THE CONNECTICUT STATUTE AGAINST PERPETUITIES.

The statute against perpetuities was repealed by the General Assembly of Connecticut in 1895, after having been in force for more than a century, and the history of its construction and application by the courts is interesting as an experiment in the development of new rules of law in this country. The statute was intended to prevent the creation of interests which cannot take effect until a remote time, and it accomplished that object by prohibiting gifts to a certain class of persons, namely, such as will not be born until before such time. The common law developed a rule which attained the same object by prohibiting gifts which are not to vest within a certain time. The rule has been stated thus: "No interest subject to a condition precedent is good, unless the condition must be fulfilled, if at all, within twenty-one years after some life in being at the creation of the interest."*

The statute was enacted in 1784, being section 2 of "An Act relating to the Age, Ability, and Capacity of Persons," in the following words: "*And in order to prevent Perpetuities it is hereby provided, That no Estate, either in Fee-Simple, Free-Tail or any lesser Estate shall be given by Deed or Will to any Person or Persons, but such as are in being, or to the immediate Issue or Descendants of such as are in Being, at the Time of making such Deed or Will. And that all Estates given in Tail shall be and remain an absolute Estate in Fee-Simple, to the Issue of the first Donee in Tail.*"† It will be noted that the first part of this section forbids gifts to a certain class of persons, and it alone is concerned with perpetuities in the proper sense of the term. This first part of the section will for convenience be

*Gray on Perpetuities, § 201. Therefore the rule might be called with more propriety the rule against remoteness. It has been said that the suspension of the power of alienation beyond the limits fixed by law is the test of a perpetuity; but the intermediate tenants may alienate whatever interest they have whether the remainder is a perpetuity or not. Whether the law will permit a donee to take a gift at all, is one question; whether, having taken it, he shall be bound by a condition not to part with it, is another question. In *Tarrant v. Backus*, 63 Conn. 277, there was a gift to testator's sons and an attempt to make the same inalienable. The court held the gift good, whether the attempted restraint on alienation was valid or not.

† Rev. St., 1784, p. 3 [§ 2].

called in this article "the statute against perpetuities." The second part declares the nature and effect of gifts in tail, and will be referred to as "the statute of entails."

The whole section appeared substantially without change in every revision of the statutes from its original enactment in 1784 to the last revision in 1883.* The only changes not merely grammatical or rhetorical are the following: In the revision of 1821 the section was transferred to the title "Lands," and thereafter remained under that title. In 1885 the statute of wills was amended by incorporating into it the prohibition of the statute against perpetuities with an exception of gifts for public and charitable uses, including the care of graves,† and the statute of wills, so amended, appeared in the revision of 1888 under the title Wills.‡ The statute of charitable uses was in the same year amended so as to include gifts for the care of graves,§ which had theretofore been illegal.¶ In 1884 the wording of the statute was changed from "persons in being," etc., "at the time of making such deed or will," to "persons in being," etc., "at the time of the delivery of such deed or the death of the testator;"¶ but this amendment was held in the case of *Johnson v. Edmond*** to be merely declaratory and not to change the substance of the law. In 1895 the statute against perpetuities was repealed,†† leaving the statute of entails‡‡ in

* 1784, p. 3, § 2.

† 1795, p. 24, § 2.

‡ 1808, pp. 42, 43, Title viii, § 2.

§ 1821, pp. 299, 301, Title 56, c. i., § 4.

§ 1835, p. 348, Title 58, c. i., § 4.

§ 1839, p. 389, Title 57, c. i., § 4.

§ 1849, pp. 454, 455, Title xxix, c. i., § 4.

§ 1854, pp. 629, 630, Title xxix, c. i., § 4.

§ 1866, pp. 536, 537, Title xxxvii, c. i., § 4.

§ 1875, p. 352, Title xviii, c. 6, pt. 1, § 3.

§ 1888, § 2952; also § 537.

† Act 1885, c. 110, § 130, p. 500.

