

did not, as alleged in the bill, revoke the prior provisions of the will as to the disposition thereof in case of non-acceptance.

10. The testator having, by his will, devised his whole estate in trust for the uses of a library, any subsequent direction to expend any part thereof in the purchase and improvement of a lot for the same did not operate as a revocation of the previous gift; nor could the failure or omission by the executor to expend the whole remainder of the estate in such purchase and improvement, being a matter over which the beneficiary had no control, divest the estate, or any part thereof, so as aforesaid devised.

12. It is not alleged in the said bill that the time has yet arrived for this defendant to elect to accept or refuse the trusts in the said bill contained, and the averments therein as to the refusal, incapacity or failure of this defendant so to accept are too uncertain and inconsistent to require answer thereto.

13. It appears, by the complainant's own showing, that the person is still living whose discretion is alleged to be necessary to execute the trusts in the said bill contained.

14. The trusts defined by the will are sufficiently certain to be carried into effect after the selection of the lot referred to, without requiring the personal direction of the executor, defendant herein, and moreover, in case of the death of the latter, certain other persons are, by the said will, nominated and appointed by the said testator to be executors in his place and stead.

For the sake of convenience the fifth ground of demurrer will be last considered.