

press 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 provided for the giving of bonds by the Treasurer of the College and for service of process on the corporation.

Section 8, the last section of the Act of 1837, limited the amount of real estate which the complainant could hold to six hundred and forty acres and made provision as to donations, grants or devises over and above that amount.

The bill also stated that the Act of March 2, 1837, had been subsequently amended by the Act of December 23, 1844, the Act of February 10, 1857, and the Act of February 13, 1865, and copies of each of those Acts were set out in subdivisions II, III and IV in said Exhibit 1 to the bill, but it seems to the appellant that it is not necessary to state in detail what the provisions of those Acts were, as they do not, in the opinion of the appellant, affect any of the questions before the court on this appeal. These Acts are set out in full, Abst. 15-17.

The bill further alleged that the defendant, The University of Chicago, was a corporation organized under the General Corporation Act in force July 1, 1872, and the Acts amendatory thereof, and the complainant attached to the bill (marked "Exhibit 2," Abst., 17 to 22) a copy of the Certificate of Incorporation of the University, issued September 10, 1890, by the Secretary of State.

The bill further alleged that the complainant now owns the land and buildings described in the bill, and the testimony of the real estate experts (Abst., 85) was to the effect that the present value of the land is ap-

proximately \$40,000 and the value of the improvements approximately \$250,000.

The bill further alleged that in October, 1900, Dr. Nicholas Senn, of Chicago, proposed to appellee that he would donate \$50,000 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. Senn \$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. (Testimony shows that Dr. Senn is dead.) This above proposition was accepted in writing and the building erected and equipped at a cost of approximately \$128,000, of which sum the College paid \$43,000 out of its own moneys and other individuals donated \$35,000.

The bill further alleges that complainant owns certain personal property including books, charts, pictures, specimens, supplies and equipment of value only in connection with carrying on medical and surgical education; that it owns a cemetery lot in Oakwood Cemetery and has a right of re-entry in case there is a breach of conditions under the provisions of a certain deed executed by it to Presbyterian Hospital.

That all of the aforesaid property of said appellee (except said Nicholas Senn Hall) was purchased with its own money obtained by it from tuition fees and other fees for services, and donations of money and property, all of which donations were free from any trust, express or implied.

That appellee's average annual net income from all

sources during the last five years has not exceeded \$4,000 per year; that the cost of conducting medical and surgical colleges has greatly increased since its incorporation and will continue to do so in the future; that the net income of appellee is wholly insufficient to enable it to successfully operate as a medical and surgical school and to make adequate provision for the depreciation of its property.

The bill further alleged that the appellee, 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 was organized, as set forth in its certificate of incorporation (Abst., 17 to 22) 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 maintain and control the government and disci-

pline 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."

The bill further alleged that the said University 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. Dr. Burton, President of the University testified (Abst. 52 and 72) that a sum in excess of \$5,300,000 was in the possession of the University, that \$300,000 of that sum was required to be expended on a medical laboratory to be erected on the west side of the City of Chicago; that \$1,000,000 must be applied to a hospital to be located on the south side of said city, and that the remaining \$4,000,000 was to be held by the University as a trust fund and the income thereof applied by it in its work of medical or surgical education, irrespective of the location in which the work is carried on.

The bill further alleged that both appellees have given careful consideration to the subject of medical and surgical education and that as a result of said consideration a draft of a proposed contract to be entered into between them has been prepared, a copy of which draft was attached to the bill of complaint and marked "Exhibit 3" (Abst. 22); and that the carrying out of the proposed contract would advance, improve and enlarge the facilities of the medical and surgical education and thereby promote the well being of the public; that Rush Medical College is a charitable corporation and that none of its property or any net income can be distributed among, or expended for the benefit of any persons whomsoever, but all its property and net income must be applied to the purposes authorized by its charter.

The bill then asked for the relief mentioned at the beginning of this statement.

The answer of the University of Chicago (Abst. 30) admitted that they negotiated with Rush Medical College for the making of a contract substantially in the form shown by the draft annexed to the bill as "Exhibit 3" and further stated that it was willing to enter into a contract of that kind so far as it was legal and proper for it to do so. The answer submitted to the court the questions of law arising from the facts shown in the record both upon the allegations of the bill and upon such facts as may be shown by the evidence taken in the case.

