

"son's, they were all too small, and of all these the prices were too high in my opinion.

"Q. Since Dr. Rush's decease, have you examined as to whether there are any available lots suitable, in your opinion, for the Library Building, other than those examined before his decease?

"A. I have examined none, because I know of no others. I have heard of no lot, which I consider suitable for the Library, as suitable as the lot at Broad and Christian.

"Q. In your answer you have given the prices of various lots in the city of Philadelphia. State when and how you ascertained those prices.

"A. As to all lots, the prices of which are given on page 8 of my Answer, saving as to those north of Monument Cemetery, I learned the prices of almost all of these from Mr. Pratt, a prominent real estate agent. The price of the burnt depot I learned from Mr. Gowen.

"Q. Was the question as to your duty under Dr. Rush's will with regard to the selection of a site submitted by you to counsel?

"A. I am sure it was; I am certain Judge Strong gave me an opinion upon it; the opinion was dated July 9, 1869, and was in these words:—

"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. You will remember that Mr. Meredith and Mr. McMurtrie suggested the Court might control your discretion, if it is *fettered* by any oral promise or verbal direction. The suggestion I think uncalled for and unfounded, but it is best to avoid unnecessary reference to oral instructions given by the testator.'

"Q. In pursuance to this advice, as to your duty to act upon your own discretion, unfettered by promises, in selecting a site for the Library building, did you consider the question of such selection in accordance with your judgment, irrespective of your promise, and if so, with what result?

"A. I did; after Dr. Rush's death, I was obliged, of course, in order to assume the duties of executor, to take the ordinary oath, which obliged me to carry out the directions of the will. This was a legal as well as a moral obligation; and under it I did then, and have done ever since, considered the question as to the site of the Library entirely irrespective of any promise made to Dr. Rush, or of any wish expressed by him, and I became then and have continued ever since