

Then, too, the defendant complains that a Master, the choice of the Court, is not the choice of the testator. But no more is a Court the chosen interpreter of a testator's intention, and a Master is but the Court, acting necessarily, to some extent, by delegation. If analogy were wanted, we might again refer to the class of cases as to a trustee's consent to a marriage. When there exists "a fraud upon the power" to consent, the Court itself inquires, through its Master, whether the marriage be a proper one, and thus women are not left to starve for matrimony.

Further, the defendant complains that he still possesses the right to say how much shall be expended in building. But the question of site and expenditure are inseparable. Given the wealth of the Indies, and the question of expenditure—so much for site, and so much for the building—is insignificant. But if there be but a limited sum, large or small, the questions cannot be severed. At any rate, this court will seek for the best lights it can find, in order to carry out the testator's intention, as contained in his written will. *Non constat* that, after all, Broad and Christian streets may not be the best place. The case is the same as if the executor had died the day after the testator, and this Court will not suffer the latter's noble charity to fail by reason of an accident.

And, finally, the defendant complains that although Broad and Christian streets may be excluded from his choice, he may still be permitted to choose elsewhere. What then becomes of his promise that he will build there "and nowhere else"? It is this promise which has been "a fraud upon the power," and although he may absolve himself, a court of equity cannot absolve him.

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