The Attorney General filed an answer (Abst. 31 to 35) admitting the incorporation of both appellees and the ownership of the real estate and some other allegations made in the bill, but denied that the appellees have the power under the law and under their respective charters to enter into the proposed contract and denied that

the Rush Medical College was entitled to the relief or any part of it prayed for in the bill of complaint.

A replication was filed by Rush Medical College to the answer of the defendants and the case was referred to Roswell B. Mason, Master in Chancery, to take evidence and report the same to the court. The testimony which was heard bore out all the allegations of fact in the bill and subsequently after a hearing before the court, a decree was entered January 4, 1924, finding the facts as alleged in the bill and authorizing the appellees to enter into the proposed contract. The decree is set out in full. (Abst. 86 to 101.)

This appellant does not question the correctness of the findings of fact contained in the decree, but believes it to be his duty in the public interest to submit to the highest tribunal of this state the important question as to the right and authority of a charitable corporation, incorporated under a special Act of the Legislature for a specific object, to transfer to another charitable corporation all of its physical property in the manner and form as contemplated by the decree.

The appellant, therefore, takes the position that conceding the facts to be as found by the decree, it appears from the bill and the decree that the decree was erroneous for the reasons stated in the assignment of errors, namely:

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, has no power under its charter to enter into the proposed contract.

6. The defendant, The University of Chicago, has 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.

BRIEF OF POINTS.

I.

THE ATTORNEY GENERAL, REPRESENTING THE PUBLIC, IS CHARGED WITH THE DUTY OF PREVENTING A BREACH OF A TRUST FOR A PUBLIC CHARITY OR TO RESTORE A TRUST FUND AFTER IT HAS BEEN DIVERTED.

People v. Braucher, 258 Ill. 604-608.

Attorney General v. Newberry Library, 150 Ill. 229-236.

II.

THE TRUSTEES OF THE RUSH MEDICAL COLLEGE IS A CHARITABLE CORPORATION CREATED BY LAW FOR A DEFINITE PURPOSE, AND IT CANNOT DONATE OR TRANSFER ITS FUNDS TO ANOTHER CORPORATION ORGANIZED FOR SIMILAR OR OTHER PURPOSES.

Northwestern University v. Wesley Hospital, 290 Ill. 205-214.

Gilman v. Hamilton, 16 Ill. 225.

III.

WHERE GIFTS ARE MADE TO A CHARITABLE CORPORATION, AN IMPLIED TRUST WILL BE ASSUMED AND SUCH GIFTS CAN ONLY BE USED FOR THE PURPOSES FOR WHICH SUCH CORPORATION WAS CREATED.

Board of Education v. Bakewell, 122 Ill. 339.

ARGUMENT.

I.

THE ATTORNEY GENERAL, REPRESENTING THE PUBLIC, IS CHARGED WITH THE DUTY OF PREVENTING A BREACH OF A TRUST FOR A PUBLIC CHARITY OR TO RESTORE A TRUST FUND AFTER IT HAS BEEN DIVERTED.

The above proposition is so well recognized that it does not require the citation of numerous authorities. Cases in point are:

People v. Braucher, 258 Ill. 604-608.

Attorney General v. Newberry Library, 150 Ill. 229-236.

It is by reason of the duty imposed upon the Attorney General to see to it that the funds of a charitable corporation are not improperly diverted from the object for which such charity was created, that the legality of the proposed plan of operation of the appellees is submitted to this court for final decision.

II.

THE TRUSTEES OF THE RUSH MEDICAL COLLEGE IS A CHARITABLE CORPORATION CREATED BY LAW FOR A DEFINITE PURPOSE, AND IT CANNOT DONATE OR TRANSFER ITS FUNDS TO ANOTHER CORPORATION ORGANIZED FOR SIMILAR OR OTHER PURPOSES.

In the case of *Gilman v. Hamilton*, 16 Ill. 225, Dr. Blackburn executed a deed of trust conveying certain real estate to certain trustees for the permanent location of a theological seminary. The trustees sold portions

of the land from time to time for the purpose of paying taxes for the residue but made no attempt to proceed with the erection of the institution. A bill was subsequently filed by the trustees against the heirs of Dr. Blackburn in which the trustees allege that if some more active agency then they are able to employ is not resorted to, the sales of said real estate will fritter down to a point where it will be necessary for some one to advance taxes, or the land will have to be sold in default of the payment of them. They then suggest that the best disposition that can be made of the fund is to convey the same in trust to the Illinois College for the organization of a theological professorship to be named after Dr. Blackburn. A decree was entered authorizing the conveyance of all the land to the college for the purpose of establishing said professorship and the conveyance was thereafter executed. The trustees of the college sold the lands and raised a fund of \$10,000 with which they endowed the designated professorship.

