

all. I believe if I had made no promise, and had not known the wishes of Dr. Rush, my judgment would have been the same." Again he said:—"If my promise to Dr. Rush, and my oath as executor had been at all in conflict, I would have resigned my executorship at once, and left some other person to put up the building."

Much more he said to the point, but this will suffice to know the strong and positive convictions of his mind. In these assertions he is also strongly corroborated by the testimony of many witnesses as to what took place just before Dr. Rush's death, and the communication of the selection of the lot to Mr. Wharton, Mr. Biddle and others. He consulted counsel, as proved by Judge Strong's letter of the 15th of June, 1869, before the meeting of the library company, on the 29th of June, when his selection was formally made known. A committee of conference was appointed at this meeting. To Mr. Farley, one of the committee, who suggested other lots, he replied that they had all been examined, and the prices were so high they did not suit Dr. Rush, and that the lot at Broad and Christian streets had been selected because, in the judgment of both Dr. Rush and himself, it combined all the advantages which he wished to secure. He again consulted Judge Strong, who replied July 19, 1869, saying:—"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."

Again argued by Mr. Farley to change the selection, on the 6th of August, 1869, he replied:—"I deem that situation (the Broad and Christian lot) most expedient under all the circumstances of the case, for I consider its distance from the centre of the city as far outweighed by its other advantages, and I have the consolation of knowing that this decision is in entire accordance with the wishes of the testator, who selected and purchased this lot for this very purpose in his lifetime." The library company themselves knew he had exercised his own judgment in the matter. A meeting was called for the 19th of October, 1869, to vote on the acceptance or rejection of the provisions of Dr. Rush's will. Committees were raised pro and con to influence the opinions of the members when the meeting should take place, and circulars were issued.

On one side it was said:—"But the executor of Dr. Rush, both from the expressed wishes of the testator during his life, as well as from his own judgment of the suitability of the selected site, is indisposed to change it." The other side said:—"The will gives to the executor the absolute right to select the location and to construct the building, and this discretion has been exercised by selecting Broad and Christian streets as the most suitable spot in the city for the purpose." Against this overwhelming evidence, the positive oath of Mr. Williams, the contemporary circumstances, and the understanding of the library company, how can the conclusion be drawn that Mr. Williams did not exercise his own judgment?

It was after all these things has occurred, and nineteen months after the death of Dr. Rush, the letter of December 30, 1870, was written, the strong hold and fortress of the plaintiff's bill. The object and purpose of this letter are made obvious by the circumstances which have evoked it. Controversy had arisen, and the library company had made several efforts to induce Mr. Williams to revoke his selection, and finally, at a meeting of the company, on the 10th of December, 1870, resolutions were passed, one of which expressed the "earnest hope and request that Mr. Williams would reconsider his intention to build on the site chosen." Dr. Willing, Judge Hare and Mr. Lea were appointed a committee to confer with Mr. Williams, and a correspondence ensued, in which Mr. Williams adhered to his selection. The letter of December 30, 1870, was then written, at the invitation of Dr. Willing, as a formal expression of Mr. Williams' intentions. He restates his convictions and expresses his surprise that he should be again asked to change his intentions, and proceeds to defend himself against censure for refus-

