

It will be observed that *in both of these cases it would be quite correct to say that the testator "intended" that the persons designated should benefit by his will.*

The syllogism—to proceed with logical forms—would stand as follows: The major premiss would be—"In all cases where the testator intended that the persons in question should benefit by his will a precatory trust is created;" and the minor premiss—"In the particular case under consideration the testator clearly intended that the persons in question (his children) should benefit by his will"—and the conclusion would be "therefore, in the present case, a trust is created by the will."

So stated the argument looks sound, and yet it is, or may be, essentially vicious. Its fallacy consists in the fact that the word "intend" is susceptible of a double meaning. It is used in one sense (which we may call, for the sake of distinction its . . . imperative sense) in the major premiss, but it may be, and often is, used in quite another sense (which may be called its optative sense) in the minor premiss: and in the latter case the conclusion will of course be a non sequitur.

To elaborate this somewhat—let us suppose that the testator's meaning and intention, in framing his will, was as follows: "I wish to provide by my will for my wife and children—I shall give my property to my wife, I have absolute confidence in her and know that she will use the property for the benefit of my children as well as herself. I shall intimate as much in my will, but I shall place no legal fetter upon her, but shall leave my children to receive their benefit through an act of volition on her part."

Obviously it could be said with absolute truth of such a testator that he "intended" his children to benefit by his will. But obviously also it would be a case where, notwithstanding such intention, a trust would not be declared.

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equitable,' and it is gratifying to observe that our own judges (Boyd, C. and Ferguson and Robertson, J.J.) had no difficulty in resisting the blandishments of counsel for the children, who urged upon them the seductive argument found on the 'obvious intention' to benefit, etc., and in unanimously deciding against the creation of a trust, to the enduring advantage of uniformity of decision in our law."