

at Broad and Christian streets presented itself, and here the testator found a site suited to his thought—a large, open square, on the main great avenue of the city, 299½ feet on Broad street, and running back 527 feet on Christian, containing about three acres and a half, at a price of \$130,000—a large sum, indeed, but still leaving enough, as he believed, to put up the extensive building which filled his thought, as expressed in the codicil itself. In view of the rapid extension of the city within the last thirteen years, what right have we to say this selection was not made under a broad and thoughtful foresight, and does not meet the views and purposes expressed in the written will and codicils. The views and wishes of the library committee are on the side of the true question, which must be decided upon the will itself.

Next, what were the grounds on which Mr. Williams exercised his discretion? These are best stated in his own words in his answer and sworn testimony.

"I have chosen this site for these among other reasons:—

- "1. It is on the finest street of our city.
- "2. It is, so far as I know, the only lot on that street sufficiently large for the building I must erect which I can obtain at a reasonable cost.
- "3. If compelled to purchase a lot elsewhere, I will not be able to erect the building ordered by the testator.
- "4. I know of no suitable lot on any other street which can be had at the same cost.
- "5. It is but a little distance from the centre of the city, and is within easy reach, by car, of all portions of it.
- "6. It will not be necessary to have the library building torn down in twenty years, and the lot sold because of its limited dimensions.
- "7. Its size insures, for all time, light, air, retirement, quiet, and safety from external dangers.
- "8. It already belongs to the estate.
- "9. It is exactly suited to the kind of library Dr. Rush proposed to endow—not a reading room, nor one containing the light and ephemeral literature of the day, but one for readers and students of a higher grade.
- "10. It will carry out the cardinal intent of the testator, as he understood it, because it is the one he selected himself.

"I adhere to this choice and to my determination to build thereon, notwithstanding the opposition which has been raised, because it was to my judgment and not that of others Dr. Rush confided the performance of his testamentary dispositions."

Certainly these are good reasons, and, aside from all other evidence, vindicate Mr. Williams' assertion that he acted on his own judgment, for they are processes of thought, or steps which lead to his conclusion. Now let us see what he says on oath as to the exercise of his own judgment, and first in his answer in direct response to the bill:—"I selected the Broad and Christian street lot when I had assumed the executorship, after calm, careful and deliberate consideration, having thought of it in every shape, favorable and unfavorable, in which it had been presented, because it was, in my judgment, the best I could obtain for the object and purposes of Dr. Rush's will, and because it combined adequate dimensions with cheapness and position."

In regard to his promise to Dr. Rush—the alleged ground of disqualification—after stating his efforts to find a suitable lot, he says:—"It was after this that the promise stated in my letter of the 30th December, 1870, was made to him. This was given with a knowledge of almost every circumstance which led subsequently to my decision when, as his executor, it became my duty to determine the site of the library." Again:—"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." There is much more in the answer to the same effect.

His testimony is given as strong as his answer. When asked whether his judgment was not influenced by his promise, he replied:—"Not that I am conscious of at