

square on the great central avenue of the city, a few squares south of the original limit, and bought it at a cost of \$130,000, or about one eighth of his entire estate. Upon this ground he directed his executor to build, and, to secure his co-operation, obtained his promise to do so. This promise was given, the executor swears most positively, not only out of regard to the testator's wishes, but because the lot and site were approved by his own judgment, founded on a previous examination of all the known eligible sites. Within a month after the death of Dr. Rush, Henry J. Williams, the executor, consulted eminent counsel as to the obligation of the contract of purchase upon the estate and upon his own duties in making the selection, and was advised by Judge Strong that the purchase was binding, that his power of selection was absolute, and was to be exercised upon his own judgment.

Dr. Rush died on the 26th of May, 1869. Mr. Williams made the selection under the will, and communicated it to the library company on the 29th of June, 1869, having previously stated it to individual members. Mr. Williams, the executor, a member himself of the library company, having no selfish or hostile interest, an old and skilful lawyer, well informed of his duties, a gentleman of intelligence and refinement, one whose integrity and purity of character are conceded by the plaintiffs to the fullest extent, is admitted to have acted in perfect good faith, and he, on his oath, attests that he acted upon his own judgment. It is alleged that the selection of the site at Broad and Christian streets, chosen and purchased by the testator, and adopted by the executor, must be set aside, not because of any intent to disappoint the trust, or of the slightest *mala fides*, but because the mind of the trustee, was, by reason of a promise to the testator, under a constraint, of which he was unconscious, when he made the selection, which made him incapable of exercising his judgment, notwithstanding he swears that he did act upon his own judgment,

