

that Henry J. Williams should execute his will. And this intention dates from his death, for it was then the will took effect. But the testator knew perfectly what Mr. Williams had promised him. Still he altered not his will. Notwithstanding the promise, Dr. Rush's will was and is, that Henry J. Williams, with the pledge upon him, should be his executor. The plaintiffs seek to defeat this plain intention of the will by parol evidence of an irrelevant and "exterior" fact.

2. The promise was an imperfect obligation—a mere *nudum pactum*—and belongs to that class of consoling assurances which are so frequently given to dying persons by the friends who surround the death bed. Dying persons often exact promises as to where they shall be buried, what ceremonies shall attend the funeral, how the household shall be managed, and various other details, which, being found impracticable, are varied or neglected altogether. Courts of justice disregard such verbal promises, not from insensibility to what is due to the dead, but because they are not of a nature to control the due administration of the decedent's estate according to law. The promise complained of here is of the same quality. Had it conflicted with his duties and oath as executor, Mr. Williams tells you he would have renounced the trust; and nobody has any right to question his assertion, because he is admitted to be an honest man, and an omniscient eye alone is capable of reading his motives, thoughts, and intents better than himself. As there was nothing disabling in the nature of this promise, the uncontradicted proof is that in point of fact, it did not influence his discretion as executor.

3. But the complaint is, not that this unimportant promise was made—indeed Mr. Williams is commended for so comforting the dying man—but the plaintiffs complain that they were entitled to a sound and unbiased judgment in the selection of a site, and that the promise warped or had a manifest tendency to warp the defendant's discretion. On