

Streets and Spruce and Race Streets, and its size not less than 150 feet square. The Committee are agreed that this new discretion given by the codicil is a purely personal one, involving the exercise of an individual judgment, as to what would be for the real interests of the institution, unbiassed by any regard for the later wishes or preferences of the testator himself, especially such as have been communicated in no legal or binding form. If by the express terms of the Codicil this power of selection is to be exercised "without regard to any provision of my will or codicils," how much more must it be so, regardless of any merely verbal directions, however sacred they might be regarded by Mr. Williams, if it concerned only his own private interest. But there is still another aspect of the case.

The highest position that could be taken by Mr. Williams is that the direction assented to by him amounted to a trust which he was bound to perform. But, if this were so, then it was a disposition of the testator's estate for purposes of charity, within a calendar month of his death, and therefore void, and not the less so because it was only verbal.

There have been many cases in England where secret trusts intended to evade the provisions of the Mortmain Acts, grafted on devises apparently absolute, have been declared void, and the property held to revert to the heirs of the testator. The question in such cases is, always, whether the devisee considers himself morally or conscientiously bound to carry out the wishes of the testator privately expressed, or as being perfectly free to exercise his own private judgment in the disposition of the property. In the opinion of your Committee, Mr. Williams would probably be held to stand in such a position, and on a bill filed by any one in interest, could be required to answer whether the selection of this location was made according to the best of his own personal judgment as to what was best for the institution, regardless of any promise to or request by the testator. The result of such an inquiry hereafter instituted might indeed be very disastrous. For, if Mr.

