

mainder to "The Infidel Society in Philadelphia, hereafter to be incorporated, for the purpose of building a hall for the free discussion of religion, politics, &c." This court said, referring to the trust for the Infidel Society, "It is plain that no court would ever undertake to administer such a charity."

This brings us to the examination of the grounds upon which it is alleged that the trusts of Dr. Rush's will are not fit to be enforced in a State where good order and sound morals prevail, and where Christianity is the popular and recognized religion.

Much stress is laid upon the expression by the testator in the first codicil, of the wish that no work should be excluded from the library on account of its difference from the ordinary or conventional opinions on the subject of science, government, theology, morals or medicine. This language is construed by the plaintiff as a direction or command that every work *shall* be included, however much it may be at variance in its teachings or doctrines from the ordinary or conventional opinions on the subjects referred to, provided it contains neither ribaldry nor indecency. That is to say, all works advocating atheism, infidelity and immorality generally, shall be included; and that no discretion is left to the executor under the will to exclude such books.

While the words, "I wish," in a will, are sometimes construed as a command, and not as merely precatory, we do not so regard them here. The testator evidently intended to express a preference merely, and however binding the executor might regard it *in foro conscientiae*, it could not be held to be binding upon him legally.

We must examine this clause of the will from the testator's standpoint, so far as that is possible, in order to ascertain his meaning in the paragraph in question. He was an educated man of scholarly habits, and of no mean

