

the defendant assumed the trust under such a trammelled and crippled discretion that he was thereby disabled from using his natural unbiassed judgment in the selection of the lot. The Master concurred in this, and in his very able report has found "that the trustee, by his promise to the testator, had so crippled his discretion as to make it impossible to say how much his preference for the lot in question is due to his unbiassed opinion that it is most expedient for the purpose, and how much to his promise to Dr. Rush," and that the action of the defendant should be subjected to the control of the court.

This presents the controlling question in the case. Do the facts and the law justify the Master in his conclusions?

The evidence shows that some weeks before the death of the testator he became very anxious to have the location of the intended library building fixed and settled; and he desired the defendant to ascertain the size and cost of all the vacant lots on Broad Street (upon which street he desired it to be placed). The defendant procured statements of the sizes and prices of all he thought suitable, from Vine to South Street; but Dr. Rush was not satisfied with any of them. Some other gentlemen brought him a plan of the lot on Christian Street, and he was so much pleased with it that he directed the defendant to buy it at once. The defendant did so, by the aforesaid contract of May 18th, 1869. The Doctor thereupon expressed great pleasure that it was concluded, as it relieved his mind from all anxiety. "Some days after," says the defendant (in his letter of the 30th December, 1870, to Dr. Charles Willing, chairman of a committee appointed by the complainants), "the Doctor recurred again to this subject, as it had probably occurred to him that he had given me an absolute discretion as to the situation of the library by the terms of his will, and that I might be induced to overrule his decision after he was gone. He called me to his bedside and asked me to give him a promise that I would build the library on that lot, and nowhere else. I gave him this promise as fully and