TRUSTS—CREATION BY PRECATORY WORDS.—Testatrix used the following language: "I wish to will my property to my husband, asking that he in turn leaves it equally to my two children." *Held*, that the will created a precatory trust under which the husband took only a life estate. *Commonweath ex rel State Tax Commission v. Willson's Admr.* (Ky. 1929) 21 S. W. (2d) 814.

The early tendency in England was to hold all precatory expressions in wills as absolutely binding trusts because the precatory words were merely a courteous means of creating a duty. *Malim v. Keighley* (1794) 2 Ves. Jr. 333; *Knight v. Knight* (1840) 3 Beav. 148. But the court in *Portsmouth v. Shackford* (1866) 46 N. H. 423, said: "The current of American authority and the later English cases is against converting the discretion of the donee into an absolute trust, and in favor of giving effect more fully than formerly, to the intention of the testator, giving to his words their natural and ordinary sense." In accord: *In re Pennock's Estate* (1853) 20 Pa. 268; *Hughes v. Fitzgerald* (1905) 78 Conn. 4, 60 Atl. 694; *Sands v. Waldo* (1917) 100 Misc. Rep. 288, 165 N. Y. S. 654.

The question as to whether or not a trust has been created is largely one of interpretation. Some writers have attempted to classify the decisions according to the particular precatory word used by the testator as "wishing," "requesting," "feeling confident," "hoping," etc., but the more practical rule seems to be to disregard the particular word used since "the use of any particular precatory word will not determine the question of intent." Bogert, Trusts (1921) 48. There are, however, certain guides which help to determine intent. A requirement imposed by some courts is that there be certainty in the precatory clause as to the parties who are to take and what they are to take. *Floyd v. Smith* (1910) 58 Fla. 12, 51 So. 537; *Coulson v. Alpaugh* (1896) 163 Ill. 298, 45 N. E. 216. Other courts, however, are not the least bit daunted by the fact that discretion in selection within a named class is left to devisee. *Cox v. Wills* (1891) 49 N. J. L. 130, 22 Atl. 794; *Weber v. Bryant* (1894) 161 Mass. 400, 37 N. E. 203.

From the standpoint of the present day tendency, the *Willson* case is, perhaps, to be criticized because it fails to question the sagacity of enforcing mere precatory words as a trust. The decision, however, is probably to be justified on the ground of giving effect to the testatrix's intent, evidence of which probably appeared in the trial in the lower court. G. E. S., '31.

WILLS—COMPETENCY OF WITNESSES—REVOCATION OF PRIOR DISINHERITING WILL.—A witness who subscribes a will under which he is beneficially interested is generally, by statute, declared competent, though the bequest to him is void unless there is a sufficient number of other witnesses. The application of these statutes in cases where the witness is indirectly interested under the will, or under a writing revoking a prior will, presents a problem on which a variety of results has been reached. In a recent Nebraska case it was held that a will revoking prior wills was not invalidated because one of the subscribing witnesses was an heir who had been disin-