This decree was reversed by the Supreme Court and the case remanded. Upon the second hearing in the Circuit Court it was decreed that neither the trustees of Illinois College nor Coffin, their grantee, derived any title under the original decree and the conveyance made in pursuance thereof, but that the entire trust fund still remains vested in the trustees under the original deed of Dr. Blackburn, or in the survivors of them. This decree was affirmed by the Supreme Court.

On pages 229 and 230 of the opinion the court uses the following language:

"The fund was mostly in land, which continued for eight or ten years to be of little value and insufficient for the erection of buildings, and the endowment or support of the institution. This is the only reason I have heard assigned, to show the imprac-

ticability of executing the trust, and a failure of the objects of the charity. I do not think this satisfactory evidence. It may not now, but may be sufficient at a future day for that purpose.

But I might admit even a conclusion that it never could become sufficient, and still it may not show a total failure of the charity; others may contribute, other means and funds may be obtained, and the end accomplished.

Very few donations of this kind are alone sufficient to accomplish fully the designs and objects of the benevolent. Should all donations be tested by a rule of sufficiency in themselves, there would be but few that might not be diverted from the original purpose, to some other as near like it as could be readily found, and especially would this be true, of the foundation or first donation beginnings. We have few educational institutions, however, well endowed, at this day, whose earliest donations might not have been diverted for the same reasons.

Neither can I admit a long prospective delay and inadequacy as showing generally a sufficient ground of interference of the chancellor, especially as the trustees may, by a judicious management of the fund, accumulate by its income or enhancement in value.

I should hardly allow myself to doubt that the benevolent donors of these funds, and especially Dr. Blackburn, contemplated that the institution might and would ultimately become large, popular and useful, but he could not have indulged the idea that the funds he conveyed were sufficient to carry his hopes and plans into immediate and full effect. He certainly would have made a contingent provision of the funds, had he not contemplated the persevering efforts of the trustees. The fund could not have been sufficient, at the time he donated it, to accomplish all that we may and must presume to have been intended, as an ultimate result of the effort."

In the instant case, the testimony of witnesses was to the effect that the income of Rush Medical College was not sufficient to enable it to make such changes in, and

additions to, its present medical school and laboratory as to meet the advances in medical and surgical science to afford the public the most efficient service, or to enable it to make adequate and proper provision out of the same to cover depreciation in its present property. Dr. Bevan testified that the college could continue to operate if it obtained a sufficiently large endowment. (Abst., 48.) There is no testimony in the record that any effort was made to secure from the people of the City of Chicago an endowment for this purpose, and thereby permit the trustees of the Rush Medical College to continue to carry out the objects of its incorporation.

In *Northwestern University v. Wesley Hospital*, 290 Ill. 205, a controversy arose concerning the construction of two deeds establishing trust relations between the parties. The court uses the following language on page 214:

"While appellant and appellee are both, in a sense, charitable corporations and are working for the purpose of carrying out one or more of these charitable purposes, it does not follow that a contract or transaction had between them for the purpose of better enabling them to carry out the objects of their creation will give rise to a charitable trust which a court of chancery will enforce. *A corporation of this character is created by law for a definite purpose, and it cannot donate its funds to another corporation organized for similar or other purposes, except that such donation assist to carry out the purpose for which such corporation was created.* (*Gilman v. Hamilton*, 16 Ill. 225; *Board of Education v. Bakewell*, 122 id. 339.) In the case at bar appellant was organized for educational purposes, and property received by it is held in trust for that purpose and cannot be devoted to other purposes. The donation to appellee would not further the corporate purposes of appellant unless made for the purpose of providing additional teaching facilities for appellant and can only be sustained upon the ground that it was so made."

