

daughter, Gertrude Maud Foxwell (thereinafter called his trustee), to be his executor and executrixes, and he devised to the appellant his dwelling-house and premises therein mentioned, subject nevertheless to the provision thereinafter contained for the benefit of Annie Maud Hamilton and Gertrude Maud Foxwell. By this provision each of these ladies was to be entitled to live in the dwelling-house as her home and to occupy a room therein for her life, and was also to be entitled to all necessary maintenance and board which the testator made a charge on the premises. The testator also gave an annuity and various pecuniary legacies and devised and bequeathed his residuary estate both real and personal to his executor, executrixes, and trustees aforesaid, to be used and employed by them in their discretion or in the discretion of the majority of them, so far as it might go in the maintenance and keeping up of his said dwelling-house and premises thereinbefore given to the appellant, with full power to sell the real estate and devote the proceeds to keeping up and maintaining his said residence in the manner in which it had been theretofore kept up and maintained, and if for any reason it should be necessary that the said residence should be sold, the testator directed that upon such sale being completed the residuary estate then remaining should be divided in equal proportions among the pecuniary legatees under his will.

The chief question now arising for decision is whether any definite limit can be assigned to the duration of the discretionary trust affecting the testator's residue. If no such limit can be assigned the trust is void as offending against the perpetuity rule. Their Lordships are of opinion that no such limit can be assigned. It was suggested in the Court below that according to the true construction of the will the discretionary trust is exercisable only by the three persons, or a majority of the three persons by the will appointed to be the testator's executor, executrixes, and trustees, and could therefore not be exercised beyond lives in being. This suggestion was not pressed before their Lordships' Board, and indeed it is, in their Lordships' opinion, fairly obvious that the discretionary trust is not vested in different persons, but in the holders for the time being of a definite office. (See *Re Smith*, [1904] 1 Ch. 139). The argument relied on before their Lordships was to the effect, that according to the true construction of the will, the trust was for the benefit only of the appellant and the two