

though they were made within "one calendar month prior to the death of the testator." I aver that by keeping my promise to Dr. Rush, I exercise the discretion he reposed in me in entire accord with my best judgment—exercised after the assumption of the trust, and upon full, careful, and deliberate examination.

I admit the truth of the allegations in the 3d section of said paragraph, that "a court of equity will not interfere with a trustee in the exercise of a discretionary power;" but I am advised and therefore aver that complainants are not a charity; and I deny that the testator, who supposed that their own income would be sufficient, mainly intended to "furnish them with books." I agree that it "was certainly designed," they should administer the bequest in connection with their own property, "under one management, in one building, and with one corps of servants and assistants;" and I suggest that complainants, if they believe they cannot, consistently with their own interests, accept and use Dr. Rush's bequest as he intended, can decline it. I am advised and therefore aver that no court of equity has ever, "where the donee has not surrendered and bound his discretion before the trust has vested in him, interfered to prevent its improper (in the sense of injudicious) exercise."

16. I do insist, as charged in the 30th paragraph, that I have selected the said site in the exercise of my *own* discretion, unbiased by any promise; and I deny that any promise, however it may be felt to be morally binding, did prevent or can prevent my exercising, or knowing that I have exercised, my judgment. I aver, that I am now able to say what line of conduct I would have followed if I had never made a promise, and that I would have selected the site at Broad and Christian Streets, if Dr. Rush had been silent as to his wishes.

17. I do aver, as alleged in the 31st paragraph, that I had a right to select voluntarily the same lot which the latter had selected, "none the less" because he had selected it; and I admit my infinite satisfaction at being able conscientiously, and in fulfilment of his *written* requests, made "more than one calendar month before his decease," to gratify his wishes