

observe first that the testator obviously intended that his nieces should have an interest in and should be entitled to this estate in some event."

And Lord James says, "It is admitted on all hands that our only duty is to discover what was the intention of the testator."

This question of intention may be put in the following form: By whom did the testator (or donor) (*d*) intend his property to be enjoyed? The idea conveyed by this question though apparently simple and obvious is in reality not so. The question is in fact open to an ambiguity. In other words it does not seem to go far enough in the analysis of the testator's intention. It seems quite clear that in very many cases the decision that the precatory words created a trust owed its origin to the fact that it seemed plain that the testator contemplated a benefit to the person who was held to be a cestui que trust, without perhaps sufficient discrimination as to whether such contemplation amounted in fact to a definite intention on the part of the testator to secure that benefit by a binding legal or equitable limitation.

Take for instance the passage just quoted from Lord Davey's judgment in the *Hanbury case*, "I observe that the testator obviously intended that his nieces should have an interest," etc., "in this estate in some event."

The course of reasoning is—

The testator obviously intended that A.B. should receive a benefit under the will, that benefit can only be secured by the declaration of a trust. A trust is accordingly declared.

But can we not imagine a case where the testator contemplated, and even intended that A.B. should derive a benefit under his will, and at the same time never intended to give A.B. a legal right to claim that benefit irrespective of some act of volition on the part of a third person.

Can we not imagine for instance the case of a husband about to bequeath his property to his wife (with full knowledge, let

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(*d*) The doctrine of precatory trusts has been held to apply to settlements inter vivos as well as to wills (*Liddard v. Liddard*, 28 Beav. 266 and see *Hill v. Hill* (1897) 1 Q.B. (C.A.) 483).