

Where the discretion lodged with the trustee has relation to some ministerial act, it is much more under the control of the court, than where it depends upon the exercise of opinion or personal judgment, such for instance, as when the consent or approbation of a trustee is required to a marriage, or to the conduct of an individual. *Milsington vs. Mulgrave*, 3 Mad., 491; *Mortimore vs. Watts*, 14 Beav., 616. Suppose the promise had been to build at Manayunk, Frankford, or Germantown; would the complainants have been bound?

Applying these principles to the IV. prayer for relief which is in these words: "That the court may decree that the defendant, being at and before the time when the said trust vested in him, or supposing himself to be under an obligation which bound his discretion as to the selection of a site for the said building, was and is thereby disqualified from, and incapable of exercising the power and trust in that behalf given to him by the said will, and that the same may be exercised by this court having jurisdiction in the premises."

We have to inquire, first, as to the fact of the alleged disqualifying obligation; 2d. Whether it does disqualify; and, 3d. If it does, how is the testator's intention to be reached or carried out.

The evidence of the alleged disqualifying obligation is found in the answer, and is asserted by Mr. Williams in his letter to Dr. Charles Willing, printed (page 18 of bill) as exhibit B to the answer; and also on page 44 ante of this report; and in paragraph 14, page 19, of the answer where the defendant says: "I admit that I wrote to Dr. Willing, on December 30th, 1870, the letter from which an extract has been given. Its statements are true."

The conversation mentioned in this letter took place about eight days before Dr. Rush's death. See ante page 36.

It thus appears that at the time of Dr. Rush's death the defendant was under a pledge, given under circumstances

