

inserted in the one drafted by the counsel of the company, nor in any other.

c. The Act of Assembly drafted by complainants virtually prohibits them from acting as trustees under Dr. Rush's will, because it enacts that their property, books, &c., shall not be subject to the conditions of that will, but shall remain entirely under their own absolute control.

d. The order of the Court by which they have sought to dispense with what the testator prescribed, is in direct opposition to the Act of Assembly by which it is pretended to have been authorized. The Act permitted the company to act as trustees "only in such manner that the real and personal property of "the company, held by them in their own right," should be in no wise affected by Dr. Rush's will and codicils, "but should "remain and be under their own entire and exclusive control "and disposition." The order of Court attempts to interfere with this control and disposition, by saying who shall act as directors, and the number of stockholders who shall use it, and by forbidding a connection with any other body corporate or politic. It is therefore utterly null.

e. The reservation of an exclusive control in the Library Company over their books, &c., is in opposition to the condition imposed by testator, that there must be no non-exclusion of books differing from "ordinary or conventional opinions."

f. The reservation of this control will prevent the complainants from binding themselves to use the building for the purposes of their library, and as a receptacle for their books. Without a compliance with these conditions, there can never be any conveyance or delivery.

g. The order only provides that "*so long*" as the Library Company shall act as such trustees, they shall do so under the conditions imposed by Dr. Rush's will; but I am advised that I have a right to insist that upon conveyance and delivery of the building they must bind themselves to a perpetual subjection to those limitations, as the consideration to be given for Dr. Rush's magnificent present.