‡ Gen. St. 1888, § 537.

§ Act 1885, c. 36, p. 427; Gen. St. 1888, § 2951.

¶ *Coit v. Comstock*, 51 Conn. 352, 386 (1883). In *Bolles v. Smith*, 39 Conn. 217 (1872), such a gift had been allowed to stand without contest, the court expressly refraining from passing on its validity. In *Bent's Appeal*, 38 Conn. 26 (1871), the point had been raised but not decided. Such gifts have been valid since the act of 1885. *Bronson v. Strouse*, 57 Conn. 147 (1888).

¶¶ Act 1884, c. 87, p. 367; Gen. St. 1888, §§ 2952, 537.

** 65 Conn. 492, 500 (1895).

†† Act June 29, 1895, c. 249, p. 590.

‡‡ Gen. St. 1888, § 2952.

force, and the statute of wills* unchanged except by the erasure therefrom of the prohibition of gifts to persons barred by the statute of perpetuities.

Thus the enactment of 1784 remained in full force for more than a century, during which period all reported cases† upon the subject of perpetuities in this state arose, and the statute has been adjudged to be declaratory of the common law of the state and colony as it had been from the beginning, but this, it is believed, has always been in cases when the Court was construing that part of the section which is herein called the statute of entails.‡ There are *dicta*, extending this statement to the statute against perpetuities,§ but it is believed that no adjudged case rests upon such an extension. The following explanation of the origin of the statute is suggested. There was an ancient rule of the English common law which, after a life estate in real property to an unborn person, forbade a remainder to a child of such person, because it would be a "possibility upon a possibility." The existence of such a rule has been denied,|| but it is established not only that such a rule existed before the modern rule against perpetuities arose, but that it still exists, and that a limitation contrary to it is void, though not in conflict with the more modern rule.¶ This ancient rule of real property law was brought to Connecticut by the English colonists, and there grew up beside it, by the common consent of the colonists, the rule that entailed estates became absolute fees in the issue of the first donee in tail, and the two rules were embodied in the statute of 1784. This explanation is rendered probable by the fact that the compilers of the revision of 1821, in arranging the statutes in the order of their subject matter, instead of the alphabetical order of their titles, which seems to have been issued theretofore, placed the entire section under the title "Lands." In time the origin

* Id. § 537.

† Except *Healy v. Healy*, 70 Conn. 467 (1898), recently published.

‡ *Hamilton v. Hempstead*, 3 Day 332 (1809); *Chappel v. Brewster*, Kirby 175 (1786).

§ See the dissenting opinion of Daggett, J., in *Allyn v. Mather*, 9 Conn. 130 (1832); cited in *Johnson v. Edmond*, 65 Conn. 499. The argument of Judge Daggett would be equally valid if the common law rule and not the statutory rule had been in force before the enactment of the statute.

|| *Gray on Perpetuities*, § 133, n. (1886), approving *Lewis on Perpetuities*.

¶ *Whitby v. Mitchell*, L. R., 42 Ch. Div. 494 (1889) affirmed by Court of Appeal, 44 id. 85 (1890); in re *Frost*, 43 id. 246 (1889).

of the statute against perpetuities was forgotten, and it was applied to personal property, apparently without controversy.*

The courts have construed the words "immediate issue or descendants" to mean children only, excluding grandchildren and more remote lineal descendants, as well as all collateral kinsmen. Thus a gift to the unborn son of a person in being is valid;† but the following have been held to be void: A gift to the children or other descendants of persons in being, to take effect upon A's reaching the age of eighteen years, for the "other descendants" are barred by the statutes;‡ a contingent gift upon the death of testator's last surviving daughter, to the issue of testator's grandchildren then deceased, including grandchildren born after the testator's death;§ a gift upon the arrival at the age of twenty-one years of the youngest child of testator's daughter, to the children of any deceased child of said daughter, *per stirpes*;|| or, upon the death of testator's last surviving child, to testator's grandchildren and their heirs;¶ or to those who shall, after the expiration of certain lives in being, be the "heirs" or "descendants" of a person in being at the time of the gift.** It is believed that all these gifts would have been valid under the common law rule.†† In view of these decisions the meaning of the statute is: *No gift is valid unless made to a person in being, or to the child of such a person.*

