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BASTARDY—EVIDENCE—BASTARD CHILD — RESEMBLANCE. — *Shailer v. Bullock*, 61 Atl. 65 (CONN.).—*Held*, that in a prosecution for bastardy, the alleged bastard child, ten months of age, was admissible in evidence to show a resemblance of features between it and defendant, alleged to have been its father.

Admissibility of child as evidence in such proceedings recognized in England without question. *Douglas Case*, 2 Harqt. Collect Jurid. 402. In United States weight of authority supports English ruling. *Gilmantan v. Haw.* 38 N. H. 108; *Scott v. Donovan*, 153 Mass. 378; *State v. Woodruff*, 67 N. C. 89. *Contra*: *Clark v. Bradstreet*, 80 Me. 454; *Hanawalt v. State*, 64 Wise 84. Main objection in such cases appears to be that child was too young to bear reliable resemblance. Some states admit child in evidence for such purpose only when it has attained some degree of maturity. Child two years and one month old admitted in *State v, Smith*, 54 Iowa, 104. but in same state child three months old not admitted. *State v. Danforth*, 48 Iowa 331. Rule is well established that a child is admissible as evidence to show face characteristics. *Danford v. Guy*, 23 Ark. 50; *Bryan v. Walton*. 20 Ga. 480; *Warlick v. White*, 76 N. C. 175. Where fact of resemblance has been regarded by the court as having probative value, the production of the child for the better apprehension of the resemblance has been treated as proper. *Wigmore on Evidence*, page 1349.

CARRIERS—EJECTION OF PASSENGER—PUNITIVE DAMAGES.—RICHARDSON V. ATLANTIC COAST LINE R. R., 51 S. E. 261. (S.. C.). —Where a passenger buys a ticket to a station which the ticket agent tells him is on the main line, and, on changing cars is shown by a person in uniform a train for his destination, but after it starts is told by the conductor that it is a through train and will not stop, and is put off with only what force is necessary, on refusal to pay the additional fare to the next stopping point, and is again received on payment and carried to the station beyond—*Held*, he is entitled to damages. Woods. J. *Dissenting*.

Where a failure to have a proper ticket is the fault of the ticket agent passenger is under no duty to pay additional fare and thus avoid trouble. *Head v. Geo. Pac. Ry.*, 79 Ga, 358; *Murdock v. B. & A. R. R.*, 137 Mass. 293; *L. & N. R. R. v. Breckenridge*, 99 Ky. 1. That he is obliged to pay the additional fare. *Penn R. R. Co. v. Lenhart*, 120 Fed. 61 (Ill.); *Sprenger v. Tacoma R. Co.*, 15 Wash. 660; *Peabody v. O. R. & N. Co.*, 21 Or. 121. If passenger, under such circumstances, leaves the train he has the right to sue, but if he chooses to go on after ejection he cannot recover. *Lake Shore & M. C. Ry. v. Pierce*, 47 Mich. 277. Even if misinformed by ticket agent, if conductor correctly informs him before the train starts he would have no ground for action. *I. & G. N. Ry. Co. v. Hassell*, 62 Tex, 256. It is the duty of passengers to inquire of trainmen and of trainmen to warn passengers not to board or remain on the wrong train. *Bœhm v. D. S. S. & Atl. Ry.*, 91 Wis. 592. In such a suit evidence must be admitted showing the passenger's good faith in riding according to the information given by the ticket agent.

Van Kirk v. Penn. Ry. Co., 76 Pa. St. 66. Conductor may rely on ticket and not be personally liable for ejection of passenger if only reasonable and necessary force is used. *Ill. Cent. v. Jackson*, 79 S. W. 1187 (Ky.). Passenger has the right to be carried according to the custom of the road, but cannot insist upon being carried otherwise. *Beauchamp v. I. & G. Ry. Co.*, 56 Tex. 239.

CONFLICT OF LAWS—MARRIED WOMAN'S CONTRACT—LEX LOCI CONTRACTUS—GARRIGUE ET AL. V. KELLER, 74 N. E. (IND.). 523.—*Held*, that a promissory note drawn and delivered in the state of a married woman's domicile and to be performed in another state is binding upon her as surety in the state where it is to be performed, although she would have been without capacity to make such a contract in that state.

