

Mr. Williams, whether the will is regarded simply as a devise to them in trust for themselves and others or whether it is held to create a charity of which they are to be the trustees.

In either case, when the building is completed and conveyed to them, it is to be used to contain their books, as well those which they now own, either in their own right or in trust, as those which may be acquired from the estate given by the will. That the discretion as to the site, being in its nature capable of exercise in a way which would make it impossible for them to accept, their interest is a contingent one depending on the site being such as they can accept.

That while it is true, they can only enjoy the property, or exercise the trust on the terms which the testator has imposed, that is subject to the *discretion* of the executor, as to the site and character of the building to be erected, they are equitably entitled to the exercise of his untrammelled discretion. That if he has committed himself beforehand to any particular site, whether that commitment has followed from unworthy or from the purest motives, from bribery, by a person having a lot to dispose of, or from a promise made to a munificent testator, it is equally in equity a fraud on the trust. That in the view of equity, no one avowedly so committed is in a position to exercise a discretion, such as is confided to the defendant by the following words in the second paragraph of the second or additional codicil, to wit :

“Second. I have in my will limited the extent of the lot to
“be purchased for the Library Building, as well as its locality,
“but as I desire that it shall have not only strength, durability,
“and accommodation, but also be of sufficient magnitude for
“any future or contingent, but not an ambitious or competing
“increase of the Library, in order to prevent, if possible, its
“being torn down in twenty years, and the lot sold at a specu-
“lative profit to suit the hyperbole of the times, *I authorize*
“*and allow my executor, under a broad and thoughtful foresight,*
“*to increase the size of the lot, and select any situation he may*