Under the statute, if it be construed most liberally in aid of a gift, all gifts must vest within two generations at the most, and under the rule, within a life or lives in being and twenty-one years and a few months thereafter. Nevertheless the statute and the rule accomplish their common end by means radically different. The statute prohibits gifts to a class of *persons* not related in a certain way to some person in being at the time of the gift; while the rule prohibits gifts designed to take effect beyond the limits of a certain future *time*, measured by any life in being at the time of the gift.

* Rand v. Butler, 48 Conn. 293 (1880); Alfred v. Marks, 49 Conn. 473 (1882).

† Allyn v. Mather, 9 Conn. 114, 127 (1832).

‡ Wheeler v. Fellowes, 52 Conn. 238.

§ Andrews v. Rice, 53 Conn. 567, 569 (1885).

|| Landers v. Dell, 61 Conn. 189 (1891); see also Hewitt v. N. Y. R. Co., etc. 70 Conn. 637.

¶ Morris v. Bolles, 65 Conn. 45 (1894).

** Rand v. Butler, 48 Conn. 293, 299 (1880); Alfred v. Marks, 49 Conn. 473, 476 (1882); Anthony v. Anthony, 55 Conn. 256 (1887); Leake v. Watson, 60 Conn. 498 (1891); Beers v. Narramore, 61 Conn. 13 (1891); Ketchum v. Corse, 65 Conn. 85 (1894); Johnson v. Webber, 65 Conn. 501 (1894); Security Co. v. Snow, 70 Conn. 288 (1898).

†† Healy v. Healy, 70 Conn. 467 (1898).

Did the statute abrogate the common law rule as to all gifts, or were some, such as gifts to charitable uses, to be governed by the rule and others by the statute, or were both in force at the same time with respect to all gifts, the rule fixing the time within which gifts must vest and the statute restricting the class of persons in whom gifts might vest within such time; or were both thus in force with respect to some gifts, and only one with respect to others? The decisions do not answer these questions clearly.

The universal application of the statute is suggested by the case of *Jocelyn v. Nott*.^{*} In that case a gift to any Congregational church which should fulfill certain conditions, with no limit as to time, was held void for uncertainty as to the time of its vesting, and the court said that under the statute all estates must vest within the lifetime of some person in being, or within the lifetime of the issue of some person in being at their creation, and that charitable gifts were no exception to the statute. But in *Pendleton v. Kinney*† it was said that gifts to charity were not within the statute. There was in this case a gift for certain lives, with forfeiture to a charity upon breach of condition, and the gift to charity was held good because the intermediate estate could not exceed the specified lives in being at testator's death. Moreover the rule against perpetuities is referred to as if in force by Judge Swift;‡ and in the case of *St. John, Adm., v. Dann*,§ where there was a gift to G. and his family until G. shall discharge his present liabilities, then to G. absolutely, such gift was held valid under the rule, because the trust was not to exceed the life of G., and under the statute, because "family" was construed as excluding persons barred by the statute. So in *Belfield v. Booth*,|| the division in fee was to be postponed until fourteen years after the executor should have settled the estate, and it was contended that this might postpone the vesting until more than twenty-one years after the testator's death, which would render the gift in fee void under the common law rule. The court admitted that the rule was in force, and said that a postponement for more than twenty-one years would avoid the gift, but held that a reasonable time for settlement was implied, which must be less than seven years

^{*} 44 Conn. 55 (1876). The Court also says that the gift is void under the common law rule.

† 65 Conn. 222 (1894).

‡ *Morgan v. Morgan*, 5 Day 517, 526 (1813).

