foreseeing, however, that these parties neither jointly nor separately might have been willing to become tenants of this hotel, or if they did that their tenancy would in the course of three years expire; he provided 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 might 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 McSaughlin 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 these 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 the a power to lease. Their rights 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 this property, "in trust to permit James Barnum and Andrew McSaughlin to use, occupy and enjoy as tenants, if they agree, or to permit one of them if they do not, 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 Tibbits vs. Tibbits, 19 Ves. 656, a testator made devise to his son "recommending him to continue his cousins A and B in the occupation of their respective farms in the County of W, as heretofore, 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. Sd. 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 occupation and enjoyment by Barnum and McSaughlin of these premises as tenants during the term of three years, for which they were devised in trust for them as such. Have his views been disappointed as to the leasing of this 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 dis-