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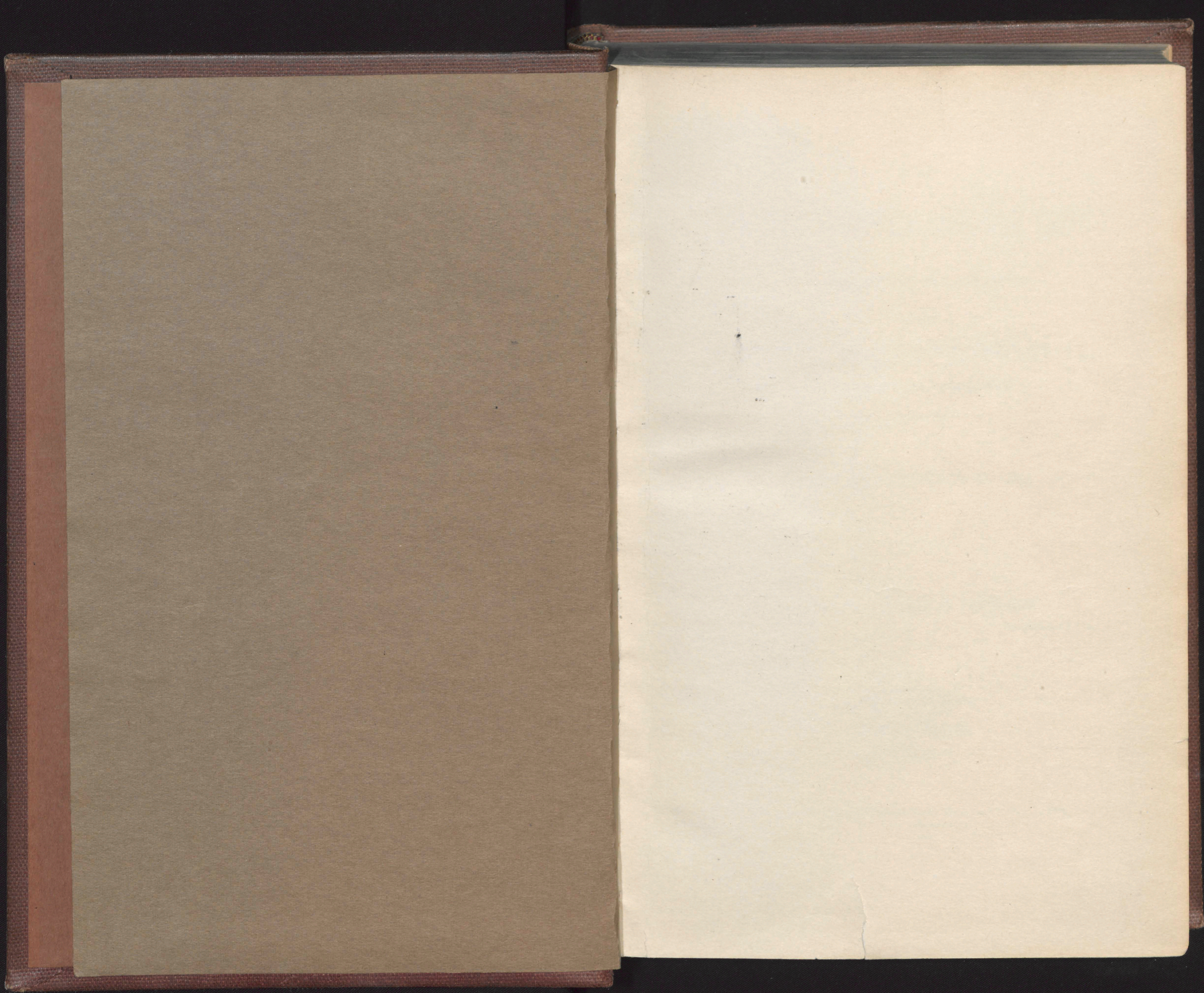
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IN THE

UNITED STATES CIRCUIT COURT,

NORTHERN DISTRICT OF ILLINOIS.