§ 66 Conn. 401 (1895).

|| 63 Conn., 299 (1893).

after the testator's death, and such postponement could not, therefore, be for so long a time as twenty-one years. The gift was accordingly upheld. In *Bent's Appeal from Probate** there were gifts to the surviving children of testator's sons, including those thereafter born, when the youngest of such children arrived at the age of thirty years. This might be more than twenty-one years after the testator's death, and the appellant claimed, among other things, that the gift was void under the common law rule. The appellees contended that the rule was not in force in Connecticut and that the gift was valid, since it was not within the prohibition of the statute. The court avoided a decision on this point. It should be remembered that the common law rule was far from settled when the Colonies were planted, though in the absence of statute it has been adopted throughout the United States in its modern English form.† The conclusion that the rule and statute were concurrently in force in Connecticut is supported by *Belfield v. Booth* (*supra*), although the statute has been cited as furnishing a measure of time within which gifts must vest, different from that furnished by the rule, and if this were true it would be hard to see how they could both be operative.

Thus in *Tappan's Appeal*,‡ a gift for charitable uses upon a condition subsequent to be performed within three years after testatrix's decease, with a provision that the judge of probate for good reason might by his written order extend the time, was held valid because such extension must be reasonable. It was said that to render a gift invalid its terms must suspend "the absolute power of alienation" during such a period to allow the issue of a person unborn at the time of the gift to take; a period manifestly much longer than three years. This was in answer to the argument of counsel based on New York decisions under a statute of that state prohibiting the suspension of the power of alienation beyond a certain period. In *New Haven Young Men's Institute v. City of New Haven*,§ a gift for a charitable use to a beneficiary to be selected by the defendant at its discretion, was attacked on the ground that such selection might not be made until a time more remote than that permitted by the statute, but the court held that the

* 38 Conn. 26 (1871.)

† Gray, *Perpetuities*, §, 200.

‡ 52 Conn. 412, 420 (1884). See also *Woodruff v. Marsh*, 63 Conn. 125. (1893).

§ 60 Conn. 32 (1890).

defendant must proceed forthwith to select the beneficiary. It is believed that the same conclusions would result from the application of the common law rule.

Since the repeal of the statute the common law rule has been in force, so that a remainder upon A.'s death to his lawful heirs is valid if created since the repealing act of 1895.*

The common law doctrine that a vested gift to a class may be so made that the share of any member is defeasable by death before the period of enjoyment and that new members may be born into the class who will ultimately take the whole gift, has been adopted in Connecticut. The reason for this is that a vested gift never contravenes the rule, since it is not subject to a condition precedent. In *Farnam v. Farnam*† a trust had been created for certain lives and the testator provided that upon the death of the survivor, "I give * * * all the estate * * * then held in trust * * * to my grandchildren who shall then be living," the children of any deceased grandchild to take their parent's share. This gift was attacked on the ground that the children of a deceased grandchild might be the issue of a grandchild born after the testator's death and barred by the statute, but the court separated the donees into two classes, the first consisting of the grandchildren, who could not be barred by the statute, and who took as a class opening to let in the after born, the share of each member being defeasable by death without issue before the time fixed, while the second consisted of the great-grandchildren. The gifts to these were valid or not as their parents were in being or not at testator's death. The gift to the grandchildren was valid. This case was followed in *Belfield v. Booth*‡ and *Johnson v. Webber*§.

If by the terms of the gift it is uncertain whether the donee will or will not turn out to be a person barred by the statute, then the whole gift is void. The mere possibility of such an event bars the donee, and the courts will not await the event and allow the donee to take, if he should turn out to be a person not barred.¶ In *Alfred v. Marks*¶ there was a gift to L., a child seven years of age, for life, and upon his death without

* *Healy v. Healy*, 70 Conn. 467 (1898.)

† 53 Conn. 261 (1885).

‡ 63 Conn. 299 (1893).

