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IN THE
Supreme Court of Illinois.

FEBRUARY TERM, 1924.

TRUSTEES OF RUSH MEDICAL
COLLEGE,
Complainant below and Appellee,

vs.

THE UNIVERSITY OF CHICAGO,
Defendant below and Appellee,

and

EDWARD J. BRUNDAGE, as Attorney-
General of the State of Illinois,
Defendant below and Appellant.

Appeal from
Circuit Court,
Cook County.

Hon.
Ira Ryner,
Chancellor.

ABSTRACT OF RECORD.

EDWARD J. BRUNDAGE,
*As Attorney General of the State of
Illinois, and*

GEORGE E. DIERSSEN,
*Assistant Attorney General of the
State of Illinois,
Solicitors for Appellant.*

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1924
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CHICAGO

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ABSTRACT OF RECORD.

Page of
Record.

1 PLACITA.

3 BILL OF COMPLAINT, filed October 1, 1923, by Trustees of Rush Medical College, an Illinois corporation, against The University of Chicago, an Illinois corporation, and Edward J. Brundage, as Attorney-General of the State of Illinois, to obtain the advice, instructions and directions of the court in regard to a draft of a contract (copy of which draft is attached to the bill), between the complainant and The University of Chicago and as to whether the complainant and The University of Chicago should be authorized to execute said contract.

The bill alleges:

7 That complainant was organized under a special Act of the Legislature of the State of Illinois, ap-

proved March 2, 1837, entitled "An Act to Incorporate the Rush Medical College"; that subsequently said Act was amended by said Legislature by an Act, approved December 23, 1844, entitled "An Act to Amend an Act entitled 'An Act to Incorporate the Rush Medical College'"; that, subsequently, said Legislature passed an Act, approved February 10, 1857, authorizing the Trustees of complainant to make a loan, said last mentioned Act being entitled "An Act to authorize the Trustees of Rush Medical College to make a loan"; and that subsequently, said Legislature passed an Act, approved February 13, 1865, enabling complainant to fund its indebtedness and to borrow money, entitled, "An Act to enable Rush Medical College of Chicago to fund its present indebtedness and to borrow money."

8 That Exhibit "A" attached to the bill, is a copy of all of said Acts of the Legislature of Illinois.

That the defendant, The University of Chicago, is an Illinois corporation, organized under the Illinois General Incorporation Act of 1872, and all Acts amendatory thereof.

That "Exhibit 2" attached to the bill, is a copy of the certificate of incorporation of said The University of Chicago, issued September 10, 1890, by the Secretary of State, and that said certificate was duly recorded in the Recorder's office of Cook County, Illinois, on September 20, 1890.

That continuously ever since its organization as a corporation as aforesaid, complainant has been engaged in the work of promoting the general interests of medical education and of qualifying young men to engage usefully and honorably in the professions of medicine and surgery.

9 That complainant now owns the real estate situate at the northeast corner of South Wood and West Harrison Streets in the City of Chicago, having a frontage of approximately 147 feet on said West Harrison Street and of approximately 100 feet on said South Wood Street (subject to all mortgages, liens and incumbrances thereon), said property being described as follows, to wit: Lots 10 to 16 inclusive in McKay's resubdivision of Block 11 of Ashland's Addition to Chicago of the East half (E. $\frac{1}{2}$), Section 18, Township 39 North, Range 14, East of the Third Principal Meridian.

That complainant about the year A. D. 1875, constructed a building and improvements on the western portion of said real estate and has equipped the same as a medical and surgical school (the total original cost of said building being approximately \$54,500), and has occupied and used the same for said purposes for a period of more than forty years past, and is now occupying and using the same for said purposes.

That on or about the 30th day of October, A. D. 1900, Dr. Nicholas Senn, of Chicago, Illinois, proposed to complainant that he would donate to it \$50,000 to be paid in December, 1900, in cash or in securities, to be applied to the erection of the east wing of said school upon the following conditions: (1) That the building should be known as the "Nicholas Senn Hall"; (2) that complainant should become the medical department of the University of Chicago as soon as it might be deemed advisable, and (3) that complainant should agree to pay to Dr. Nicholas Senn the sum of \$1250 on the first day of July, 1901, and a like sum on the first days of January and July thereafter during his lifetime; that

complainant accepted said proposition of said Dr. Nicholas Senn and entered upon plans for carrying the same into effect, and that thereafter said Dr. Nicholas Senn paid complainant said sum of \$50,000.

That under date of April 19, 1901, an agreement in writing was entered into between complainant and said Dr. Nicholas Senn, wherein after reciting said proposition and the acceptance thereof by complainant and the payment to complainant of said \$50,000 by said Dr. Nicholas Senn, complainant agreed to construct said building to be called "Nicholas Senn Hall," and to take suitable steps to constitute complainant the medical department of said University of Chicago as soon as and whenever it might be deemed advisable and feasible so to do, and further agreed to make the payments to said Dr. Nicholas Senn set forth in his said proposition.

6
10 That thereafter, further donations in aid of the construction of said Nicholas Senn Hall, aggregating approximately \$35,000, were made by other persons; that said Nicholas Senn Hall was erected on the eastern portion of the real estate hereinbefore described; that the total cost of said Nicholas Senn Hall and the equipment thereof was approximately \$128,000 and that said total cost exceeded the amount so contributed by said Dr. Nicholas Senn and other donors by approximately the sum of \$43,000, and that said excess was paid by complainant out of its own moneys.

That the value of said parcel of real estate so owned by complainant, on which its said medical and surgical school and said Nicholas Senn Hall were constructed, does not exceed the sum of \$30,000.

That complainant also now owns (subject to all mortgages, liens and incumbrances thereon) the following described real estate, to wit: Lots 3 to 7 inclusive in the Resubdivision of Block 4 of Assessors Division of the East half of the Southeast Quarter of Section 18, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, which said described tract of land is situate on West Harrison Street, opposite the parcel of land on which the medical and surgical school of complainant and said Nicholas Senn Hall have been constructed, and that on said Lots 3 to 7 inclusive
11 in said Resubdivision of said Block 4 of said Assessor's Division, a Laboratory Building was erected by complainant in the year A. D. 1893, the cost of the original construction of the same being approximately \$83,000, and that the value of said described real estate upon which said Laboratory Building was so erected is approximately \$20,000.

That complainant also now owns certain personal property, including books, charts, pictures, surgical equipment, laboratory supplies and accessories, pathological specimens and other educational equipment and accessories, and is also the owner of a cemetery lot in Oakwood Cemetery in Cook County, Illinois.

That complainant also has a right of re-entry, in case there has been, or may hereafter be, a breach of condition under the provisions of a certain deed bearing date January 2, 1884, and heretofore recorded in the Recorder's Office of Cook County, Illinois, executed by complainant, as grantor, to the Presbyterian Hospital as grantee.

That all of the property of complainant described in the preceding part of the bill (except said Nich-

olas Senn Hall, the funds for the erection of which were obtained in the manner thereinbefore stated) was purchased by complainant with its own moneys obtained by it from tuition fees and other fees which complainant had received from its students and moneys received by it for services rendered by it to other persons and corporations, and donations of money and property, all of which donations were free from any trust, express or implied, created by any of the donors thereof, and without any requirement by any of said donors as to the purpose or purposes for which the same should be held, owned, used or expended by complainant, or any specification by any of said donors regarding such purpose or purposes.

12 That complainant is now the absolute owner of all of said property, real and personal, described in the preceding part of the bill, including said Nicholas Senn Hall (subject to all mortgages, liens and incumbrances thereon) and that said property is the only property, real and personal, now owned by complainant, except certain trust funds referred to in a subsequent part of the bill.

That at the present time complainant is wholly dependent for its income upon tuition fees and other fees received from students, and moneys it may receive from other persons for services rendered, and upon the income from said trust funds mentioned in a subsequent part of the bill, and that the average annual net income of complainant from all said sources, remaining after the payment of necessary charges and expenses, has, during the last five (5) years preceding the filing of this bill, not exceeded \$4,000, and that during the year immediately preceding the filing of the bill said net income has not exceeded said amount.

That in the great fire of 1871 all of the property then held by complainant was destroyed, and that the total amount received by it from insurance on same did not exceed the sum of \$250.

That the expenses of conducting medical and surgical colleges have, ever since the incorporation of complainant, rapidly increased, from time to time, and at the present time are very much larger than in the past, owing to the advances in medical and surgical education, and in the sciences allied thereto, and the increased cost of material and operation, and that, in the judgment of complainant, said expenses will continue to increase in the future.

13 That the net income of complainant at the present time is wholly insufficient to enable it to make such changes in, and additions to, its present medical school and laboratory, and the equipment thereof, as are necessary to meet the advances in medical and surgical science, and to keep said medical school and laboratory, and the equipment thereof, up to modern methods, and afford the public the most efficient service, and that said net income is in fact wholly insufficient to enable complainant to make adequate and proper provision out of the same to cover depreciation in its present property.

That the defendant, The University of Chicago, has full power and authority under its charter to engage in the work of medical and surgical education.

That the objects for which said University of Chicago was organized, as set forth in its said certificate of incorporation, are as follows:

"2. The particular objects for which said corporation is formed are to provide, impart, and furnish opportunities for all departments of higher educa-

tion to persons of both sexes on equal terms; to establish, conduct, and maintain one or more academies, preparatory schools, or departments, such academies, preparatory schools, or departments to be located in the City of Chicago or elsewhere as may be deemed advisable; to establish, maintain, and conduct manual-training schools in connection with such preparatory departments; to establish and maintain one or more colleges, and to provide instruction in all collegiate studies; to establish and maintain a university, in which may be taught all branches of higher learning, and which may comprise and embrace separate departments for literature, law, medicine, music, technology, the various branches of science, both abstract and applied, the cultivation of the fine arts, and all other branches of professional and technical education which may properly be included within the purposes and objects of a university, and to provide and maintain courses of instruction in each and all of said departments; to prescribe the courses of study, employ professors, instructors, and teachers, and to maintain and control the government and discipline in said University, and in each of the several departments thereof, and in each of the several academies, preparatory schools, or other institutions subordinate thereto, and to fix the rates of tuition, and the qualifications for admission to the University and its various departments; to receive, hold, invest, and disburse all moneys and property, or the income thereof, which may be vested in or intrusted to care of the said corporation, whether by gift, grant, bequest, devise, or otherwise, for educational purposes; to act as trustee for persons desiring to give or provide moneys or property, or the income thereof, for any one or more of the departments of said University, and for any of the objects aforesaid, or for any educational purposes; to grant such literary honors and degrees as are usually granted by like institutions, and to give suitable diplomas; and generally to pursue and promote all or any of the objects above named, and to do all and every of the things necessary or pertaining to the accomplishment of said objects or either of them."

14

That said University of Chicago has for some years past conducted, and is now conducting, a medical school on its quadrangles on the south side of the City of Chicago, and that it has obtained in subscriptions and gifts the sum of approximately \$5,300,000 to be used and applied by it to the work of medical and surgical education.

That said University of Chicago has stated to complainant that it intends, from its present resources and out of the moneys obtained from said subscriptions and gifts or from other sources, to develop its said medical and surgical school, situated on the south side of the City of Chicago, and, in connection therewith, to conduct and equip a hospital, containing approximately 200 beds, and to make all necessary and proper provisions for the operation and maintenance of said medical and surgical school and hospital; and has also stated to complainant that it has been heretofore intending to establish and maintain a school for medical and surgical education and research on the west side of the City of Chicago, near the present site of the medical and surgical school of complainant, and, in connection therewith, to construct, equip and maintain a new laboratory building, costing, with its equipment, not less than \$400,000, to be occupied and used for the purposes of said school.

15

That complainant and said University of Chicago have given an extended and careful consideration to the subject of medical and surgical education and the existing condition of the same, and to the subject of the best course to pursue in order to advance, improve and enlarge the facilities for such education, and make the same more efficient, and thereby promote the well-being of the public.

That, as a result of such consideration, a draft of a proposed contract between complainant and said University of Chicago has been prepared, a copy of which said draft is attached to the bill, marked "Exhibit 3."

That complainant and The University of Chicago believe that the making and carrying out of said proposed contract is the best course to pursue in order to advance, improve, and enlarge the facilities for medical and surgical education, and to make the same more efficient, and thereby promote the well-being of the public, and will render the work of complainant and said University of Chicago, in connection with medical and surgical education, more effective than it otherwise would be, and will broaden the scope of the same, and will also tend to economy and greatly benefit the cause of medical and surgical education and the public.

That questions may be made as to whether complainant and said University of Chicago have power, under the law and under their respective charters, to enter into said proposed contract, and as to the propriety of the provisions therein contained, or of some of said provisions, and that complainant is unwilling to enter into said contract until it has first been submitted to the court, and a decree entered by the court passing upon said questions, and finding that said contract is within the corporate powers of complainant and of said University of Chicago, and that none of its provisions are objectionable on any other grounds, and approving the contract.

That complainant is a charitable corporation, and not a corporation organized for pecuniary profit; that under its charter, none of its property, and none

of its net income, after paying its running expenses, can be distributed among, or expended for the benefit of, any persons whomsoever, but that all of its property and its net income must be applied to the purposes authorized by its charter, that is to say, to the promotion of the general interests of medical education and to qualify young men to engage usefully and honorably in the professions of medicine and surgery.

That complainant now holds certain trust funds, referred to in paragraph 6 of the draft of the proposed contract (set out in "Exhibit 3" to the bill) and excepted therefrom.

The bill then prays that the University of Chicago and said Edward J. Brundage, as Attorney General of the State of Illinois, may be made parties defendant and may make answer (but not under oath), and that complainant may obtain the advice, instructions, findings, and directions of the court in the premises and in regard to the question as to whether said proposed contract between complainant and said University of Chicago is a contract into which complainant and said University of Chicago have the power, under the law and under their respective charters, to enter, and as to whether or not the provisions of said contract, or any of the same, are open to any legal objection, and as to the powers and duties of complainant in the premises, and, in case said proposed contract is found by the court to be a contract into which complainant and said University of Chicago have power to enter, and that none of the provisions thereof are open to any legal objection, and the court thereupon authorizes and directs that said proposed contract be entered into, then that said proposed contract may be carried out

under the supervision, order and direction of this court, and the consummation of the same be approved by this court, and that complainant may have such other, further or different relief in the premises, as the nature of the case may require and to the court may seem meet;

The bill then prays for the issue of summons to the defendants, the University of Chicago and Edward J. Brundage, as Attorney General of the State of Illinois, to appear before the Circuit Court of Cook County, to answer the bill.

19 "EXHIBIT 1" TO THE BILL OF COMPLAINT.

I.

1. THE ACT OF THE LEGISLATURE OF ILLINOIS, APPROVED MARCH 2, 1837, ENTITLED "AN ACT TO INCORPORATE THE RUSH MEDICAL COLLEGE."

"SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly.

That Theophilus W. Smith, Thomas Ford, E. D. Taylor, Josiah C. Goodhue, Isaac T. Hinton, John T. Temple, Justin Butterfield, Edmund S. Kimberly, James H. Collins, Henry Moore, S. S. Whitman, John Wright, William B. Ogden, Ebenezer Peck, John H. Kinzey, John D. Caton and Grant Goodrich, be, and they are hereby created a body politic and corporate, to be styled and known by the name of the 'Trustees of the Rush Medical College,' and by that style and name to remain and have perpetual succession. The College shall be located in or near Chicago, in Cook County. The number of trustees shall not exceed seventeen, exclusive of the Governor and Lieutenant Governor of this State, the Speaker of the House of Representatives, and the President of the College, all of whom shall be ex-officio members of the board of trustees.

SECTION 2. The object of incorporation shall be to

promote the general interests of medical education, and to qualify young men to engage usefully and honorably in the professions of medicine and surgery.

20 SECTION 3. The corporate powers hereby bestowed shall be such only as are essential or useful in the attainment of said objects, and such as are usually conferred on similar bodies corporate, namely: In their corporate name to have perpetual succession; to make contracts; to sue and be sued, to plead and be impleaded; to grant and receive by its corporate name, and to do all other acts as natural persons may; to accept and acquire, purchase and sell property, real, personal, or mixed; in all lawful ways to use, employ, manage, dispose of such property, and all money belonging to said corporation, in such manner as shall seem to the trustees best adapted to promote the objects aforesaid; to have a common seal, and to alter and change the same; to make such by-laws as are not inconsistent with the Constitution and laws of the United States, and this State; and to confer on such persons as may be considered worthy, such academical or honorary degrees as are usually conferred by such institutions.

SECTION 4. The trustees of said College shall have authority, from time to time, to prescribe and regulate the course of studies to be pursued in said College; to fix the rate of tuition, lecture fees and other College expenses; to appoint instructors, professors and such other officers and agents as may be needed in managing the concerns of the institution; to define their powers, duties and employments, and to fix their compensation; to displace and remove either of the instructors, officers or agents, or all of them, whenever the said trustees shall deem it for the interest of the College to do so; to fill all vacancies among said instructors, professors, officers or agents; to erect all necessary and suitable buildings; to purchase books and philosophical and chemical apparatus, and procure the necessary and suitable means of instruction in all the different departments of medicine and surgery; to make rules for the general management of the affairs of the College.

SECTION 5. The board of trustees shall have power to remove any trustee from office for dishonorable or

- 21 criminal conduct; Provided, That no such removal shall take place without giving to such trustee notice of the charges preferred against him, and an opportunity to defend himself before the board, nor unless two-thirds of the whole number of trustees for the time being shall concur in such removal. The board of trustees shall have power whenever a vacancy shall occur by removal from office, death, resignation, or removal out of the State, to appoint some citizen of the State to fill such vacancy. The majority of the trustees for the time being shall constitute a quorum to transact business.

SECTION 6. The trustees shall faithfully apply all funds by them collected, in erecting suitable buildings; in supporting the necessary instructors, professors, officers and agents; and procuring books, philosophical and chemical apparatus, and specimens in natural history, mineralogy, geology and botany, and such other means as may be necessary or useful for teaching thoroughly the different branches of medicine and surgery; Provided, That in case any donation, devise, or bequest, shall be made for particular purposes, accordant with the object of the institution, and the trustees shall accept the same, every such donation, devise, or bequest, shall be applied in conformity with the express condition of the donor or devisor; Provided, also, That lands donated or devised as aforesaid, shall be sold or disposed of as required by the last section of this act.

SECTION 7. The treasurer of said College always, and all other agents, when required by the trustees, before entering upon the duties of their office, shall give bonds respectively, for the security of the corporation, in such penal sum, and with such sureties as the board of trustees approve; and all process against said corporation shall be by summons, and service of the same shall be by leaving an attested copy with the treasurer of the College, at least thirty days before the return day thereof.

- 22 SECTION 8. The lands, tenements, and hereditaments, to be had in perpetuity in virtue of this act, by said institution, shall not exceed six hundred and forty acres; Provided, however, That if donations, grants or devises of land, shall from time to time be made to said corporation, over and above six hun-

dred and forty acres, which may be held in perpetuity as aforesaid, the same may be received and held by said corporation, for the period of six years from the date of any such donation, grant or devise; at the end of which time, if the said lands, over and above the six hundred and forty acres, shall not have been sold, then, and in that case, the lands so donated, granted, or devised, shall revert to the said donor, grantor, or to their heirs.

Approved, 2d March, 1837."

II.

THE ACT OF THE LEGISLATURE OF ILLINOIS, APPROVED DECEMBER 23, 1844, ENTITLED "AN ACT TO AMEND AN ACT ENTITLED 'AN ACT TO INCORPORATE THE RUSH MEDICAL COLLEGE.'"

"SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly,

That the number of trustees of said College shall not exceed fourteen, exclusive of the Governor and Lieutenant Governor of the State, the Speaker of the House of Representatives, and the President of the College, all of whom shall be ex-officio members of the board of trustees, and a majority of said trustees for the time being, exclusive of such ex-officio members, shall constitute a quorum to transact business.

SECTION 2. Any part of the act to which this is an amendment, which may conflict with this act, is hereby repealed.

Approved, December 23, 1844."

III.

