

In his codicil of 1867 (Will, page 23) he repeats his intention that his executor should erect for the Library Company a building not only large enough to contain their present books, but also their probable increase for many years to come. He certainly intended that the building should be used in good faith for the deposit of their books by the Library Company. He provided for the construction of a "monument," and not of a vault. I am advised, and therefore aver, in agreement with the charges of the bill, that an acceptance of this building when erected by the Library Company will be upon the condition that it will be used in good faith, as such place of deposit for *all* their books.

I consider the averment in the second section of the 12th paragraph of the bill as immaterial, and admit it, if by "mode of user" is meant a use at the houses of the shareholders.

I deny the averments in the third section of said paragraph. I am advised, and therefore aver, that the complainants are not a charitable corporation, and that the discretion given me to select a site for the library building is not therefore in the nature of a trust for them; but that if the law and the facts are as stated in the bill, then as the will speaks as of the day of the testator's death, if, in his lifetime, by his own act, he disqualified me from the exercise of the discretion given to me by the will, the bequest to the Library Company being dependent upon the exercise of that discretion as a condition precedent to the vesting of the estate, no Court of Chancery can dispense with the performance of that condition.

I am advised, and therefore aver, that my disqualification to exercise my discretion, supposing it to exist, having arisen from acts of the testator himself, the complainants can take no benefits under his will conditioned upon a prior exercise of my discretion, however ready they may be to comply with all the "other conditions and regulations."

6. I admit the truth of the averments and charges in the 13th, 14th, 15th, 16th, 17th, 18th, and 19th paragraphs of the bill; but I deny that the act of Assembly and the amendments to their charter were, as stated in the 18th paragraph, sufficient to enable them "to effectually accept the provisions of the will, and conditions attached by the testator to his gift."