§ 65 Conn. 501 (1894).

|| *Rand v. Butler* 48 Conn. 293; *Wheeler v. Fellowes* 52 Conn. 238; *Tappan's Appeal*, id. 412, 420.

¶ 49 Conn. 473 (1882).

children remainder, to the heirs of W. At the time of the suit W. was living and L. had died without children, but the remainder to the heirs of W. was held void because at the time of the gift it was uncertain whether or not the heirs of W. at L's death might be grandchildren whose parents were not in being when the gift was made. So under the common law rule if the contingency might possibly happen beyond the time fixed, the gift was void.*

But the question of the validity of a gift which is disputed on this ground will not be determined unless necessarily involved in the controversy. Thus, in *Farnam v. Farnam*,† a suit for the construction of a will, the validity of the gift to children of a deceased grandchild was questioned, and it was said that the issue of each grandchild was a separate class and the gift to it might or might not be valid, but the court further said that the question was unimportant and refrained from deciding it. So in *Johnson v. Edmond*,‡ which was also an action for the construction of a will, there was a gift to A. for life, and at her death to her children and the descendant of any child who may have deceased, and a gift over to B. A. died childless after the testator's death. The court held it unnecessary to consider the effect of the attempted gift to the descendants of A.'s deceased children, and that the property vested in B. at testator's death subject to A.'s life interest and subject also to the contingency A.'s dying without surviving descendants. In the similar case of *Johnson v. Webber*,§ after a valid vested gift to testatrix's grand children, as a class, there was an attempted gift over of the share of any member of the class upon his death before the period of enjoyment. This event never happened, and the court refused to consider the validity of the gift over, because, if invalid, it would not affect the gift to the class, and if valid it was inoperative because the contingency never occurred. When the gift is to a class, some members of which may be persons barred by the statute, it is void as to all members.||

The validity of gifts to charitable uses has been determined in accordance with the decisions under the common law rule. Thus a gift in trust to be applied partly to uses non-charitable and the rest to charitable uses is wholly void, for a little char-

* Gray, *Perpetuities*, § 214.

† 53 Conn. 261.

‡ 65 Conn. 492 (1894).

§ 65 Conn. 501 (1894).

|| See headnote in *Hewitt v. N. Y. etc. R. Co.*, 70 Conn. 637 (1898).

ity will not save a gift;* and after a gift in trust for one charitable use, a gift over by way of forfeiture for breach of condition at any time in the future to other trustees for another charitable use, is valid.† A remote gift to a charity is valid if there is no intermediate gift to a non-charitable use,‡ and income may be accumulated and added to principal for such period and in such amounts as are reasonable in view of the objects of the charity and other circumstances. Thus, where there was a gift of \$400,000, to establish and maintain a school, with a provision that \$10,000 be accumulated each year and added to the principal for one hundred years and longer, if the trustees should deem it best, such accumulation was held reasonable in view of the amount of the principal and the probable increase of population in the state, and it was said that an unreasonable accumulation after one hundred years had elapsed could be stopped by the courts.§ Accumulation for private uses during lives in being is allowed.||

The question often arises whether a gift, partly void and partly valid, can be separated so that the valid part may stand. This can be done only when it would not involve consequences substantially and materially different from what the donor intended. Thus a gift to testator's daughters and their children during the lives of said daughters and the survivor of them is good, though coupled with a void contingent gift over upon the death of such survivor.¶ And where certain property was divided into two funds, and there was a valid gift of the first and a valid gift of certain annual payments out of the income of the second for the lives of certain persons and the survivor of them, followed by a void gift over upon the death of such survivor to testatrix's then lineal descendants, it was held that

* *Coit v. Comstock*, 51 Conn. 352 (1883.)

† *Storrs Agricultural School v. Whitney*, 54 Conn. 342 (1887). The case of *Jocelyn v. Nott*, 44 Conn. 55 (1876), was distinguished. In the latter case a charitable gift upon the fulfillment of certain conditions in the future, without certainty as to time or as to the beneficiary was held void, and the court said that there was no exception to the statute in favor of charitable gifts. See also *Gray, Perpetuities*, § 597.

