

said, as near as I can recollect, "Well, I'm very glad it's now all settled."

Q. Was this promise made before you had ascertained the position and eligibility of different lots in the city of Philadelphia?

A. Weeks after; I have no recollection of any examination of lots after May 3, the date of my letter to Mr. Pratt. I think the Broad Street lot was called to Dr. Rush's attention before that date, but certainly immediately after.

Q. Was the question as to your duty under Dr. Rush's will with regard to the selection of a site submitted by you to counsel?

A. I am sure it was; I am certain Judge Strong gave me an opinion upon it; the opinion was dated July 9, 1869, and was in these words:—

"As executor you are guided by the written will. In the exercise of the discretion reposed in you by that instrument, you may regard Dr. Rush's views and wishes orally expressed; but after all, *your* judgment, however it may be made up, must be your guide in matters left to your discretion. You will remember that Mr. Meredith and Mr. McMurtrie suggested the Court might control your discretion, if it is *fettered* by any oral promise or verbal direction. The suggestion I think uncalled for and unfounded, but it is best to avoid unnecessary reference to oral instructions given by the testator."

Q. In pursuance of this advice, as to your duty to act upon your own discretion, unfettered by promises, in selecting a site for the Library building, did you consider the question of such selection in accordance with your judgment, irrespective of your promise, and if so, with what result?

A. I did; after Dr. Rush's death, I was obliged, of course, in order to assume the duties of executor, to take the ordinary oath, which obliged me to carry out the directions of the will. This was a legal as well as a moral obligation; and under it I did then and have done ever since,