

"erection of a suitable building thereon." Though such a declaration would be in direct subversion of all the provisions of the will, it *might* give the desired relief.

Upon the decease of Dr. Rush, Mr. Williams consulted his then counsel, Judge Strong, as to his duties under the will. Since then, he has "taken no important step without "first obtaining the advice and approbation of counsel."<sup>(l)</sup> He was thoroughly impressed with the extent of the obligation imposed upon him by his oath of office as executor, and was advised that he must exercise his own judgment in the selection of a lot for the purposes of the library.<sup>(m)</sup>

Under this advice, with full knowledge of his duty, and with an honest intention to perform it, he selected the lot at Broad and Christian Streets as the site for the building. This action, and the reasons therefor, repeated in his testimony,<sup>(n)</sup> are stated in the answer,<sup>(o)</sup> as follows:—

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, you may regard Dr. Rush's views and wishes orally expressed, but, after all, *your* judgment, however it may be made up, must be your guide in matters left to your discretion."

In pursuance of this advice—for I have felt, and still feel, under the obligation of my oath of office, bound to perform my duty in accordance with the *law*—I considered, in all its bearings, without any bias, the matter of the site, but my conviction that it was the one by far the most expedient remained, and still remains, unchanged.

Though protesting that the complainants have no concern with or control over my reasons for this decision so long as they are honest, which is not, I believe, denied, yet, in deference to the Court, I will state some of those which influenced me at the outset, and govern me still.

The lot I have selected is bounded by Broad and Thirteenth, Christian and Carpenter Streets. It has a front on

(l) Answer, page 4.

(m) Answer, page 6.

(n) Examiner's Report, pages 216-217.

(o) Answer, pages 7, 8, 9, and 10.

