made out, however, no greater effect is to be given to the want of clearness in the one case than the other; the rule being equally applicable always, that in order to create a trust there must be,—1, sufficient words; 2, a certain subject; and, 3, a certain object: *Williams* v. *Williams*, 1 Sim. N.S. 358, 369, 370; *Briggs* v. *Penny*, 3 Macn. & G. 546, 556; 1 Jarman on Wills (3rd Lond. ed.), 359. In *Bernard* v. *Minshull*, H. R. V. Johnson, 276, we have a case where precatory words availed to prevent the donee from taking a beneficial interest, although the intended trust failed for uncertainty. This case shows, first, that a want of certainty is not conclusive as to the effect of precatory words; and, second, that it is fatal to a trust of any sort.

What are called precatory words are of very different degrees of force. One of them, the word "confidence," is a very strong one; indeed, in legal usage, it comes near being the equivalent of "trust." It is often mated with it; "trusts and confidences" is the phrase used in the Statute of Uses and elsewhere; and under the term "Trust," Burrill's Law Dictionary, after giving "a confidence" as one of its definitions, goes on to add: "The radical idea of a trust is confidence, and this is the word employed by Lord Coke in his definition of a use, which has been adopted by Mr. Butler and Mr. Lewin as the best and most exact definition of a *trust*." In *Meredith* v. *Heneage*, 1 Sim. 542, 556, with reference to the words "in full confidence and with the firmest persuasion," the court say, "unquestionably these words are extremely strong." Surely they are. It was considered in that case that there was enough else to outweigh them; but in the absence of a clear indication to the contrary, one may well wonder how it should ever be thought that a testator, in laying a donee under such solemn and stringent injunctions, could intend that he might keep the gift while he disregarded them.

There are many other words — of wish, recommendation, desire, entreaty, expectation and so forth—which have not, intrinsically, so much force. To all of them alike, however, one powerful consideration applies,—they are used in an instrument whose primary purpose it is to transfer property; and they are used as a part of the phraseology for transferring it. A will may be, and is, sometimes, availed of, incidentally, for the expression of the testator's mere wishes or opinions; but that is not its purpose, nor is it ordinarily or mainly used for such communications. It seems to be reasonable—where these expressions are found in such a document, and where one who has a right to order, expresses, without qualification, his expectation, or his wish, that something shall be done—to say that "the expression of his wishes is deemed to be the expression of his will" (Wilde, J., in *Whipple* v. *Adams*, 1 Met. 445), and that "the mode is only civility" (Lord Loughborough, in 1 *Malin* v. *Keighley*, 2 Ves. Jr. 529, 532). How shall one determine that the testator would give any thing if he did not suppose that his "expectation," or "wish," or "confidence," would be heeded? Assuming, as we do, that he has given no plain indication of his intention in other ways, we have the two facts, that property is given to A. B., and that the giver, in bestowing it, desires that it shall be applied in a particular way. Why shall it not be so applied? "He uses," says Redfield (1 Redf. Wills, 713), "such precatory words, because he desires to leave it to the *discretion* of the donee; and if he intended to control that discretion, he would adopt very different language" This is easily said, but it is not convincing. One has only to reply, "Why, then, does he not *say* that he intends to leave it to the discretion of the donee? Why does he not at least intimate it, so as to lift from the conscience of the donee that weight which his language must needs lay upon it." Every man feels the moral stringency of such injunctions. No person, in giving property, and coupling these expressions with the gift, can fail to be aware how impressive they are: they are, and are meant to be, extraordinarily weighty. It seems to us, therefore, that the law is wise and prudent in assuming that where a testator intends that such injunctions shall have no other force than that of suggestions to the discretion of a donee, he will indicate it, and in requiring whenever he does not indicate it, and the conscience of the donee is found to be evading them, that they shall be taken up and enforced by "the general conscience of the realm—which is Chancery."

As to the objections, then, which are taken to the doctrine of precatory trusts, it may be said generally,—

I. That so far as they amount merely to saying that the cases have sometimes been decided on grounds too narrow and technical, or that the rule has sometimes been pressed with too little referenco to other rules equally operative, they may be admitted to have much force.

II. That so far as they serve to indicate a desire for a broader statement of the rule, so as to include certain admitted limitations of it, one would hardly care to find fault with them.

III. That so far as it is desired to insist chiefly on the primary rule as to the intent of the testator, to be collected from the whole instrument, there is no need to contend against them. Thus Redfield cites, with approbation (1 Redf. Wills, 707), the language of Lord Cranworth, in *Williams* v. *Williams*, 1 Sim. N. S. 358, 368, to wit: "The real question in these cases always is, whether the wish or desire or recommendation that is expressed by the testator is meant to govern the conduct of the party to whom it is addressed, or whether it is merely an indication of that which he thinks would be a reasonable exercise of the discretion of the party; leaving it, however, to the party to exercise his own discretion."