‡ *Woodruff v. Marsh*, 63 Conn. 125 (1893). The authorities on this point under the common law rule are conflicting. The court approved *Russell v. Allen*, 107 U. S. 163.

§ *Ibid.* For the common law rule see *Gray, Perpetuities*, ch. 20.

|| *Andrews v. Rice*, 53 Conn. 567; *Farnam v. Farnam*, id. 261; *Morris v. Bolles*, 65 Conn. 45; *Johnson v. Webber*, id. 501.

¶ *Andrews v. Rice*, 53 Conn. 567. See also: *Leake v. Watson*, 60 Conn. 498; *Landers v. Dell*, 61 Conn. 189; *Morris v. Bolles*, 65 Conn. 45.

neither the valid gift of the first fund nor the valid gift of income from the second, was affected by the void gift in remainder.* On the other hand if a will creates a trust during the lives of testator's widow and children and the survivor of them, makes a valid gift of income to the widow for life, gives a valid remainder (of income) to the children, and on the decease of any child a void gift (of income) to the lineal descendants of such child, and finally a void gift in fee on the termination of the trust to the lineal descendants of the testator's children, the valid gift of income to the widow is not affected by the invalid gifts, but the valid gift of income to testator's children during the lives of the widow and children and the survivor of them cannot be separated from the invalid gifts and must fail, and the trust must terminate at the widow's death.†

Where the terms of a gift are doubtful the law will not look to the statute to discover the donor's intention, but his words will be construed independently, and after their meaning is determined the statutory test will be applied. The question of validity often depends upon the time when the donees are to be determined; thus a gift to B. and at B.'s death to testator's heirs was held to be a vested remainder in testator's heirs at his death, and therefore valid;‡ but if the gift had been construed to be to persons answering the description of testator's "heirs" at B.'s death it would have been void, for such persons might be the issue of persons unborn at the time of the gift. So where there was a gift in trust until testator's youngest grandchild became eighteen years of age, followed by a gift in fee, it was held that the youngest grandchild in being at testator's death was meant.§ A provision that if the testatrix's granddaughter shall die leaving "a husband," then I give to "said husband," means the husband of the granddaughter at the time of the gift, and not any future husband.|| But where a trust was created for the support of A. "until he is of lawful age, then to be his or his children's forever," and in case he should die without children, a gift to the heirs of W., it was held that such heirs could not be known until A. died without children, and therefore the gift to them is a void executory devise.¶ Gifts in remainder are fre-

* Johnson v. Webber, 65 Conn. 581.

† Ketchum v. Corse, 65 Conn. 85.

‡ Rand v. Butler, 48 Conn. 293, 299 (1880).

§ Wheeler v. Fellowes, 52 Conn. 238 (1884).

|| Johnson v. Webber, 65 Conn. 501.

¶ Alfred v. Marks, 49 Conn. 473, Carpenter, J., dissenting.

quently made by will to the "heirs," "issue" or "legal representatives" of certain persons, and their validity depends upon the construction given to such descriptive words. The intent of the testator will of course control. A provision for such of testatrix's heirs at law as may be in need of pecuniary assistance, applies only to persons living at the time of testatrix's death, and the gift is valid.* "Legal representatives" often means executors and administrators, and a gift to a person not barred by the statute, or his legal representatives if he dies before the time of enjoyment, is construed as a vested gift in fee to him;† but "heirs and legal representatives" may mean lineal descendants, as for instance where there is a trust during the lives of testator's children and the survivor of them, income to be paid to them, and upon the death of any, to his "heirs and legal representatives" and upon the termination of the trust the principal to be paid to the "heirs and legal representatives" of the children.‡ So "heirs" must frequently be taken literally or as equivalent to "statutory distributees," though this avoids the gift. For example, a gift to A. for life and remainder to his "heirs" or "legal heirs,"§ or upon the expiration of certain lives to the "heirs" of testator's children or grandchildren.|| But the word may mean children, as in the case of a trust, the income to be paid to testator's sons during their lives, and on the death of either son a gift to his widow if he leaves no "heirs," but if he does leave "heirs," division to be made to the family the same as before his death until the youngest child arrives at the age of twenty-one years, when there shall be a division in fee to the "heirs."¶ It is frequently important to determine whether the gift is made to a class or to individuals, for if the former, it is good, and if the latter, bad. The following have been construed to be gifts to a class. In trust during the lives of testator's widow and children and the survivor of them, and upon the death of such survivor "this trust shall cease and I give all the estate which shall then be held in trust to my grandchildren who shall then be living *per capita* and not *per stirpes*,"** or upon the death of testator's two granddaughters certain property to

