

II.

The propositions which must be maintained in order to maintain the decree.

1. Did Mr. Williams act under his promise and not in pursuance of his power?

Complainants in their bill assert the affirmative. Unless they prove it they have no right to relief. Have they done so? They point to the letter of 30 December, 1870, as proof. In that letter Mr. Williams communicates the fact that he did make a promise; but asserts, in the most decided manner, that he selected the lot because, in HIS JUDGMENT, it was most expedient. He does not say that his promise influenced his selection; but simply that having made the selection, because, in his judgment, it was best, he could not voluntarily build elsewhere, on a lot not so good, in violation of his promise to build there and nowhere else. If this case is to be determined, like every other, upon the evidence, it fails for want of proof. Of this there is none. All the evidence is opposed to the allegations of the bill. The witnesses of complainants, Messrs. Whitman and Fraley, testify that from the outset, at least eighteen months before his letter was written, and repeatedly afterwards, Mr. Williams said what in it he asserted—that the lot he had chosen was the most suitable for the purposes of the will. It cannot be claimed that he was then seeking to make evidence for himself; for had this been his design he would have been silent altogether. Mr. Williams swears to his belief in most unequivocal language, and he gives the reasons which induced it. He also swears that with all the lots before him, of which afterwards he knew when it became necessary to make his selection under the will, he had come to this conclusion before any promise was given. In