- 23 THE ACT OF THE LEGISLATURE OF ILLINOIS, APPROVED FEBRUARY 10, 1857, AUTHORIZING THE TRUSTEES OF RUSH MEDICAL COLLEGE TO MAKE A LOAN, ENTITLED, "AN ACT TO AUTHORIZE THE TRUSTEES OF RUSH MEDICAL COLLEGE TO MAKE A LOAN."

"WHEREAS, the trustees of Rush Medical College, of the city of Chicago, in this state, have contracted

a considerable indebtedness, in the erection of additions to their college buildings, in said city, and contemplate the necessity of the erection of other buildings and improvements upon their college grounds; therefore,

SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the said trustees shall, in their corporate capacity, have full power and authority to borrow, from time to time, any sum of money, not exceeding in all the sum of fifty thousand dollars, for such period of time as they may elect, at a rate of interest not exceeding ten per centum per annum, payable annually or semi-annually, at such place or places as they may contract, for the purpose of liquidating their present indebtedness, and for any other uses of the said college.

SECTION 2. In case of any loan or loans, under the provisions of this Act, the said Trustees shall have full and ample power to execute all such bonds or other obligations, and also securities, by way of mortgage or otherwise, upon the property of said college, as may be requisite and proper for such purpose.

This Act to be in force from and after its passage.
Approved, Feb. 10, 1857."

IV.

- 24 THE ACT OF THE LEGISLATURE OF ILLINOIS, APPROVED FEBRUARY 13, 1865, ENABLING RUSH MEDICAL COLLEGE TO FUND ITS INDEBTEDNESS AND TO BORROW MONEY, ENTITLED, "AN ACT TO ENABLE RUSH MEDICAL COLLEGE, OF CHICAGO, TO FUND ITS PRESENT INDEBTEDNESS AND TO BORROW MONEY."

"SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the trustees of Rush Medical College of Chicago have, and the power is hereby conferred upon them, or a majority of them, to liquidate all of the present indebtedness of said College, and to that end the said trustees are hereby authorized to issue bonds, in sums of not less than one hundred dollars, in the usual form, payable to the holders

of said indebtedness, or order, or to bearer, at their option, payable at such day and at such rate of interest, not to exceed ten per cent per annum, as to said trustees shall seem expedient, and to pay such indebtedness with such bonds, or to negotiate and sell the same in the market, and with the proceeds pay such indebtedness. And the said trustees are hereby further authorized to execute a mortgage or deed of trust upon all the real estate and property of said college, in the usual form, for the better securing the payment of said bonds, with the interest to accrue thereon.

SECTION 2. The said trustees are hereby authorized and empowered, from time to time, to borrow money, not exceeding in all the sum of one hundred thousand dollars, for the purpose of erecting additions to or rebuilding said college buildings; and, for that purpose, to issue bonds, and secure the payment of the same upon the college property, in all respects as provided, in the preceding section.

Approved February 13, 1865."

25

"EXHIBIT 2," TO BILL OF COMPLAINT.

THE CERTIFICATE OF INCORPORATION
OF

THE UNIVERSITY OF CHICAGO,
Filed September 10, 1890.

RECORDED IN COOK COUNTY, SEPTEMBER 20, 1890.

STATE OF ILLINOIS, DEPARTMENT OF STATE.

ISAAC N. PEARSON,
Secretary of State.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, A Certificate, duly signed and acknowledged, having been filed in the office of the Secretary of State, on the 10th day of September, A. D. 1890, for the organization of

"THE UNIVERSITY OF CHICAGO,"

under and in accordance with the provisions of "An Act concerning Corporations," approved April 18,

1872, and in force July 1, 1872, and all acts amendatory thereof, a copy of which certificate is hereto attached;

Now, therefore, I, ISAAC N. PEARSON, Secretary of State of the State of Illinois, by virtue of the powers and duties vested in me by law, do hereby certify that the said "The University of Chicago" is a legally organized Corporation under the laws of this State.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the great Seal of State. Done at the City of Springfield, this 10th day of September in the year of our Lord One Thousand Eight Hundred and Ninety, and of the Independence of the United States the one hundred and fifteenth.

(Signed) I. N. PEARSON,
Secretary of State.

26 STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

To the Honorable Isaac N. Pearson,
Secretary of State:

We, the undersigned, John D. Rockefeller, E. Nelson Blake, Marshall Field, Fred T. Gates, Francis E. Hinckley, and Thomas W. Goodspeed, citizens of the United States, desiring to associate ourselves for the lawful purposes hereinafter stated, and for the purpose of forming a corporation (not for pecuniary profit), under the provisions of the Act of the General Assembly of the State of Illinois, entitled, "An Act concerning corporations," approved April 18, 1872, and of the several acts amendatory thereof, do hereby state and certify as follows, to wit:

1. The name by which said corporation shall be known in law is

"THE UNIVERSITY OF CHICAGO."

2. The particular objects for which said corporation is formed are to provide, impart, and furnish opportunities for all departments of higher educa-

tion to persons of both sexes on equal terms; to establish, conduct, and maintain one or more academies, preparatory schools, or departments, such academies, preparatory schools, or departments to be located in the city of Chicago or elsewhere as may be deemed advisable; to establish, maintain, and conduct manual-training schools in connection with such preparatory departments; to establish and maintain one or more colleges, and to provide instruction in all collegiate studies; to establish and maintain a University, in which may be taught all branches of higher learning, and which may comprise and embrace separate departments for literature, law, medicine, music, technology, the various branches of science, both abstract and applied, the cultivation of the fine arts, and all other branches of professional or technical education which may properly be included within the purposes and objects of a university, and to provide and maintain courses of instruction in each and all of said departments; to prescribe the courses of study, employ professors, instructors, and teachers, and to maintain and control the government and discipline in said University, and in each of the several departments thereof, and in each of the several academies, preparatory schools, or other institutions subordinate thereto, and to fix the rates of tuition, and the qualifications for admission to the University and its various departments; to receive, hold, invest, and disburse all moneys and property, or the income thereof, which may be vested in or intrusted to care of the said corporation, whether by gift, grant, bequest, devise, or otherwise, for educational purposes; to act as trustee for persons desiring to give or provide moneys or property, or the income thereof, for any one or more of the departments of said University, and for any of the objects aforesaid, or for any educational purposes; to grant such literary honors and degrees as are usually granted by like institutions, and to give suitable diplomas; and generally to pursue and promote all or any of the objects above named, and to do all and every of the things necessary or pertaining to the accomplishment of said objects or either of them.

3. The management of said corporation shall be vested in a Board of twenty-one Trustees, who shall be elected as follows:

28 At the first annual meeting there shall be elected by ballot twenty-one Trustees. The Trustees so elected shall, at their meeting, classify themselves by lot into three classes of equal numbers, which classes shall be designated as the first, second, and third class, and the term of office of the first class shall expire at the second annual meeting, and the terms of office of the other classes shall expire annually thereafter, in the order of their numbers. At each annual meeting succeeding the first, seven trustees shall be elected by the Trustees by ballot. Vacancies occurring by death, resignation, removal, or otherwise shall be filled for the unexpired term by the Board at its first meeting after the vacancy occurs, and the member elected shall belong to the class in which the vacancy occurred.

The qualifications of the Trustees and President of the University, and of its college, which shall constitute its literary or undergraduate department, shall be as follows:

At all times two-thirds of the Trustees, and also the President of the University and of the said college, shall be members of regular Baptist churches, that is to say, members of churches of that denomination of Protestant Christians now usually known and recognized under the name of the regular Baptist denomination; and, as contributions of money and property have been and are being solicited, and have been and are being made, upon the conditions last named, this charter shall not be amended or changed at any time hereafter so as to abrogate or modify the qualifications of two-thirds of the Trustees and the President above mentioned, but in this particular this charter shall be forever unalterable.

29 No other religious test or particular religious profession shall ever be held as a requisite for election to said Board, or for admission to said University or to any department belonging thereto, or which shall be under the supervision or control of this corporation, or for election to any professorship, or

any place of honor or emolument, in said corporation, or any of its departments or institutions of learning.

The membership of this corporation shall consist of the several persons who for the time being shall be acting as Trustees, and they shall annually elect Trustees to fill the places of those whose terms of office shall expire at the annual meeting. Persons not members of the corporation shall be eligible to election as Trustees, subject only to the qualifications hereinbefore stated.

The Board of Trustees may make By-Laws not inconsistent with the terms of this charter, or with the laws of this state or of the United States, for the government and control of said corporation, and of its several departments, and of the several institutions of learning under its care and control, and for the proper management of the educational, fiscal, and other affairs of said corporation, and for the care and investment of all moneys and property belonging to it, or given or intrusted to the said corporation for educational purposes. Said By-Laws shall provide for annual meetings, the first of which shall be held within one year from the date of these articles of incorporation.

4. The location of the University and of its College of Arts, to be established by said corporation, shall be in Chicago, in the County of Cook, and State of Illinois.

5. The following persons are hereby selected as Trustees to control and manage said corporation for the first year of its corporate existence, to wit:

30 E. Nelson Blake, Ferd. W. Peck, Judge Joseph M. Bailey, Charles L. Hutchinson, Francis E. Hinckley, Herman H. Kohlsaat, Hon. George A. Pillsbury, Eli B. Felsenthal, Professor William R. Harper, Martin A. Ryerson, Edward Goodman, George C. Walker, John W. Midgley, Judge Daniel L. Shorey, Alonzo K. Parker, D. D., C. C. Bowen, Andrew MacLeish, Frederick A. Smith, Henry A. Rust, Charles W. Needham, Elmer L. Corthell.

In testimony whereof we, the incorporators first above named, hereunto set our hands, and affix our

seals, this 18th day of June, the year of our Lord One Thousand Eight Hundred and Ninety.

JOHN D. ROCKEFELLER (SEAL)
E. NELSON BLAKE (SEAL)
MARSHALL FIELD (SEAL)
FRANCIS E. HINCKLEY (SEAL)
FRED. T. GATES (SEAL)
THOMAS W. GOODSPEED (SEAL)

31 "EXHIBIT 3," TO BILL OF COMPLAINT.

THIS AGREEMENT, made this day of
A. D. 19....., by and between THE UNIVERSITY OF
CHICAGO, an Illinois corporation (hereinafter
called the "University"), and TRUSTEES OF THE
RUSH MEDICAL COLLEGE, also an Illinois corpora-
tion (hereinafter called the "College"),

WITNESSETH AS FOLLOWS:

WHEREAS, the University and the College, after
extended and careful consideration of the subject
of medical and surgical education and the existing
condition of the same, and of the best course to
pursue in order to advance, improve and enlarge
the facilities for such education, and make the same
more efficient, and thereby promote the well-being
of the public, believe that the making and carrying
out of this contract is the best course to pursue to
attain the desired objects, and will render the work
of the parties in connection with medical and surgi-
cal education more effective than it otherwise would
be, and will broaden the scope of the same, and will
also tend to economy, and greatly benefit the cause
of medical and surgical education and the public;
and,

WHEREAS, the University has obtained in subscrip-
tions and gifts approximately \$5,300,000, to be used
and applied by it to the work of medical and surgical
education; and,

WHEREAS, all of the property of the College here-
inafter described (except the Nicholas Senn Hall
hereinafter mentioned, the funds for the erection of
which were obtained in the manner hereinafter
stated) and hereby covenanted and agreed to be con-

32 veyed, transferred and assigned by the College to
the University, was purchased by the College with
its own moneys, obtained by it from tuition fees
and other fees the College had received from its
students and moneys received by it for services ren-
dered by it to other persons or corporations, and
donations of money and property, all of which do-
nations were free from any trust, express or im-
plied, created by any of the donors thereof, and
without any requirement by any of said donors as
to the purpose or purposes for which the same
should be held, owned, used or expended by the Col-
lege, or any specification by any of said donors re-
garding such purpose or purposes; and,

WHEREAS, the College is now the absolute owner
of all of said property, real and personal, herein-
after described (subject to all mortgages, liens and
incumbrances thereon) and said property is the only
property, real or personal, now owned by the Col-
lege, except certain trust funds hereinafter referred
to; and,

WHEREAS, the College is at the present time wholly
dependent for its income upon tuition fees and other
fees received from students, and moneys it may re-
ceive from other persons for services rendered and
upon the income from the trust funds referred to in
paragraph 6, *infra*, of this agreement, and the aver-
age annual net income from the College from all
said sources, remaining after payment of necessary
charges and expenses, has during the last five years
not exceeded \$4,000 and said net income during the
year preceding the date hereof has not exceeded that
amount; and,

33 WHEREAS, the net income of the College is wholly
insufficient to enable it to make such changes and
additions to its present medical school and labora-
tory, and the equipment thereof, as are necessary
to meet the advances in medical and surgical science
and to keep the same up to modern methods and
afford the public the most efficient service, and, in
fact, is wholly insufficient to enable the College to
make proper provision out of its income against de-
preciation in its present property; and,

WHEREAS, the University of Chicago is already conducting, and has for some years conducted, a medical school on its quadrangles on the south side of the City of Chicago; and,

WHEREAS, the University intends, from its present resources and out of the moneys obtained from said subscriptions and gifts, or from other sources, to develop a medical and surgical school near its quadrangles situated on the south side of the City of Chicago, and in connection therewith to construct and equip a hospital containing approximately two hundred (200) beds, and to make all necessary and proper provisions for the operation and maintenance of said medical and surgical school and hospital; and,

WHEREAS, the University has also been intending to establish and maintain a school for medical and surgical education and research on the west side of the City of Chicago and near the present site of the College, and, in connection therewith, to construct and equip a new laboratory building, costing with its equipment not less than \$400,000, to be occupied and used for the purposes of said school; and,

34 WHEREAS, the College now owns the real estate situate at the northeast corner of South Wood and West Harrison streets in the City of Chicago, having a frontage of approximately 147 feet on said West Harrison street and of approximately 100 feet on said South Wood street (subject to all mortgages, liens and incumbrances thereon), said property being described as follows, to wit:

Lot 10 to 16 inclusive in McKay's Resubdivision of Block 11 of Ashland's Addition to Chicago of the east half Section Eighteen (18), Township Thirty-nine (39) North, Range Fourteen (14), East of the Third (3d) Principal Meridian; and,

WHEREAS, the College heretofore and about the year A. D. 1875, constructed a building and improvements on the western portion of said last described real estate and has equipped the same as a medical and surgical school (the total original cost of said building being, approximately, \$54,500) and has occupied and used the same for said purposes for a

period of more than forty years past, and is now occupying and using the same for said purposes; and,

WHEREAS, on or about the 30th day of October, A. D. 1900, Dr. Nicholas Senn, of Chicago, Illinois, proposed to the College that he would donate to it the sum of \$50,000 to be paid in December, 1900, in cash or in securities, to be applied to the erection of an east wing of the College, upon the following conditions: (1) That the building should be known as "Nicholas Senn Hall"; (2) that the College should become the medical department of the University of Chicago as soon as it might be deemed advisable, and (3) that the College should agree to pay Dr. Nicholas Senn the sum of \$1250 on the first day of July, 1901, and a like sum on the first days of January and July thereafter during his lifetime; and

WHEREAS, the College accepted said proposition of said Dr. Nicholas Senn and entered upon plans for carrying the same into effect and thereafter said Dr. Nicholas Senn paid the College said sum of \$50,000; and,

35 WHEREAS, under date of April 19, 1901, a certain agreement in writing was entered into between the College and said Dr. Nicholas Senn wherein and whereby, after reciting the said proposition and the acceptance thereof by the College and the payment to the College of said \$50,000 by said Dr. Nicholas Senn, the College covenanted and agreed to construct said building to be called "Nicholas Senn Hall," and to take suitable steps to constitute said College the medical department of the University of Chicago as soon as and whenever it might be deemed advisable and feasible so to do, and further covenanted and agreed to make the payments to said Dr. Nicholas Senn set forth in his said proposition; and,

WHEREAS, further donations in aid of the construction of said Nicholas Senn Hall, aggregating approximately \$35,000, were thereafter made by other persons; and,

WHEREAS, the total cost of said Nicholas Senn building and the equipment thereof was approxi-

mately \$128,000, and said total cost exceeded the amount so contributed by said Dr. Nicholas Senn and other doctors by approximately the sum of \$43,000 and said excess was paid by the College out of its own moneys; and,

WHEREAS, the value of said parcel of real estate so owned by the College, as aforesaid, on which its medical and surgical school and said Nicholas Senn Hall were constructed, as aforesaid, does not exceed \$30,000; and,

WHEREAS, the College also now owns (subject to all mortgages, liens and incumbrances thereon) the following described real estate, to wit:

36 Lots 3 to 7 inclusive in Resubdivision of Block 4 of Assessors' Division of the east half of the south-east quarter of Section Eighteen (18), Township Thirty-nine (39) North, Range Fourteen (14), East of the Third Principal Meridian; which said described tract of land is situate on said South Wood street, opposite the parcel of land on which, as aforesaid, the medical and surgical school of the College and said Nicholas Senn Hall, have been constructed, as aforesaid; on which said Lots 3 to 7 inclusive in said Resubdivision of said Block 4 of said Assessor's Division, a Laboratory Building was erected by the College in the year A. D. 1893, the cost of such original construction being approximately \$83,000, and the value of the real estate upon which said Laboratory Building was so constructed, being approximately \$20,000; and,

WHEREAS, the College also now owns certain personal property consisting of books, charts, pictures, surgical equipment, laboratory supplies and accessories, pathological specimens and other educational equipment and accessories; and,

WHEREAS, the College has a right of re-entry in case there has been or may be hereafter a breach under the provisions of a certain deed bearing date January 2, 1884, and heretofore recorded in the Recorder's Office of Cook County, Illinois, executed by the College, as grantor, to the Presbyterian Hospital, as grantee; and,

WHEREAS, the College is also the owner of Lot 109

in Division Two of Block A in Oakwood Cemetery in Cook County, Illinois;

Now, THEREFORE, it is mutually covenanted and agreed between the parties as follows:

37 1. The College hereby covenants and agrees that upon the execution and delivery of this agreement, it will convey, assign and transfer to the University all of the property, real and personal (including said Nicholas Senn Hall) of which the College is the owner, as aforesaid (except the trust funds referred to in paragraph 6, *infra*, of this agreement), subject to all mortgages, liens and encumbrances on any of said property, real or personal, and will also assign and transfer to the University all cash remaining on the execution and delivery of this instrument in the hands of the College as its own absolute property, after deducting therefrom all indebtedness of the College theretofore incurred by it on account of operating or other expenses of any and every kind and nature whatsoever; and the University hereby assumes and agrees to pay all of said mortgages, liens and encumbrances and to save the College harmless from any liability on account of the same, or any of the same, and also further covenants and agrees that it will use all of said property, real and personal (or its proceeds, in case of a sale), to promote the general interests of medical education and to qualify young men to engage usefully and honorably in the professions of medicine and surgery.

2. The University hereby covenants and agrees that, upon the execution of this agreement, it will proceed to develop its said medical and surgical school near its said quadrangles on the south side of the City of Chicago, and, for use in connection therewith, will construct, equip and maintain there, or at some other place in the City of Chicago suitable for that purpose, a hospital, containing approximately two hundred (200) beds, and will complete said hospital and put it in operation, with all convenient speed, and, in any event, within ten (10) years from the date hereof.

3. The University hereby covenants and agrees that, upon the execution of this agreement, it will

38 proceed, at its own expense, to tear down said medical and surgical school building of the College, and on the tract of land on which it now stands, construct and equip a new laboratory building, capable of occupancy and use as a school for medical education and research, said building with its equipment to cost not less than \$400,000—said building and equipment to be in accordance with modern methods for the construction and equipment of laboratories for medical and surgical education and research, and will let the contracts for such construction within one (1) year from the date hereof, said building to be completed with all convenient speed and, in any event, within five (5) years from the date hereof; and the University further covenants and agrees that it will operate said new laboratory building and equipment and pay all the expenses of any and every kind and nature whatsoever of such operation.

