

ing. I aver that in making selection of the site at Broad and Christian Streets, I acted under the direction of the testator as contained in his will, and in the proper and legal exercise of the discretion thereby given to me.

12. I deny the truth of the averments in the 25th paragraph, in the form in which they are put. I admit that I did, at his request, "not in the extremity of the testator's last illness," but whilst his intellect was as clear and strong as ever, within a month of his decease, promise him verbally, to use the said lot of ground at Broad and Christian Streets as the site of the library building; and I aver, that at the time I made said promise I thought it the best lot for the purpose which could be obtained; and I aver, that after careful reflection and subsequent examination, I still entertain this opinion. I deny that I ever made "a promise not to exercise any discretion at all" in reference to the site, or that any such words ever passed between Dr. Rush and myself.

I said nothing which deprived me of the full power to form a judgment or opinion in reference to the propriety or expediency of selecting that situation. A promise to do a particular act does not prevent the formation or the expression of an opinion in relation to its propriety or expediency, and I believe that I am just as able to determine whether the site at Broad and Christian Streets is proper or beneficial, as if I had made no promise at all. An agent or trustee acting under a specific power can, surely, although legally and morally bound to comply with it, decide whether the object of that power is right or wrong, beneficial or injurious, and whether or not, in his opinion, some other course would not be preferable, although he may not be permitted to follow it. So, here, I believe I can determine the question as to the eligibility of the site as correctly as if the subject had never been mentioned by Dr. Rush.

I am sworn to execute the provisions of the will. One of these requires me to exercise an honest discretion, and I believe I have done so. If, however, my discretion under my oath had been in opposition to my promise, then I would have been obliged to reflect upon the course I should pursue; but