

pages 20 *et seq.* of the bill, this theory is set forth with abundant verbiage, but it is all founded upon a false assumption, *that they, the plaintiffs, were entitled to any higher or better discretion than such as Mr. Williams possessed.*

Whatever rights the plaintiffs originally had (I shall hereafter maintain that they have forfeited all they had), they held them under and according to the will. They were contingent legatees, and if they took any part of Dr. Rush's estate, they must take it in *formam doni*; they must take it at the hands of Mr. Williams, or in case of his disability, at the hands of Mr. Biddle or Mr. Craven. No other way had been provided for them—no otherwise were they legatees, or interested in the estate. The suggestion that Mr. Williams was not unbiased is a sheer impertinence. Biased or unbiased, free or trammelled, he was the appointed agent by which the plaintiffs were to get their legacy. It was as irrelevant to allege that his judgment was trammelled as it would have been to allege that his head was gray. Dr. Rush knew who he was, and what he was, and he selected him as his agent, his personal representative, to dispense his bounty, and if his ungrateful legatees don't like the hand that was chosen, let them refuse the gift and cease carping at the giver and his agent.

Both the master and the learned judge at Nisi Prius conceded to the plaintiffs more than they had a right to claim, as to the freedom of the will of Mr. Williams. The will of Dr. Rush speaks of a broad and thoughtful foresight in his executor, but it imposes no such rule as the plaintiffs claim. Not a word in this fundamental law gives the plaintiffs the right to a free, unbiased, unwarped judgment in the selection of site, but what it does give them is the discretion of Henry J. Williams. Their whole case, therefore, rests upon a gratuitous assumption, outside of the will and subversive of all its provisions.

And their analogies are no better. A man shall not be a judge or juror in his own case, because no law has said