4. The College hereby covenants and agrees to, and hereby does, assign and transfer to the University, subject to the consent of the other parties to said contracts, all existing contracts between the College and the Presbyterian Hospital, Otho S. A. Sprague Memorial Institute, Home for Destitute Crippled Children, Children's Memorial Hospital and Central Free Dispensary, and other institutions (if any), and the University hereby assumes, and agrees to perform, each and all of the covenants of the College contained in each and all of the said existing contracts and to indemnify and save harmless the College from any and all liability under the same.

39 5. The College hereby grants to the University the exclusive right to use, in connection with its work of medical and surgical education, the designation "Rush Medical School of the University of Chicago," or any other designation it may desire containing the word "Rush," until such time as the College shall desire to use, and shall begin to use, in connection with its work in medical or surgical education, some designation containing the word "Rush," and the University hereby covenants and agrees to use such designation, containing the word "Rush," as a designation for its own post-graduate

medical or surgical work, until the College itself desires, as aforesaid, to use and begins to use the same.

It is expressly understood and agreed that the obligation hereunder of the University to use the name "Rush" shall cease and determine, in case said name (either by itself or in combination with other words) is adopted or used by any other corporation, institution, or person, or association of persons, in connection with any medical or surgical education or work in the State of Illinois, and such adoption or use is adjudged permissible by the judgment or decree of any court of competent jurisdiction in the State of Illinois.

6. It is expressly understood and agreed that all trust funds now held by the College shall, notwithstanding this agreement, continue to be held in trust by the College upon and subject to the same trusts upon and subject to which they are now held, including the following trust funds: (1) Freer Prize Fund; (2) H. M. Lyman Memorial Prize Fund; (3) Manheimer Library Fund; (4) A. D. Thomson-Bevan Fellowship Fund; (5) Nicholas Senn Fellowship Fund; (6) John Phillips Fund and (7) certain real estate situate in Mitchell County, Iowa, devised to the College by the will of Lillian G. Swale, of Mason City, Iowa, for the endowment of scholarships.

40 IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective officers duly thereunto authorized, in accordance with resolutions of their respective Boards of Trustees, and their respective corporate seals to be hereto affixed the day and year first above written.

THE UNIVERSITY OF CHICAGO,

By _____

Attest: _____

President of its Board of Trustees.

Secretary.

TRUSTEES OF RUSH MEDICAL COLLEGE,

By _____

Attest: _____

Its President.

Secretary.

43 SUMMONS issued October 1, 1923, to the University of Chicago and Edward J. Brundage, as Attorney-General of the State of Illinois, and return showing service on October 1, 1923, on the University of Chicago by delivering a copy thereof to Wallace Heckman, its agent, and also service on said Edward J. Brundage as Attorney-General of the State of Illinois, by delivering a copy thereof to him on October 1, 1923.

45 APPEARANCE, filed October 15, 1923, of Edward J. Brundage, as Attorney General of the State of Illinois.

ANSWER of the defendant, the University of Chicago, filed October 26, 1923.

47 Said answer sets up that the University of Chicago is informed and believes, and upon such information admits, the substantial allegations of fact in the bill set forth to be true.

Admits that, believing the facts to be as stated in the bill, it negotiated with the complainant for the making of a contract between it and this defendant, substantially in the form shown in the draft of such contract annexed as Exhibit 3 to the bill; and that it is willing to enter into a contract of that kind with the complainant and to carry the same out in order to effectuate the purpose therein stated, so far as it is legal and proper for it so to do and as it may be permitted by the laws and the ordinances of the City of Chicago in force from time to time and applicable to the subject matter covered by such contract.

Submits to the court for its decision, the questions of law arising upon the facts shown in the record herein, both upon the allegations of the bill

48 and upon such facts as may be shown by the evidence taken herein.

ANSWER of the defendant, Edward J. Brundage, as Attorney-General of the State of Illinois, filed November 9, 1923.

50 Admits organization of complainant as alleged in the bill.

Admits that the defendant, The University of Chicago, is a corporation duly organized under the laws of this state as alleged in the bill.

Admits that complainant, ever since its organization as a corporation, has been engaged in the work of promoting the general interests of medical education and of qualifying young men to engage usefully and honorably in the professions of medicine and surgery.

Admits that complainant now owns the real estate described in the bill.

Neither admits nor denies allegations of bill concerning donation of Dr. Senn and cost and construction of "Nicholas Senn Hall" but demands strict proof.

53 Admits that complainant now owns certain personal property, including books, charts, pictures, surgical equipment, laboratory supplies and accessories, pathological specimens and other educational equipment and accessories, and is also the owner of a cemetery lot in Oakwood Cemetery in Cook County, Illinois; and says that he is not informed as to whether or not complainant has a right of re-entry, in case there has been, or may hereafter be, a breach of condition under the provisions of a certain deed bearing date of January 2, 1884, and heretofore re-

corded in the Recorder's Office of Cook County, Illinois, executed by the complainant, as grantor, to the Presbyterian Hospital, as grantee, as alleged in the bill of complaint, and, if the same is material, demands strict proof of said allegation.

- 54 Defendant demands strict proof that all of the property of the complainant described in said bill, except said Nicholas Senn Hall, was purchased by complainant with its own moneys, obtained by it from tuition fees and other fees and donations of money and property.

That defendant is not informed, save by complainant's bill of complaint as to whether or not complainant is now the absolute owner of all the property, real and personal, described in the bill of complaint (subject to all mortgages, liens and encumbrances thereon); and is not informed, save as alleged in the bill of complaint, whether or not said property is the only property, real and personal, now owned by the complainant, except certain trust funds held by the complainant and demands strict proof of all of said allegations.

Neither admits nor denies that complainant is wholly dependent for its income upon tuition fees and other fees received from students, and moneys it may receive from other persons for services rendered, and upon the income from certain trust funds, and neither admits nor denies that the average annual net income of complainant from all sources remaining after the payment of necessary charges and expenses, has, during the last five years preceding the filing of the bill of complaint, not exceeded the sum of \$4,000, and neither admits nor denies that during the year immediately preceding the filing of

said bill, said net income has not exceeded said sum of \$4,000, but as to all of said allegations, the defendant demands strict proof thereof.

- 55 Admits that the expenses of conducting medical and surgical colleges have, since the incorporation of complainant, increased from time to time, and that at the present time such expenses are very much larger than in the past, and admits that such expenses will continue to increase in the future.

Neither admits nor denies that the net income of complainant at the present time is wholly insufficient to enable it to make such changes in, and additions to, its present medical school and laboratory, and the equipment thereof, as are necessary to meet the advances in medical and surgical science and to keep said medical school and laboratory, and the equipment thereof, up to modern methods, and afford the public the most efficient service, and neither admits nor denies that said net income is in fact wholly insufficient to enable complainant to make adequate and proper provision out of the same to cover depreciation in its present property; and the defendant demands strict proof of said allegations.

Denies that the defendant, The University of Chicago, has full power and authority under its charter to engage in the work of medical and surgical education.

Admits that the defendant, The University of Chicago, has for some years past conducted and is now conducting a medical college on its quadrangles on the South Side of said City of Chicago, but neither admits nor denies that it has obtained in subscriptions and gifts the sum of approximately \$5,300,000, to be used and applied by it to the work of medical

and surgical education, as alleged in the bill of complaint, and demands strict proof of said allegation.

- 56 Admits that a draft of a proposed contract between said complainant and said defendant. The University of Chicago, has been prepared and that "Exhibit 3" attached to the bill of complaint, is a correct copy of said proposed contract.

Denies that the making and carrying out of the proposed contract set out in said "Exhibit 3," is the best course to pursue in order to advance, improve and enlarge the facilities for medical and surgical education, and to make the same more efficient, and thereby promote the well being of the public, and denies that the carrying out of said proposed contract will render the work of said complainant and said The University of Chicago, in connection with medical and surgical education, more effective than it otherwise would be, and denies that it will broaden the scope of the same, and denies that it will also tend to economy and greatly benefit the cause of medical and surgical education and the public.

This defendant further answering denies that the complainant and The University of Chicago have power, under the law and under their respective charters, to enter into said proposed contract.

Admits that the complainant, Trustees of Rush Medical College, is a corporation organized not for pecuniary profit and admits that under the charter of the complainant, none of its property and none of its net income after paying its running expenses, can be distributed among, or expended for the benefit, of any person whomsoever, but that all of the property and net income of the complainant must be ap-

- plied to the purposes authorized by its charter, that is to say, to the promotion of the general interests of medical education and to qualify young men to engage usefully and honorably in the professions of medicine and surgery.
- 57

Denies each and every allegation of the complainant's bill of complaint not specifically admitted in the answer and demands strict proof of all of such allegations.

Denies that the complainant is entitled to the relief, or any part thereof, in the bill of complaint demanded, and prays the same advantage of this answer as if he had pleaded or demurred to the bill of complaint; and prays to be dismissed with his reasonable cost and charges.

- 59 REPLICATION, filed November 10, 1923, to the several answers of the defendants.

- 60 NOTICE, served November 10, 1923, of application to the court on November 13, 1923, to have the cause referred to a Master in Chancery to take and report the evidence.

- 63 ORDER, entered November 13, 1923, referring the cause to Roswell B. Mason, Master in Chancery, to take evidence and report the same to the court.

- 67 REPORT of Master Roswell B. Mason, filed December 24, 1923. This states that pursuant to the order of reference, he has taken the depositions of the witnesses set forth in the report and that the following exhibits (Complainant's Exhibits A to V, both inclusive) were offered and received in evidence, which depositions and evidence are made a part of the master's report, and returned therewith and
- 69 that no further evidence was taken.

- 70 NOTICE to take proofs.

Exhibits were offered by Mr. Martin, on behalf of the complainant, and received in evidence as follows:

73 (1) Complainant's Exhibit A, a special Act of the Legislature of the State of Illinois, approved March 2, 1837, entitled "An Act to incorporate the Rush Medical College."

(2) Complainant's Exhibit B, a special Act of the Legislature of the State of Illinois, approved December 23, 1844, entitled "An Act to amend an Act entitled 'An Act to incorporate Rush Medical College.'"

75 (3) Complainant's Exhibit C, an Act of the Legislature of the State of Illinois, approved February 10, 1857, entitled, "An Act to authorize the Trustee of the Rush Medical College to made a loan."

(4) Complainant's Exhibit D, an Act of the Legislature of Illinois, approved February 13, 1865, entitled, "An Act to enable Rush Medical College to fund its present indebtedness and borrow money."

(5) Complainant's Exhibit E, a certified copy of deed dated April 8, 1875, executed by Elizabeth D. McKay and Charles P. McKay, to the complainant.

76 (6) Complainant's Exhibit F, a certified copy of a deed dated July 15, 1892, executed by John B. Murphy and Jeannette C. Murphy, his wife, to complainant.

77 (7) Complainant's Exhibit G, a certified copy of a deed dated July 20, 1892, executed by the Chicago College of Dental Surgery, to complainant.

(8) Complainant's Exhibit H, a certified copy of deed dated January 2, 1884, executed by the complainant to the Presbyterian Hospital of Chicago.

78 (9) Complainant's Exhibit I, a certified copy of the Certificate of Incorporation of the defendant, The University of Chicago, issued September 10, 1890, recorded in the Recorder's Office of Cook County, Illinois, September 18, 1890, with the Recorder's certificate thereon.

(10) Complainant's Exhibit J, contract dated April 19, 1901, executed by complainant.

(11) Complainant's Exhibit K, contract dated January 29, 1902, between Dr. Frank Billings and the complainant.

(12) Complainant's Exhibit L, contract dated April 30, 1901, between Dr. Arthur D. Bevan and the complainant.

(13) Complainant's Exhibit M, contract dated April 30, 1901, between Dr. F. S. Coolidge and the complainant.

79 (14) Complainant's Exhibit N, contract dated April 30, 1901, between Henry B. Favill and the complainant.

(15) Complainant's Exhibit O, contract dated April 30, 1901, between Dr. E. Fletcher Ingalls and the complainant.

(16) Complainant's Exhibit P, contract dated April 30, 1901, between Dr. D. R. Brower and the complainant.

(17) Complainant's Exhibit Q, a summary of the receipts and disbursements of the complainant from 1871 to 1896 and a continuation of the same, covering the period from 1896 to 1903, prepared from the cash book of the complainant.

(Said Complainant's Exhibits were all filed with the Master's Report, and are set out in the Tran-

script of Record, at pp. 165-208 and are abstracted at pp. 81-88 of this Abstract.)

FRANK BILLINGS, a witness for complainant, testified as follows:

Direct Examination by Mr. Martin.

80 My name is Frank Billings. I reside at 1550 North State Parkway, Chicago. I am a Physician, Professor in Medicine and Dean of the Faculty of Rush Medical College. I have been connected with Rush Medical College since the fall of 1898. I have read the bill of complaint in this case and the exhibit of the proposed contract attached to the bill. I am acquainted with the financial experience of Rush College, since 1898. I think the contract, the proposed contract between the complainant and the University of Chicago, is a desirable contract to be entered into, both in the interests of medical and surgical education and from the standpoint of the complainant.

81 Q. Will you please give your reasons, Dr. Billings? A. May I go into that a little at length?

Q. Yes. A. In my opinion the contract proposed to be entered into between Rush Medical College and the University of Chicago in the establishment of a University undergraduate medical school at the University and a graduate school of medicine at Rush Medical College will afford institutions of medical teaching, of medical investigation, far better opportunities for the efficient care of the sick and injured, of a very high standard, equal to institutions of like character in the United States of America, or indeed, in any place in the world.

In 1898 Rush Medical College through its Board of Trustees, and upon the initiative of its faculty sought affiliation with the University of Chicago in the education of men and women. That affiliation
82 has continued from that time until this. Through that affiliation, the standards of medical education have been raised at Rush Medical College, and, in co-operation with the University, the Medical College has become equal to any in the United States of America.

In 1901 and 1902, as the result of this affiliation, the first two years of medical instruction were removed from Rush Medical College to the University of Chicago, and from that date the University of Chicago has educated and trained men and women in medicine at the University for those first two years, while Rush Medical College has completed the education in what we call the Clinical Departments over a course of two years, until 1918, when a third year was added, and since that date, since 1918, Rush Medical College has had the responsibility of the three years' training and educating of medical students or until they received their degree of Doctor of Medicine.

In 1902 and '03, Mr. William R. Harper, then President of the University of Chicago, had every reason to believe that a union of Rush Medical College and of the University of Chicago in the teaching of medical students, could be brought about at that time or very soon after 1902 and 1903.

83 Rush Medical College and the University together secured subscriptions of one million dollars at that time, which was accepted as satisfactory by the Board of Trustees of the University of Chicago, and that subscription was then transmitted to

Mr. Rockefeller in New York. It proved finally unacceptable and the union was delayed, because the financial considerations were not satisfactory.

From that time onward the two institutions continued to educate men and women in medicine. In 1916, we had advanced to such a high degree of medical education, which was recognized everywhere in the country, that finally Mr. Flexner of the General Education Board, came out to Chicago to make a survey and, as a result of that survey of the medical institutions at the University and Rush Medical College, he made a report with the suggestion that the Rockefeller Foundation and the General Educational Board make a stipulation to the University of Chicago and to the Rush Medical College to bring about that union, which would mean the establishment of the medical school for undergraduates at the University of Chicago and a graduate school on the West Side.

- 84 The conditions made by the Rockefeller Foundation and the General Educational Board was that each of those institutions would give one million dollars, provided \$3,300,000 more was subscribed.

By April, 1917, \$3,300,000 was secured through the efforts of people connected with Rush Medical College and the University of Chicago. The war immediately following delayed construction of buildings contemplated, and since the war until recently and probably now, the high cost of building materials and the high wages of skilled workmen made those in authority believe that they were not justified in going on with the building plans.

Now, in all of the negotiations that have gone on since 1898, the faculty of Rush Medical College, with the approval of the Trustees, in this question

of the University of Chicago taking over Rush Medical College in the development of these plans for medical education in Chicago, had taken and has continued to take the initiative.

- 85 That, Mr. Mason, I want to get in to show that it has been Rush Medical College, the complainant in this suit, that has taken the initiative always in a desire to establish in Chicago a very high-grade medical school.

- Q. Will it or will it not be a more economical way to carry on medical and surgical education here if these two institutions are put together under one administrative head? A. I don't know that it would be more economical in the way of money or 86 financial cost, but it would give opportunity for improvement of methods of medical education, because there would be money available for the teaching of clinical medicine which is not now in demand.

May I amplify that by saying Rush Medical College has practically depended upon the fees of its students; and the faculty, since my association there, all the clinical teachers, have worked without money reward and continue to do so. Only a few of the teachers there who give their entire time to the work receive one cent in compensation for the services rendered. It has been the most remarkable evidence of generous service to the sick and injured and to the public through education, the best kind of medical education, in behalf of men and women and in behalf of the public, that I have ever known.

It cannot go on in that way forever. Had it not been for the loyalty, had it not been for the splendid qualities of mind and heart of this faculty, we would not have had Rush Medical College occupying the high place it occupies as an educational institution.

Another thing I want to say about this matter: with the approval of, upon the initiative really of
 87 the Board of Trustees, and with the approval of its faculty the first two years of medical education, was moved from Rush Medical College to the University of Chicago, and it is only through the affiliation of the University of Chicago that Rush Medical College has the facilities to educate men and women from the beginning to-day until they get their degrees, and if the affiliation should cease now, if this contract should be denied, Rush Medical College would soon be left educating men and women clinically without the facilities for their education in the first two years of the medical course.

I have a fair general knowledge as to what the properties of Rush are at the present time and their status financially.

Q. The bill in this case mentions some special trust funds that are held by Rush,—this proposed contract does not cover those special trust funds,—under the plan proposed they are to continue to be held by Rush and administered by Rush. Now the
 88 bill further alleges that all of the property which Rush now has, other than those trust funds, was purchased by it either with moneys obtained from fees or from fees which it received for services that it rendered to other people or from donations of money made by other people, which donations it alleges, were not upon specific trusts but were general gifts. Are those statements correct? A. Yes, they are.

So far as I know Rush holds no property whatever except those special trust funds that is subject to any trust which was created by the donors of such property.

Q. You would know, would you not? A. I think I would.

The personal property which Rush owns and which this contract, if entered into, would contemplate being turned over to the University, is valuable in a teaching institution.

It has a real, intrinsic value as teaching material.
 89 What value it would have on a sale, I could not state very well; you refer to equipment?

Q. Yes. A. And to pathological specimens that have been gathered for years, anatomical and otherwise?

Q. Books and charts? A. Books and charts; yes, sir.

Q. Surgical equipment and laboratory supplies and accessories? A. Yes, sir; laboratory supplies are only carried from year to year, purchased by the supply department, and of course diminish as the year runs through.

Q. Would you have any idea what value could be put upon those things? A. On all of the personal property?

Q. Yes. A. No, I would hesitate to do that intrinsically. Does this include the library?

Q. Yes. A. Well, the library alone couldn't be replaced probably for \$50,000, I should say, in round numbers. At the same time a great deal of it is of no money value. It is books that have been accumulated by gift and otherwise, and many of them old editions that are of value where one is using them for literary purposes, going back over the field, but
 90 medical books are peculiar in that in the advancement of science, any general medical book of medicine, surgery and all that, is practically worthless intrinsically within five years of its issue. There

are only a few exceptions to that, monographs and all that may have a value for a longer period of time. For example, I had an advertisement yesterday, of a book on the practice of medicine, a series, costing \$125, issued in the beginning of this year, and offered for sale at \$75. In so short a period of time many of these books are practically valueless, and yet are of value to an institution like Rush Medical College, because of the work being done by students and others in connection with medical history.

Q. And in connection with the education of students? A. Yes, in connection with the education of students, but the real intrinsic value, if sold, would not be very much.

Mr. Dierssen: I was just wondering whether that one question was fully answered about the trust funds. As I understand it in the hearing here, there are certain trust funds which are to be merged.

91 Mr. Martin: They are alleged in the bill.

Mr. Dierssen: Are they simply alleged in the general way, that there are trust funds? I wonder if that was sufficiently brought out in the testimony?

Mr. Martin: Those trust funds are set out in the draft of the proposed contract, I think.

