

*Marston & Eastman*, for the defendant, cited 1 Redf. Wills., ss. 5-7; *Perkins v. Mathes*, 49 N. H. 107; *Gale v. Drake*, 51 N. H. 78.

SMITH, J. The testator evidently described the lands in the condition in which they were at the time of the making of his will, and not as they might be at the uncertain time of his decease. A will speaks from the death of the testator, and not from its date, unless its language, by fair construction, indicates the contrary intention. Redf. Wills (ed. 1864), c. 9, s. 1, pp. 379, 380. In this case the language of the will shows that the testator intended to describe the land as it was when the description was written.

The language of the will is, "Also one undivided half of the woodland north of this line." What woodland was intended? The only woodland north of this line was the acre on the north side of the great field, and about ten acres of old growth on the east side of the forty-acre piece. - The defendant's construction divides the field, and the wood-lot north of and immediately adjoining it, equally between the plaintiff and the defendant. The plaintiff's construction gives him under the name of woodland, north of a certain line that evidently refers to a line of the great field, a tract of land that was pasture, with too little wood to be called woodland, that was north of the field.

The word north may mean northerly, north-easterly, or north-westerly. Its meaning depends on the context. The context here shows that one half of the forty-acre pasture was not devised to the plaintiff. If the testator had intended otherwise, he probably would have expressed his intention by the use of some such expression as undivided half of the woodland in the pasture, or undivided half of the pasture, or undivided half of all the woodland in the home farm, or undivided half of all the woodland north of a given line. The acre answers accurately the description in the will, and is all we think the testator intended to devise to the plaintiff.

*Judgment on the verdict.*

ALLEN, J., did not sit: the others concurred.

When the terms of a contract made by an agent are clear, they are to have the same construction and legal effect whether made for a domestic or for a foreign principal.

ASSUMPSIT, for apples sold and delivered. The defendant, residing in this state, was the agent of A. & O. W. Mead & Co., a

firm doing business in Boston, and all its members resident in Massachusetts. At the time of the sale of the apples, the plaintiff was informed and knew that the defendant was acting as agent of the firm. A referee found for the defendant.

*Mellows*, for the plaintiff. A. & O. W. Mead & Co. resided and did business in Massachusetts, which as to matters of this kind is a foreign state. *Emery v. Berry*, 28 N. H. 473, 486; 1 Gr. Ev., ss. 489, 504. Agents or factors, acting for merchants resident in a foreign country, are held personally liable upon all contracts made by them for their employers; and this without any distinction whether they describe themselves in the contract as agents or not. *Story Agency*, ss. 267, 268, 290, and cases cited; *McKenzie v. Nevius*, 22 Me. 138. We say that in case of a principal residing in a foreign state, whether the agency is disclosed or not at the time of the contract, the plaintiff has his election to hold either principal or agent responsible. 2 Kent Com. 631, notes, and cases cited.

*Marston & Eastman*, for the defendant.

CLARK, J. "If a duly authorized agent uses such terms as legally import an undertaking by the principal only, the contract is that of the principal, and he alone is the party by whom it is to be performed." Met. on Cont. 106. Whether the defendant assumed a personal liability in making the contract is a question of fact, which has been determined by the finding of the referee. *Noyes v. Patrick*, 58 N. H. 618. The fact that the firm of A. & O. W. Mead were residents of Massachusetts, doing business there, is not of itself a ground for holding the defendant personally liable. "The present doctrine is, that when the terms of a contract made by an agent are clear, they are to have the same construction and legal effect whether made for a domestic or for a foreign principal." Met. on Cont. 111. The statement cited by the plaintiff, from *Story Agency*, s. 268, is not now recognized as the law, excepting perhaps in Maine and Louisiana. Met. on Cont. 111; *Bray v. Kettell*, 1 Allen 80; *Kirkpatrick v. Stainer*, 22 Wend. 244; *Oelricks v. Ford*, 23 How. 49.

*Judgment for the defendant.*

BINGHAM, J., did not sit: the others concurred.