

selection of a site for the library building, in the exercise of what he believes to be his unbiased judgment, the executor has chosen one that, in the opinion of the testator himself, was best adapted to his purposes. Ordinarily the court struggles hard to get at the intentions of a testator; but here, the executor must be disqualified because he is trying to execute them.

If there be a doubt, surely that doubt should not be given against the executor, when the sole consequence of a refusal to do so will be, that the anxious wishes of the donor will be gratified, and that a site will be adopted which the man most interested was so anxious to secure.

We earnestly urge upon the court that it will refuse to interfere with an executor who honestly exercises the best judgment he possesses, with the intent to execute the power as written in the will; that it will not condemn him without cause; and that it will not subvert the testator's written will, upon mere suspicion.

We summarize what we have urged as follows:—

1. There is no proof that Mr. Williams selected the Broad and Christian Street lot, under the influence of his promise.
2. The evidence, from his declarations long before litigation, that it was selected because in his judgment it was "most expedient," is overwhelming, and it is corroborated by the fact that he came to the same conclusion before any promise was given.
3. Mr. Williams is competent to testify as to his intention in selecting the site and as to the reasons which governed him.
4. A judgment as to the fitness of a site is not necessarily influenced by a promise to build nowhere else, especially where the party who gave the promise is aware of his duty to act independently of its influence, and would, by a resignation, if his judgment were adverse, keep his promise without violating his duty.