THE UNION MUTUAL LIFE INSURANCE CO.

"

"

THE UNIVERSITY OF CHICAGO.

BILL TO

FORECLOSE.

PLEADINGS AND ABSTRACT OF TESTIMONY.

SWETT, HASKELL & GROSSCUP,

Complainant's Solicitors.

LEONARD SWETT,
JAMES L. HIGH,
Of Counsel.



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PLEADINGS.

BILL OF COMPLAINT.

UNITED STATES OF AMERICA, } ss.
NORTHERN DISTRICT OF ILLINOIS.

IN THE

UNITED STATES CIRCUIT COURT

OF SAID DISTRICT,

MARCH TERM, A. D. 1881.

To the Judges of the United States Circuit Court of said District, in Chancery sitting:

The Union Mutual Life Insurance Company, a corporation created by and existing under and by virtue of the laws of the State of Maine, and which is a citizen of the State of Maine, brings this its bill of complaint against the University of Chicago, a corporation created by and existing under and by virtue of the laws of the State of Illinois; N. K. Fairbank, president, and O. W. Barrett, secretary of the board of trustees of said corporation; Levi D. Boone, Samuel S. Boone, all citizens of the State of Illinois.

And thereupon your orator complains and says that the said The University of Chicago, through its properly con-

stituted officers and board of trustees, one of the defendants hereinbefore named, on or about the eighth day of February, in the year of our Lord one thousand eight hundred and seventy-six, applied to and requested your orator to lend it the sum of one hundred and fifty thousand (\$150,000) dollars on the security hereinafter named, and that your orator complied with said request, and did accordingly lend and advance the said sum of one hundred and fifty thousand dollars (\$150,000) to the said The University of Chicago, at Chicago, in said State of Illinois.

And thereupon, and in order to secure the repayment thereof to your orator, with interest thereon at the rate of eight (8) per centum per annum, payable half yearly, the University of Chicago, through its proper officers and agents, lawfully authorized thereto, duly executed and delivered to your orator one certain promissory note, bearing date at Chicago aforesaid, the eighth day of February, in the year eighteen hundred and seventy-six, for the payment unto your orator of the principal sum of one hundred and fifty thousand dollars (\$150,000), said principal sum being due and payable five years from the date thereof, with interest thereon at the rate of eight per centum per annum, payable semi-annually, to wit:

On the eighth day of August and February in each year, until said principal sum should be fully paid, and in case said note should not be paid at maturity, or should be declared to be due, for a failure to comply with the conditions mentioned therein and in the trust deed made to secure the same, hereinafter mentioned, then said note should bear interest at the rate of ten per centum per annum, until fully paid, both interest and principal being payable at the office of said Union Mutual Life Insur-

ance Company in said city of Chicago, which said interest payments, until said principal sum should become due, were specified in and evidenced by ten (10) interest notes or coupons.

And it was further, in effect, expressly agreed that if default should be made in the payment of any one of the payments of interest aforesaid, in the manner in said note specified, and such default should continue for thirty days, then and in that event, the said principal sum above mentioned should at the election of the legal holder of said principal note, at once become due and payable, such election to be made at any time after the expiration of said thirty days as by said note now in the possession of your orator, and ready to be produced and proved, as your Honors shall direct, may more fully and at large appear.

And your orator further shows unto your Honors, that for the purpose of further securing the repayment to your orator of said sum of money so lent and advanced as aforesaid, with interest thereon as aforesaid, the University of Chicago, by its vice-president and secretary, lawfully authorized thereto, also at the same time executed and delivered to the said Levi D. Boone a certain deed of trust in the nature of a mortgage, under its corporate seal and under the hands and seals of its said vice-president and secretary, bearing date the eighth day of February, A. D. 1876, in and by which deed of trust, after reciting as therein mentioned, the said The University of Chicago did grant, bargain, sell, alien, release, convey and confirm unto the said Levi D. Boone, in fee, for the better securing the payment of said principal and interest, certain lands and tenements situate in the county of Cook and State of Illinois, to wit:

