tinations, &c., &c., ought to be distinguished, nevertheless the word condition often serves to express them all." Merlin's Rep., Cond., § 2.

The signification of this article of the code becomes then an important inquiry. It is found in the Digest of Justinian, and from thence passed into the codes of France and Spain. Touil. 5, No. 255. 1 Escrich. Dic. leg., 565. It was copied from the code Napoleon into the code of Louisiana. Savigny furnishes us with the history of the law as found in the Pandects. One of the schools into which the Roman jurisconsults was divided (Proculeians) placed the construction of contracts and testaments containing illegal or impossible conditions on the same principle, and insisted that the whole disposition in each should be vitiated by them; another (Sabinians) changed the rule with reference to the instrument, and while contracts were vitiated by the illegal or immoral conditions, in wills the conditions, only were pronounced nugatory. Justinian adopted the opinion of the latter, which seems to have been preferred in practice before; and his adoption has been regarded as a legislative sanction of their rule in favor of testaments. Great authorities in France oppose this doctrine, and in Prussia it exists, but in a modified form, while it has been wholly rejected in Austria. 5 Toul., No. 247. Savig. Rom. Law, § 122-'3-'4.

The common law rule depends upon the fact whether the performance of the illegal, immoral, or impossible condition is prescribed as precedent or subsequent to the vesting of the estate of the devisee. In the former case no estate exists till the condition is performed, and no right can be claimed through an illegal or immoral act. In the latter case, the estate remains, because it cannot be defeated as a consequence of the fulfilment of an illegal or immoral condition. This, however, applies only to devises of real estate. For the ecclesiastical and chancery courts in regard to bequests of personalty follow the rule of the civil law as above expressed. 1 Rop. Leg., 754-'5. 7 Beav., 437. 1 Eden. R., 140. 2 Spence, eq. j. 229.

The condition in the case before us which impose restraints upon alienation and partition, and exact a particular management through agents of a specified description, are conditions subsequent, and would not by the rule of the common law divest the estate, if pronounced to be illegal or immoral. 3 Pet. S. C. R., 377; 1 Sim. R. N. S. 464. 7 E. L. & Eq., 179; 2 J. C. Scott, C. B. R. 883. 2 Zabriskie R. 117; 10 Ala. R., 702.

These conditions belong, too, to the class that are reprobated as repugnant to the legal rights which the law attaches to ownship. The common law pronounces such conditions void in consequence of that repugnancy, and the civil law treats them as recommendations and counsel, not designed to control the will of donee. 1 Rop. Leg., 785; 4 Kent's Com., 130. Toul. 5, No. 51; Toul. 4, No. 405. Dalloz. Dic., tit. Cond., 96; 10 E. L. & E. R. 23.

Our opinion upon the article of the code we have cited is, that it does not prescribe a rule of interpretation to aid the understanding of the courts in finding the intention of a testator, but that it is a peremptory enactment of the legislative authority, applicable to the subject matter in all cases, without reference to any declared or presumed intentions of the author of a particular donation. The code treats such conditions in contracts as the wrong of both the parties, and annuls the act. In the case of the testament, while it refuses to allow the condition, it saves to the innocent legatee the disposition in his favor. It may be that this is done on the presumption that, independent of the condition, the legatee is the favorite of the testator, or from a consideration of the legatee alone. Savigny Rom. Law, § 122, et seq.

We have thus far treated the cities as occupying an equal position, and have considered the case with reference to the city of New Orleans alone.

The city of Baltimore is legally incorporated and endowed with the powers usually granted to populous and improving cities. The general assembly of Maryland, in 1825, authorized the city to establish public schools and to collect taxes for their support; and in 1842 it was empowered to receive in trust, and to control for the purposes of the trusts, any property which might be bestowed upon it, by gift or will, for any of its gen-