

interfere with a trustee in the exercise of a discretionary power, (save to see that a discretion is really exercised,) yet, that looking to the fact that the object of this testator was to found a charity of this particular sort—a literary charity—by furnishing it with books and maintaining said building, and that it was certainly designed that your orators should administer that charity in connection with their own, and under one management, and, it was probably intended, in one building, and with one corps of servants and assistants,—a court of equity, having control of charities, would, even if the donee had not so surrendered and bound his discretion before the trust had vested in him, interfere to prevent its improper exercise.

XXIX. Your orators aver that nothing but the high moral conviction under which the defendant labors—of his duty to abide by his promise—blinds him to these consequences. And although true it is that the promise so made by him to his testator was wholly illegal and could not lawfully bind the former nor be enforced against him, yet your orators charge that the defendant did and does believe that his conscience was and is bound thereby, and that he would be doing a dishonorable act if he made any other selection.

XXX. But the defendant at times insists that he has selected the said site in the exercise of *his own* discretion, unbiased by said promise; but your orators charge that the defendant, having made the promise and believing himself bound by it, was and is utterly unable to determine what line of conduct he would have followed if he had not made such promise, and that a court of equity will not regard any assertion of what might or would have been the defendant's determination, had no such influence existed.

XXXI. At other times the defendant alleges, as an excuse, that, as the testator agreed to buy the said lot for the purpose of having a library building erected thereon, he, the testator, did thus *himself* select the site for the building; and that he, the

