

possibility of Mr. Williams being unable to execute the will. These clauses were not indeed drawn with a view to what has happened, for no good angel who may have watched over Dr. Rush in his last hours could ever have anticipated such a case as this, but the will is to be construed by its four corners, and the intention of the testator is the rule for the court. So reading the will, can it be doubted that the testator intended to commit the selection of a site to one or the other of the above-named three men? He would be a bold man who would deny this.

But if such is the will, whence comes the power of a Master? Equity has jurisdiction of trusts, but only to execute them according to their institution. Courts of Chancery have no more power to repeal wills, or make wills for dead men, or substitute for their wills the fancies and conceits of lawyers, whom much learning has made mad, than Orphans' Courts have. Until it becomes unlawful for men to make wills, it will be unlawful for courts of justice to disregard and overthrow them. Dr. Rush did not appoint this court, nor any Master of this court, to execute his will. The prayer for a Master then is a gross aggression upon the will, which surely this court will be slow to tolerate.

And this brings me to an observation which failed to make any impression upon the Judge at Nisi Prius (doubtless through defectiveness of the statement), but which I venture to repeat—that this bill and its prayers are founded upon a denial of the *jus disponendi*, which I submit is the essential and main quality of property. The great motive for acquiring and guarding property is that we may dispose of it. Very little of it can we use—very little satisfies all our present wants, but the right to dispose of it when we are done with it is a most animating and invaluable right. It is at that right the plaintiffs strike. Their rights under the will were future and contingent—future because until the building was erected and tendered to them they were to have no voice in the matter, and contingent

