

tiffs' rights to be presently considered, on the inquiry whether the prayers in his bill can be sustained. It is plain that the testator considered the public charity the same whether administered by the Philadelphia Library Company or by some other trustee. He preferred the former. And if he has given them rights which the Court will protect, or ought to protect, the action of the Court in so doing cannot be "in prejudice of a great charity for the benefit of the public," in any sense which should induce the Court to withhold its action.

The sixth specification of demurrer, is: "The Court has no jurisdiction to control my discretion in the selection of a site for the building, nor in the execution of any of the trusts of the will."

This is as a general proposition true if the discretion exists.

But the point of the plaintiffs' bill is, that after the subject was confided to the discretion of the defendant, and before the time for exercising it arrived, he had incapacitated himself from exercising discretion in the premises. This brings us to consider whether the prayers of the plaintiff's bill can be sustained; if they can, this ground of demurrer fails.

The first prayer of the bill is, "that the rights of your orators and of the defendants in the premises may be ascertained and declared." That, of course, is what to a certain extent must be done in whatever way this cause is disposed of.

The second prayer, viz.: "That it may be declared and decreed that the power conferred on the defendant by the will of the testator was a trust to be administered by him only in the manner in which all trusts can of right, or ought to be administered." The Master believes to be a correct statement of the law.

As the proposed building, when completed, is to be conveyed unto "The Library Company of Philadelphia and their successors" for the uses and purposes of their library, and "The Ridgway Branch of the Philadelphia Library," and