

*Figure v. Society*, 46 Vt. 362; *Supreme Commandery v. Ainsworth*, 71 Ala. 436. This law is reasonable, is in conformity with law, is not shown to be in conflict with the charter or articles of association, and is consistent with the general purposes of the society. The contract being controlled by the law as changed, the benefit must be paid to the widow.

*Decree for Alice G. Adams.*

CHASE, J., did not sit: the others concurred.

Cheshire, }  
Dec., 1894. }

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FOSTER v. WILLSON.

Precatory words in a will, equally with direct fiduciary expressions, will constitute a trust for the person in whose favor they are used, when it appears from the language employed and other competent evidence that such was the intention of the testator.

BILL IN EQUITY, alleging that Ella H. Willson, daughter of the plaintiff and wife of the defendant, died April 13, 1892, leaving a will which was executed March 28, 1892, and was approved and allowed April 22, 1892; that the defendant was appointed executor thereof and has accepted said trust; that since the decease of the testatrix, the plaintiff continued to live in the defendant's family until March 1, 1893; that the plaintiff is eighty-two years old, is infirm by reason of his advanced age, and requires personal care and attention; that by reason of the defendant's neglect and ill-treatment, the plaintiff has been compelled to leave the defendant's family and reside elsewhere; that the plaintiff has no property and no means of support, and that the defendant since March 1, 1893, has refused to support him, though requested so to do. The material portions of the will set forth in the bill are as follows: "1. As to my life policy, I give and bequeath one half the amount which shall be collected on it to my husband, Fred H. Willson, and one half to my father, Benjamin F. Foster. 2. As to all the rest, residue, and remainder of my estate, I give, bequeath, and devise the same to my said husband, Fred H. Willson, to have and to hold the same to him and his heirs and assigns forever; but it is my wish and desire that he shall furnish a home, maintenance, and care to and for my said father during life, should he need and require it." The prayer of the bill is for a decree for a reasonable sum to be paid by the defendant for the plaintiff's support since March 1, 1893,

and for such further sums as from time to time may be needed for the plaintiff's support.

The answer admits the making and probate of the will, but denies that the defendant has neglected or ill-treated the plaintiff, or that the plaintiff was compelled to leave the defendant's family by reason of neglect or ill-treatment; and avers that the defendant, though under no legal obligation to furnish the plaintiff with a home in his family, has been and still is willing to support and care for him there, but the plaintiff without cause refuses to live there. The answer also avers that by the terms of the will the defendant is not legally or equitably bound to support or provide for the plaintiff in his family or elsewhere, insists upon this as a special matter of defence, and claims the same benefit therefrom as if the defendant had demurred to the bill.

*Don H. Woodward*, for the plaintiff.

*Batchelder & Faulkner*, for the defendant.

BLODGETT, J. The intention of the testatrix to provide for the maintenance of her father being sufficiently apparent from the will itself, it is the duty of the court to effectuate it by regarding the defendant as trustee for the father, if, from the whole transaction and the words used, such a trust may be fairly implied.

In determining this question it is to be borne in mind that there is no uncertainty as to the subject or object of the testatrix's expression of her wish and desire; and that precatory words in a will, equally with direct fiduciary expressions, will constitute a trust. "Technical language is not necessary to constitute a trust. It is enough if such intention is apparent. Thus, words of recommendation, request, entreaty, wish, or expectation, addressed to a devisee or legatee, will make him a trustee for those persons in favor of whom such expressions are used, provided that from the construction of the whole will such was the apparent intention of the testator, and provided he has pointed out with sufficient clearness and certainty both the subject-matter and the object of the trust." 1 Per. Tr. (3d ed.), s. 114, note; 1 Jar. Wills (5th Am. ed.) 680; *Erickson v. Willard*, 1 N. H. 217, 229. "The criticisms which have been sometimes applied to this rule by text writers and in judicial opinions will be found to rest mainly on its application in particular cases, and not to involve a doubt of the correctness of the rule itself as a sound principle of construction." *Warner v. Bates*, 98 Mass. 274, 277, per *Bigelow*, C. J.

The only element of uncertainty then is, whether the maintenance of the testatrix's father was intended by her to be executed by her husband as a trust. That is to say, did the testa-

trix intend to impose an obligation on her husband to carry her wish and desire as to her father's maintenance into effect, or, having expressed her wish and desire, did she intend to leave it to him to comply with them or not at his discretion? From the nature of the case, no certain answer can be given; but upon the established rule of testamentary construction in this state, as well as in accordance with the general rule where like words have been used by testators (44 Am. Dec., note, 372-379), and with a plain moral duty on the part of the defendant, we are of opinion that the clause of the will which is the subject of the present controversy does not leave the maintenance of the plaintiff to the discretion of the defendant, to be afforded or withheld at his pleasure, but that the devise to him was made on the trust that he should furnish such maintenance during the plaintiff's life, should he need and require it, which the bill charges and the demurrer admits.

"The wish of a testator, like the request of a sovereign, is equivalent to a command" (1 Hill Tr. 73; 1 Per. Tr., s. 121, note); and especially should it be so held in a case like the present, where it would seem that even the slightest wish of a deceased wife as to the care of her aged, infirm, and dependent father ought of itself to be sufficiently binding on the defendant's conscience.

The question whether the maintenance of the plaintiff shall be in the defendant's family or elsewhere will be determined at the trial term.

*Demurrer overruled.*

All concurred.

Cheshire, }  
Dec., 1894. }

GURNSEY & a., *Ap'ts*, v. KEENE.

The question of procedure upon an appeal from a decision of the mayor and aldermen in a highway proceeding is one of fact, to be determined at the trial term.

APPEAL, from the decision of the mayor and aldermen awarding the plaintiffs no damages for land taken for a highway. The defendants in their answer aver that the plaintiffs' land over which the new highway is laid is within the limits of an existing