That part of the South half of the North East quarter

of Section Thirty-four (34), Township Thirty-nine (39) North, Range Fourteen (14), East of the Third Principal Meridian, bounded as follows, to wit:

Beginning at a point in the center of Cottage Grove avenue fifty (50) feet due south of the south line of lots in Oakenwald Subdivision, lying next north of Groveland Park, running thence west parallel with said south line of the lots, and fifty (50) feet from said line if extended a distance of six hundred and twenty-seven (627) feet, thence due south six hundred and fifteen (615) feet, thence east parallel to and fifty (50) feet north of the north line of lots in the said Oakenwald Subdivision, lying next south of Woodland Park, a distance of seven hundred and ninety feet to the center of Cottage Grove avenue, thence north-westwardly along the center of Cottage Grove avenue, six hundred and thirty-six (636) feet to the place of beginning, containing ten (10) acres, more or less, to center of surrounding streets, being the same land deeded by Stephen A. Douglas to said University of Chicago.

Together with all and singular the tenements, hereditaments thereunto belonging or in any wise appertaining and the reversion and reversions, etc., rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand, as well in law as in equity, of the said The University of Chicago, in and to the same and in every part and parcel thereof, with the appurtenances, to have and to hold the said granted, bargained and described premises, with the appurtenances, unto the said Levi D. Boone, his successors in trust and assigns forever, in trust, nevertheless, that if default should be made in the payment of the said principal sum of money above mentioned, or the interest thereon, or any part thereof, or in case of a breach of any of the covenants or

stipulations in said trust deed contained, then on application of the legal holder of said promissory note, it should be lawful for the said trustee therein named, his heirs, assigns or successors in trust, to enter into and upon all and singular the premises thereby granted, or any part thereof, and to sell and dispose of said premises and all the right, title, benefit and equity of redemption of said The University of Chicago, their successors and assigns therein, at public auction, at the north door of the chamber of commerce in the said city of Chicago, for the highest and best price the same would bring in cash, thirty days' public notice having been previously given, etc., etc.

And the said The University of Chicago, for itself and for its successors and assigns, in and by said trust deed, covenanted and agreed to and with the said Levi D. Boone and his successors in trust, that until said indebtedness should be fully paid, or said premises be sold by virtue of said trust deed, it would pay all taxes and assessments thereon, when and as the same became due and payable, and that it would cause any buildings on said premises to be insured in some safe and responsible insurance company for the insurable value thereof, and, upon request of said trustee or the legal holder of said indebtedness, assign the policy or policies of such insurance to said trustee, as collateral security, and keep the same so insured and the policies assigned as aforesaid, provided such insurance should not be required for a greater sum than the amount of said indebtedness then unpaid.

And it was stipulated and agreed, that in case of the death, resignation or other disability to act of the said Levi D. Boone, then said defendant, Samuel S. Boone, should be successor in trust, etc.

And the said The University of Chicago, for itself and

for its successors and assigns, covenanted, bargained and agreed to and with the said Levi D. Boone, and his successors in trust and assigns, that it was well seized of the premises above described, as of good, sure, perfect and indefeasible estate of inheritance in the law, in fee simple, and had good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid; that the same were free from all other and former grants, mortgages, liens and incumbrances, taxes and assessments, or sales thereof of any kind, name, nature or description whatsoever, and that the same were in the peaceable and quiet possession of the said Levi D. Boone, his successors in trust, his and their assigns, against all and every person or persons lawfully claiming, or to claim the same, or any part thereof, it would warrant and forever defend.

And the said The University of Chicago, for itself and its successors and assigns, did covenant, grant and agree to and with the said Levi D. Boone and his successors in trust, that it would well and truly pay the principal sum of money, and interest thereon, mentioned in said principal note, according to the tenor and effect thereof, and would not at any time thereafter, until the said principal sum and the interest thereon should be fully paid, suffer said premises, or any part thereof to be sold for any tax or assessment whatsoever, nor do, nor permit to be done to, in, upon or about said premises, anything that might in anywise tend to impair the value thereof, or to weaken, diminish or impair the security intended to be effected under and by virtue of said trust deed.

