

And the following preamble and resolutions were also adopted:—

“WHEREAS, At a meeting of the members of the Library Company held on the 29th day of June, 1869, Mr. Williams, as executor of Dr. Rush, expressed an intention of erecting the library building contemplated by the provisions of the said will on the square of ground on the corner of Broad and Christian streets, in this city; now, further,

“*Resolved*, That it is the opinion of the directors of this company, that the removal of their collection of books to the site thus proposed would, under the circumstances, be destructive of the interests of the Library, and contrary to the wishes of a vast majority of the stockholders.

“*Resolved*, That the directors take this as the first opportunity since the company has been authorized by law to accept the trusts of Dr. Rush’s will, to express to Mr. Williams their earnest hope and request that he will reconsider his intention of building on the site named.

“*Resolved*, That Dr. Willing, Judge Hare and Mr. Lea be appointed a committee to communicate these resolutions to Mr. Williams, and to confer with him on the subject.”

XXIV. At and before this time, your orators had learned that the defendant, in making the selection of the said site at Broad and Christian streets, was not acting either under the directions of the testator as contained in his will, nor in the proper and legal exercise of the discretion which the will had given to him, but that before and at the time when the said will was admitted to probate, he had disqualified and disabled himself from exercising any discretion whatever in the premises.

XXV. The mode or circumstance by which he had thus disabled himself was this, viz. : he had bound himself, by a most solemn verbal promise, made to the testator in the extremity of his last illness, and within a month of his death, not to exercise any discretion at all, but to use a particular piece of ground, and no other, as the site of said building.