Mr. Tenney: They are specified there.

Mr. Dierssen: I see them in paragraph 6 of the contract.

Mr. Martin: Yes. Now, those are not conveyed by this contract and those are trust funds, most of them, to be applied to purposes of medical education or to scholarships; those are the principal things.

Mr. Dierssen: Those are all the trust funds?

Mr. Martin: Yes, those are all the trust funds, and that is true of that real estate, out in Iowa, that is a trust fund for that sort of purpose, but the contract was not to embrace those.

92 The Witness: Do you want to go over the real estate, question of buildings and so on?

Mr. Dierssen: There are allegations of value there.

The Witness: In reference to the cost of buildings, I would like to say this, as to the value of the buildings there, the three buildings, those being the old buildings so-called, erected, the cornerstone laid in 1875.

Mr. Martin: The clinical building?

THE WITNESS: Which bears some value in the contract, I consider it a liability and not an asset. It is a fire trap. I think if Rush Medical College of its own initiative had it torn down, it would be in debt by the time it sold the material. As to the laboratory building on the south side of Harrison Street, it is a fairly good building, semi-fireproof, but was erected in 1898 and is not suited for teaching medicine under the conditions of to-day, and an inquiry as to what it would require to place it in proper condition for teaching by a committee appointed by the University this summer from Rush Medical College, resulted in a minimum of \$25,000 being stated as the sum necessary to place it in condition for use, which I think should be taken into account in placing any value upon the building. As to Senn Hall, it is a good building, and in the subscriptions given to the University for the completion of its medical plans, including its buildings, \$30,000 was scheduled to rehabilitate Senn Hall.

93

ARTHUR DEAN BEVAN, called as a witness for complainant, testified as follows:

Direct Examination by Mr. Martin.

My name is Dr. Arthur Dean Bevan. I reside in Chicago, Illinois. I am a surgeon.

I am a member of the Faculty of Rush Medical College. I am the professor of surgery and the head of the surgical department.

I have read the bill of complaint in this case and the draft of the proposed contract attached to it.

I have been connected with Rush since 1888.

- 94 Q. Will you state whether in your opinion the execution and carrying out of that proposed contract would be for the best interests of medical and surgical education and the public, and for the best interests of Rush, and if so, please give your reasons at length?

- A. Yes, I think this combination of Rush Medical College and the University of Chicago will result in the development of a stronger school of medicine than either one of them could develop alone. Rush has an existence of a great many years. I think it was chartered in 1837 and began to teach medicine in 1843, and it has a very large and influential alumni, throughout the Mississippi Valley especially, and it has developed very largely independently one of the four or five strongest medical schools in the United States. But I think from the combination of the University of Chicago and Rush Medical College a very much stronger medical school can be developed, and their plans to develop both an undergraduate school in medicine and a graduate school, I think will result in great service to medical
- 95

education in this country and will be of service to the University of Chicago and to Rush Medical College and to the people of this country.

Since I first became connected with Rush I have become familiar with the property of Rush, and its funds.

- I think Rush does not own any property which was conveyed to it under any express trusts of any kind other than the special trust funds mentioned in the bill of complaint and in the draft of the proposed contract. From my relation to the institution and my knowledge of its affairs since I became connected with it, I think I would be likely to know of it if there had been. It has been my understanding that all gifts of moneys received by Rush other than those trust funds, have been general gifts made to Rush Medical College. Dr. Senn gave a gift altogether of about \$50,000; that was for the Senn Memorial—that was for that specific purpose—and I think attached to that was an understanding that the professorship of surgery was to be named the Nicholas Senn Professorship of Surgery. Outside of Nicholas Senn Hall and those special trusts there were no gifts other than general gifts.
- 96

- Q. What do you know about the present condition, financial condition, of Rush, and its ability to carry on effective work in medicine, in medical and surgical education? A. Well, situated the way it is to-day and doing simply the clinical years of medicine, it has succeeded in doing, I think, exceptionally good work, but that has been made possible only by the fact that it has had the services of possibly one hundred or more able medical men and women who have given their services in teaching and in research work for nothing. This cannot con-

tinue indefinitely. If they were paid salaries, the same as university professors are paid, it would require, I should think, an endowment of somewhere
97 from five to ten million dollars to furnish those salaries.

Q. What have you to say about the present condition of the buildings on the Rush properties? A. I think that the old college building on the corner of Harrison and Wood Street is in a condition that it should be very soon torn down and replaced. The other two buildings, I think, can be of service for a good many years. They require some modification, but they can be changed, I think, for a comparatively small amount of money.

Q. What has been the history in the past as to the increase in the cost of medical and surgical education since Rush was founded in 1837?

A. I can speak with some authority on that subject, because for twenty years I have been the Chairman of the Council on Medical Education of the American Medical Association and we have been virtually a committee to report on all matters of medical education to that association.

20 Twenty-five or thirty years ago the cost of medical education was comparatively low, and there
98 were even medical schools that were conducted at a profit and their fees for tuition ran from one hundred to two hundred dollars a year. At that time, however, a man could obtain an education in medicine in two years, and the education was largely by lectures.

Since that time, through the efforts of that Association, the course has been raised practically to seven years, two years of technical preliminary education in the university, chemistry and biology

and physics, and four years in the medical school, and in almost all instances one year as an interne in a hospital, and, with that change, there has grown an enormous increase in the cost of medical education, so that in many schools it costs \$1,000 a year to educate a student in medicine. It costs much more in all schools than the fees that are charged the students. Medical education is the most expensive education of any department in the university.

It is also a fact that the relations are very much closer between medical and surgical education and education in the sciences,—what you may call the
99 allied sciences,—than they formerly were. Physics, chemistry and physiology are now made prerequisites for a course in medicine in practically all of our large American schools, and on that account there is a pretty close relationship between the School of Science and the School of Medicine, and the effect is to add very greatly to the cost of the most satisfactory medical education.

Q. Well, is not that likely to continue? A. Well, I hope not, because it has reached a point where in some schools it is apparently out of proportion to the results. It is likely to increase, however.

Q. There are likely to be advances in all those sciences? A. Yes, the cost is likely to increase, but I say I hope not because I think it is becoming very expensive to get any medical education.

Q. Doctor, do you know about what the net income of Rush is at the present, what it has been during the last five years? A. Well, I know ap-
100 proximately. I cannot give you the exact figures, they can be obtained from the office.

Q. About what is your best recollection of it?

A. We have been getting at Rush, I think on the

104 year to \$176,000; it is estimated to amount this year to \$194,000. That is spent entirely on the work of the first two years.

The University has never regarded that—at least that I judge to be the mind of my predecessor and his associates,—as anything more than a temporary plan. That is, it has always contemplated eventually conducting a full medical course, and in 1916, the matter was taken up for very special study, and as a result of that a plan was evolved in consultation with representatives of Rush Medical College, that the University should develop the full four years' medical course for the M. D. degree, and that it should also in accordance with this understanding with Rush Medical College, develop a post-graduate school for those who had already received a doctor's degree or M. D. degree on the West Side.

At that time a sum of money which the auditor certified to me was \$5,300,000, somewhat in excess of that, indeed, was raised. That money would have been long before this actually devoted to that purpose but for the interruptions caused by the war which caused delay. That money has been held for that purpose.

Q. And is now held by the University?

105 A. And is now held for that purpose together with the accumulation of interest upon it.

Q. Well, the bill in this case alleges that the University stated to the authorities of Rush Medical College that it had intended to develop its medical school on the South Side, and to conduct and equip a hospital containing approximately two hundred beds there, and to make all necessary and proper provisions for the operation and maintenance of the same, and that it has also been intending to erect a

hospital on the West Side of the City of Chicago near the— A. Not a hospital.

Q. A medical school near the present site of Rush Medical College, and also to construct there a laboratory building, costing, with its equipment, approximately \$400,000. What have you to say as to these allegations? A. All those are definitely included within the plans of the University. In particular it has been the definite ambition of the University to develop on the South Side a school with an even greater emphasis upon the development of medical science than has been customary in medical schools.

106 Most medical schools in this country, like most other professional schools, were originally established for the purpose of producing practitioners, men who would go out and practice medicine or law or ministry as the case may be.

Increasingly in recent years it has been evident that the interests of medical science and the interests of public health are served, perhaps even more largely, by schools that devote themselves with emphasis to the development of science as it relates to medicine than by the schools which devote themselves merely to the production of the practitioner.

In other words, there is so much more to be learned about the things that relate themselves to medical science, so much more has been learned by research, that the health of the community is actually promoted possibly more by those who make discoveries in medical science than by those who simply learn what has already been known and go out to practice it.

The whole tendency in medical education, as in some other branches of professional education, has

been to transfer the emphasis from the passing on to each generation of students of what is previously
107 known, to the learning of new things.

One could give a very long list of the things by which medical science has been tremendously advanced by researches made by men who are not practicing medicine, but whose researches have very greatly contributed to the advancement of medical science.

The University does not believe that we are at the end of that process, and it desires to build up a medical school which will throw the emphasis upon the development of medical science and the discovery of additional facts about diseases and their cures and pass on these facts to its students and through them out to the profession in general. It regards itself as peculiarly fortunate in the fact that it has strongly developed departments of chemistry and physics and anatomy and physiology and hygiene, which are doing work, not for the mere purpose of producing practitioners, but for the development of science, and it is peculiarly fortunate also that it has free land unoccupied as yet near the buildings where this other work is done, on which it can build a hospital and develop the clinical side of the medical school.

That opportunity does not exist in very many parts of the country in the schools where there are
108 strong departments of physics and chemistry and physiology and anatomy and so forth. They have been forced to put their medical schools at a distance and that very separation is a disadvantage; or in other cases, where they have been able to bring them together, they have not been able to develop departments of the sciences to anything like the same extent that the University of Chicago has been.

Our departments—I speak without boasting—but our departments of physics and chemistry and physiology are among the strongest in the country and it is therefore, the ambition of the University, not to exalt itself, but in order to render the very largest service it can to medical science and to safeguard the public health, to build up that sort of medical school.

There is another task that medical men tell me is very inadequately performed. It was only a few days ago that a man who was very familiar with the whole medical situation was saying to me with emphasis that there was no place in the country where this other service can be rendered, and that is, to provide a school for the man who has already taken a medical degree, a man who gets his M. D. degree and goes out into practice and within four or five years discovers that he has to know a great deal
109 more about the practice of medicine than he does know. If he finds there is more knowledge he has to have, or he finds he wants to specialize in some particular line, there is no school that is just adapted to this purpose. There are schools to which he can go and get some help, but there are no schools adapted to his purpose.

It seems therefore to the University a very great opportunity to establish a school of that type, and the very best place in Chicago is alongside the Presbyterian Hospital, and in the vicinity of the other great hospitals that are there.

The other half of our plans, therefore, is to develop on the site of the Rush Medical College a medical and surgical school for those who have already received an M. D. degree, in very confident expectation that the school will be filled as soon as

it is opened with men who have already had an M. D. degree and have already had some experience in medical practice and who feel their need for further medical study.

The same thing has happened, of course, in other professions, and we are sure it will happen in this profession.

Those therefore are the two sides of our plan, and we believe by carrying out those two plans we shall be able to make a contribution to public health and to the cure of disease such as we could not make in any other way and such as we think very few other schools could make in just that way.

It is true, as stated in the bill, that we have informed Rush regarding our intentions. There have been repeated conferences between the representatives of the two institutions. Complete plans for the whole school were drawn some years ago, they are now being restudied with a view to meeting present conditions.

Cross-Examination by Mr. Dierssen.

Q. Doctor, what is to become of the name of Rush Medical College if this plan is carried through? A. The University under this contract agrees to associate the word "Rush" with the post-graduate school I spoke of as the second part of our plan for so long a time as the Rush Medical Corporation does not itself wish to use that title.

The University also would acquire the right to use the name Rush, with any of its medical or surgical education, whether carried on the west side or the south side, but only binds itself to use it in connection with the post-graduate school, wherever

it is carried on, whether at the University or on the west side.

Mr. Dierssen: Q. It is not proposed, in other words, that this corporation, the trustees of Rush Medical College will go out of existence?

Mr. Martin: No. The Rush Medical College will continue to administer the special trust funds that it has, and it also retains the right to go into medical and surgical education, if it wants to do so. The only effect of it doing so being, that in that case, the University would be relieved from the obligation to use the name "Rush."

Mr. Dierssen: Then, as I understand, the only purpose of this agreement would be to transfer title to its physical property with the exception of the special trust funds?

Mr. Martin: Yes.

Mr. Dierssen: And permit another institution to carry on the work that the college itself formerly carried on and assume all the liabilities and indebtedness of the Rush Medical College.

Mr. Martin: Yes, and under the agreement by the University, it will apply all the property it gets under the contract, it will use all of said property, real and personal, or its proceeds in the case of a sale, to promote the general interests of medical education and to qualify young men to engage usefully and honorably in the profession of medicine and surgery. That agreement is in the exact language of the provisions of the charter of Rush as to the purposes Rush was organized for. So that in one sense the university stands in precisely the same position as if it was a trustee, because it gets the property subject to that agreement.

HARRY H. HARPER, called as a witness for complainant, testified as follows:

Direct Examination by Mr. Martin.

113 My name is Harry H. Harper; I reside at 1635 Hinman Avenue, Evanston. My occupation is real estate business. I am familiar with the property described in the bill of complaint as Lots 10 to 16 inclusive in McKay's Resubdivision of Block 11 of Ashland's Addition to Chicago of the East half of Section 18, Township 39, North Range 14, East of the Third Principal Meridian, and with the improvements on that property. Those improvements are two buildings, a joist constructed building, the Clinical Building, and a fireproof building, the Nicholas Senn Hall.

The laboratory building is on the opposite or south side of Harrison Street, and not on the real
114 estate to which I have been referring.

I am familiar with Lots Three (3) to Seven (7) inclusive in the resubdivision of Block Four (4) of Assessor's Division of the East Half (E $\frac{1}{2}$) of the Southeast Quarter (S. E. $\frac{1}{4}$) of Section 18, Township 39 North, Range 14 East of the Third Principal Meridian in Cook County, Illinois. That is the property on which the Laboratory Building stands. I am familiar with the matter of appraisalment of buildings of that kind. I have also investigated the matter of the original cost of that building and the time it was constructed and so forth.

In my opinion the present value of that laboratory building is \$75,119. I am acquainted with the value of the real estate upon which this laboratory building stands. In my opinion the value of that

piece of real estate is \$18,375. I am acquainted with the value of the real estate on which the clinical building and the Senn Memorial Building stand. In my opinion the value of that real estate is \$22,050.

116 The present value of the clinical building is \$20,000.

Q. In your opinion and from your knowledge of values, do you think that building could be sold today for \$20,000? A. No, not for any other line of
117 business. I think the building if sold in connection with the other two, Nicholas Senn Hall and the laboratory building across the street, could be sold for \$20,000, but not for commercial uses.

The present value of the Senn building is \$155,533, based on a reproduction value with sixty per cent increase.

119 CHARLES HODGDON, called as a witness for complainant, testified as follows:

Direct Examination by Mr. Martin.

My name is Charles Hodgdon. I reside in Chicago. My occupation is architect. I am familiar with the Rush Medical College properties on the west side, on West Harrison Street. I have had occasion, as an architect, to make appraisements and valuations of buildings. I have made a valuation of the clinical building and laboratory building and the Senn Building, and I have it here.

120 Q. This valuation is correct according to you?

A. Yes, sir.

Mr. Martin: I offer this valuation in evidence and ask it be marked Complainants' Exhibit S.

Mr. Dierssen: When did you make your examination of these properties, Mr. Hodgdon?

A. I guess it was January, 1922; it is dated I believe at the top of the paper there, that was January 21, 1922, sir.

Mr. Dierssen: Have you seen the properties since that time?

The Witness: No, sir.

121 *Cross-Examination by Mr. Dierssen.*

Q. What would you say at the present time is the present value of the old laboratory building?

A. My judgment of the present value of that building is \$70,424.

Q. You mean as of the date and time you examined it? A. The time I examined it, that is over a year ago.

Q. January, 1922? A. Yes, sir.

Q. What would you say was the value of the clinical building at that time? A. \$24,127.

Q. And of the Nicholas Senn Building? A. \$154,915.

Q. In your opinion would the value of those buildings be increased at this time or would it be less than it was at the time you examined them? A. Very little increase if any. There has been a little increase in building cost since 1922.

Mr. Martin: But there has been a further depreciation?

A. There would be a further depreciation of the building, too.

Mr. Dierssen: Q. Would you say the value of these three buildings would be more or less at this
122 time than it were in January, 1922?

A. I think the difference would be negligible.

Q. Approximately the same? A. Yes.

GEORGE O. FAIRWEATHER, called as a witness for the complainant, testified as follows:

Direct Examination by Mr. Martin.

My name is George O. Fairweather. I reside at 1301 East 60th Street. I am employed by the University of Chicago as an assistant in the office of the counsel and business manager.

Q. Mr. Fairweather, please look at the last part of the paper I now hand you which is marked Complainant's Exhibit 2, and tell me what it is? A. That part is a summary of receipts and expenditures taken from the reports of the Comptroller of Rush Medical College for the period beginning
123 June 1, 1896, and ending June 30, 1923. This exhibit was prepared in my office under my supervision and direction, from the annual reports of the Comptroller of the Rush Medical College.

Q. Well, those dates are the dates of what? A. Those dates represent the elapsed time in each of these reports which the Comptroller made.

Q. The period of time covered by each of the Comptroller's reports? A. That is it.

Q. Under the heading "Current Receipts" in this summary there are four items opposite which are the words "Budget Est." What does that mean? A. That means the budget estimate for the
124 years in which that language appears. That language is used to indicate the fact that for those four years we did not receive a copy of the Comptroller's report as to the actual income and actual expenditures, but a document which was an estimate, a budget estimate, of income and expenditures. We were advised that the actual document, showing the

actual expenditures could not be provided. That came to us from the office of Rush Medical College, Comptroller's office.

Those items under the heading "Remarks" are labeled with a number and you will find a corresponding number in either the column headed "Current Receipts" or "Special Receipts," and each number explains the particular character of the receipt it refers to.

Q. The remark opposite the item of \$7,000 is "Money Borrowed," the remark opposite the item \$71,000 is "Faculty Donations." Is it not a fact
125 that except for those two items of receipts, all the receipts shown under special receipts and explained in this column headed "Remarks" were donations from special trust funds held by Rush Medical College? A. That was my understanding, they refer to receipts from special trust funds.

Q. All of them except those two? A. Except these two that you have mentioned.

Under the heading "Current Receipts," receipts from tuition fees, laboratory fees, various locker rentals, the charges that students are paying for their medical work, and special services are included, and that is true as to all of the current receipts shown in this exhibit.

126 The column headed "Administration and General Expenses," in the part of the exhibit to which you are now calling my attention, covers such matters as office expenses, postage, printing, commencement expenses and an item that is called the Alumni Dinner, as I recall it, laboratory expenses, supplies for use in instruction—those are the main headings. The column headed "Instruction" in this summary of expense, covers salaries of the faculty members.

Under the column headed "Supplies and Expense," are included expenses for material and supplies—the departmental expenditures for materials used in
127 the departments of teaching, anatomy, physiology, chemistry and the like.

The column headed "B. & G.," covers Buildings and Grounds expenses, which are repairs, maintenance, building supplies.

The column headed "Interest," covers all charges that were made for money borrowed, including interest on mortgages and bonds, and loans of various kinds that were made to the College.

Q. There is a column headed "Special Expenses," and the next column to it is headed "Remarks." These remarks are explanatory, are they not? A. Yes, sir; there are remarks numbered in the column headed "remarks" which refer to items with similar numbers in the column before it, and they explain them.

Q. What does this mean here: "Contingent
128 Salaries for practical branches?" A. We find a notation "Contingent Salaries for Practical Branches in the report. I assume that that means that the salary was dependent upon the quantity of the instruction. The amount is \$13,000.

That amount was included in what I have already testified about, but we thought that would merit some special explanation.

J. SPENCER DICKERSON, called as a witness for complainant, testified as follows:

Direct Examination by Mr. Martin.