It is the established rule that a contract void by the *Lex Loci Contractus* is void in the state of its performance. *Hager v, National German American Bank*, 105 Ga. 116; *Union Nat. Bank v. Chapman*, 169 N. Y. 538. But where as in this case capacity is given by the *Lex Loci Contractus* and denied by the *Lex Solutionitis* some cases hold the other way. *United States v. Garling House*, 4 Ben. 194; *Phœnix Mutual Life Ins. Co. v. Simons*. 52 Mo. app. 385; *Voigt v. Brown*, 42 Hun 394; *Potson v. Stewart*,167 Mass. 211. When the *Lex Loci Contractus* and the *Lex Solutionis* do not conflict the *Lex Loci Contractus* will prevail against the *Lex Domicilii. First National Bank v. Mitchell*, 92 Fed. 565; *Bowles & v. Field*, 78 Fed. 642. And even where the married woman does not leave the place of her domicile but contracts in another state through an agent or by mail the *Lex Loci Contractus* will prevail against the *Lex domicilii. First National Bank v. Freeman, Supra; Bell v. Packard*, 69 Me. 105; *Millikin v. Pratt*, 125 Mass. 374. But see *contra. Freeman's Appeal*, 68 Conn. 533. Parties may stipulate in regard to certain matters as to what law shall govern. *Depau v. Humphreys*, 20 Martin R. 1., but see *Van Schaike v. Edwards*, 2 Johns. Cas. 355.

CONSTITUTIONAL LAW—CHINESE EXCLUSION—CLAIM OF CITIZENSHIP.—UNITED STATES V. TU TOY,25 SP. CT. 644.—*Held*, that the decision of the Secretary of Commerce and Labor affirming the denial by immigration officers of the right of a person of Chinese descent to enter the United States is conclusive on the Federal courts under the act of August 18, 1894.

This case, analogous to two earlier decisions must be considered good law. *United States v. Wong Kim Ark*, 169 U, S. 649; *Chin Bak Kan v. U. S.*, 185 U. S. 193. But see dissenting opinion by Mr. Justice Brewer and also *United States v. Gee Mun Sang*, 93 Fed. 365. *United States v. Sing Tuck*, 194 U. S. 161, does not decide the question. Where citizenship is not claimed the secretary's decision is final in all cases. See authorities cited and *In re Lee Gee Ling*, 85 Fed, 635. Congress may prescribe rules of evidence. *United States v. Williams*, 83 Fed. 997; *Fong Yue Ting v. United States*, 149 U. S. 698. Congress is subject to constitutional provisions against unreasonable seizures. *United States v. Wong Quong Wong*, 94 Fed. 832. Decision where favorable to the right of entry is not conclusive on the Federal courts. *In re Ki Sing*, 30 C. C. A. 451; *In re Li Foon*, 80 Fed. 881.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE.—STATE V. DELAMETER, 104 N. W. 537 (S. D.).—*Held*, that the interstate commerce clause of the Fed-

eral Constitution is not contravened by sections of a state code making it an offense for a travelling salesman to take orders for intoxicating liquors without a license. Haney, J., *dissenting*.

A license tax for negotiating the sale in one state of goods in another is, in effect, a tax on goods sold and the state cannot levy a tax on goods without its jurisdiction. *Hynes v. Briggs*, 41 Fed, 470; *Brown v. Hanston*, 114 U. S. 622. But where the one negotiating the sales has the goods with him for delivering such goods may be taxed, if no discrimination is made against them as the property of residents of other states. *Howe Mach. Co. v. Gage*, 100 U, S. 676; *Singer Co. v. Wright*, 33 Fed. 121. By virtue of its power to regulate interstate commerce Congress may authorize a person to import and sell intoxicating liquors in "the original package"; but here the power of Congress ceases and the power of the state begins. *Brown v. Maryland*, 25 U. S. 422; *Re Beine*, 42 Fed. 546. In such a case only the importer may sell under the act. *License Cases*, 46 U. S. 504; *State v. Intoxicating Liquors*, 69 Me. 524. By the "Wilson Act," 26 Stat. at L. 313, the sale of intoxicating liquors after entering the territorial limits of the state is left to state legislation.

CONSTITUTIONAL LAW—STATE STATUTES—CONSTRUCTION.—CLARK v. NASH, 25 SP. CT. 676.—*Held*, that the construction put upon a state statute by the state court is binding upon the U. S. Supreme Court. Harlan and Brewer, JJ. *dissenting*.

