being known to such person to be living during that time, shall marry during the lifetime of such absent husband or wife, the marriage shall be void only from the time that its nullity shall be pronounced by a Court of competent authority:" 2 R. S. N. Y. ch. 139, sec. 6.

"When it shall appear, and be so decreed, that such second marriage was contracted in good faith, and with the full belief of the parties that the former husband or wife was dead, the issue of such marriage born or begotten before its nullity be declared, shall be entitled to succeed, in the same manner as legitimate children, to the real and personal estate of the parent who at the time of the marriage was competent to contract . . . :" ib. ch. 142, sec. 23.

The statutory provision contained in sec. 6 of ch. 139, above quoted, became law in 1830. It is upon its construction and effect that the members of the New York Bar called as witnesses disagree.

Mr. Orcutt, an attorney in practice for 25 years, swears that this statute is restrospective, and affects marriages contracted and issue born of such marriages before it became law. This position is controverted by Mr. E. Corey Townsend, a practitioner for 21 years, and by Mr. W. S. Jenkins, who has been in practice for 25 years, who both maintain that the statute applies only to marriages contracted after its enactment. . . .

Mr. Orcutt relied upon the decision of the Court of Appeals in Brower v. Bowers, 1 Abbott (C. A.) 214, decided in 1850. . . . This decision, if it correctly expounds the law of the State of New York, settles in favour of plaintiffs the question of the retroactivity of the statute of 1830. All three legal witnesses concur in stating that the decisions of the Court which disposed of this case bind all the Courts of the State of New York. . . . A contrary view as to the retroactivity of the statute was expressed by Chancellor Walworth in Valleau v. Valleau, 6 Paige at p. 210. But nowhere do I find any judicial observation upon Brower v. Bowers which casts the slightest doubt upon its authority. It is referred to, without any adverse comment, in Price v. Price, 124 N.Y. at p. 600, and Bailey v. Bailey, 45 Hun at p. 282. Upon cross-examination, Mr. Jenkins admitted that Brower v. Bowers has never been overruled. I therefore find, upon the evidence before me, that that case correctly states the law of New York to be that the statute of 1830 is retrospective in its operation. In the view I take of the present action, this finding may not be material.