And it was further covenanted that said The University of Chicago, its successors and assigns, should and would at all times thereafter, until said principal sum of

money, and all arrearages of interest thereon, should be fully paid, keep all the buildings, outhouses excepted, then situate, or that might thereafter be erected upon said premises, fully insured against loss or damage by fire in some good and responsible insurance company or companies (the selection of such insurance company or companies to be left to the option of the said trustee or his successors in trust) in the fair insurable value of such buildings, and cause such insurance to be made payable, in case of loss, to the said trustee or his successors in trust, and deliver to him or them all and every the policies of insurance therefor, as soon and whenever such insurance should be effected, and all renewal certificates of such policies; and in default of so doing, the said trustee or his successors in trust, at his or their option, might effect such insurance in his or their own name or names, or otherwise, and the premium money paid therefor should be a charge upon said premises, and should be and was thereby declared to be secured by said trust deed, in the same manner as the said principal sum of money above mentioned was secured, and such premium money should be paid by said The University of Chicago, its successors or assigns, to the said trustee or his successors in trust, on demand, and might be collected at any time after the same should have been paid, with interest thereon at the rate of ten per centum per annum from the time the same was advanced; and the said trustee, or his successors in trust, should hold each and all such policies of insurance as collateral and additional security for said principal sum of money and interest, and should have the right to collect and receive any and all money and sums of money that might at any time become collectible or receivable upon each, all and every of such policies of in-

surance, by reason of the damage or destruction of such buildings by fire, and apply the same, when received, in the same manner, as far as possible, as was thereinbefore provided for the application of the proceeds of a sale of said above described premises under the power of sale therein contained; or, if the legal holder of said principal note should so elect, should disburse the same in the repair or rebuilding of such buildings. But nothing therein contained should be construed as requiring the said trustee or his successors in trust to incur any expense or make any effort to collect any money that might become due on any of such policies of insurance, etc., etc.

And it was further recited in said trust deed that said indebtedness was for a loan of money authorized by resolution of the executive committee of the board of trustees of the University of Chicago, adopted January twenty-sixth (26th), A. D. 1876, and the consent in writing thereto of a majority of said board of trustees, and that said trust deed was executed and delivered in pursuance of such resolution and consent.

And it was further therein recited that the president or vice president and secretary were authorized to sign, seal and deliver said instrument, all of which will more fully and at large appear by reference to said trust deed, now in the possession of your orator, ready to be produced and proved as your Honors shall direct, and to which, for greater certainty, your orator begs leave to refer.

And your orator further shows unto your Honors that the execution and delivery of said trust deed was afterwards, to wit, on the eighth day of February, A. D. 1876, properly signed and sealed by Artemus Carter at the time the vice president of said defendant, the University of Chicago, and also by O. W. Barrett, its secretary, and

that its corporate seal was affixed thereto, and was duly acknowledged according to law by the said Artemus Carter, vice president, and by the said O. W. Barrett, secretary, before Daniel L. Boone, a notary public, as by the certificate of acknowledgment thereof annexed to said trust deed, signed by the said Daniel L. Boone as such notary public, and attested by his notarial seal, reference being had thereto for such purpose, will more fully appear.

And your orator further shows that afterwards, to wit, on the fifteenth (15th) day of February, A. D. 1876, said trust deed was filed for record, in the office of the recorder, within and for the county of Cook, in the State of Illinois, and was duly recorded therein in book 660 of records, on page 3 *et seq.*, as by the record of said trust deed now remaining in said office, and also by the certificate of James Stewart endorsed upon said trust deed, signed by said James Stewart, recorder, sufficiently appears, and to which said record and certificate thereof your orator prays leave to refer, if it be necessary for your orator so to do.

And your orator further shows that said defendant, the University of Chicago, violated its covenant and agreement in said note and trust deed contained, in that it made default in payment of the installment of interest due as aforesaid, on the eighth (8th) day of August, A. D. 1876, and that said default has continued for more than thirty days, and in that it made default in the payment of the several installments of interest due as aforesaid, on the 8th day of February, A. D. 1877; and on the 8th day of August, A. D. 1877; and on the 8th day of February, A. D. 1878; and on the 8th day of August, A. D. 1878; and on the 8th day of February, A. D. 1879; and on the

8th day of August, A. D. 1879; and on the 8th day of February, A. D. 1880; and on the 8th day of August, A. D. 1880; and that said defaults in the payment of said interest have each and all continued for more than thirty days.