On questions of a general commercial nature the courts of the United States will not follow the state decisions. *Goodman v. Simonds*, 61 U. S. 343. But it is otherwise on a question of a purely local nature such as real estate law. *Clark v. Graham*, 19 U. S. 557. Or the construction of state statutes, especially when the statute has become a rule of property in that state. *R. Co. v. Pa.*, 98 U. S. 359. Where, however, the rights of the parties have arisen before the state court has construed the statute the Supreme Court will follow its own views. *Carrol Co. Smith*, 111 U. S. 556. Or where such decisions have not been uniform. *Enfield v. Jordan*, 119 U. S. 680. Also, in determining whether a state statute is in violation of a provision of the Federal Constitution the Supreme Court will follow its own judgment even if opposed to prior decisions of the state court. *R. Co. v. Palmer*, 109 U. S. 244; *Yich Wo v. Hopkins*, 118 U. S. 356. The above case not coming under any of these exceptions was undoubtedly in accordance with prior decisions.

CORPORATIONS—ACCOMMODATION NOTES—ULTRA VIRES—ESTOPPEL.—PERKINS V. TIMES REALITY CO., 61 ATL. 167 (N. J.).—*Held*, a corporation can not be heard to plead that accommodation notes, given with the consent of the stockholders, were *ultra vires*.

Fifty years ago the courts would have summarily declared it to be illegal for a business corporation to become an accommodation indorser on commercial paper but to-day it will be bound on such paper in the hands of a *bona fide* holder without notice and before maturity. *Marshall Corporations* 287; *Wright v. Pipe Co.*, 101 Pa, 204; *National Park Bank v. German Mutual Warehousing & Security Co.*, 116 N. Y. 281. The old doctrine has been further modified, according to the weight of authority, and it seems that a corporation, will be estopped from pleading *ultra vires* to accommodation paper, irrespective of whether the holder is *bona fide* or not, provided all the stockholders have assented and no creditors object. *Murphy v. Arkansas and*

Louisville Land and Improvement Co., 97 Fed. 723; *Holmes v. Willard*, 125 N. Y. 75. The rule in *Marshall Corporations* 222 is in direct contradiction to the above but does not seem to be supported by reason or authority.

FIRE INSURANCE POLICY—STIPULATION AS TO INCUMBRANCES—EFFECT.—NEHER V. WESTERN ASSURANCE CO., 82 PAC. 166 (WASH.).—*Held*, that where one in possession of personal property encumbered by a chattel mortgage, makes an oral application for insurance thereon, without making any misrepresentations as to his interest and not knowing that the insurance company did not insure mortgage chattels, may recover on a policy for loss, even though it contains a condition that it shall be void if the chattels are encumbered by a mortgage. Root and Crow, JJ., *dissenting*.

Some courts have held that where there was a condition similar to the one above, the insured was precluded from recovering, notwithstanding the fact that the company made no inquiry concerning the interest of the insured; *Waller v. Northern Assurance Co.*, 10 Fed. 232; and they base their decisions upon the principal that it is the duty of the insured to disclose all facts which might influence the company in assuming the risk. *Ins. Co. v. Lawrence*, 2 Pet. 25. But by the great weight of authority the courts say that since the insured seldom sees the policy until the contract is made and he has paid his premium, it is unfair to compel him to be bound by such conditions which are generally more or less technical and hard to understand; *Dooly v. Hanover Ins. Co.*, 16 Wash. 155; also, unless the company makes inquiries, it insures at its peril; *O'Brien v. Ohio Ins. Co.*, 52 Mich. 131; so that, such conditions do not preclude the insured from recovering. *VanKirk v. Citizens' Ins. Co.*, 79 Wis. 627.

INNS—WHAT CONSTITUTES A GUEST.—CRAPO V. ROCKWELL ET AL., 94 N. Y. SUPP. 1122.—Where one stays in a hotel for a period of seventeen months, installs a piano and other heavy furniture, and makes special arrangements with the proprietors, *held*, that she is not such a guest, in the eyes of the law, as to render the innkeeper liable as insurer for damages to her property.

