

III. The alleged acceptance has been withdrawn. By their acceptance on the twenty-fifth of May, 1870, of the said Act of Assembly, the complainants distinctly elected, as they allege, "not to allow their collection of books to be removed to the building to be erected by the defendant, if placed on the proposed site," and this election, so far as appears from the averments in their bill, was made in the belief that I was acting in entire accordance with the directions of the will, for they aver no knowledge until the receipt of my letter of the thirtieth of December, 1870, of my having made any, supposed to be disqualifying, promise. The purchase, in January, 1870, of the lot at Locust and Juniper Streets, with a view to erecting a library building thereon, in direct opposition to the provisions of the will, was also, it is charged, a withdrawal of their former acceptance.

IV. The complainants are not a charitable corporation, nor within the protection afforded to charities by courts of chancery.

V. The interference by the Court in favor of a *private* corporation, such as the complainants are, will be in prejudice of a great charity for the benefit of the *public*, which "the Ridgway Library" will be, if endowed under the provisions of Dr. Rush's will, in the event of the refusal or omission of the complainants to accept the devises in their favor.

VI. The Court has no jurisdiction to control my discretion in the selection of a site for the building, nor in the execution of any of the trusts of the will.

24. I pray that I may, under the provisions of the rule of Court in such cases made and provided, be permitted to avail myself of all matters of defence in law, or to the merits of the bill, in my above answer stated, of which I might have availed myself by demurrer, or plea in bar, with the same force and effect as though I had filed a separate demurrer or demurrers, plea or pleas in bar."