My name is J. Spencer Dickerson. I am living at the Quadrangle Club. I am the Secretary of the Board of Trustees of the Rush Medical College. I
129 have been Secretary of that Board some ten or twelve years.

I have had charge of the records of the minutes of the Board of Trustees of Rush Medical College.

Q. This statement, Complainant's Exhibit 2, was gotten up from these Comptroller's Reports? A. Duplicate originals, that is right.

Q. Those were the ones sent out to Mr. Fairweather? A. I assume they were duplicate originals of those, these particular ones came from the office of the Registrar of Rush Medical College. I made up this summary from the ones I got and those came from the custody of Rush Medical College.

JAMES H. HARPER, called as a witness for complainant, testified as follows:

Direct Examination by Mr. Martin.

130 My name is James H. Harper. I reside at 1743 West Harrison street. I am Registrar of Rush Medical College.

I have charge of the books, buying of supplies, and making payments for same, and seeing that correct entries were made as to all receipts and disbursements.

I had charge of the cash book and ledger, full charge of the matter of all receipts and disbursements, and of making proper entries in the cash book and ledger.

After those entries were made in the cash books and ledgers, reports were prepared each year from those books, and those reports are the reports that have been called Comptroller's reports here.

131 After those reports had been prepared, they were mimeographed and one copy sent to each member of the Board of Trustees, including the Secretary of the Board of Trustees.

One set of those mimeographs was given to Mr. Fairweather and from it he prepared the statement of receipts and expenses, Complainant's Exhibit Q.

Those Comptroller's reports were prepared under my direction.

The copies sent to Mr. Fairweather were correct transcripts of the entries in the cash books.

Mr. Martin: I have the original cash books of
132 Rush Medical College to which the witness refers, here in the office of the Master, and if any of the counsel desire to examine them they may do so, and also the ledgers, and also a full set of all the books beginning with June 1, 1896.

Mr. Martin. Q. Mr. Harper, certified copies of the deeds to the real estate owned by Rush have been introduced in evidence. Did you make search for the originals of those deeds?

A. I did.

Q. Could you find them? A. I could not.

I do not know what has become of them; they must have been lost.

I went to Rush Medical College April 1, 1898.

The complainant has been in possession of all of

the real estate covered by the deeds that I have referred to since I went there, and ever since that
133 time has been using that property for the purpose of medical and surgical education,— In fact, Rush Medical College had been, to my knowledge, using that property for those purposes for many years prior to 1896.

I know, of my own knowledge, that the annual net income of Rush Medical College, since 1898, has been less than \$4,000 a year, omitting amounts received from the special trust funds.

During the last five years the annual net income has exceeded that amount, \$4,000 a year.

Since I have been there, since 1898, the complainant has not received any gifts of money or property in trust other than the special trust funds to which I have referred.

Q. Has it received any donations since 1898 that were in the form of a trust? A. No, sir.

The books of Rush Medical College show that the value of the property Rush held and owned immediately after the great fire of 1871 was about \$2,500. That amount included all the insurance money it collected, and proceeds of old bricks sold and old iron sold.

At that time the College was in debt as shown by
135 its records, to the amount of \$65,000. That \$65,000 was a bond issue, and was also a debt on the building which was built in 1855, a debt that had been incurred in putting up that building.

The books show where the money came from for the construction of all the improvements that have been made on any of Rush's property on the west side since 1898.

Q. Where did it come from, where did that

money come from? A. A portion of it came from Dr. Nicholas Senn, \$50,000; part of it \$35,000, came from Dr. Billings, Dr. Bevan, Dr. Coolidge, Dr. Brower, Dr. Ingalls and Dr. Favill.

All of those sums, amounting to \$85,000, were used in the construction of the Nicholas Senn building.

136 No other buildings have been constructed since 1898.

The expenses of operating Rush Medical College since 1898, have been paid out of moneys received for tuition and other fees from the students, and fees for special services, and small miscellaneous receipts, and from donations.

The faculty has donated moneys, and waived salaries.

Whenever it was necessary the Faculty did that.

None of those donations were on trust or for specific purposes. They were all money gifts, and none of the givers required that any of them be used for any expressed purpose.

Cross-Examination by Mr. Dierssen.

Q. What do you mean by moneys received for special services rendered to other people? What
137 were those services, hospital services, medical services? A. Medical services or they were—we got gifts from different people.

Mr. Dierssen: Q. What special services?

The Witness: We did some laboratory work, yes, but very little if anything came in from that source.

Mr. Martin: I offer in evidence a copy of a second mortgage dated July 15, 1875, executed by the complainant as mortgagor to the Central Free Dispensary of West Chicago as mortgagee, securing a loan to the complainant of the principal sum of \$11,000, payable in 95 years with interest thereon at

the rate of 6 per cent per annum, payable semi-annually, recorded in the Recorder's Office of Cook County, Illinois, on July 19, 1875.

138 *Redirect Examination by Mr. Martin.*

The amount unpaid at the present time on the principal of the mortgage to the Central Free Dispensary is \$11,000. The interest has been paid up to date, but no part of the \$11,000 has been paid.

JOHN M. DODSON, called as a witness for complainant, testified as follows:

Direct Examination by Mr. Martin.

My name is John M. Dodson. I reside at 5707
139 Blackstone Avenue. I am a Physician, Dean of Students, Rush Medical College, and also in the University of Chicago, temporarily on leave from that duty.

I have read the bill of complaint in this case, and the proposed contract attached to it.

I have been connected with Rush since March, 1889, 34 years, nearly 35 years.

I have been there in two or three capacities, Professor of Medicine, diseases of children, Dean of Students latterly.

I have been reasonably familiar with the financial affairs of Rush, during that time.

My duties never included close supervision of the financial affairs, that belonged to the Comptroller.

Q. Doctor, what do you think of this proposed contract? A. I think it is a contract in the best interests of medical education and of public weal.

I heard the testimony of Dr. Billings and Dr.

140 Bevan, and I agree substantially with what they had to say on that subject.

To the best of my knowledge, Rush has never received any gifts since I have been connected with it which were subject to express trusts or conditions except the Senn Hall gifts, and the special trust funds mentioned in the bill.

My position has been such that it might have happened without my knowledge, but I think that unlikely.

I think the expenses of medical and surgical education are very much increasing from time to time.

Q. Assuming that the net income of Rush to-day is only about \$4,000 after paying expenses, do you think that that is sufficient to enable them to keep up, to keep step with modern ideals in medical and surgical education? A. No, and I should go further
141 than that. I should say it required some nice accounting to figure out a net profit of \$4,000. If the men who are rendering services to the college, which is essential to good medical education, had been paid anything like an adequate sum, you would be having some deficit instead of a small surplus.

It would be almost impossible to say how much the professors and teachers of Rush have been getting on an average annually since I first became connected with it. There have always been, as there are now, a few men who give as teachers a part of their time to that work, who are paid a certain sum. My services of course are paid because I give the major part of my time to it. The Professor of Pathology has been paid and the Professor of Chemistry and a number of the younger men, but the men among the clinical teachers, as a rule, to the
142 number of one hundred or more, have received no

compensation at all for the last fifteen, yes, more than twenty years. We started out originally with the idea of paying all of the clinical men on a *per horom* basis; the salaries were to be fixed and then they were to be paid, not salaries, of course, but on the basis of so much per hour of what would be expected of them for full time teaching, but that plan had to be abandoned within a few years because of the falling off of the number of students, due to the increase in the requirements for admission to the school. The attendance fell off from a total of 1,100, a little after the affiliation was entered into, to less than four hundred.

In 1901 or '02, half of them had gone to the University, so that there were actually in attendance at Rush less than two hundred students.

Cross-Examination by Mr. Dierssen.

Q. What is the present attendance of Rush Medical College? A. Substantially 255 to 260. The limit set upon the classes, which was a recent development, is 120 in each of the last two years, not including the hospital, but that has been exceeded
143 a little because of the great pressure which has been brought to bear to admit students from schools giving only the first two years. Rush receives into its clinical years a considerable body of students who do not come from the University at all, who come largely from schools in Wisconsin and other States.

Q. What is the real purpose in seeking to enter into this contract with the University of Chicago, having in mind the fact that many members of the faculty have donated their services in the past, and,

we might assume, that they will be willing to do that in the future; what is the real purpose, therefore, in seeking to affiliate in the manner that they propose in this contract? A. A medical college, as Dr. Billings intimated, has three purposes—two purposes, I would say, to teach students and to advance medical knowledge by so-called research. Those two cannot be conducted independently of each other, to advantage. There is no school that can command the services of the best men in any of the medical branches unless they are given an opportunity to do investigative work with sufficient assistance and equipment to make that worth while. That costs money.

I think the justification for a private endowment or for state funds in the maintenance of an educational institution might be stated in this way:
144

A considerable portion of the time, say roughly two-thirds, of the members of its faculty ought to be devoted to investigative work that is not properly a charge against the students. That ought to be paid by the public who might benefit by it primarily. The other one-third is met in tuition.

A few years ago at the university—I do not know whether that would obtain now—but I ascertained from an investigation that I had made that was just about the way it was working out, the students paid about one-third of the cost of the maintenance of the departments that were teaching them medical subjects.

Q. Then the real purpose would not be to see to it that the faculty members were properly compensated for their services but rather to see that proper facilities were furnished to the schools and equipment? A. Both the fact that the members of the

145 faculty should be compensated, if they agree to give
an adequate amount of time to this work, and to provide proper facilities.

There is the other reason also that they need additional facilities; and new up to date modern buildings—Laboratory and equipment, and Rush Medical College has not the funds for that purpose.

146 Mr. Martin: I offer in evidence a certified copy of certain proceedings at a special meeting of the Board of Trustees of Complainant held September 28, 1923, with the certificate of the secretary of the Complainant attached thereto.

The Master: The same is received in evidence and marked Complainant's Exhibit "U" and is returned herewith.

147 Mr. Martin: I offer in evidence a certified copy of certain proceedings at the annual meeting of the Board of Trustees of the Complainant, held May 19, 1894, with the certificate of the secretary of the Complainant attached thereto.

The Master: The same is received in evidence and marked Complainant's Exhibit "V" and is returned herewith.

ERNEST D. BURTON, recalled as a witness for the Complainant, testified as follows:

Direct Examination by Mr. Martin.

Q. Mr. Burton, the bill of complaint in this case alleges that the University of Chicago has obtained from subscriptions and gifts the sum of \$5,300,000, to be used and applied by it to the work of medical and surgical education. Is that allegation true, and if so, what terms or conditions have been imposed by

the donors of that fund regarding its use for those purposes? A. By the terms of those gifts and subscriptions \$300,000 must be applied to the erection of a laboratory building on the west side of the City of Chicago; \$1,000,000 must be applied to a hospital to be located on the South Side of Chicago; the
148 remaining \$4,000,000 is to be held by the University as a trust fund and the income thereof applied by it to any of its work of medical or surgical education, irrespective of the location in which that work is carried on.

Under the terms of those gifts and subscriptions, any part of the income of the \$4,000,000 can be applied to work of medical and surgical education carried on by the University on the real estate which, under the proposed contract between the University and the Trustees of Rush Medical College is to be conveyed to the University such part as the University might decide it was for the best interests of medical and surgical education should be applied for that purpose on that property.

CHARLES HODGDON, recalled as a witness for Complainant, testified as follows:

Direct Examination by Mr. Martin.

149 Q. In your former testimony in this case before the Master you testified that you had made a valuation of the Clinical Building, the Laboratory Building and the Nicholas-Senn Building, and produced a written valuation, to the correctness of which you swore, and it was received in evidence and marked Complainant's Exhibit "S." You then stated that you made your examination of the building referred

to in January, 1922. Since the last hearing before the Master at which you so testified, have you examined those buildings? A. I have.

Q. What have you to say as to the value of those buildings to-day based on your recent examination of them? A. I think the value of the buildings at the present time is approximately the same as their value in January, 1922, when I examined them. There has been some increase in building costs since then, and there has been some depreciation, signs
150 of wear, and it is my judgment that the depreciation about offsets any appreciation in the building costs since that time.

JAMES H. HARPER, recalled as a witness for the Complainant, testified as follows:

Direct Examination by Mr. Martin.

Q. Mr. Harper, I call your attention to paragraph 6 of Exhibit 3, attached to the bill of complaint in this case, in which paragraph a reference is made to certain trust funds now held by the College, and a provision made that these trust funds should continue to be held in trust by the College upon
151 and subject to the same trusts upon which they are now held, including the Freer Prize Fund, the H. M. Lyman Memorial Prize Fund, the Manheimer Library Fund, the A. B. Thompson-Bevan Fellowship Fund, the Nicholas Senn Fellowship Fund, the John Phillips Fund, and certain real estate in Mitchell County, Iowa, devised to the complainant by the will of Lillian G. Swale. Are you familiar with these trust funds? A. I am.

Q. Please state fully in a general way upon what

trusts these funds are held? A. They are all held for purpose of furthering the medical and surgical education of young men. The income of the Freer Prize Fund is to be expended in giving prizes for excellence in students' work and so also is the income of the Lyman Fund. The Manheimer Fund consists of medical books and of a further sum of \$5,000 to be used for the purpose of founding or augmenting or perpetuating a Medical Library. The A. D. Thompson-Bevan Fellowship Fund and Nicholas Senn Fellowship Fund are fellowships in surgery, and the gift by the will of Lillian G. Swale is for scholarships. By the terms of none of those trusts is it required that any part of the income or principal thereof shall be expended in connection
152 with medical or surgical work carried on by Rush Medical College itself.

In my opinion, all those trusts could be administered by the complainant if the proposed contract between it and the University of Chicago is executed and carried out. I do not think that that contract would in the least interfere with carrying out all of those trusts.

The complainant owns Cemetery Lot 109 in Division 2 of Block A in Oakwood Cemetery in Cook County.

As shown by the books of Rush Medical College, the original cost of the Clinical Building was \$54,500; the original cost of the Laboratory Building was \$83,096; and the original cost of the Nicholas-Senn Building was \$127,502.

Q. Mr. Harper, on the former hearing before the Master in this case you testified that the \$50,000 received from Dr. Nicholas Senn and the \$35,000 received from Doctors Billings, Bevan, Coolidge,

Brower, Ingalls and Favill—the aggregate being
 153 \$85,000—was applied to the construction of Nicholas-Senn Building, and you have just stated that the original cost of the Nicholas-Senn Building was \$127,502. The difference between this amount of \$127,502 and the \$85,000 is \$42,502. Do you know from what source this additional amount of \$42,502 expended in that construction came? A. I do.

It was paid by Rush Medical College out of its own general funds.

I am familiar with all the corporate books and records of the complainant. I have examined those books and records to see whether they contain any entry showing that any donation of money or property that has been made to the complainant was made upon any trust created by any of the donors as to the purpose for which such donation should be held or expended by the complainant, or any specification by any of the donors regarding such purpose,
 154 and I have not found any entry, except as to the donations in connection with Nicholas Senn Hall and the special trust funds about which testimony has been given in the case. So far as the books show all donations to Rush Medical College, except the ones I have just referred to, have been donations unaccompanied by any trust or requirement or specification regarding the purpose for which the donations should be held or expended.

Cross-Examination by Mr. Mack.

Q. You stated there was nothing in that proposed contract which would prevent Rush Medical College from carrying out all of the trusts. Is there anything that would prevent Rush from carrying out any of the trusts? I mean by that that your

answer might indicate that there is nothing to prevent carrying them all out, or it might prevent some of them being carried out, is there anything to prevent them from carrying out any of the trusts?
 A. Nothing.

NATHAN C. PLIMPTON, called as a witness for the Complainant, testified as follows:

Direct Examination by Mr. Martin.

My name is Nathan C. Plimpton. I reside in Chicago. I am Auditor of the University of Chicago.

I have been auditor since June, 1922. I was the assistant auditor, made assistant auditor in January, 1917, and before I became assistant auditor I had been in the employ of the University about eight years in the auditor's office.

As such auditor, I have charge of all the books of account and keep the records of receipts and expenditures of the University. It is a part of my duties to ascertain all moneys that are paid to the University and to make proper entries regarding the same
 156 in my books.

I have read the bill of complaint in this case.

Q. In this bill of complaint it is stated that the University of Chicago has obtained in subscriptions and gifts the sum of approximately \$5,300,000 to be used and applied by it to the work of medical and surgical education. Will you please state what the facts are in regard to this allegation? A. That sum of \$5,300,000 has been actually raised and paid in to the University and is now held by the University for the purposes of the work to which you refer.

GEORGE O. FAIRWEATHER, recalled as a witness for Complainant, testified as follows:

Direct Examination by Mr. Martin.

Q. I now show you the first part of Complainant's Exhibit "Q" and will ask you to tell me what it is. A. That part is a summary of receipts and
157 expenditures taken from the records of Rush Medical College for the period beginning October, 1871, down to and including May 1, 1896.

The portion of this Exhibit "Q" to which you are now calling my attention, was prepared in my office, under my direction, from the records of Rush Medical College. The dates shown in this summary on the left-hand side indicate the several periods of time which are covered by the statement of the particular receipts and disbursements opposite which those dates are placed.

The figures under the heading "Cash on hand" indicate the amount of money which was on hand at the beginning of the periods covered by the different dates opposite which they are placed.

The figures in the column headed "Current Receipts" indicate the regular income of the College from student fees, locker rentals, laboratory charges, matriculation fees, diploma charges and miscellaneous sources.

158 The figures under the column headed "Donations," indicate items of gift to the College, as more fully explained by reference made by numerals to statements in the adjoining column headed "Remarks"; for example, the \$10,000 item is explained by such reference as a gift by Tuthill King.

The nature of all these donations was that they

were gifts to Rush Medical College without conditions.

Under the heading entitled "Special Receipts" the figures indicate special items, the nature of which is explained under the adjoining column entitled "Remarks," for example, the first item of \$868.88 represents the insurance and salvage obtained from the building of the College as the result of the fire of 1871.

As I have already said, the numbered entries under the column headed "Remarks" refer to the corresponding numbers in the preceding columns of the portion of Exhibit "Q," which you are now examining me about.

159 The figures under the column headed "Current Expense" cover such matters as office expenses, postage, printing, laboratory expenses, supplies for use in instruction and miscellaneous expenses.

The figures under the column headed "Salaries," indicate salaries of faculty members, and the items in the column to which you are referring, to which are attached numbers, are explained in one of the succeeding columns headed "Remarks," for example, the item of \$9,000 to which the figure 3 is attached refers to the corresponding entry numbered 3 under the head of "Remarks," viz. "9 Professors."

The figures under the column headed "Interest," indicate all interest paid by Rush Medical College on moneys it had borrowed from time to time.

The items of \$12,500 and \$1,470, under the column in this portion of Exhibit "Q" headed "Laboratory Bldg." (covering receipts) are special receipts of
160 money gifts; they were used by Rush Medical Col-

lege for the construction of what is now known as the Laboratory Building.

The items of \$3,173.02, \$481, and \$25,942, in the column in this part of Exhibit "Q" headed "Building" (covering expenditures) represent expenditures in building construction on the West Side real estate.

The items of \$309.57 and \$10,717.97 in the column headed "Equipment" represent the cost of scientific and other equipment used by the College in its buildings.

The item of \$4,500 in the column headed "Property and building of hospital" in Exhibit "Q," covers purchase price of hospital lot. The \$25,000 item in the same column covers the cost of construction of the hospital building.

Each of the items in the column headed "Special Expense" in the part of Exhibit "Q" to which
161 I have been referring, bears a number which refers to a statement under the same number in the column headed "Remarks" and that statement describes the character of that particular expense.

The items of expense shown under the head "Laboratory Bldg.," viz: \$24,136.75, \$70,985.52; \$2,716.07 and \$583.70, cover the cost of the Laboratory Building erected by the College during the period from 1892 to 1895.

The Master: Proofs closed.

The Master: Rule on all defendants to close proofs on Friday, December 21, 1923.

Mr. Mack: I have no proofs to offer.

Mr. Dierssen: I have no proofs to offer.