In the present case, Rush Medical College does not contemplate conveying part of its property or funds to the University of Chicago for the purpose of obtaining better facilities for its students and faculty, as in the case *supra*, but desires to convey all of its property to the University of Chicago, with the exception of certain property held under express trusts. If the proposed contract is entered into, Rush Medical College will no longer conduct and maintain a medical and surgical school, for which it was organized, but will merely continue in existence for the purpose of carrying out the trusts mentioned in paragraph 6 of the proposed contract. For all practical purposes, Rush Medical College will cease to exist and a new school, a new corporation, The University of Chicago, will take its place.

WHERE GIFTS ARE MADE TO A CHARITABLE CORPORATION, AN IMPLIED TRUST WILL BE ASSUMED AND SUCH GIFTS CAN ONLY BE USED FOR THE PURPOSES FOR WHICH SUCH CORPORATION WAS CREATED.

In the case of *Board of Education v. Bakewell*, 122 Ill. 339, the State Legislature endeavored to dispose of some of the property of the State Normal University on the theory that it was a state institution, and not a private corporation. The court, however, held it to be a private charitable corporation.

On page 351 of the opinion, the following language occurs:

"It would seem to be supposed, here, that the corporation and the legislature together had the right of absolute disposition of this corporate property. But there are other rights and interests than of these bodies here involved. Appellant is but a trustee of this property, to hold and administer it for the special purpose named in its charter—the education of teachers for the common schools. The

benefactions were devoted by the donors to this special purpose, and can be applied to no other. Appellant stands here as representing the donors, and their rights are to be defended and maintained by it. And so with respect to those who are to derive learning from this source, appellant is a trustee for them also. Religion, charity and education are, in the law, legatees or donees, capable of receiving bequests or donations in this form. (*Dartmouth College v. Woodward*, 4 Wheat. 643.) Before the courts, it will not be suffered that there shall be any abuse of the trust, and it will be seen to that the property shall not be diverted from the object to which it was devoted by the donors."

It would seem, therefore, that when gifts are made to a charitable corporation, they will be held by such corporation as trustee and can only be administered for the special purpose for which such corporation was organized.

In the case now under consideration by this court, the appellee, trustees of Rush Medical College, desires to disregard the purpose for which gifts and donations were made to it, and convey and transfer all of its property to another institution.

This appellant, therefore, believes that the decree entered by the Circuit Court of Cook County is erroneous and should be reversed.

