

approved, would have been disregarded when he was gone, he would most unquestionably have embodied them in a form *legally* binding. It was after this, that the promise stated in my letter of thirtieth December, 1870, was made to him. This was given with a knowledge of almost every circumstance which led subsequently to my decision, when, as his executor, it became my duty to determine the site of the library. Knowing, as I do, that this promise is not binding upon *me*, the trustee in law, however it may be in morals and good faith upon the beneficiaries, I aver that I have never heard any reason assigned which would justify me in changing my opinion as to the propriety of this site. I have certainly seen none assigned in the bill which has been filed.

If there had been a conflict between my sworn duty under my oath as executor, and my promise to the testator, I could have ended it by a resignation of my executorship; but as no such conflict ever arose, it has never become necessary for me to determine what course, under such circumstances, it would be right for me to pursue.

I selected the Broad and Christian Street lot when I had assumed the executorship, after calm, careful, and deliberate consideration—having thought of it in every shape, favorable and unfavorable, in which it had been presented—because it was, in my judgment, the best I could obtain for the objects and purposes of Dr. Rush's will—and because it combined adequate dimensions with cheapness and position. I announced my selection at the meeting of shareholders of the Library Company on the twenty-ninth of June, 1869, and at the meeting held on the fifth of October, 1869, the resolutions, alleged to have been resolutions of acceptance, were adopted in face of the bitter opposition of a then minority (now in some mysterious way controlling the company) hostile to the selected site.

I was advised by my counsel in writing on the 9th of July, 1869:—

“As executor you are guided by the written will. In the exercise of the discretion reposed in you by that instrument,