If any one goes to a hotel and rents a room by the month, he is not a guest in a legal sense. *Horner v. Harvey*, 3 N. M.. 197. An innkeeper is not liable as an insurer for the goods of one whose status is that of a boarder merely. *Lusk v. Belote*, 22 Minn. 468. If an inhabitant of a place makes a special contract with an innkeeper for board at his inn, he is a boarder and not a guest. *Norcross v. Norcross*, 53 Me. 163. If a person goes upon a special contract, to board and to sojourn at an inn, he is not, in the sense of the law, a guest, but he is deemed a boarder. *Story on Bailments*, Sect. 447. *Parsons on Contracts*, vol. II, page 152, says: The special contract between the boarder and the master of the house mayb e express or implied, and a length of residence, upon certain terms, might certainly be one circumstance, which, with others, might lead to the inference of such a contract.

INTERSTATE BUSINESS—TELEGRAPH COMPANIES.—WESTERN UNION TELEGRAPH CO. V. HUGHES, 51 S. E. (VA.), 225.—*Held*, that one state may enforce a penalty for delay in the transmission of messages by telegraph between two points within its borders although part of the transmission is across another state and the delay actually occurs in the latter.

This decision following *Lehigh Valley R. Co. v. Pennsylvania*, 145 U. S. 192 adds to the weight of authority. But see *State v. Chicago, St. P. M. & O. R. Co.*, 40 Minn. 267; and *New Orleans Cotton Exchange v. Cincinnati, N. O. & T. P. R. Co.*, 2 Inters. Com. Rep. 289. Where there are connecting carriers the rule is in doubt. *Sternberger v. Railroad Co.* 29 S. C. 510; *Leavell v. West. Union Tel. Co.*, 116 N. C. 211. When the state attempts to "regulate" rates under such circumstances it acts without authority. *Hanley v. Kansas City Southern R. Co.*, 187 U. S. 617.

LIBEL—PRIVILEGE.—PREWITT V. WILSON, 105 N. W. 365 (Ia.).—*Held*, that a defamatory publication concerning a candidate for public office is privileged but only conditionally.

There is a direct conflict of authority on this point. Some courts hold that such publications are to be considered on the same basis as an ordinary writing. *Post Pub. Co. v. Hallans*, 59 Fed. 530; *Root v. King*, 7 Cow. (N. Y.) 613. Others hold that they are conditionally privileged; that is, if made in good faith, even though false, the writer is not liable. *State v. Balch*, 31 Kan. 465; *Marks v. Baker*, 28 Minn. 162. It must not be reckless repetition of a rumor but must be on probable cause. *Burke v. Mascarick*, 81 Cal. 302; *Briggs v. Garrett*, 111 Pa. St. 404. The reason is that each elector has the right to discuss and inform others as to his belief in the fitness or un fitness of the candidate. However, it must be published solely for the purpose of informing other electors or the writer will be liable. *State v. Keenan*, 82 N. W. 792 (Ia.). The ruling in the principal case is, therefore, in accordance with the general rule and prior decisions in Iowa. *Bays v. Hunt*, 60 Ia. 251.

MASTER AND SERVANT—OWNER'S DUTY TOWARD CONTRACTOR'S SERVANT.—STEVENS V. UNITED GAS AND ELECTRIC CO., 60 ALT. 848 (N. H.).—Where servant of an independent contractor, while engaged in erecting a power house for defendant is injured by defectively insulated wires maintained on the premises by the defendant, *held*, that the defendant is liable since he owed him the non-delegable duty of protection from concealed dangers. Young, J. *dissenting*.

The liability here is analogous to that of the owner of real estate who is held responsible for the injuries of those expressly or impliedly invited on his premises. *Johnson v. Spear*, 76 Mich. 139. The relation of master and servant does not subsist between proprietor and a servant of contractor; only that of landowner and invitee. *Thompson, Negligence*, §§ 680, 979; *Huffcut, Agency*, 278. Must warn them of all danger. *Erickson v. Railroad*, 41 Minn. 500, and is responsible if injured by instrumentalities he has furnished. *Coughtay v. Woolen Co.*, 56 N. Y. 124. Although the owner's liability has not been recognized in some cases, where the contractor has full control over the servants and premises. *Reier v. Detroit Steel & Spring Works*, 109 Mich. 244. The owner's responsibility where contractor has such control would be the same as a landlord to his tenant's servant, *Towne v. Thompson*, 68 N. H. 317, except that owner must not contract for a nuisance. *Brannock v. Elmore*, 114 Mo. 55.

