the gift to his wife so long as that charge should prove no inconvenience to her, or by leaving those annuities wholly to her discretion himself, merely seeking to influence, but not to control her choice. And so we are to ascertain, if we can, which is the truth, or that there is such doubt as to make the general devise conclusive. 'If she finds it;' that is, if experience shows it; if the facts at the time of payment prove to be such; if her financial condition as it shall then exist enables her to pay easily. The expression contemplates, not her choice or preference, but her pecuniary situation after the experience or management of one or more years, and it indicates his purpose to have been to charge the annuities upon the sweeping gift to his wife, provided only, that in her experience of the future it should turn out that the payment of those charges would occasion her no inconvenience. 'If she finds it always convenient;' that is, on each occasion—at the date of every payment. The use of the word 'always' implies a conviction in the testator's thought, which would quite naturally exist, that in view of the large estate he had given his wife, and her own ample fortune, it would usually and ordinarily, when the time of payment came, prove to be easy and convenient for her to spare the money for that purpose, but that such a state of facts might not always and upon every occasion exist; that in her management of the property there might come misfortune reducing or destroying income, or some exceptional increase of expenses due to an under-estimate of incurred expenditure, and, if that happened at any one or more of the times of payment, he desired that not she, but his sister and brother, should bear the consequent inconvenience. In these words of the testator, his purpose and intention, I think, is sufficiently disclosed. He did not mean to make the payment of the annuities dependent upon the mere choice or will of his wife, but upon her ability to pay them without inconvenience to herself. Given that ability, he says: 'I wish it to be done.' The words are not 'I wish her to do it,' or 'I hope she will feel it to be her duty,' or 'I trust she will see the propriety of such payment to be made;' but 'I, the testator—dealing with my own bounty to her—I wish it to be done; it is my wish, not hers, that I put behind the annuities.' It is observable, also, that in the gift to his wife he does not add words that could seem inconsistent with a subsequent charge upon it, as, 'for her own use and benefit,' or 'to her and her heirs forever,' but leaves the path to a trust or a charge unobstructed, so far as possible. It is perfectly well settled that what are denominated 'precatory words,' expressive of a wish or desire, may, in given instances, create a trust or impose a charge. Without a detailed consideration of the cases, it is quite clear that, as a general rule, they turn upon one important and vital inquiry, and that is whether the alleged bequest is so definite, as to amount and subject-matter, as to be capable of execution by the court, or whether it so depends upon the discretion of the general devisee as to be incapable of execution without superseding that discretion. In the latter case there can neither be a trust nor a charge, while in the former there may be and will be, if such appears to have been the testamentary intention. The distinction is clearly drawn and was acted upon in *Lawrence* v. *Cooke*, 104 N. Y. 632. The word there used was 'enjoin,' in itself a more imperative word than 'wish;' and yet a trust or charge was denied, because by the terms of the command the payment to the granddaughter was placed wholly within the discretion of the residuary devisee, and could not be touched by the court without its utter destruction. The provision to be made was at such times, in such manner, and in such amounts as the devisee should judge to be expedient, and controlled only by what her own sense of justice and Christian duty should dictate. It was added, that if she had been enjoined to make suitable provision out of the residuary estate, a charge would have been created; for what would be 'suitable' could be determined as a fact, and would be independent and outside of the mere choice or whim of the devisee. If the word had been 'wish' instead of 'enjoin,' the result could not have been different upon either branch of the conclusion. The doctrine is clearly and strongly stated in *Warner* v. *Bates*, 98 Mass. 277, and had an early illus-