* *Bronson v. Strouse*, 57 Conn. 147.

† *Tarrant v. Backus*, 63 Conn. 277, 290; *Johnson v. Edmond*, 65 Conn. 492.

‡ *Ketchum v. Corse*, 65 Conn. 85.

§ *Anthony v. Anthony*, 55 Conn. 256; *Leake v. Watson*, 60 Conn. 498.

|| *Beers v. Narramore*, 61 Conn. 13; *Morris v. Bolles*, 65 Conn. 45.

¶ *Anthony v. Anthony*, 55 Conn. 256.

** *Farnam v. Farnam*, 53 Conn. 261.

be divided and distributed equally among their children *per capita*.* But the gift is individual where it is provided that upon the death of testator's daughter the trustees shall divide the principal "into as many equal shares as I may have grandchildren or their issue then living, the issue of any deceased grandchild to be counted as one share," one share to be given to each grandchild and one to the issue of each deceased grandchild;† or where, upon the termination of a prior trust, there is a gift in fee to the children of testator's daughter, the children of any such child who may have deceased to take its parent's share.‡

It is worthy of note that though the statute against perpetuities is itself ancient, all decisions under it are quite recent. We find it referred to by the court in 1832,§ urged by counsel in 1871,|| and stated by the court as a ground for the decision in *Jocelyn v. Nott*¶ in 1876, though it would seem that the true ground for that decision is the common law rule. In *Rand v. Butler*** (1880) the "heirs" of the testator are construed to mean those who are heirs at the testator's death, and the court holds that if it were otherwise construed the gift would be void under the statute. In the year 1882,†† ninety-eight years after the enactment of the statute, we have the first unequivocal ruling that a gift is void under it. Since that time the cases have been numerous. It would seem that the statute remained forgotten or undiscovered for a long period, that gifts were frequently made in conflict, or seemingly in conflict with its provisions, and that when attention was called to it by frequent decisions its repeal was demanded by the public. The influence of the decisions of the courts of England and other states has been so strong that an attempt to differentiate our law from that prevailing in those jurisdictions has failed.

The Ohio statute of December 17, 1811, is copied from that of Connecticut *verbatim* except that its operation is restricted to "lands or tenements lying within the state." The courts have construed "immediate issue or descendants" as including grandchildren whose parents were dead; and it has been held that the prohibition of the statute has regard only to persons, so that if a gift, otherwise good, be made to a class of persons some of whom are barred by the statute and some not, it is valid as to the latter and void as to the former.‡‡

PHILIP PATTERSON WELLS.

* *Johnson v. Webber*, 65 Conn. 501.

† *Andrews v. Rice*, 53 Conn. 567.

‡ *Landers v. Dell*, 61 Conn. 189.

§ *Allyn v. Mather*, 9 Conn. 114.

|| *Bent's Appeal*, 38 Conn. 26.

¶ 44 Conn. 55.

** 48 Conn. 293.

†† *Alfred v. Marks*, 49 Conn. 473.

‡‡ *Stevenson v. Evans*, 10 Ohio St. 307; *Turley v. Turley*, 11 id. 173; *McArthur v. Scott*, 113 U. S. 340, 383.