

the judges were divided as follows: On one side, and against the creation of a trust, were Kekewich, J. (who heard the application on originating summons), Vaughan Williams, L.J., and Stirling, L.J. (in the Court of Appeal), and Lord Lindley (in the House of Lords), while on the other side were Cozens-Hardy, L.J. (in the Court of Appeal), and the Earl of Halsbury, L.C., and Lords Macnaghten, Davey, James and Robertson, in the House of Lords. This seems to indicate that the subject is one of unusual difficulty. It has seemed to the writer, in considering the cases that possibly the somewhat loose statement of the principle of decision, which has generally been adopted, may have been to some extent to blame for the numerous differences of opinion that have arisen.

The question of trust or no trust must, of course, in the last analysis depend on the intention of the testator or donor. This has been recognized in all the cases. Thus in the head note to *In re Hamilton*, supra, it is stated, "The rule you have to observe is simply this, in considering whether a precatory trust is attached to any legacy the Court will be guided by the intention of the testator apparent in the will, and not by any particular words in which the wishes of the testator are expressed." And Lindley, L.J., in *In re Williams, Williams v. Williams*, supra, at p. 22, says, "There is no principle except to ascertain the intention of the testator from the words he has used, and to ascertain and give effect to the legal consequences of that intention when ascertained."

Rigby, L.J., in S.C., at p. 26 says, "No authoritative case ever laid it down that there could be any other ground for deducing a trust or condition than the intention of the testator as shewn by the will taken as a whole."

And Vaughan Williams, L.J., in *In re Hanbury, Hanbury v. Fisher*, supra, at p. 425, puts it thus: "You must take the will which you have to construe and see what it means. See, that is, what is the intention of the testator, as expressed in his will, and then answer the question aye or no according to the intention of the testator as expressed by his will."

In the same case in the House of Lords, Lord Davey said, "I