MUNICIAL CORPORATIONS—LIABILITY FOR NEGLIGENCE—MAINTENANCE OF SEWERS.—LOCKWOOD V. CITY OF DOVER, 61 ATL. 32, (N. H.).—*Held*, that

where a city voluntarily exercises its authority to construct a sewer for the local advantage of the municipality, it is liable for negligence in the construction or maintenance of same. And, where the construction of such sewers is put in charge of board of commissioners, they act as agents of city and not public officers and the city is not relieved of its liability.

That an action at law will lie against a city for damages caused by negligence in carrying out a public improvement authorized by statute, seems to be well established. *Boston Belting Co. v. Boston*, 149 Mass. 44; *Rochester White Lead Co. v. City of Rochester*, 3 N. Y. 463. Municipal corporations are responsible for due care in the execution of any work ordered by them, and if the work is one for the special benefit of its own people, it must not negligently be allowed to get out of repairs to the injury of individuals. *Cooley on Torts*, page 621. When the construction and maintenance of streets, sewers, etc., is put in exclusive control of a board of street and park commissioners it is interpreted to mean "exclusive" of other officers and not exclusive of city. *Ehrgott v. The Mayor*, 96 N. Y. 264. Members of such board are considered as agents of the city and the latter is there; fore liable for their negligence. *Barnes v. District of Columbia*, 91 U. S. 540. *Bailey v. Mayor*, 3 Hill 531.

NUISANCES—CREATION BY GRANTOR—NOTICE TO ABATE.—GRAHAM V. CHICAGO I. & L. RY. CO., 74 N. E. 641 (IND.).—Wherein an action for a nuisance on the alleged theory that defendant created the nuisance, it being specially found that the nuisance was created by defendant's grantor, *held*, plaintiff was not entitled to recover, in the absence of notice to defendant of such nuisance and a demand for abatement a reasonable time before suit is brought.

There must be a request to abate. *Cooley on Torts*, 728. The notice may be written or oral or by acts clearly giving the party notice. *Carleton v. Reddington*, 21 N. H. 291-311. The grantee does not become responsible merely because he becomes the owner. *London v. Mullins*, 52 Iowa App. 410. *Lufkin v. Zane*, 157 Mass. 117. Although the principle "that it is clearly his (grantee's) duty to look into the right of his grantor before purchasing" was maintained in a well written opinion in *Caldwell v Gale*. 11 Mich. 774, in *Pinney v. Berry*, 61 Mo. 539, it was held that neither express notice nor positive request to abate was necessary. The better opinion would seem that the liability for the nuisance is not incurred by the grantee on account of his ownership but through his participation in and continuance of the wrong and notice would therefore be necessary. *Conhocton Stone R. v. B. N. Y. & E. R. R.*, 51 N. Y. 513.

PATENTS—INVENTION—COMBINATION OF OLD ELEMENTS.—IMPERIAL BOTTLE CUP & MACHINE CO. V. CROWN CORK & SEAL CO. 139 Fed. 312.—Where a patent consists of a combination of old elements co-operating upon a new principle to produce the same results as a prior patent, *held*, that the use of the old elements may limit but cannot defeat the patent. Gaff, J., *dissenting*.

To entitle improvement to protection as invention it should arise from the exercise of the inventive facilities involving something more than is obvious to persons skilled in that particular line. *Pearce v. Mulford*, 102 U. S. 112; *Packing Co. v. Provision Co.* 105 U. S. 566. A combination may result either from the exercise of inventive skill or from mechanical ingenuity and experiments, but it is an invention and the subject matter of a patent in the former case

only. *Robinson, Patents*, 228. By the weight of authority a combination of old elements is patentable when the several elements of which it is composed produce by their joint action either a new and useful result or an old result in a cheaper or otherwise more advantageous way. *Niles Tool Co. v. Betts Machine Co.* 27 Fed. 301; *Stephenson v. Brooklyn R. R. Co.*, 114 U. S. 149. It has been held that, in order that a combination of old elements be patentable, there must be some new results obtained. *Hoffman v. Young*, 18 O. G. 794; *Stutz v. Armstrong*, 28 O. G. 367. But the weight of authority is with the present case. *Rob., Patents*, § 155, N. 1.