162 Certificate, dated December 22, 1923, of Roswell B. Mason.

EXHIBITS RETURNED WITH THE MASTER'S REPORT.

- 165-167 (1) COMPLAINANT'S EXHIBIT "A," being copy of the Act to Incorporate Trustees of Rush Medical College, passed March 2, 1837.
- 168 (2) COMPLAINANT'S EXHIBIT "B." Copy of the act approved December 23, 1844, to amend said act approved March 2, 1937.
- 169-170 (3) COMPLAINANT'S EXHIBIT "C." Copy of the act approved February 10, 1857, authorizing the Trustees of Rush Medical College to make a loan.
- 170 (4) COMPLAINANT'S EXHIBIT "D." Copy of the act approved February 13, 1865, entitled "An Act to Enable Rush Medical College of Chicago to fund its present indebtedness and to borrow money."
- 171 (5) COMPLAINANT'S EXHIBIT "E." Certified copy of deed dated April 8, 1875, from Elizabeth D. McKay and Charles H. McKay, her husband, conveying to complainant Lots 10, 11, 12, 13, 14, 15 and 16 in McKay's Resubdivision of Block 11 in Ashland's Addition to Chicago.
- 171-173 (6) COMPLAINANT'S EXHIBIT "F." Certified copy of deed dated July 15, 1892, from John B. Murphy and Jeanette C. Murphy, his wife, conveying to complainants Lots 3, 4 and 5 in the Resubdivision of Block 4 in the Assessor's Division of half of the SE $\frac{1}{4}$ in Sec. 18 in Twp. 39 N. Range 14 East of the Third P. M. in Chicago.
- 176-177 (7) COMPLAINANT'S EXHIBIT "G." Certified copy of deed dated July 20, 1892, from Chicago College of Dental Surgery, conveying to complainant Lots 6 and 7 in the Resubdivision of Block 4 in the Assessor's Division of the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Sec. 18

in Twp. 39 North of Range 14 East of the Third P. M. in Chicago.

- 178-180 (8) COMPLAINANT'S EXHIBIT "H." Certified copy of agreement, dated January 2, 1884, between complainant and the Presbyterian Hospital of Chicago.
- 181-187 (9) COMPLAINANT'S EXHIBIT "I." Certified copy of certificate of Secretary of State that the University of Chicago is a legally organized corporation under the Illinois laws, said certificate being dated September 10, 1890.
- 188-190 (10) COMPLAINANT'S EXHIBIT "J." Contract dated April 19, 1901, by the complainant with Dr. Nicholas Senn relating to his donating to complainant \$50,000 on the terms therein stated.
- 191-192 (11) COMPLAINANT'S EXHIBIT "K," being agreement dated January 29, 1902, between complainant and Dr. Frank Billings, in which it is recited that Dr. Billings has theretofore paid \$5,000 to aid in the construction of Nicholas Senn Building and that he further agrees to pay complainant an additional \$5,000 for a fellowship, and the complainant agrees that it will expend a sum equal to the income from \$10,000 for the maintenance of such fellowship, it being further provided that the complainant may at any time extinguish its liability by paying Dr. Billings the sum of \$10,000.
- 193-194 (12) COMPLAINANT'S EXHIBIT "L," being an agreement dated April 30, 1901, between Dr. A. D. Bevan and complainant, whereby Dr. Bevan agrees to pay to complainant \$5,000 for the use of complainant in aiding in construction of the Nicholas Senn Building, and the complainant agrees to pay to Dr. Bevan on January 1, 1902, a sum equal to inter-

est at 5 per cent upon said \$5,000 and also to pay to Dr. Bevan \$125 on the first days of July and January thereafter during his lifetime—it being agreed that complainant may at any time extinguish its liability by paying Dr. Bevan the sum of \$5,000.

- 195-196 (13) COMPLAINANT'S EXHIBIT "M," being a contract dated April 30, 1901, between Dr. F. S. Coolidge and complainant whereby Dr. Coolidge agrees to pay complainant \$5,000 for the use of complainant in aiding the construction of Nicholas Senn Building and the complainant agrees to pay to Dr. Coolidge on January 1, 1902, a sum equal to the interest at 5 per cent of said \$5,000 and also to pay him \$125 on the first days of July and January thereafter during his lifetime—it being agreed that complainant may at any time extinguish its liability by paying Dr. Coolidge's said sum of \$5,000.
- 197-198 (14) COMPLAINANT'S EXHIBIT "N," being an agreement dated April 30, 1901, between H. M. Favil and complainant whereby Dr. Favil agrees to pay complainant the sum of \$5,000 for the use of complainant in aiding the construction of Nicholas Senn Building and the complainant agrees to pay Dr. Coolidge on January 1, 1902, a sum equal to interest at 5 per cent upon said \$5,000, and also to pay to him \$125 on the first days of July and January thereafter during his lifetime—it being agreed that complainant may at any time extinguish its liability by payment to Dr. Coolidge of said \$5,000.
- 199-200 (15) COMPLAINANT'S EXHIBIT "O," being an agreement dated April 30, 1901, between Dr. E. Fletcher Ingals and complainant whereby Dr. Ingals agrees to pay complainant \$5,000 for the use of complainant in aiding the construction of Nicholas Senn Building and complainant agrees to pay Dr. Ingals

on January 1, 1902, a sum equal to the interest at 5 per cent on said \$5,000 and also to pay to him the sum of \$125 on the first days of July and January thereafter during his lifetime and the complainant also agrees that after his death it will maintain a fellowship—it being expressly agreed that complainant may at any time extinguish its liability by the payment to said Dr. Ingals of said sum of \$5,000.

201-202 (16) COMPLAINANT'S EXHIBIT "P," being an agreement dated April 30, 1901, between Dr. D. R. Brower and complainant whereby Dr. Brower agrees to pay complainant \$5,000 for the use of complainant in aiding the construction of Nicholas Senn Building and the Trustees agree to pay to Dr. Brower on July 1, 1902, a sum equal to the interest at 5 per cent upon said \$5,000 and also to pay to him \$125 on the first days of July and January thereafter during his lifetime and further agrees that after his death it will maintain a fellowship—it being agreed that complainant may at any time extinguish its liability by the payment to Dr. Brower of said sum of \$5,000.

203-208 (17) COMPLAINANT'S EXHIBIT "Q," being a statement of the receipts and disbursements of the complainant from October, 1871 to July, 1923.

(NOTE: It does not seem necessary to abstract this statement as no question regarding it is involved on this appeal and so far as it has any bearing on the suit the testimony of George C. Fairweather covers the matters shown by this exhibit.)

209-211 (18) COMPLAINANT'S EXHIBIT "R," being a valuation made by H. H. Harper of the properties of the complainant, said valuation being as follows:

"I find the total value of the properties at 1746-1758 West Harrison street and 1737-1751 West Har-

ison street, owned by the Rush Medical College to be \$291,177.

Main building	\$20,000
Laboratory building	75,119
Senn Hall	155,533
Land	40,525

Total	\$291,177
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212 (19) COMPLAINANT'S EXHIBIT "S," being a valuation of Rush Medical school buildings made by Charles Hodgdon, said valuation being as follows:

Main building	\$24,127
Laboratory building	70,424
Senn Hall	154,915

Total value of buildings	\$249,466
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213-219 (20) COMPLAINANT'S EXHIBIT "T," being a mortgage dated July 15, 1875, by the complainant to the Central Free Dispensary of West Chicago, covering a loan of \$11,000 maturing in ninety-five years, with annual interest at six per cent per annum and covering complainant's property on the northeast corner of Harrison and Wood streets in Chicago.

220-227 (21) COMPLAINANT'S EXHIBIT "U," being a certified copy of a resolution adopted at a meeting of the board of trustees of complainant held September 28, 1923, which resolution recites that the draft of the proposed agreement between complainant and the University of Chicago (being a copy of the agreement attached as "Exhibit 3" to the bill of complaint) was read at said meeting and that thereupon the board of trustees approved the draft and consented "that said draft be submitted to the court in the proposed chancery proceeding to obtain the instructions of the court on the question whether said contract should be executed by the college."

228 (22) COMPLAINANT'S EXHIBIT "V," being a certified copy of the proceedings at a meeting of the board of trustees of complainant on May 19, 1894, from which it appears that during the preceding three years the faculty had remitted their salaries, amounting to \$63,060.70, which they have donated to the complainant for the erection and equipment of the new laboratory building and that it was necessary to borrow \$30,000 more by the issue of bonds to purchase the land and a portion of the equipment.

229 DECREE, entered on the 4th day of January, 1924, as follows:

This day this cause coming on to be heard upon the bill of complaint of the complainant, Trustees of Rush Medical College, heretofore filed herein on behalf of said complainant by its solicitors, Scott, Bancroft, Martin & McLeish, and upon the answer of the defendant, The University of Chicago, by Tenney, Harding, Sherman & Rogers, and Phillips, Mack & O'Bryan, its solicitors, and upon the answer of the defendant, Edward J. Brundage, as Attorney General of the State of Illinois, heretofore filed herein by himself and upon the replication heretofore filed herein by the complainant to each and all of said answers, and upon the report of Roswell B. Mason, Master in Chancery of this court, made and filed herein under and in pursuance of an order heretofore duly entered herein, referring this cause to said master to take evidence and report the same to this court, and upon the evidence and exhibits contained in said Master's report and upon the evidence, oral and documentary, introduced in open court, and the complainant now coming into court and moving that a

decree be entered herein, as prayed in its said bill of complaint, and said solicitors for each of said defendants being present in court and having been heard, and the court having considered the issues and all of the evidence and exhibits contained in said Master's report, and also the oral and documentary evidence introduced in open court, and the arguments of counsel, and having considered all of the same and being fully advised in the premises;

THE COURT DOTH FIND, that it has full, complete and perfect jurisdiction over each and all of the parties to this suit and also of the subject matter of this suit.

AND THE COURT DOTH FURTHER FIND AS FOLLOWS:

230 That the complainant was organized under a special Act of the Legislature of the State of Illinois, approved March 2, 1837, entitled "An Act to Incorporate the Rush Medical College"; that subsequently said Act was amended by said Legislature by an Act, approved December 23, 1844, entitled "An Act to Amend an Act entitled 'An Act to Incorporate the Rush Medical College'"; that, subsequently, said Legislature passed an Act, approved February 10, 1857, authorizing the Trustees of the complainant to make a loan, said last mentioned Act being entitled "An Act to authorize the Trustees of Rush Medical College to make a loan"; and that subsequently, said Legislature passed an Act, approved February 13, 1865, enabling the complainant to fund its indebtedness and to borrow money, entitled, "An Act to enable Rush Medical College of Chicago to fund its present indebtedness and to borrow money."

That a true and correct copy of all of said Acts

of the Legislature of Illinois hereinbefore referred to, is attached to the bill of complaint herein, marked "Exhibit 1," and made part thereof.

That the defendant, The University of Chicago, is a corporation, duly organized under the Act of the Legislature of Illinois, entitled "An Act concerning Corporations, approved April 18, 1872, and in force July 1, 1872," and all Acts amendatory thereof; and that a true and correct copy of the certificate of incorporation of said The University of Chicago, issued under date of September 10, 1890, by Isaac N. Pierson, then Secretary of State of the State of Illinois, certifying that "The University of Chicago" is a legally organized corporation under the laws of this state, is attached to the bill of complaint herein marked Exhibit 2, and made part thereof, and that said certificate was duly recorded in the Recorder's office of Cook County, Illinois, on September 20, 1890.

That continuously ever since its organization as a corporation as aforesaid, and up to the present time, the complainant has been engaged in the work of promoting the general interests of medical education and of qualifying young men to engage usefully and honorably in the professions of medicine and surgery.

That the complainant now owns the real estate situate at the northeast corner of South Wood and
231 West Harrison streets in the City of Chicago, having a frontage of approximately 147 feet on said West Harrison street and of approximately 100 feet on said South Wood street (subject to all mortgages, liens and incumbrances thereon), said property being described as follows, to wit: Lots 10

to 16 inclusive in McKay's resubdivision of Block 11 of Ashland's Addition to Chicago of the East half (E.½), Section 18, Township 39 North, Range 14, East of the Third Principal Meridian.

That the complainant heretofore and about the year A. D. 1875, constructed a building and improvements on the western portion of said real estate and has equipped the same as a medical and surgical school (the total original cost of said building being approximately \$54,500), and has occupied and used the same for said purposes for a period of more than forty years past, and is now occupying and using the same for said purposes.

That said building is now in such a condition that it will very soon have to be torn down and replaced.

That on or about the 30th day of October, A. D. 1900, Dr. Nicholas Senn, of Chicago, Illinois, proposed to the complainant that he would donate to it the sum of \$50,000 to be paid in December, 1900, in cash or in securities, to be applied to the erection of the east wing of said school upon the following conditions: (1) That the building should be known as the "Nicholas Senn Hall"; (2) that the complainant should become the medical department of the University of Chicago as soon as it might be deemed advisable, and (3) that the complainant should agree to pay to Dr. Nicholas Senn the sum of \$1,250 on the first day of July, 1901, and a like sum on the first days of January and July thereafter during his lifetime; that the complainant accepted said proposition of said Dr. Nicholas Senn and entered upon plans for carrying the same into effect, and that thereafter said Dr. Nicholas Senn paid the complainant said sum of \$50,000.

That thereafter under date of April 19, 1901, a certain agreement in writing was entered into between the complainant and said Dr. Nicholas Senn, wherein and whereby after reciting the said proposition and the acceptance thereof by the complainant and the payment to the complainant of said \$50,000 by said Dr. Nicholas Senn, the complainant covenanted and agreed to construct said building to be called "Nicholas Senn Hall," and to take suitable steps to constitute the complainant the medical department of said University of Chicago as soon as and whenever it might be deemed advisable and feasible so to do, and further covenanted and agreed to make the payments to said Dr. Nicholas Senn set forth in his said proposition.

That thereafter, further donations in aid of the construction of said Nicholas Senn Hall, aggregating approximately \$35,000 were made by other persons; that said Nicholas Senn Hall was erected on the eastern portion of the real estate hereinbefore described; that the total cost of said Nicholas Senn Hall and the equipment thereof was approximately \$128,000 and that said total cost exceeded the amount so contributed by said Dr. Nicholas Senn and other donors by approximately the sum of \$43,000, and that said excess was paid by the complainant out of its own moneys.

That the value of said parcel of real estate so owned by the complainant, as aforesaid, on which its said medical and surgical school and said Nicholas Senn Hall were constructed, as aforesaid, is approximately \$22,500.

That the complainant also now owns (subject to all mortgages, liens and incumbrances thereon) the

following described real estate, to wit: Lots 3 to 7 inclusive in the Resubdivision of Block 4 of Assessors Division of the East half of the Southeast Quarter of Section 18, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, which said described tract of land is situate on West Harrison Street, opposite the parcel of land on which, as aforesaid, the medical and surgical school of the complainant and said Nicholas Senn Hall have been constructed, as aforesaid, and that on said Lots 3 to 7 inclusive in said Resubdivision of said Block 4 of said Assessor's Division, a Laboratory Building was erected by the complainant in the year A. D. 1893, the cost of the original construction of the same being approximately \$83,000, and that the value of said described real estate upon which said Laboratory Building was so erected is approximately \$20,000.

That the complainant also now owns certain personal property, including books, charts, pictures, surgical equipment, laboratory supplies and accessories, pathological specimens and other educational equipment and accessories.

That said personal property is of value in connection with the work of carrying on medical and surgical education, but that it is of small value for purposes of sale. That said complainant is also the owner of a cemetery lot in Oakwood Cemetery in Cook County, Illinois.

That the complainant also has a right of re-entry, in case there has been, or may hereafter be, a breach of condition under the provisions of a certain deed bearing date January 2, 1884, and heretofore recorded in the Recorder's Office of Cook County, Illi-

nois, executed by the complainant, as grantor, to the Presbyterian Hospital, as grantee.

That all of the property of the complainant hereinbefore described (except said Nicholas Senn Hall hereinbefore mentioned, the funds for the erection of which were obtained in the manner hereinbefore found) was purchased by the complainant with its own moneys obtained by it from tuition fees and other fees which the complainant had received from its students and moneys received by it for services rendered by it to other persons and corporations, and donations of money and property, all of which donations were free from any trust, express or implied, created by any of the donors thereof, and without any requirement by any of said donors as to the purpose or purposes for which the same should be held, owned, used or expended by the complainant, or any specification by any of said donors regarding such purpose or purposes.

That the complainant is now the absolute owner of all of said property, real and personal, hereinbefore described, including said Nicholas Senn Hall (subject to all mortgages, liens and incumbrances thereon) and that said property is the only property, real and personal, now owned by the complainant, except certain trust funds hereinafter referred to.

That at the present time the complainant is wholly dependent for its income upon tuition fees and other fees received from students, and moneys it may receive from other persons for services rendered, and upon the income from said trust funds herein-after mentioned, and that the average annual net income of the complainant from all said sources,

remaining after the payment of necessary charges and expenses, has, during the last five (5) years preceding the filing of this bill, not exceeded \$4,000, and that during the year immediately preceding the
234 filing of this bill said net income has not exceeded said amount.

That in the great fire of 1871 all of the property then held by the complainant was destroyed, and that the total amount received by it from insurance on same did not exceed the sum of \$2,500.

That the expenses of conducting medical and surgical colleges have, ever since the incorporation of the complainant, rapidly increased, from time to time, and at the present time are very much larger than in the past, owing to the advances in medical and surgical education, and in the sciences allied thereto, and the increased cost of material and operation, and that said expenses will continue to increase in the future.

That the net income of the complainant at the present time is wholly insufficient to enable it to make such changes in, and additions to, its present medical school and laboratory, and the equipment thereof, as are necessary to meet the advances in medical and surgical science, and to keep said medical school and laboratory, and the equipment thereof, up to modern methods, and afford the public the most efficient service, and that said net income is wholly insufficient to enable the complainant to make adequate and proper provision out of the same to cover depreciation in its present property.

That in the opinion of competent witnesses, and the court finds the fact to be, that the time has arrived when, in view of the advances in medical and surgical

science, the complainant cannot continue as a complete medical school without obtaining a large endowment.

That the defendant, The University of Chicago, has full power and authority under its charter to engage in the work of medical and surgical education.

That the objects for which said University of Chicago was organized, as set forth in its said certificate of incorporation hereinbefore referred to, are as follows:

235 "2. The particular objects for which said corporation is formed are to provide, impart, and furnish opportunities for all departments of higher education to persons of both sexes on equal terms; to establish, conduct, and maintain one or more academies, preparatory schools, or departments, such academies, preparatory schools, or departments to be located in the City of Chicago or elsewhere as may be deemed advisable; to establish, maintain, and conduct manual-training schools in connection with such preparatory departments; to establish and maintain one or more colleges, and to provide instruction in all collegiate studies; to establish and maintain a university, in which may be taught all branches of higher learning, and which may comprise and embrace separate departments for literature, law, medicine, music, technology, the various branches of science, both abstract and applied, the cultivation of the fine arts, and all other branches of professional and technical education which may properly be included within the purposes and objects of a university, and to provide and maintain courses of instruction in each and all of said departments; to prescribe the courses of study, employ professors, instructors, and teachers, and to maintain and control the government and discipline in said University, and in each of the several departments thereof, and in each of the several academies, preparatory schools, or other institutions subordinate thereto, and to fix the rates of tuition, and the qualifications for admission to the University and

its various departments; to receive, hold, invest, and disburse all moneys and property, or the income thereof, which may be vested in or intrusted to care of the said corporation, whether by gift, grant, bequest, devise, or otherwise, for educational purposes; to act as trustee for persons desiring to give or provide moneys or property, or the income thereof, for any one or more of the departments of said University, and for any of the objects aforesaid, or for any educational purposes; to grant such literary honors and degrees as are usually granted by like institutions, and to give suitable diplomas; and generally to pursue and promote all or any of the objects above named, and to do all and every of the things necessary or pertaining to the accomplishment of said objects or either of them."

