was no such limitation affecting the bringing of an action to recover a legacy. See Mass. Gen. St. c. 97, § 22; *Kent* v. *Dunham*, 106 Mass. 586, 591; *Brooks* v. *Lynde*, 7 Allen, 64, 66. He also learned that as his father's will gave him, after his mother's death, the same estate that he would have taken by inheritance had there been no will, the law looked upon the devise to him as void, and deemed him to have taken the estate by descent. What he had supposed to be a specific devise of the estate to him was then a void devise, or no devise at all; and his parcel of real estate, being in the eye of the law simply a part of an undevised residue, was of course liable to be sold for the payment of the legacies contained in his father's will. It was assets which the executor was bound to apply to that purpose. This exact point had been determined in the then recent case of *Ellis* v. *Page*, 7 Cush. 161; and Mr. Ingalls was finally compelled to see the estate, the undisputed possession of which he had enjoyed for so many years, sold at auction by the executor of his father's will for $135,000, not quite enough to pay the legacies to his cousins, which legacies, with interest from the expiration of one year after the testator's death, amounted at the time of the sale in 1862 to $143,000. The Messrs. Jones themselves purchased the estate at the sale, deeming the purchase a good investment of the amount of their legacies, and Mr. Ingalls instituted a system of stricter economy in his domestic expenses, and pondered much on the uncertainty of the law and the mutability of human affairs.

By one of those curious coincidences which so often occur, Messrs. William and Arthur Jones had scarcely begun to enjoy the increased supply of pocket money afforded them by the rents of their newly acquired property, when they each received one morning a summons to appear before the Justices of the Superior Court, "to answer unto John Rogers in a writ of entry," the premises described in the writ being their newly acquired estate.

The Messrs. Jones were at first rather startled by this unexpected proceeding; but as they had, when they received their deed from Mr. Ingalls's executor, taken the precaution to have the title to their estate examined by a conveyancer, who had reported that he had carried his examination as far back as the beginning of the century and had found the title perfectly clear and correct, they took courage, and waited for further developments. It was not long, however, before the facts upon which the writ of entry had been founded were made known. It appeared that for some time prior to 1750 the estate had belonged to one John Buttolph, who died in that year, leaving a will in which he devised the estate "to my brother Thomas, and, if he shall die without issue, then I give the same to my brother William." Thomas Buttolph had held the estate until 1775, when he died, leaving an only daughter, Mary, at that time the wife of Timothy Rogers. Mrs. Rogers held the estate until 1790, when she died, leaving two sons and a daughter. This estate she devised to her daughter, who subsequently, in 1800, conveyed it to Mr. Thomas Ingalls, before mentioned. Peter Rogers, the oldest son of Mrs. Rogers, was a non-compos, but lived until the year 1854, when he died at the age of 75. He left no children, having never been married. John Rogers, the demandant in the writ of entry, was the oldest son of John Rogers, the second son of Mrs. Mary Rogers, and the basis of the title set up by him was substantially as follows. He claimed that under the decision in *Hayward* v. *Howe*, 12 Gray 49, the will of John Buttolph tail, the law construing the intention of the testator to have been that the estate should belong to Thomas Buttolph and to his issue as long as such issue should exist, but that upon the failure of such issue, whenever such failure might occur, whether at the death of Thomas or at any subsequent time, the estate should go to William Buttolph. It had also been decided in *Corbin* v. *Healy*, 20 Pick. 514, 516, that an estate tail does not descend in Massachusetts, like other real estate, to all the children of the deceased owner, in equal shares, but, according to the old English rule, exclusively to the oldest son, if any, and to the daughters only in default of any son; and it had been further decided in *Hall* v. *Priest*, 6 Gray, 18, 24, that an estate tail cannot be devised or in any way affected by the will of a tenant in tail. Mr. John Rogers claimed then that the estate tail given by the will of John Ruttolph to Thomas Ruttolph had descended at the death of Thomas to his