

trust which equity will administer. It was recently held by this court that the Philadelphia Library was a public charity, and its property, the very building in question, free from taxation for that reason; *Donohugh vs. Library Company*, 5 Norris, 306. The devise to the library being for a lawful purpose and having vested, and the primary intent of the testator being to assist what this court has declared to be a "purely public charity," is the intent of the testator to be defeated, and the trust set aside, because one of the directions or conditions of the bequest as to a secondary intent may happen to be illegal? The answer to this question is not difficult. It is, at least, doubtful, since the passage of the act of 26th of April, 1855, P. L., 331, whether the heir at law has any standing in court upon a bill to set aside the trusts of a will. Conceding, however, that said act does not apply to this case, the authorities are clear that the law will strike down the unlawful direction and leave the primary intent untouched. To this extent the doctrine of *cy pres* is part of the law of Pennsylvania. We need not load this opinion with an extended citation of authorities. The subject is fully discussed and the authorities collected in the recent case of *City of Philadelphia vs. Girard's Heirs*, 9 Wright, 9. The principle is there stated that "It is a rule of law and equity, that where a vested estate is distinctly given, and there are annexed to it conditions, limitations, powers, trusts (including trusts for accumulation) or other restraints relative to its use, management or disposal, that are not allowed by law, it is these restraints, and the estates limited on them, that are void, and not the principal or vested estate." The clause in Dr. Rush's will regarding the character of the works to be placed in the library and the provision in the codicil for the publication of his own works are not conditions precedent to the vesting of the estate. If they are unlawful they will be disregarded. If the fact be that the testator's works are of the character alleged in the bill it is not