That is all well enough; but it hardly touches the difficulty, which is one relating to the admission of a subordinate rule of presumption to assist in settling this "real question."

IV. That, upon the whole, the strong language of Bigelow, C. J,, is, perhaps, not too strong, when he says, in *Warner* v. *Bates*, 98 Mass. 274, 277: "The criticisms which have been sometimes applied to this rule by text-writers and in judicial opinions, will be found to rest mainly on its application in particular cases, and not to involve a doubt of the correctness of the rule itself as a sound principle of construction. Indeed, we cannot understand the force or validity of the objections urged against it, if care is taken to keep it in subordination to the primary and cardinal rule that the intent of the testator is to govern, and to apply it only where the creation of a trust will clearly subserve that intent."—*American Law Review.*

CONTRABAND OF WAR.

The war between France and Prussia will make it necessary for commercial lawyers to rub up their old lore on the subject of "contraband," a topic of much import to shippers, ship-owners, and insurers. The decision whether any particular cargo of goods is or is not contraband of war lies theoretically as well as practically with the Prize Court of the capturing power, whose decision is a decision *in rem*, and not to be impugned in any court. It will be remembered that though a foreign judgment *in personam* may be reviewed, a foreign judgment *in rem* may not. There has indeed been a disposition on the part of the present Lord Chancellor, among other judges, to hold that even a foreign judgment *in rem* may be reviewed if on its face it has proceeded on a gross disregard of the comity of nations (see *Simpson* v. *Fogo*, 11 W. R. 418; and the report of *Castrique* v. *Imrie*, in the Exchequer Chamber, 9 W. R. 455); but it is in a high degree improbable that a foreign Prize Court decision would ever be disregarded by any of our courts. Indeed apart from their being decisions *in rem* there appears to be a sort of understanding that Prize Court decisions are conclusive on the matters before them. When we speak of a Prize Court decision being unquestionable in the court of another power we shall of course be understood as meaning unquestionable for the purposes of questions arising in the foreign court and hinging upon the question decided in the Prize Court, as, for instance, in insurance matters.

Contraband may be confiscated by the captor, beyond which there is this further consequence, that any insurance upon it is void. A contract to insure contraband is void, because it is a contract to export under circumstances which render the exportation illegal, and if the act be illegal, an insurance to protect the act is illegal likewise.

At the present moment all sorts of questions are being asked as to whether or not this, that, and the other is contraband of war. Without following Grotius into his three classifications of munitions of war, goods applicable for pleasure and not for war, and goods of a mixed nature (*ancipitis usus*), we will state as shortly as we can the present acceptation of the subject. All muniments of war conveyed to a belligerent are of course contraband; also all goods conveyed to a blockaded port. As to what is or is not a blockaded port, it is material to notice the 4th article of the French Emperor's proclamation, that "blockades, in order to be binding, must be effectual; that is they must be maintained by a force really sufficient to prevent the enemy from obtaining access to the coast"—this merely expresses what has been decided in our own English courts. Two things are necessary to constitute a blockade binding on neutrals—first, that it should be notified to their country; and secondly that there should be really a substantial blockade. It is not enough for a belligerent to proclaim a blockade which he cannot maintain, but of course a blockade does not necessarily cease to be a blockade because one or two vessels manage to run the gauntlet. The blockading power is entitled to consider its notification of a blockade to the Government of a neutral power as a notification to all the subjects of that power. But it seems that, with reference to the validity of an insurance, there is no such rule, and the knowledge of the insurers is a question of fact to be determined (Lord Tenterden in *Harratt* v. *Wise*, 9 B. & C. 717). In *Naylor* v. *Taylor*, (ib. 721) a master sailed to a port not knowing whether it was blockaded or no, and not intending to violate the blockade; the policy, also, on the ship was framed upon a doubt whether the blockade would be subsisting by the time the ship arrived out; it was held that the voyage, and therefore the policy, was not illegal. We need not, of course, say that all persons would be regarded as having notice of matters of public notoriety.

As to goods in general, no hard and fast definition of contraband is possible. The doctrine of "occasional contraband" (*i. e.*, that destination, &c., &c., may make anything contraband) has, indeed, been found fault with by some text writers, but may be regarded as established in modern use. For the purposes of the present war, it must be assumed that all sorts of things may be contraband according to their destination, the exigencies of the belligerent at the port to which they are addressed, and a hundred other varying circumstances. Coal, for instance, may fairly be considered contraband if conveyed to a port in which belligerent steam-rams are lying. Resin, rope, and other articles capable of being "naval stores" may be contraband when shipped for a belligerent dockyard port. Horses may be contraband if shipped out to be landed for belligerent use. Provisions may