That said University of Chicago has for some years past conducted, and is now conducting, a medical school on its quadrangles on the south side of the City of Chicago, and that it has obtained in subscriptions and gifts the sum of approximately \$5,300,000 to be used and applied by it to the work of medical and surgical education, and that said sum has heretofore actually been received by and is in the possession of said University of Chicago, to be used and applied by it to said work.

That by the terms of said gifts and subscriptions, \$300,000 of said total of \$5,300,000 must be applied to the erection of a laboratory building on the West Side of the City of Chicago; that \$1,000,000 of said \$5,300,000 must be applied to a hospital to be erected on the South Side of the City of Chicago, and that the remaining \$4,000,000 is to be held by the University of Chicago as a trust fund and the income thereof applied by it to any of its work of medical
236 or surgical education irrespective of the location in which that work is carried on, and that such part of

said income could be applied to the work of medical and surgical education carried on by said University of Chicago on the real estate which, under said proposed contract between said complainant and said University of Chicago, is to be conveyed by said complainant to said University of Chicago, as it was for the best interest of medical and surgical education should be applied for that purpose on that property.

That said University of Chicago has stated to the complainant that it intends, from its present resources and out of the moneys obtained from said subscriptions and gifts or from other sources, to develop its said medical and surgical school, situated on the south side of the City of Chicago, and, in connection therewith, to conduct and equip a hospital, containing approximately 200 beds, and to make all necessary and proper provisions for the operation and maintenance of said medical and surgical school and hospital; and has also stated to the complainant that it has been heretofore intending to establish and maintain a school for medical and surgical education and research on the west side of the City of Chicago, near the present site of the medical and surgical school of the complainant, and, in connection therewith, to construct, equip and maintain a new laboratory building, costing, with its equipment, not less than \$400,000, to be occupied and used for the purposes of said school.

That in view of the facts hereinbefore found, the complainant and said University of Chicago have given an extended and careful consideration to the subject of medical and surgical education and the existing condition of the same, and to the subject of

the best course to pursue in order to advance, improve and enlarge the facilities for such education, and make the same more efficient, and thereby promote the well-being of the public.

That, as a result of such consideration, a draft of a proposed contract between the complainant and said University of Chicago has been prepared, a copy of which said draft is attached to the bill of complaint, marked "Exhibit 3" and made a part thereof.

That the present resources of the complainant are wholly insufficient to enable it to carry on the work of medical and surgical education as effectively as it
237 would be carried on if the proposed contract, a copy of which is attached to the bill of complaint herein, were executed and carried out.

That in the opinion of competent witnesses, and the court finds the fact to be, that the proposed contract, if executed and carried out, will result in the development of a very much stronger school of medicine than either the complainant or the defendant, said University of Chicago, could develop alone, and will result in great service to medical education in this country and will be of service to said complainant and to said University of Chicago and to the people.

That the making and carrying out of said proposed contract set out in said "Exhibit 3" will advance, improve and enlarge the facilities for medical and surgical education, and make the same more efficient, and thereby promote the well-being of the public, and will render the work of the complainant and said University of Chicago, in connection with medical and surgical education, more effective than

it otherwise would be, and will broaden the scope of the same, and will also greatly benefit the cause of medical and surgical education and the public.

That the bill of complaint alleges that questions may be made as to whether the complainant and said University of Chicago have power, under the law and under their respective charters, to enter into said proposed contract, and as to the propriety of the provisions therein contained, or of some of said provisions, and that the complainant is unwilling to enter into said contract until it has first been submitted to the court, and a decree entered by the court passing upon said questions, and finding that said contract is within the corporate powers of the complainant and of said University of Chicago, and that none of its provisions are objectionable on any other grounds, and approving the contract.

That the complainant is a charitable corporation, and not a corporation organized for pecuniary profit; that under its charter, none of its property, and none of its net income, after paying its running expenses, can be distributed among, or expended for the benefit of, any persons whomsoever, but all of its property and its net income must be applied to the purposes authorized by its charter, that is to say, to the promotion of the general interests of medical education and to qualify young
238 men to engage usefully and honorably in the professions of medicine and surgery.

That the complainant now holds certain trust funds, referred to in paragraph 6 of the draft of the proposed contract (set out in said "Exhibit 3" to the bill of complaint) and excepted therefrom.

That all of the said trust funds are held by the

complainant for the purpose of furthering the medical and surgical education of young men, namely (1) the Freer Prize Fund, (2) H. M. Lyman Memorial Prize Fund, (3) Mannheimer Library Fund, (4) A. D. Thomson-Bevan Fellowship Fund, (5) Nicholas Senn Fellowship Fund, (6) John Phillips Fund, and (7) certain real estate situate in Mitchell County, Iowa, devised to the complainant by the will of Lillian G. Swale of Mason City, Iowa, for the endowment of scholarships. That the income of said Freer Prize Fund and of said H. M. Lyman Memorial Prize Fund is to be expended in giving prizes for excellence in students' work; that said Mannheimer Library Fund consists of medical books and of a further sum of Five Thousand (\$5,000) Dollars to be used for the purpose of founding, augmenting or perpetuating a medical library; and that said A. D. Thomson-Bevan Fellowship Fund and said Nicholas Senn Fellowship Fund are fellowships in surgery, and that said gift by the will of Lillian G. Swale is for the endowment of scholarships. That by the terms of none of the instruments creating said Funds is it required that the income of any part of the principal or interest shall be expended in connection with medical or surgical work carried on by the complainant itself, and that all of said trusts could be administered by the complainant if the proposed contract between it and the University of Chicago is executed and carried out, and that the execution and carrying out of said contract would not interfere with the administration of said trusts by the complainant in accordance with their terms.

AND IT IS ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:

239 That the making and carrying out of the proposed plan embodied in the proposed contract, a draft of which is attached to the bill of complaint herein, marked Exhibit 3, will advance, improve and enlarge the facilities for medical and surgical education and will make the same more efficient and will promote the well being of the public and will render the work of the complainant and said University of Chicago, in connection with medical and surgical education, more efficient than it otherwise would be, and will broaden the scope of the same and greatly benefit the cause of medical and surgical education and the public; that all the provisions contained in said contract are proper provisions and that said complainant and said defendant, The University of Chicago, should be authorized to enter into said contract, and that said University of Chicago has full power and authority, under its charter, to enter into all its covenants and agreements contained in said contract and to perform the same.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said complainant and said University of Chicago be, and they hereby are, authorized to enter into said proposed contract and to carry out the same, according to its terms. Leave is hereby given to any of the parties hereto to apply to the court for instructions in regard to any matter which may arise regarding the execution of said contract or the carrying out of any of the details thereof.

IT IS FURTHER ORDERED that all of the costs and expenses connected with this proceeding (including

solicitors' fees) of the defendant, the University of Chicago, shall be paid by it, and that all of the other costs and expenses connected with this proceeding (including solicitors' fees) of the other parties hereto shall be paid by the complainant.

And said defendant, Edward J. Brundage, as Attorney General of the State of Illinois, now comes and prays an appeal to the Supreme Court of Illinois, and the same is hereby allowed.

Enter:

IRA RYNER,
Judge.

240 CERTIFICATE of the Clerk of the Circuit Court of Cook County, dated January 7, 1924.

ASSIGNMENT OF ERRORS.

And now comes the appellant, the said Edward J. Brundage, as Attorney General of the State of Illinois, and says that in the record and proceedings and in rendering the decree aforesaid, there is manifest error in this, to wit:

1. The court below had no jurisdiction of the subject matter of the suit and should have dismissed the bill.
2. The court below should have dismissed the bill.
3. The court below erred in entering the decree.
4. The court below erred in entering the decree authorizing the complainant, Trustees of Rush Medical College, and the defendant, The University of Chicago, to enter into the proposed contract set out in Exhibit 3 to the bill of complaint and to carry out said contract according to its terms.

5. The complainant, Trustees of Rush Medical College had no power under its charter to enter into the proposed contract.

6. The defendant The University of Chicago had no power under its charter to enter into the proposed contract.

7. The defendant The University of Chicago has no power and authority under its charter to engage in the work of medical and surgical education.

8. The complainant was not entitled to the relief or any part thereof prayed in its bill of complaint.

9. The decree below was not in accordance with law.

10. By reason whereof, the appellant, Edward J. Brundage, as Attorney General of the State of Illinois, prays that said decree may be reversed, with directions to the court below to dismiss the bill of complaint.

EDWARD J. BRUNDAGE,
Attorney General of the State of Illinois.

The University of Chicago has been established in 1837 as a private institution of higher learning.

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The University of Chicago
Office of the President

for opinion see
312 Ill. Rep - page 109 *Wib*

For surplus copies see
STATE OF ILLINOIS, } ss. *Mr. Teister.*
COUNTY OF COOK.

IN THE
Circuit Court of Cook County

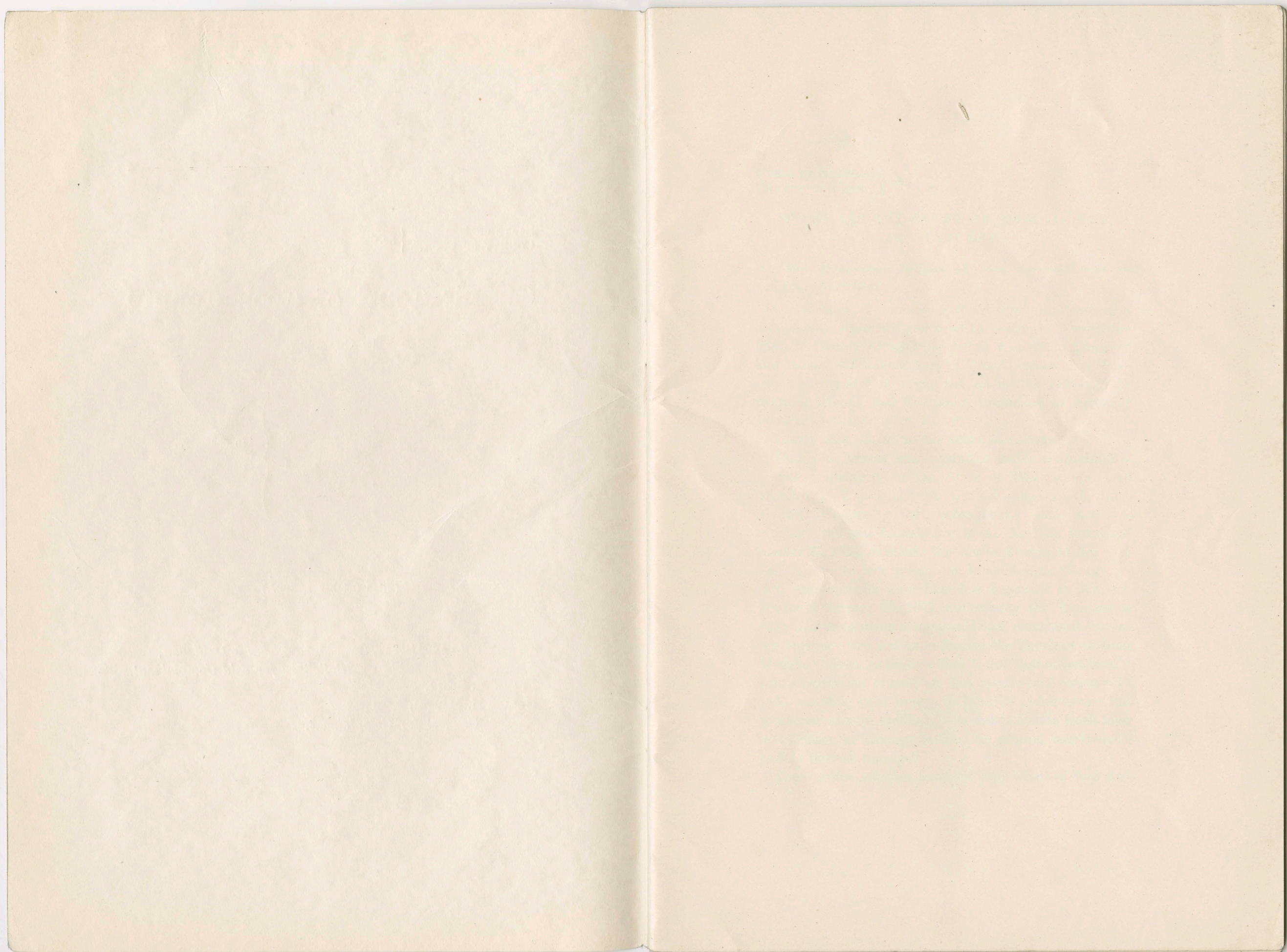
IN CHANCERY.

TRUSTEES OF RUSH MEDICAL COLLEGE, <i>Complainant,</i>	} In Chancery. Gen. No.
vs. THE UNIVERSITY OF CHICAGO and EDWARD J. BRUNDAGE, as Attorney- General of the State of Illinois, <i>Defendants.</i>	

BILL IN CHANCERY.
(Filed October 1, 1923.)

SCOTT, BANCROFT, MARTIN & MacLEISH,
Solicitors for said Complainant.

FRANK H. SCOTT,
HORACE H. MARTIN,
Counsel for Complainant.



STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

IN THE CIRCUIT COURT OF COOK COUNTY
IN CHANCERY.

*To the Honorable Judges of said Circuit Court, in
Chancery Sitting:*

Your orator, TRUSTEES OF RUSH MEDICAL COLLEGE, a corporation organized and existing under the laws of the State of Illinois, brings this, its bill of complaint, against and makes defendants hereto, THE UNIVERSITY OF CHICAGO, a corporation organized under the laws of the State of Illinois, and EDWARD J. BRUNDAGE, as Attorney General of the State of Illinois.

Your orator shows to the court as follows:

That your orator was organized under a special Act of the Legislature of the State of Illinois, approved March 2, 1837, entitled "An Act to Incorporate the Rush Medical College"; that subsequently said Act was amended by said Legislature by an Act, approved December 23, 1844, entitled "An Act to Amend an Act entitled 'An Act to Incorporate the Rush Medical College'"; that, subsequently, said Legislature passed an Act, approved February 10, 1857, authorizing the Trustees of your orator to make a loan, said last mentioned Act being entitled "An Act to authorize the Trustees of Rush Medical College to make a loan"; and that subsequently, said Legislature passed an Act, approved February 13, 1865, enabling your orator to fund its indebtedness and to borrow money, entitled, "An Act to enable Rush Medical College of Chicago to fund its present indebtedness and to borrow money."

Your orator attaches hereto a copy of all of said Acts

of the Legislature of Illinois hereinbefore referred to, marked "Exhibit 1," and makes the same a part of this, its bill of complaint, the same as if herein set forth at length.

Your orator further shows to the court that the defendant, The University of Chicago, is a corporation, duly organized under the Act of the Legislature of Illinois, entitled "An Act concerning Corporations, approved April 18, 1872, and in force July 1, 1872," and all Acts amendatory thereof.

Your orator attaches hereto (marked "Exhibit 2" and made a part hereof) a copy of the certificate of incorporation of said The University of Chicago, issued under date of September 10, 1890, by Isaac N. Pierson, then Secretary of State of the State of Illinois, certifying that "The University of Chicago" was a legally organized corporation under the laws of this state, which said certificate was duly recorded in the Recorder's office of Cook County, Illinois, on September 20, 1890.

Your orator further shows to the court as follows:

That continuously ever since its organization as a corporation as aforesaid, and up to the present time, it has been engaged in the work of promoting the general interests of medical education and of qualifying young men to engage usefully and honorably in the professions of medicine and surgery.

That your orator now owns the real estate situate at the northeast corner of South Wood and West Harrison Streets in the City of Chicago, having a frontage of approximately 147 feet on said West Harrison Street and of approximately 100 feet on said South Wood Street (subject to all mortgages, liens and incumbrances thereon), said property being described as follows, to-wit: Lots 10 to 16 inclusive in McKay's resubdivision of

Block 11 of Ashland's Addition to Chicago of the East half (E.½), Section 18, Township 39 North, Range 14, East of the Third Principal Meridian.

That your orator heretofore and about the year A. D. 1875, constructed a building and improvements on the western portion of said real estate and has equipped the same as a medical and surgical school (the total original cost of said building being approximately \$54,500), and has occupied and used the same for said purposes for a period of more than forty years past, and is now occupying and using the same for said purposes.

That on or about the 30th day of October, A. D. 1900, Dr. Nicholas Senn, of Chicago, Illinois, proposed to your orator that he would donate to it the sum of \$50,000 to be paid in December, 1900, in cash or in securities, to be applied to the erection of the east wing of said school upon the following conditions: (1) That the building should be known as the "Nicholas Senn Hall"; (2) that your orator should become the medical department of the University of Chicago as soon as it might be deemed advisable, and (3) that your orator should agree to pay to Dr. Nicholas Senn the sum of \$1250 on the first day of July, 1901, and a like sum on the first days of January and July thereafter during his lifetime; that your orator accepted said proposition of said Dr. Nicholas Senn and entered upon plans for carrying the same into effect, and that thereafter said Dr. Nicholas Senn paid your orator said sum of \$50,000.

That thereafter under date of April 19, 1901, a certain agreement in writing was entered into between your orator and said Dr. Nicholas Senn, wherein and whereby after reciting the said proposition and the acceptance thereof by your orator and the payment to your orator of said \$50,000 by said Dr. Nicholas Senn, your orator covenanted and agreed to construct said building to

be called "Nicholas Senn Hall," and to take suitable steps to constitute your orator the medical department of said University of Chicago as soon as and whenever it might be deemed advisable and feasible so to do, and further covenanted and agreed to make the payments to said Dr. Nicholas Senn set forth in his said proposition.

That thereafter, further donations in aid of the construction of said Nicholas Senn Hall, aggregating approximately \$35,000 were made by other persons; that said Nicholas Senn Hall was erected on the eastern portion of the real estate hereinbefore described; that the total cost of said Nicholas Senn Hall and the equipment thereof was approximately \$128,000 and that said total cost exceeded the amount so contributed by said Dr. Nicholas Senn and other donors by approximately the sum of \$43,000, and that said excess was paid by your orator out of its own moneys.

That the value of said parcel of real estate so owned by your orator, as aforesaid, on which its said medical and surgical school and said Nicholas Senn Hall were constructed, as aforesaid, does not exceed the sum of \$30,000.

That your orator also now owns (subject to all mortgages, liens and incumbrances thereon) the following described real estate, to wit: Lots 3 to 7 inclusive in the Resubdivision of Block 4 of Assessors Division of the East half of the Southeast Quarter of Section 18, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, which said described tract of land is situate on West Harrison Street, opposite the parcel of land on which, as aforesaid, the medical and surgical school of your orator and said Nicholas Senn Hall have been constructed, as aforesaid, and that on said Lots 3 to 7 inclusive in said Resubdivision of said

Block 4 of said Assessor's Division, a Laboratory Building was erected by your orator in the year A. D. 1893, the cost of the original construction of the same being approximately \$83,000, and that the value of said described real estate upon which said Laboratory Building was so erected is approximately \$20,000.

That your orator also now owns certain personal property, including books, charts, pictures, surgical equipment, laboratory supplies and accessories, pathological specimens and other educational equipment and accessories, and is also the owner of a cemetery lot in Oakwood Cemetery in Cook County, Illinois.

That your orator also has a right of re-entry, in case there has been, or may hereafter be, a breach of condition under the provisions of a certain deed bearing date January 2, 1884, and heretofore recorded in the Recorder's Office of Cook County, Illinois, executed by your orator, as grantor, to the Presbyterian Hospital, as grantee.

That all of the property of your orator hereinbefore described (except said Nicholas Senn Hall hereinbefore mentioned, the funds for the erection of which were obtained in the manner hereinbefore stated) was purchased by your orator with its own moneys obtained by it from tuition fees and other fees which your orator had received from its students and moneys received by it for services rendered by it to other persons and corporations, and donations of money and property, all of which donations were free from any trust, express or implied, created by any of the donors thereof, and without any requirement by any of said donors as to the purpose or purposes for which the same should be held, owned, used or expended by your orator, or any specification by any of said donors regarding such purpose or purposes.

That your orator is now the absolute owner of all of

said property, real and personal, hereinbefore described, including said Nicholas Senn Hall (subject to all mortgages, liens and incumbrances thereon) and that said property is the only property, real and personal, now owned by your orator, except certain trust funds hereinafter referred to.