And your orator further shows that said defendant, the University of Chicago, further violated its covenant and agreement in said note and trust deed contained, in that it has made default in the payment of said sum of one hundred and fifty thousand dollars (\$150,000) mentioned in said principal note, and wholly refuses and neglects to pay the same, although often requested so to do.

And your orator further shows that said defendant, the University of Chicago, has further violated its covenants and agreements in said trust deed contained, in that it has wholly failed and neglected to keep the buildings on said premises insured against loss or damage by fire, and that by reason of such failure and default on the part of said defendant your orator has been obliged to pay out large sums of money to keep said premises insured against such loss or damage. That on or about the first day of February, A. D. 1878, your orator paid out and expended the sum of five hundred dollars (\$500), being the amount of premium paid for the purpose of keeping said premises insured. That for the same purpose, on or about the eighth day of March, A. D. 1879, it paid out and expended the sum of four hundred thirty-one and $\frac{23}{100}$ dollars (\$431 $\frac{23}{100}$), and also on or about the 27th day of March, A. D. 1880, the sum of three hundred and twenty-five dollars (\$325).

And your orator further shows that the only interest that the said Levi D. Boone has in the said premises he

has acquired by virtue of said trust deed, and that although often requested so to do, he has hitherto wholly failed and neglected to advertise and sell said premises in accordance with the terms of said trust deed.

That the only interest that the said Samuel S. Boone has in said premises is acquired by virtue of his being named in said trust deed as the successor in trust to said Levi D. Boone, and that he also neglects and has hitherto wholly failed to advertise and sell said premises in pursuance of the terms of said trust deed.

And your orator further shows that said defendant corporation consists of a board of trustees, forty-two in number, and that the said defendants, N. K. Fairbank and O. W. Barrett, herein before mentioned, are respectively president and secretary of said board of trustees.

And your orator charges that the interest in said premises conveyed in trust as aforesaid, which the said N. K. Fairbank and O. W. Barrett and the other of said board of trustees have, if any they or either of them have in said premises or any part thereof, accrued subsequent to the lien of your orator under said trust deed, and is subject thereto, and that the said defendants ought either to pay what is due to your orator as aforesaid, or to release their equity of redemption in said premises conveyed in trust as aforesaid, but they refuse so to do.

And your orator further charges that the said defendant The University of Chicago, through its officers and agents, have conspired, or are conspiring with divers persons, to your orator unknown, to defeat your orator's recovery of its said claim as herein before stated, by denying that it, the said defendant, The University of Chicago, had authority to execute said trust deed, and to convey said premises as in the manner therein set forth, and that,

too, notwithstanding it, the said University of Chicago, in the manner and form as in said trust deed is set forth and herein above stated, solemnly declared under its corporate seal, that it had good right and full authority so to convey said premises, and would forever defend the title thereto as vested in said Levi D. Boone, trustee, by virtue of said conveyance.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, full true and perfect answer make (not under oath, answers under oath being hereby waived) to all and singular the premises as fully and particularly as if the same were hereinafter repeated.

Your orator prays that said trust deed may be treated as a mortgage and be foreclosed as such; that an account may be taken under the direction of this court of what is due and owing to your orator of principal money and interest on its said notes and under said trust deed, and of all other sums of money it has expended in pursuance of the terms of said trust deed; that said defendants may be decreed to pay to your orator what may be found due to it on taking such an account as aforesaid, together with its costs of this suit, by a short day to be appointed by this honorable court for that purpose, or, in default thereof, that said premises may be sold by and under the direction of this court according to the rules and practices of this court, and in pursuance to the statutes of the State of Illinois, in such cases made and provided, and the proceeds of such sale be applied to the payment of the amount due your orator as aforesaid, together with all costs and expenses; and that the said defendants and all persons claiming under them subsequent to the commencement of this suit, may be foreclosed and barred of all equity of

