trustees their Heirs and successors shall have the power and are required to lease as aforesaid shall be as long as my said Children or any of them or any Children or descendants of them as any of them lives by them or any of them at the time of the death of these or any of them shall live. It is to be observed that the testator in the first clause of this Article designates the tenants who are to occupy the Hotel and defines the term of three years for which they are hired and prescribes the rent they are to pay. He says that the trustees shall upon his death permit Jeremiah Barnum and Andrew McLaughlin or one of them if both shall and do agree to be tenants to use occupy and enjoy as tenants the said City Hotel buildings upon agreeing to pay the yearly rent of ten thousand dollars &c and that the tenancy should continue for 3 years. Foreseeing however that these parties neither jointly or separately might have been willing to become tenants of this Hotel or if they did that their tenancy might be in the course of three years expired he provides in the clause above quoted for these contingencies and therein directed the trustees to lease it not for a fixed rent nor to a person designated but for such rent as they and his executors &c should approve and to such person as they be satisfied would conduct it as a Hotel. It is clear then that these terms which are supposed to create a perpetuity apply to the power to lease alone and not to any interest or estate limited to the devisees and that the power to which they apply is to be exercised only in case McLaughlin and Barnum do not accept the Hotel and premises as tenants, or if they do when they cease to be tenants. They did enter into possession as tenants, under the terms and conditions of the will and as the bill alleges have continued to occupy them and were in the occupation of them at the time the bill was filed. It is manifest then that this occupation and enjoyment of this Hotel property by these parties for the term of 3 years has not been under any leasing to them by the trustees in the exercise of this power, in fact their tenancy during that term did not arise under any act of the trustees which can be properly called the exercise of a power to lease. Their right and enjoyment as tenants were derived directly from the will of the testator and not indirectly through the trustees. He declares that they shall hold the property in trust to permit Jeremiah Barnum and Andrew McLaughlin to use occupy and enjoy as tenants if they agree to permit one of them if they have, at the rent and upon the terms specified for the term of three years. A trust may be created by a devise to a person to permit him to occupy and enjoy as tenants. In the case of Tibbalds vs Tibbalds 19 Ves 655 a testator made devise to his son recommending to him to continue his cousins A & B on the occupation of their respective farms in the County of Wexford so long as they continue to manage the same in good and husbandlike manner and to duly pay their rents. It was held a trust for the cousins who had been tenants at will. Lord Eldon said in deciding the case it is clear recommendation in a will where the objects and the subjects are certain amounts to a trust. In this case the language of the testator is much stronger than that of recommendation. It is clear then that the views of the testator were not disappointed in respect to the

occupant and enjoyment by Barnum and McLaughlin of these premises as tenants during the term of three years for which they were denied in trust for them as such. He also has been disappointed as to the leasing of the property since their term of three years expired so as to let in the application of the second Article of his will to the disposition therein declared of his estate. It is said that they have been disappointed as to leasing since because it has been altogether under a void power and the cases cited had no validity and no power exists to create further leases and therefore this second Article also is inforce. This power given to the trustees to lease is void as the Complainants allege because it is to continue for a period longer than that allowed by the rule against perpetuities. This rule is well established so far as it relates to dispositions of and declarations of trust of property so that no man can dispose of his estate by deed or will in such a manner that the parties whom it may vest shall be deprived of the power of alienating it for more than a life or lives in being and twenty one years after. But as the strictness of this rule in its operation upon limitations and devises of estates is mitigated by what is called the doctrine of Cypres. But the question here is not in reference to the application of this rule to a devise of this property because it is not pretended that the testator has disposed of the property itself but the rate of it in violation of this rule for he has given the surplus of rents to accrue from it to his children in fee simple and they therefore have the right to alienate or dispose of them absolutely. He is attempted however to apply this rule simply to the power to lease conferred upon the trustees. In regard to such power this rule is by no means so well established. I have looked at all the cases in which the question as to its application to powers has been discussed and I find the reasoning of the Courts upon the subject and their decisions so far as they have gone not clearly and completely brought together in Sugdens Law of Perpetuities and his appendix in Vols 5 2 and 6 Law Lib in vol 5 2 p 365 in chapt 25 entitled of the rule against perpetuities as it affects the limitation and exercise of powers of sale exchange partition leasing and the like. This author in introducing the subject says whether any necessity do really exist for restricting powers of the kind under consideration to the perpetuity boundary has long been a question with writers on real property law. which and the other hand the admitted practice of the profession was for a long series of years conducted upon the notion that such powers were valid although unrestricted so as in the first moiety of the question to excite the remark by a great luminary of the law that a contrary rule would shake half the titles in the Kingdom. The doubt in regard to the validity of these powers was first created by a decision of Lord Eldon in Ware vs Polhill 11 Ves 257. It was the general opinion however of the most learned men at that time in this branch of the law that the validity of such powers was not impeached by this decision and that it was not necessary to limit the exercise to the established boundaries of remoteness. Sir Ed Sugden in his work on Powers 6 Ed Vol 1 p 181 Vol 2 p 194 declares that the validity of common powers of sale and exchange was not impeached by Ware vs Polhill that the general practice had been not to confine them to lives in being and 21 years that half the titles in the Kingdom depended on such powers that if the power and it was neither the kind of perpetuity the land could always be drawn and that appeared to be no reason why it should be deemed void in its creation. In the cases of Pedrick vs Perkins 4 Sim