

defendant, as trustee, had not the less a right to select voluntarily the *same* lot which the testator had thus selected, or else that the testator's alleged selection, in some way or other, took the place of that to be made by the defendant, and was either binding, or could, at his option, be made binding, and, in fact and law, has been made binding, on all claiming under the will; the contrary whereof your orators charge to be true, and they aver that, by his own showing, it was not possible for the defendant, after the testator's death, to make a voluntary selection of that or any other site, because he had already, in the testator's lifetime, bound himself by his promise not to exercise the discretion which the will had given him, but to build the library on that site, and nowhere else.

XXXII. Your orators further charge that to permit such an alteration of the testator's will to be made by parol, would be a mere evasion of the statute of wills—that such attempted alteration cannot be strengthened by the mere purchase by the testator of a lot of ground, unaccompanied by a written declaration, signed by him, of the purpose for which it was so bought—and especially when, by the law of the land, such an alteration of the will, even if otherwise made in the most lawful and binding manner, would be wholly void and of no effect, by reason as aforesaid of having been made within one calendar month prior to the testator's death.

Wherefore, every act and declaration both of the testator and of the defendant in reference to the determination or selection of the said lot at the south-east corner of Broad and Christian streets, as a site for the building to be erected under the trusts in the will contained, is wholly nugatory, void, and ineffectual for that purpose.

XXXIII. And they charge that the site selected is utterly ruinous and destructive of the general purpose for which your orators were incorporated and endowed, and the trust which they have been hitherto administering, and which it was the manifest design of the testator to promote, in this,—