

that the defendant had, when he made the selection of the lot in question, or has now, such a free discretion and unbiassed judgment as the complainants are entitled to invoke and a court of equity bound to provide. It should therefore be referred to a master to inquire and report what will be the most expedient location for said library building, without my indicating any opinion as to whether or not the lot at Broad and Christian Streets is a suitable one.

The exceptions to the report are dismissed, the report of the master is confirmed, and decree accordingly.

# DECREE.

And now, this 31st day of December, A.D. 1872, this cause came on to be heard upon bill, answer, replication, and proofs, and was argued by counsel; Whereupon, in consideration thereof, the Court are of opinion and so declare, First, that the complainants are competent to, and of right may, when the proper time shall arrive, assume the trust confided to them by the will of the testator, Dr. James Rush; Secondly, that all the powers to that end conferred on the defendant by the will of the said testator are trusts, in which the complainants have an interest in the nature of property, and which are to be administered by the defendant only in the manner in which all trusts can, or of right ought to be administered; And it appearing to the court, as well by the written admissions of the defendant as by his answer and testimony in this cause, that at and before the time when the said trust vested in him, he had absolutely bound the discretion intended to be given to him by the said will as to the selection of a site for the building proposed by the testator to be erected, and was and is thereby disqualified from, and incapable of exercising the power and trust in that behalf given to him by the said will, and that, in order to carry out the true intent and meaning thereof, the said trust may, and should be now exercised under the supervision of this Court according to

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