A correspondent from Nova Scotia, in a letter recently published, asks for information touching the confirmation of deeds of composition and discharge where there is no opposition. We do not clearly see what the difficulty is that seems to impress our correspondent. By sec. 104 the burthen of proof of the discharge being completely effected shall be upon the insolvent until the confirmation is obtained from the Judge. The insolvent can apply for the order or not as he likes—the discharge is good without it, though it may be awkward to prove it; whilst under sec. 104 an authentic copy of the judgment confirming the discharge is sufficient evidence as well of such discharge as of its confirmation.

We notice that J. G. Scott, Esq., Barrister-at-law, has been gazetted as Clerk of the Executive Council of Ontario, in the place of James Ross, Esq., resigned. He will make an efficient and energetic officer.

SELECTIONS.

NOTES ON PRECATORY TRUSTS IN WILLS.

In *Quayle* v. *Davidson*, 12 Moore, P.C. 268, it was held that a court of equity "will, if necessary, construe words importing a trust as an expression of hope or confidence." In precatory trusts, on the other hand, words expressing hope or confidence are construed as importing a trust. In each case the courts apply "one of the fixed rules of equitable construction, that there is no magic in particular words." Hill on Tr. 65.

The intention of the testator, of course, is to govern in all cases. So that no informality in words will prevent the creation of a trust where it clearly appears that a line of duty is marked out for the donee, and not merely suggestions made to his discretion: and neither precatory words nor any other will avail to create a trust where a contrary intent is shewn.

But the doctrine of precatory trusts is something more than the converse of the principle in *Quayle* v. *Davidson;* it does not stop with saying that precatory words *may*, under stress of a plainly indicated intent, be construed as importing a trust. It is stated as a rule of presumption; and, in the absence of countervailing circumstances, or in the equipoise of such as conflict, it *requires* that precatory words shall be so construed. The rule was thus expressed by Sir R. P. Arden, Master of the Rolls, in the case of *Malim* v. *Keighley*, 2 Ves. Jr. 333, 335 (A. D. 1795): "I will lay down the rule as broad as this: whenever any person gives property, and points out the object, the property, and the way in which it shall go, that does create a trust, unless he shows clearly that his desire expressed is to be controlled by the party; and that he shall have an option to defeat it." The precatory word in this case was "recommend."

This statement of the rule is cited because it has been very often quoted and approved; as, for example, in the case of *Knight* v. *Boughton*, 11 Cl. & Fin. 513. 551 (A. D. 1844), by Lord Chancellor Lyndhurst and Lord Cottenham; and in the case of *Homer* v. *Shelton*, 2 Met. 194, 207, by Wilde J. It is criticised, and yet adopted as sufficiently accurate, by Lord Chief Baron Richards, in *Heneage* v. *Andover*, 10 Price, 230.

Perhaps, therefore, when it is said, in relation to precatory trusts (Adams, Eq. 31,) that: "The question in each particular case is merely of construction on the terms of the instrument," the matter is not stated with entire accuracy. The remark, at any rate, is less significant than it would seem to be at first sight; and is not to be considered as denying that there is a canon of construction applicable to precatory words.

In England, the rule is admitted, on all hands, to be an established one; and it runs back, in that country, through a series of approved decisions, for more than a century and a half. *Eales* v. *England*, 2 Vern. 466 (A. D. 1702); *Harding* v. *Glyn*, 1 Atk. 469 (A. D. 1739); *Pierson* v. *Garnet*, 2 Bro. C. C. 38, 226 (A. D. 1786); *Paul* v. *Compton*, 8 Ves. 375 (A. D. 1803); *Cary* v. *Cary*, 2 Sch. & Lef. 173, 189 (A. D. 1804); *Forbes* v. *Ball*, 3 Mer. 437 (A. D. 1817); *Wright* v. *Atkyns*, 1 Turn. & Russ. 143 (A. D. 1823); *Wood* v. *Cox*, 1 Keen, 317 (A. D. 1836); *Shaw* v. *Lawless*, 5 Cl. & Fin. 129 (A. D. 1838); *Knight* v. *Boughton*, 11 Cl. & Fin. 513 (A. D. 1844); *Williams* v. *Williams*, 1 Sim. N. S. 358 (A. D. 1851); *Briggs* v. *Penny*, 3 Macn. & G. 546 (A. D. 1851); *Bernard* v. *Minshull*, H. R. V. Johns. 276 (A. D. 1859); *Bonser* v. *Kinnear*, 2 Gif. 195 (A. D. 1860); *Shovelton* v. *Shovelton*, 32 Beav. 143 (A. D. 1863); *Irvine* v. *Sullivan*, L. R. 8 Eq. 673 (A.D. 1869). And see *McCormick* v. *Grogan*, I. R. 1 Eq. 313 (A. D. 1867); S. C. L. R. 4 H. L. 82.

It has also been generally adopted in this country. *Reed's Adm'r* v. *Reed*, 30 Ind. 313 (A. D. 1868): *Warner* v. *Bates*, 98 Mass. 274 (A. D. 1867); *Van Amee* v. *Jackson*, 35 Vt. 173 (A. D. 1862); *Negroes* v. *Plummer*, 17 Md. 165 (A. D. 1860); *Anderson* v. *McCullough*, 8 Head, 614 (A. D. 1859); *Ingram* v. *Fraley*, 29 Geo. 553 (A. D. 1859); *Lines* v. *Darden*, 5 Florida, 51 (A. D. 1853); *McKonkey's Appeal*, 13 Penn. St. 253 (A. D. 1850); *Lucas* v. *Lockhart*, 10 Sm. & M. 466 (A. D. 1848); *Harrison* v. *Harrison's Adm'r*, 2 Gratt. 1 (A. D. 1845); *Coates's Appeal*, 2 Penn. St. 129 (A. D. 1845); *Tolson* v. *Tolson*, 10 G. & J. 159 (A. D. 1838); *Bull* v. *Bull*, 8 Conn. 47 (A. D. 1830); *Erickson* v. *Willard*, 1 N. H. 217 (A.D. 1818). See also *Harper* v. *Phelps*, 21 Conn. 257.