NOTES PAYABLE AFTER DEATH.—"Like money by the Druids borrow'd, in th' other world to be restor'd." Men usually, in the creation of promissory notes or other commercial obligations, provide a time for their settlement, which, in ordinary expectation, will be reached ere they leave the confines of this earth and journey toward unknown shores. Yet occasionally we find an individual who, be it pleasure to pass life under the shadow of paper obligation, or be it grim humor in postponing his creditor to a time when he may have a journey to the realms of the devil to collect, or be it desire to make a testamentary gift to a friend, using this form instead of a will, sits down and writes his promise to pay an amount of money, payable when he dies or at a certain time after that melancholy event. Of course, such a promise is personally impossible of performance. Death, the intervenor, renders powerless the hand that wrote, to personally keep his promise good. The lifeless clay cannot pay, nor can the spirit which actuated the writing. The promise, if it be enforcible, must be fulfilled by the living representative.

An instrument of this weird class has recently been the subject of consideration by the New York Court of Appeals, and a glimpse of how it has passed muster in the courts may appropriately accompany the abstract elsewhere published.

It will be found, upon looking at the cases which will presently be cited, that the judicial sentiment is unanimous (with the exception of a Scottish case decided a century ago) that the fixing of the time of payment at a period posterior to the life of the promisor, or of another, not only has no effect upon the validity of the instrument as a contract obligation, but none either upon its negotiability. The importance of this latter element lies in its effect upon the right of the holder of such an instrument to recover without proof of consideration—a negotiable instrument importing consideration—and also in its bearing upon the right of an indorsee to recover as upon a negotiable instrument.

In an early case decided in the English Common Pleas in 1743 (*Colehan* v. *Cooke*, Willes 393; Ames, p. 82), a note was given promising to pay an amount to D. or order six weeks after the death of the maker's father. After his death, D. indorsed the note to the plaintiff, who sued upon it. The point made by the defence did not relate to validity of the note as a contract obligation, but to its negotiability. It was insisted against payment that the note was not within the statute of Anne and not indorsable or assignable. Hence the indorsee could not recover. The court overruled this objection, and its judgment was afterwards affirmed in the Court of King's Bench (2 Strange, 1217), where the instrument was said to be negotiable, "for there is no contingency whereby it may never become payable, but it is only uncertain as to the time, which is the case of all bills payable so many days after sight."

In another English case decided a century later (*Roffey* v. *Stapylton*, 10 A. & E. 222; year, 1839) the writing was in this form:

"I promise for myself and executors to pay F. H. or her executors, one year after my death, £300 with legal interest."

This was the subject of dispute simply on the question whether interest should run from date (1808) or from maturity after death (1836). Ordinarily an instru-