And it is laid down in the best text-books as an established rule; 1 Jarman on Wills (3d Lond. ed.), 356; 2 Washb. Real. Prop. (3d ed.) 469; Adams' Eq. 30, 31; Hill on Tr. 71; Lewin on Tr. 104.

Nevertheless, the doctrine as to precatory trusts has long been, and is still, fiercely assaulted in many quarters. One might gather from the language of some text-writers, and occasionally of some judges, that there never had been any good reason for adopting it, and that such reasons as there were, had been wholly exploded. *Pennock's Estate*, 20 Penn. St. 268 (A. D. 1853); *Van Duyne* v. *Van Duyne*, 1 McCarter, 397 (A.D. 1862); 2 Story's Eq. Jur. § 1069; Tiff. & Bull. on Tr. 224; 1 Redf. Wills, 713.

These attacks have not always come from the best instructed quarters. Thus, in the year 1853, in *Pennock's Estate*, 20 Penn. St. 268, a very extraordinary and elaborately considered case, the court say: "We may now add that we know of no American cases wherein the antiquated English rule has been adopted." In view of the American cases cited above, is it too much to say that the court ought to have known of half a dozen?

But in some instances these objections have proceeded from judges of high authority, *e. g.*, Lord Eldon in *Wright* v. *Atkyns*, 1 V. & B. 313, 315. See also *Heneage* v. *Andover*, 10 Price, 230, 265; s. c. on appeal, *sub nom. Meredith* v. *Heneage*, 1 Sim. 542; *Sale* v. *Moore*, 1 Sim. 534, 540; *Green* v. *Marsden*, 1 Drew. 646; the judicial comments of this sort, however, have, we believe, uniformly been made in cases which were held not to come within the scope of the rule. Among the text-writers who object to the rule now under consideration, Judge Redfield (1 Redf. Wills, 713) goes so far in his strictures as to say: "This" [to wit, that nothing obligatory is meant], "we think, is what is *always* intended by testators, in the use of these hortatory expressions in their wills, towards the recipients of their bounty. There is scarcely one man in a thousand who would, in such cases, use any such indefinite and optional forms of expression towards those whom he expected to assume a binding duty and obligation. . . . So that, probably, *in nine cases out of ten*, where the courts have raised a trust out of such mere words of wish and exhortation, it has been done contrary to the expectation of the testator, and more out of regard to the moral than the legal duty of the donee."

The italics are our own. These phrases are, certainly, sufficiently broad.

Is this sort of comment upon the doctrine of precatory trusts just? And upon what grounds, if any, may we look to see that doctrine continue to hold its own?

The rule is but one among many; it is a secondary and auxiliary rule,—always subordinate to the cardinal principle that the intention of the testator is to govern. Indeed, it is a rule that has its whole support in a supposed conformity with that principle; and it gives way at once when the two are shown to conflict. There is no sort of difficulty in accepting the rule where it does not conflict with the testator's intention, for no technical words are necessary to create a trust. The difficulty exists in cases, where, without the application of this rule, there is no plain indication of the intent.

Where the doctrine is an established one, as in England, it may safely be assumed that it always accords with the intention of the testator, when the will is drawn artificially and with technical skill.

It is to be noted that, in its strictest definition, it is a rule of very restricted application. It will seldom happen that some indication or other, and some prevailing indication, of a testator's intention, in the use of precatory words, may not be drawn from the facts to which the will is applicable, or from the other language or the structure of the instrument. Thus, in the late and well-considered case of *Warner* v. *Bates*, 98 Mass. 274, the language under discussion was the following clause in a testamentary gift from a wife to her second husband: "In the full confidence that, upon my decease, he will, as he has heretofore done, continue to give and afford my children" [naming all her children by both husbands] "such protection, comfort, and support as they or either of them may stand in need of;" it appeared that some of the children were adults, and without property; that during their whole life they had all been supported at the mother's house and out of her property, and had lived together as one family; that she gave all her property to the husband for life, and left the children nothing at all during that period, unless through the operation of the clause above quoted; and that upon the husband's death she gave all her property to the children, by both husbands, equally; the court were clear in the opinion that, under circumstances like these, the established rule as to the construction of precatory words accorded well with the intention of the testatrix.

It is a trite qualification of the rule as to precatory trusts, and one that has been ingeniously applied so as to take many a case out from the operation of it, that the subject-matter and the person, or object, must be clearly pointed out. But a good deal more significance has been attached to this observation than it deserves. It is a qualification that is not peculiar to precatory trusts. Where the technical phrases for creating a trust are used, and there is no room for question as to the intention, the want of clearness in pointing out the person or property to which it relates, can have only the effect of nullifying that admitted intent. Where precatory words are used, this uncertainty has the same effect, so far as any intention to create a trust is made out; and so far as there is a doubt as to the intention, it also has a bearing upon the solution of that question. The intention being