

or *unreasonably*, this court, upon bill or information, may control and regulate the administration of the charity," and see *Pulpress vs. The Church*, 12 Wright, 204; *De Peyster vs. Clendinning*, 8 Page, 296; *Fontain vs. Ravend*, 17 How., 369, relied upon by defendant, is not opposed to this.

The defendant, in his answer, page 15, meets this by saying:—

"I deny the averments in the third section of said paragraph. I am advised, and therefore aver, that the complainants are not a charitable corporation, and that the discretion given me to select a site for the library company is not therefore in the nature of a trust for them; but that if the law and the facts are as stated in the bill, then as the will speaks as of the day of the testator's death, if, in his lifetime, by his own act, he disqualified me from the exercise of the discretion given to me by the will, the bequest to the Library Company being dependent upon the exercise of that discretion as a condition precedent to the vesting of the estate, no Court of Chancery can dispense with the performance of that condition.

"I am advised, and therefore aver, that my disqualification to exercise my discretion, supposing it to exist, having arisen from acts of the testator himself, the complainants can take no benefits under his will conditioned upon a prior exercise of my discretion, however ready they may be to comply with all the 'other conditions and regulations.'"

The master is of opinion that this argument is fallacious. The testator did nothing to disqualify the executor; he could impose no duty upon him. The disqualifying promise was the act of the executor. The selection of the lot was an incident merely of the testator's main intent, which was that a building should be erected suitable for a library building, and for a memorial or monument. The duty imposed upon the defendant was to erect a building, conformably to the plan described by the testator, and tender it to the Library Company. The testator had not made up his mind on what site, but that he must select some site was a necessary incident to the duty imposed upon the trustee.