

to whom her father had, to her surprise, not left her a certain house, indignantly ask, "What are a few words written in a will, compared to the conversations of a lifetime?"

II. The question of fact. Has the discretion in this case been bound?

The court below spoke of the "uncontradicted evidence," and indeed, the case might almost have been argued upon bill and answer. The testimony taken before the Examiner was only done out of abundant caution to exclude possible conclusions arising out of the answer.

The defendant made a promise to the testator to build the library on a particular site "and nowhere else;" and he has told us, in his letter, in his answer, and in his evidence, that he regards this promise "as sacred as an oath." Now, there are men to whom integrity is an instinct, and moral sense, spontaneous. And for this very reason, as was conclusively put by the Court below, "the greater the integrity, the higher the moral sense, the stronger would be the obligation upon the conscience."

To a coarse mind, the pressure on the discretion from having received a certain sum of money for choosing one site, would be effaced by the greater pressure from subsequently receiving a larger sum for choosing another; but, to a man of instinctive integrity, the slightest pledge of faith is ineffaceable, and from thenceforth there is "no variableness, neither shadow of turning." And the very fact that the defendant tells us, "I believe that I am just as able to determine whether the site at Broad and Christian streets is proper and beneficial, as if I had made no promise at all,"\* is, to a human mind, the most overwhelming and conclusive proof that his discretion is absolutely gone.

"Certain facts," said the Court below, "which the wisdom of ages has recognized as influencing the judgment of mankind generally, create a conclusion of law that they will influence the judgment of each individual. Apply the law and reason to this case, testing the uncontradicted evidence by all those principles

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\* Defendant's answer, page 28.