policy with respect to bequests made within two months of death, the Legislature has by special charter incorporated several societies of the kind provided for by the Act of 1848, authorizing these societies to take by bequest without restriction and in two instances has by amendment removed restrictions which in effect prohibited such bequests. Commenting on these recent statutes the opinion states:

"These recent acts of the Legislature answer more fully than any mere argument could do, the claim that it is now contrary to public policy to permit gifts to corporations when made by will executed within the two-months limit. Surely 'that cannot be enforced as public policy by the courts which the Legislature one day prohibits, in some cases, and another day permits in other cases.' "

The opinion concludes:

"I have not attempted to discuss this case in every aspect presented by the learned counsel for the contestant in his very able brief and oral argument. To have done so would have been to write a treatise, and yet that would afford no reason why the discussion should not be had if the case required it. The issue, after all, is one of statutory construction and may be confined within narrow limits. The decision which has been reached seems to me the only one which can be rendered with due regard to legal principles and without attributing to the Legislature

and the revisers a disposition to render complex and uncertain that which could as easily have been placed beyond controversy. I am fully satisfied that there has been no change in the legislative policy of this State with reference to the matters which have been discussed in this opinion, certainly none adding to the restrictions imposed upon charitable or educational bequests. I believe the purpose in retaining Section 6 of the Act of 1848 was as has here been pointed out, and that should the time ever come when the Legislature shall see fit to further prohibit bequests made shortly before death, and to extend that prohibition to foreign corporations, it will not be done by complicated, tortuous, ambiguous and uncertain methods, but rather by direct and clear statutory provision."

An appeal is to be taken from the decision. Should affirmance follow, counsel for the contestant make the statement that they will then avail themselves of the provisions of Section 2653*a* of the Code of Civil Procedure. This section provides that the validity of the probate of a will may be determined in an action in the Supreme Court for the county in which such probate was had. All heirs at law and next of kin and all interested persons, including the executors, must be made parties. The issue to be tried is confined to the question whether the writing is the last will and testament of the testator. This issue is tried by a jury, and the statute provides that the verdict shall be conclusive as to real and personal property, unless a new trial be granted or the judgment thereon be vacated or reversed. It will be seen that this is not an appeal or in the nature of an appeal from the decision in Surrogate's Court, but a new and independent action resorted to, ordinarily, for the purpose of procuring the verdict of a jury on the questions of testamentary capacity and undue influence.

*Safford E. North.*

BATAVIA, N. Y., February 22, 1898.