Respectfully submitted,

.....
Attorney General of the State of Illinois,

.....
*Assistant Attorney General,
Solicitors for Appellant.*

Nov. 10, 1923 file
M16

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

IN THE
Circuit Court of Cook County

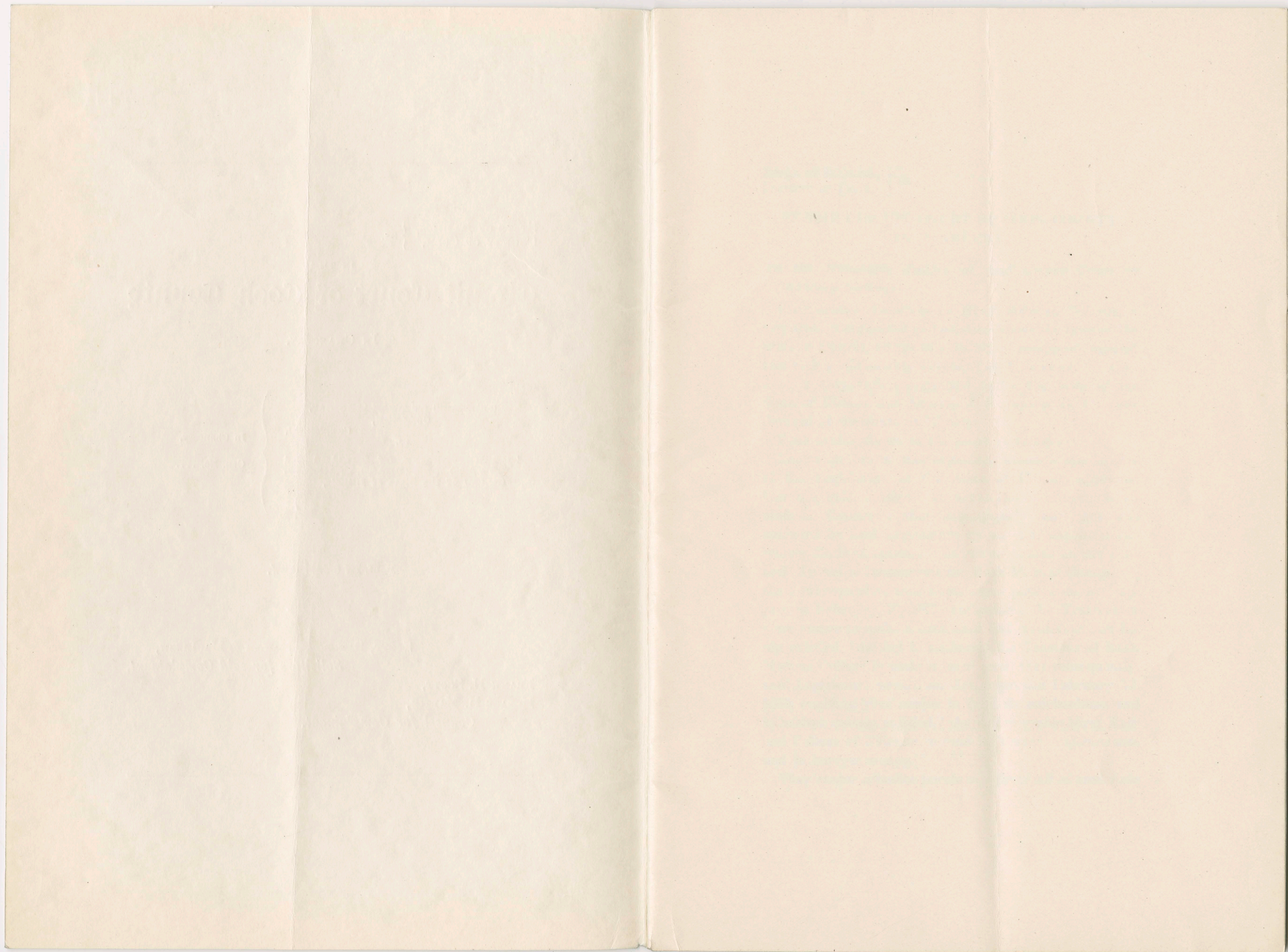
IN CHANCERY.

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

BILL IN CHANCERY.

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

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



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

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

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.

Your orator further shows to the court that questions may be made as to whether your orator 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 your orator 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 your orator and of said University of Chicago, and that none of its provisions are objectionable on any other grounds, and approving the contract.

Your orator further shows to the court that it 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 your orator now holds certain trust funds, referred to in paragraph 6 of the draft of the proposed contract (set out in said "Exhibit 3" hereto) and excepted therefrom.

TO THE END, THEREFORE, that said The University of

Chicago and said Edward J. Brundage, as Attorney General of the State of Illinois, hereinbefore named as defendants hereto, may be made parties defendant to this bill, and may make answer thereto, (but not under oath, an answer under oath being hereby expressly waived as to each of said defendants), and that your orator 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 your orator and said University of Chicago is a contract into which your orator 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 your orator in the premises, and, in case said proposed contract is found by the court to be a contract into which your orator and said University of Chicago have power, as aforesaid, to enter, and that none of the provisions thereof are open to any legal objection, and the court thereupon authorizes and directs that the 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 your orator 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;

MAY IT PLEASE YOUR HONORS to grant the writ of summons in chancery, directed to the Sheriff of said County of Cook, in the State of Illinois, commanding him that he summon the said defendants, The University of Chicago and Edward J. Brundage, as Attorney General of the

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
Its President.

.....
Solicitors for said Trustees of Rush Medical College.

.....
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-

son, 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)

“EXHIBIT 3.”

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 corporation (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 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; and,

WHEREAS, the University has obtained in subscriptions 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 hereinafter 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 conveyed, 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 rendered by it to other persons or 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 College, or any specification by any of said donors regarding such purpose or purposes; and,

WHEREAS, the College is now the absolute owner of all of said property, real and personal, hereinafter described (subject to all mortgages, liens and incumbrances thereon) and said property is the only property, real or personal, now owned by the College, 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 receive 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 average annual net income of 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,

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 laboratory, and the equipment thereof, as are necessary to meet the ad-

vances 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 depreciation 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,

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

cipal 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:

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 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 labora-

tory 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.

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.

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.....
*President of its Board of
Trustees.*

Attest:

.....
Secretary.

Trustees of Rush Medical College,

By.....
Its President.

Attest:

.....
Secretary.