

solemnly as language could express it, and he then thanked me, and said he could now die in peace."

In his testimony taken before the Examiner on the 17th of April, 1872, he says: "I think it was about the second day after the interview with Mr. Wharton (which he had just stated was on the 20th or 21st of May, 1869), when I was seated by Dr. Rush's bedside. I think the lot had been the subject of conversation between us, when the Doctor turned to me and said, 'Harry, now you will promise me to put the building upon that lot?' I said, 'Certainly, Doctor, if you desire it; I will promise you that I will put it there, and nowhere else.' The Doctor merely expressed his satisfaction. I think he said, as near as I can recollect, 'Well, I am very glad of it; it is now all settled.'"

The Doctor died within five or six days thereafter. This promise, then, was demanded and given a very few days prior to his death. It was two years after the last codicil to his will had been executed. It was demanded of a brother-in-law to whom he was about to intrust more than a million of dollars—I say about to intrust, for there was yet time for him to revoke the will and all of its trusts. He was unwilling to pass all his vast estate into the hands of the defendant upon the implied assurance that the library building would be located upon the lot which he had purchased for its site. Hence he made the specific demand. What his action would have been, had the defendant's answer not been in accord with his judgment, is left to conjecture. He suffered his will to remain unchanged. He passed from this earth, there is every reason to believe, in an abiding faith that he had restrained the free choice of the defendant, and that he had secured the erection of the library building upon the lot designated by himself.

What was the position of the defendant? He knew that he had been named in the testator's will as his trustee and executor. Sitting by the bedside of his dying friend and brother—recognizing the Doctor's right to control his own

