

the modern cases abounding in expressions to the effect that doubtless, in earlier days, an entirely contrary decision would have been come to in the case. Thus in the recent case of *In re Oldfield, Oldfield v. Oldfield* (1904) 1 Ch. D. Div. at p. 550, we find Kekewich, J., expressing himself as follows: "I may venture to say that two or three generations back this would have been construed to be a trust. The words quoted by Rigby, L.J., in *In re Williams* (1897) 2 Ch. 29, from the judgment of Lord Langdale—no mean authority—in *Knight v. Knight* (1840) 3 Beav. 148, 172; 52 R.R. 74, 84, seem to point to that. He does not use the word 'desire' but uses a weaker expression, namely, 'recommend.' It is sufficient for me to say that what Lord Langdale laid down is now no longer law(a). There are many cases which shew that the Court is inclined now to accept the natural construction of words of this character."

And again we find the same judge using the following words in the case of *In re Hanbury, Hanbury v. Fisher*, supra, at p. 419. "But I put that aside and turn to what Lord St. Leonards said in the passage quoted by Lindley, J., in the judgment in *In re Williams, Williams v. Williams* (1897) 2 Ch. 12, 21 from the work on the Law of Property published in 1849, p. 375. "The law as to the operation of words of recommendation, confidence, request or the like attached to an absolute gift, has in late time varied from the earlier authorities. In nearly every recent case the gift has been held to be uncontrolled by the request or recommendation made, or confidence expressed. This undoubtedly simplifies the law, and it is not an unwholesome rule that if a testator really means his recommendation to be imperative he should express his intention in a mandatory

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(a) The statement of the old doctrine by Lord Langdale in *Knight v. Knight*, supra, which is here referred to and condemned is as follows: "As a general rule it has been laid down that when property is given absolutely to any one person, and the same person is, by the giver, who has power to command, recommended or entreated or wish to dispose of that property in favour of another the recommendation, entreaty or wish shall be held to create a trust, first, if the words are so used that upon the whole they ought to be construed as imperative; secondly, if the subject of recommendation or wish be certain; and thirdly, if the object or person intended to have the benefit of the recommendation or wish be also certain."