

1. I am of opinion that until the Philadelphia Library Company shall have accepted the provisions of the will respecting the devise for their benefit, they have no control over it or over your action as trustee. It is indeed desirable that you should know at an early day whether the Library Company intend to take advantage of the provisions of the will in their favor, for that knowledge might properly have some influence upon your action. If the building to be erected is not to be accepted on the conditions prescribed, and if it shall become your duty to found and endow another library, it may well be considered whether a smaller sum should not be devoted to the building and a larger to the endowment. But until the provisions of the will have been accepted by the Library Company, they have no right to interfere with the discretion vested in you as trustee.

2. I am also of opinion that the direction given on the fourth printed page of the will, to erect the building, and provide for its extension according to plans, directions, and specifications the testator should thereafter make or give; or, in case he should make or leave no such plans, &c., according to your best judgment, and to the views which had been expressed to you by him, taken in connection with the fourth section of the second codicil, fully justifies you in following the directions given to you verbally, within a month of Dr. Rush's decease. I assume of course that those directions relate only to the mode of erection, or to the place for erecting the buildings. I think an uncontrolled discretion is vested in you in these particulars. While I am not prepared to say that you are *legally bound* by any verbal directions given by Dr. Rush within a month of his death, you are at liberty to follow them, and considering the language of the will, they are entitled to weight in your consideration.

3. The surplus, remaining after the building shall have been erected and paid for, and after a sufficient fund shall have been set apart for the annuities, will belong, under the will, to the Library Company if they accept the gift on the