That at the present time your orator is wholly dependent for its income upon tuition fees and other fees received from students, and moneys it may receive from other persons for services rendered, and upon the income from said trust funds hereinafter mentioned, and that the average annual net income of your orator from all said sources, remaining after the payment of necessary charges and expenses, has, during the last five (5) years preceding the filing of this bill, not exceeded \$4,000.00, and that during the year immediately preceding the filing of this bill said net income has not exceeded said amount.

That in the great fire of 1871 all of the property then held by your orator was destroyed, and that the total amount received by it from insurance on same did not exceed the sum of \$250.00.

That the expenses of conducting medical and surgical colleges have, ever since the incorporation of your orator, rapidly increased, from time to time, and at the present time are very much larger than in the past, owing to the advances in medical and surgical education, and in the sciences allied thereto, and the increased cost of material and operation, and that, in the judgment of your orator, said expenses will continue to increase in the future.

That the net income of your orator at the present time is wholly insufficient to enable it to make such changes in, and additions to, its present medical school and laboratory, and the equipment thereof, as are necessary to

meet the advances in medical and surgical science, and to keep said medical school and laboratory, and the equipment thereof, up to modern methods, and afford the public the most efficient service, and that said net income is in fact wholly insufficient to enable your orator to make adequate and proper provision out of the same to cover depreciation in its present property.

Your orator further shows to the court that the defendant, The University of Chicago, has full power and authority under its charter to engage in the work of medical and surgical education.

That the objects for which said University of Chicago was organized, as set forth in its said certificate of incorporation hereinbefore referred to, are as follows:

"2. The particular objects for which said corporation is formed are to provide, impart, and furnish opportunities for all departments of higher education to persons of both sexes on equal terms; to establish, conduct, and maintain one or more academies, preparatory schools, or departments, such academies, preparatory schools, or departments to be located in the City of Chicago or elsewhere as may be deemed advisable; to establish, maintain, and conduct manual-training schools in connection with such preparatory departments; to establish and maintain one or more colleges, and to provide instruction in all collegiate studies; to establish and maintain a university, in which may be taught all branches of higher learning, and which may comprise and embrace separate departments for literature, law, medicine, music, technology, the various branches of science, both abstract and applied, the cultivation of the fine arts, and all other branches of professional and technical education which may properly be included within the purposes and objects of a university, and to provide and maintain courses of instruction in each and all of said departments; to prescribe the courses of study, employ professors, instructors, and teachers, and to main-

tain and control the government and discipline in said University, and in each of the several departments thereof, and in each of the several academies, preparatory schools, or other institutions subordinate thereto, and to fix the rates of tuition, and the qualifications for admission to the University and its various departments; to receive, hold, invest, and disburse all moneys and property, or the income thereof, which may be vested in or intrusted to care of the said corporation, whether by gift, grant, bequest, devise, or otherwise, for educational purposes; to act as trustee for persons desiring to give or provide moneys or property, or the income thereof, for any one or more of the departments of said University, and for any of the objects aforesaid, or for any educational purposes; to grant such literary honors and degrees as are usually granted by like institutions, and to give suitable diplomas; and generally to pursue and promote all or any of the objects above named, and to do all and every of the things necessary or pertaining to the accomplishment of said objects or either of them."

That said University of Chicago has for some years past conducted, and is now conducting, a medical school on its quadrangles on the south side of the City of Chicago, and that it has obtained in subscriptions and gifts the sum of approximately \$5,300,000.00 to be used and applied by it to the work of medical and surgical education.

That said University of Chicago has stated to your orator that it intends, from its present resources and out of the moneys obtained from said subscriptions and gifts or from other sources, to develop its said medical and surgical school, situated on the south side of the City of Chicago, and, in connection therewith, to conduct and equip a hospital, containing approximately 200

beds, and to make all necessary and proper provisions for the operation and maintenance of said medical and surgical school and hospital; and has also stated to your orator that it has been heretofore intending to establish and maintain a school for medical and surgical education and research on the west side of the City of Chicago, near the present site of the medical and surgical school of your orator, and, in connection therewith, to construct, equip and maintain a new laboratory building, costing, with its equipment, not less than \$400,000, to be occupied and used for the purposes of said school.

That in view of the facts hereinbefore stated, your orator and said University of Chicago have given an extended and careful consideration to the subject of medical and surgical education and the existing condition of the same, and to the subject of the best course to pursue in order to advance, improve and enlarge the facilities for such education, and make the same more efficient, and thereby promote the well-being of the public.

That, as a result of such consideration, a draft of a proposed contract between your orator and said University of Chicago has been prepared, a copy of which said draft is attached hereto, marked "Exhibit 3" and made a part hereof, the same as if herein set forth at length.

That your orator and The University of Chicago believe that the making and carrying out of said proposed contract set out in said "Exhibit 3" is the best course to pursue in order to advance, improve, and enlarge the facilities for medical and surgical education, and to make the same more efficient, and thereby promote the well-being of the public, and will render the work of your orator and said University of Chicago, in connection with medical and surgical education, more effective

State of Illinois, to appear before this court at the Court House in said City of Chicago, County of Cook, at the next term thereof, then and there to answer this bill.

TRUSTEES OF RUSH MEDICAL COLLEGE,
By ERNEST A. HAMILL,
Its Vice President.

SCOTT, BANCROFT, MARTIN & MACLEISH,
*Solicitors for said Trustees of Rush
Medical College.*

FRANK H. SCOTT,
HORACE H. MARTIN,
Counsel for Complainant.

EXHIBIT 1."

I.

THE ACT OF THE LEGISLATURE OF ILLINOIS, APPROVED MARCH 2, 1837, ENTITLED "AN ACT TO INCORPORATE THE RUSH MEDICAL COLLEGE."

"SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly,

That Theophilus W. Smith, Thomas Ford, E. D. Taylor, Josiah C. Goodhue, Isaac T. Hinton, John T. Temple, Justin Butterfield, Edmund S. Kimberly, James H. Collins, Henry Moore, S. S. Whitman, John Wright, William B. Ogden, Ebenezer Peck, John H. Kinzey, John D. Caton and Grant Goodrich, be, and they are hereby created a body politic and corporate, to be styled and known by the name of the "Trustees of the Rush Medical College," and by that style and name to remain and have perpetual succession. The College shall be located in or near Chicago, in Cook County. The number of trustees shall not exceed seventeen, exclusive of the Governor and Lieutenant Governor of this State, the Speaker of the House of Representatives, and the President of the College, all of whom shall be ex-officio members of the board of trustees.

SECTION 2. The object of incorporation shall be to promote the general interests of medical education, and to qualify young men to engage usefully and honorably in the professions of medicine and surgery.

SECTION 3. The corporate powers hereby bestowed, shall be such only as are essential or useful in the attainment of said objects, and such as are usually conferred on similar bodies corporate, namely: In their corporate name to have perpetual succession; to make

contracts; to sue and be sued, to plead and be impleaded; to grant and receive by its corporate name, and to do all other acts as natural persons may; to accept and acquire, purchase and sell property, real, personal, or mixed; in all lawful ways to use, employ, manage, dispose of such property, and all money belonging to said corporation, in such manner as shall seem to the trustees best adapted to promote the objects aforesaid; to have a common seal, and to alter and change the same; to make such by-laws as are not inconsistent with the Constitution and laws of the United States, and this State; and to confer on such persons as may be considered worthy, such academical or honorary degrees as are usually conferred by such institutions.

SECTION 4. The trustees of said College shall have authority, from time to time, to prescribe and regulate the course of studies to be pursued in said College; to fix the rate of tuition, lecture fees and other College expenses; to appoint instructors, professors and such other officers and agents as may be needed in managing the concerns of the institution; to define their powers, duties and employments, and to fix their compensation; to displace and remove either of the instructors, officers or agents, or all of them, whenever the said trustees shall deem it for the interest of the College to do so; to fill all vacancies among said instructors, professors, officers or agents; to erect all necessary and suitable buildings; to purchase books and philosophical and chemical apparatus, and procure the necessary and suitable means of instruction in all the different departments of medicine and surgery; to make rules for the general management of the affairs of the College.

SECTION 5. The board of trustees shall have power to remove any trustee from office for dishonorable or criminal conduct; Provided, That no such removal shall

take place without giving to such trustee notice of the charges preferred against him, and an opportunity to defend himself before the board, nor unless two-thirds of the whole number of trustees for the time being shall concur in such removal. The board of trustees shall have power whenever a vacancy shall occur by removal from office, death, resignation, or removal out of the State, to appoint some citizen of the State to fill such vacancy. The majority of the trustees for the time being, shall constitute a quorum to transact business.

SECTION 6. The trustees shall faithfully apply all funds by them collected, in erecting suitable buildings; in supporting the necessary instructors, professors, officers and agents; and procuring books, philosophical and chemical apparatus, and specimens in natural history, mineralogy, geology, and botany, and such other means as may be necessary or useful for teaching thoroughly the different branches of medicine and surgery; Provided, That in case any donation, devise, or bequest, shall be made for particular purposes, accordant with the object of the institution, and the trustees shall accept the same, every such donation, devise, or bequest, shall be applied in conformity with the express condition of the donor or deviser; Provided also, That lands donated or devised as aforesaid, shall be sold or disposed of as required by the last section of this act.

SECTION 7. The treasurer of said College always, and all other agents, when required by the trustees, before entering upon the duties of their office, shall give bonds respectively, for the security of the corporation, in such penal sum, and with such sureties as the board of trustees approve; and all process against said corporation shall be by summons, and service of the same shall be by leaving an attested copy with the treasurer of the College, at least thirty days before the return day thereof.

SECTION 8. The lands, tenements, and hereditaments, to be had in perpetuity in virtue of this act, by said institution, shall not exceed six hundred and forty acres; Provided, however, That if donations, grants or devises of land, shall from time to time be made to said corporation, over and above six hundred and forty acres, which may be held in perpetuity as aforesaid, the same may be received and held by said corporation, for the period of six years from the date of any such donation, grant or devise; at the end of which time, if the said lands, over and above the six hundred and forty acres, shall not have been sold, then, and in that case, the lands so donated, granted, or devised, shall revert to the said donor, grantor, or to their heirs.

Approved, 2d March, 1837."

II.

THE ACT OF THE LEGISLATURE OF ILLINOIS, APPROVED DECEMBER 23, 1844, ENTITLED "AN ACT TO AMEND AN ACT ENTITLED 'AN ACT TO INCORPORATE THE RUSH MEDICAL COLLEGE.'"

"SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly,

That the number of trustees of said College shall not exceed fourteen, exclusive of the Governor and Lieutenant Governor of the State, the Speaker of the House of Representatives, and the President of the College, all of whom shall be ex-officio members of the board of trustees, and a majority of said trustees for the time being, exclusive of such ex-officio members, shall constitute a quorum to transact business.

SECTION 2. Any part of the act to which this is an amendment, which may conflict with this act, is hereby repealed.

Approved, December 23, 1844."

III.

THE ACT OF THE LEGISLATURE OF ILLINOIS, APPROVED FEBRUARY 10, 1857, AUTHORIZING THE TRUSTEES OF RUSH MEDICAL COLLEGE TO MAKE A LOAN, ENTITLED, "AN ACT TO AUTHORIZE THE TRUSTEES OF RUSH MEDICAL COLLEGE TO MAKE A LOAN."

"WHEREAS, the trustees of Rush Medical College, of the city of Chicago, in this state, have contracted a considerable indebtedness, in the erection of additions to their college buildings, in said city, and contemplate the necessity of the erection of other buildings and improvements upon their college grounds; therefore,

SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the said trustees shall, in their corporate capacity, have full power and authority to borrow, from time to time, any sum of money, not exceeding in all the sum of fifty thousand dollars, for such period of time as they may elect, at a rate of interest not exceeding ten per centum per annum, payable annually or semi-annually, at such place or places as they may contract, for the purpose of liquidating their present indebtedness, and for any other uses of the said college.

SECTION 2. In case of any loan or loans, under the provisions of this Act, the said Trustees shall have full and ample power to execute all such bonds or other obligations, and also securities, by way of mortgage or otherwise, upon the property of said college, as may be requisite and proper for such purpose.

This Act to be in force from and after its passage.

Approved, Feb. 10, 1857."

IV.

THE ACT OF THE LEGISLATURE OF ILLINOIS, APPROVED FEBRUARY 13, 1865, ENABLING RUSH MEDICAL COLLEGE TO FUND ITS INDEBTEDNESS AND TO BORROW MONEY, ENTITLED, "AN ACT TO ENABLE RUSH MEDICAL COLLEGE, OF CHICAGO, TO FUND ITS PRESENT INDEBTEDNESS AND TO BORROW MONEY."

"SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the trustees of Rush Medical College of Chicago have, and the power is hereby conferred upon them, or a majority of them, to liquidate all of the present indebtedness of said college, and to that end the said trustees are hereby authorized to issue bonds, in sums of not less than one hundred dollars, in the usual form, payable to the holders of said indebtedness, or order, or to bearer, at their option, payable at such day and at such rate of interest, not to exceed ten per cent. per annum, as to said trustees shall seem expedient, and to pay such indebtedness with such bonds, or to negotiate and sell the same in the market, and with the proceeds pay such indebtedness. And the said trustees are hereby further authorized to execute a mortgage or deed of trust upon all the real estate and property of said college, in the usual form, for the better securing the payment of said bonds, with the interest to accrue thereon.

SECTION 2. The said trustees are hereby authorized and empowered, from time to time, to borrow money, not exceeding in all the sum of one hundred thousand dollars, for the purpose of erecting additions to or rebuilding said college buildings; and, for that purpose, to issue bonds, and secure the payment of the same upon the college property, in all respects as provided, in the preceding section.

Approved February 13, 1865."

"EXHIBIT 2."

THE CERTIFICATE OF INCORPORATION
OF

THE UNIVERSITY OF CHICAGO,
Filed September 10, 1890.

RECORDED IN COOK COUNTY, SEPTEMBER 20, 1890.

STATE OF ILLINOIS, DEPARTMENT OF STATE.

ISAAC N. PEARSON,
Secretary of State.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, A Certificate, duly signed and acknowledged, having been filed in the office of the Secretary of State, on the 10th day of September, A. D. 1890, for the organization of

"THE UNIVERSITY OF CHICAGO,"

under and in accordance with the provisions of "An Act concerning Corporations," approved April 18, 1872, and in force July 1, 1872, and all acts amendatory thereof, a copy of which certificate is hereto attached;

Now, therefore, I, ISAAC N. PEARSON, Secretary of State of the State of Illinois, by virtue of the powers and duties vested in me by law, do hereby certify that the said "The University of Chicago" is a legally organized Corporation under the laws of this State.

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the great Seal of State. Done at the City of Springfield, this 10th day of September in the year of our Lord One Thousand Eight Hundred and Ninety, and of the Independence of the United States the one hundred and fifteenth.

(Signed) I. N. PEARSON,
Secretary of State.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

*To the Honorable Isaac N. Pearson,
Secretary of State:*

We, the undersigned, John D. Rockefeller, E. Nelson Blake, Marshall Field, Fred T. Gates, Francis E. Hinckley, and Thomas W. Goodspeed, citizens of the United States, desiring to associate ourselves for the lawful purposes hereinafter stated, and for the purpose of forming a corporation (not for pecuniary profit), under the provisions of the Act of the General Assembly of the State of Illinois, entitled, "An Act concerning corporations," approved April 18, 1872, and of the several acts amendatory thereof, do hereby state and certify as follows, to wit:

1. The name by which said corporation shall be known in law is

"THE UNIVERSITY OF CHICAGO."

2. The particular objects for which said corporation is formed are to provide, impart, and furnish opportunities for all departments of higher education to persons of both sexes on equal terms; to establish, conduct, and maintain one or more academies, preparatory schools, or departments, such academies, preparatory schools, or departments to be located in the city of Chicago or elsewhere as may be deemed advisable; to establish, maintain, and conduct manual-training schools in connection with such preparatory departments; to establish and maintain one or more colleges, and to provide instruction in all collegiate studies; to establish and maintain a University, in which may be taught all branches of higher learning, and which may comprise and embrace

separate departments for literature, law, medicine, music, technology, the various branches of science, both abstract and applied, the cultivation of the fine arts, and all other branches of professional or technical education which may properly be included within the purposes and objects of a university, and to provide and maintain courses of instruction in each and all of said departments; to prescribe the courses of study, employ professors, instructors, and teachers, and to maintain and control the government and discipline in said University, and in each of the several departments thereof, and in each of the several academies, preparatory schools, or other institutions subordinate thereto, and to fix the rates of tuition, and the qualifications for admission to the University and its various departments; to receive, hold, invest, and disburse all moneys and property, or the income thereof, which may be vested in or intrusted to care of the said corporation, whether by gift, grant, bequest, devise, or otherwise, for educational purposes; to act as trustee for persons desiring to give or provide moneys or property, or the income thereof, for any one or more of the departments of said University, and for any of the objects aforesaid, or for any educational purposes; to grant such literary honors and degrees as are usually granted by like institutions, and to give suitable diplomas; and generally to pursue and promote all or any of the objects above named, and to do all and every of the things necessary or pertaining to the accomplishment of said objects or either of them.

3. The management of said corporation shall be vested in a Board of twenty-one Trustees, who shall be elected as follows:

At the first annual meeting there shall be elected by ballot twenty-one Trustees. The Trustees so elected

shall, at their meeting, classify themselves by lot into three classes of equal numbers, which classes shall be designated as the first, second, and third class, and the term of office of the first class shall expire at the second annual meeting, and the terms of office of the other classes shall expire annually thereafter, in the order of their numbers. At each annual meeting succeeding the first, seven trustees shall be elected by the Trustees by ballot. Vacancies occurring by death, resignation, removal, or otherwise shall be filled for the unexpired term by the Board at its first meeting after the vacancy occurs, and the member elected shall belong to the class in which the vacancy occurred.

The qualifications of the Trustees and President of the University, and of its college, which shall constitute its literary or undergraduate department, shall be as follows:

At all times two-thirds of the Trustees, and also the President of the University and of the said college, shall be members of regular Baptist churches, that is to say, members of churches of that denomination of Protestant Christians now usually known and recognized under the name of the regular Baptist denomination; and, as contributions of money and property have been and are being solicited, and have been and are being made, upon the conditions last named, this charter shall not be amended or changed at any time hereafter so as to abrogate or modify the qualifications of two-thirds of the Trustees and the President above mentioned, but in this particular this charter shall be forever unalterable.

No other religious test or particular religious profession shall ever be held as a requisite for election to said Board, or for admission to said University or to any department belonging thereto, or which shall be under the

supervision or control of this corporation, or for election to any professorship, or any place of honor or emolument, in said corporation, or any of its departments or institutions of learning.

The membership of this corporation shall consist of the several persons who for the time being shall be acting as Trustees, and they shall annually elect Trustees to fill the places of those whose terms of office shall expire at the annual meeting. Persons not members of the corporation shall be eligible to election as Trustees, subject only to the qualifications hereinbefore stated.

The Board of Trustees may make By-Laws not inconsistent with the terms of this charter, or with the laws of this state or of the United States, for the government and control of said corporation, and of its several departments, and of the several institutions of learning under its care and control, and for the proper management of the educational, fiscal, and other affairs of said corporation, and for the care and investment of all moneys and property belonging to it, or given or intrusted to the said corporation for educational purposes. Said By-Laws shall provide for annual meetings, the first of which shall be held within one year from the date of these articles of incorporation.

4. The location of the University and of its College of Arts, to be established by said corporation, shall be in Chicago, in the County of Cook, and State of Illinois.

5. The following persons are hereby selected as Trustees to control and manage said corporation for the first year of its corporate existence, to wit:

E. Nelson Blake, Ferd. W. Peck, Judge Joseph M. Bailey, Charles L. Hutchinson, Francis E. Hinckley, Herman H. Kohlsaat, Hon. George A. Pillsbury, Eli B. Felsenthal, Professor William R. Harper, Martin A. Ryer-