TAXATION—DUE PROCESS OF LAW.—DELAWARE, LACKAWANNA & WESTERN R. R. Co. V. COMMONWEALTH OF PENNSYLVANIA.—25 SUP. CT, 669.—Where the capital stock of a corporation is appraised for the purpose of taxation without deducting the value of property held by the corporation outside and beyond the jurisdiction of the state making the appraisement, *held*, that the collection of a tax under such an appraisement would amount to the taking of property without due process of law. The Chief Justice, *dissenting*.

A state cannot tax property situated without its territorial limits. *Cooley, Taxation*, 84; *Darwin v. Strickland*, 57 N. Y. 492. And it is almost universally held that the capital of a corporation is represented by the property in which it has been invested and that a tax upon the capital stock is in effect a tax upon such property. *Gordon's Exr. v, Baltimore*, 5 Gill 231; *Rome R. R. Co. v. Rome*, 14 Ga. 275; *Cooley, Taxation*, 396. Private corporations are held to be "persons" within the clause of the Fourteenth Amendment relating to due process of law. *County of Santa Clara v. Southern Pac. R. R.* 18 Fed. 385. This decision is distinguishable from *Adams Express Co. v. Ohio*, 163 U. S. 194, holding that it was not a violation of the Fourteenth Amendment where a tax was laid upon the property of a corporation in the state, assessed on a basis of valuation derived by the rule of proportion to the whole capital stock.

WILLS—BEQUEST TO WIFE—DIVORCE—IN RE JONES' ESTATE, 60 ATL. 915 (Pa.).—*Held*—Bequest to my "wife. M. B." is not revoked by implication because subsequently the wife procured an absolute divorce, the word "wife" being descriptive only. Mitchell, C., J. *dissenting*.

It is now well settled in this country that a bequest to a wife by name does not imply a continuing condition and is not revoked by divorce. So "to my wife A," *Card v. Alexander*, 48 Conn. 492; *Peck, Husband and Wife*, 226; to "my intended wife E. J.," *Charlton v. Miller*, 27 Ohio, St. 298; so for insurance policy payable to "my wife M. B," *Brown v. Grand A. O. of U. W.*, 208 Pa. 101; as to wife in devise to "T. B. and R. his wife," *Bullock v. Lilley*, 1 N. J. Eq. 489; so to "my present wife" entire will not revoked. *Baacke v. Baacke*, 50 Neb. 18. A will, however, is revoked where there has been an absolute divorce and the reciprocal property right have been arranged between the parties. *Lansing v. Haynes*, 95 Mich. 16; *Schouler Wills*, Section 426 A. The English courts, although formerly in according with American decisions, *Bullmore v. Wynter*, 22 Ch. D. 619 and *Boddington. v. Clairat*, 25 Ch. D. 685, have recognized revocation of requests by divorce in *Hitchins v. Morrieson*, 40 Ch. D. 30, and criticized the holding in the cases above cited.

WILLS—CONSTRUCTION—BEQUEST TO CREDITOR—ADEMPTION—IN RE ARNTON, 94 N. Y UPP. 741.—Where the testator made a bequest to his credi-

tors—the will reciting that it and others were made in an effort to repay those who had been kind to testator during his long illness—and the bequest was greater than the indebtedness. *Held*, that it did not amount to a satisfaction of the same.

Though the presumption, especially in Equity, is that a bequest equal to or greater than the debt, is intended as a satisfaction, slight circumstances will take the case out of the operation of the rule. *Harris v. R. I. Hospital Trust Co.*, 10 R. I. 313; *Cloud et ux. v. Clinkenbeard's Exrs.* 47 Ky. 397; *King v. Berry's Exrs.*, 2 N. J. Eq. 44. Pennsylvania and Illinois follow the English decisions—a legacy equal to or greater than the debt, and not contingent or uncertain, is presumed to be a satisfaction of the debt. *Wesco's Appeal* 55 P. St. 195, But the legacy must be paid before it can be set up as a discharge of the debt. *Maloney et al. Admrs. v. Scanlon*, 53 Ill. 122. The legacy is intended as a bounty and not as a payment, *Strong v. William's Exrs.*, 12 Mass. 391. But in all questions of construction of wills "the intention of the testator has always been regarded as the pole star by which any construction of the testamentary instrument is to be guided." *Bispham's Equity*, p. 119.