redemption in and to the said premises conveyed in trust as aforesaid, and every part thereof, and that your orator may have a decree for any balance of money that may be found due to it over and above the proceeds of said sale, and that the said defendants, its officers and agents, and all persons confederating with them may be restrained by a proper order of this court from harassing, hindering and delaying your orator in the recovery of its said debt by instituting suits in other courts and by a multiplicity of litigation, and that your orator may have such other and further relief in the premises as to your Honors shall seem meet and the nature of this case may require.

May it please your Honors to grant unto your orator the most gracious writ of subpoena of the United States of America to be directed to the said The University of Chicago, N. K. Fairbank, O. W. Barrett, Levi D. Boone, Samuel S. Boone, thereby commanding them and every of them, at a certain day and under a certain pain therein to be specified, personally to be and appear before your Honors in this honorable court, and then and there to answer all and singular the premises and to stand to, perform and abide such order and decree therein as to your Honors shall seem meet; and your orator will ever pray, &c.

UNION MUTUAL LIFE INSURANCE COMPANY,

By E. R. BLISS,

Its Solicitor.

E. R. BLISS,

Of Counsel.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

On this 18th day of February, A. D. 1881, personally appeared E. R. Bliss, and made oath that he is the solicitor of the above-named complainant, and that he has read the above bill and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated to be on information and belief, and as to those matters he believes them to be true.

E. R. BLISS.

Subscribed and sworn to before me
this 18th day of February, A. D.
1881.

EDW'D R. SWETT,

[SEAL.]

Notary Public.

(Endorsed.)

Filed February 18, 1881.

W. H. BRADLEY, *Clerk.*

AMENDMENT AND SUPPLEMENTAL BILL

UNITED STATES OF AMERICA, }
NORTHERN DISTRICT OF ILLINOIS. }

IN THE CIRCUIT COURT OF SAID DISTRICT.

UNION MUTUAL LIFE INSURANCE COMPANY }
v.
THE UNIVERSITY OF CHICAGO *et al.* }

Amendment and Supplemental Bill of Complaint of
the Union Mutual Life Insurance Company.

*To the Honorable Judges of the Circuit Court of the
United States in and for the Northern District of Illi-
nois, in chancery sitting:*

Your orator, the Union Mutual Life Insurance Company, complainant in the above entitled cause, leave of court being first had and obtained, brings this its amendment and supplement to its original bill herein against the University of Chicago, a corporation created by and existing under the laws of the State of Illinois; N. K. Fairbank, president, and O. W. Barrett, secretary of the board of said trustees of said corporation; Levi D. Boone, Samuel S. Boone, Luther Laflin Mills, as states attorney of the county of Cook, in the State of Illinois; Carter H. Harrison, mayor of the city of Chicago and *ex officio* regent of the University of Chicago; Isaac N. Arnold, also a regent of said university, and Stephen A. Douglas, all of whom are citizens of the State of Illinois, and Robert M. Douglas, who is a citizen of the State of North Carolina,

as defendants; and thereupon your orator complaining, shows to the court that heretofore and on the 18th day of February last, your orator filed its original bill of complaint in the above entitled cause for certain relief therein prayed, as by the record remaining in this court will more fully appear.

Your orator further shows, that on, to wit: said 18th day of February, said Luther Laflin Mills, as such states attorney, claiming to act in behalf of the people of the State of Illinois, and the said Carter H. Harrison, mayor and regent as aforesaid, and Isaac N. Arnold, regent as aforesaid, exhibited their certain information and bill of complaint in the Circuit court of said Cook county, against your orator, together with Levi D. Boone, The University of Chicago, John C. Burroughs, and the board of regents of said university, as defendants, for certain relief as therein prayed, and for the purpose of more fully advising this court of the nature of said information and bill, and the relief therein prayed, your orator produces herewith a copy of the same, which is marked Exhibit A, and made a part hereof.

Your orator further shows unto your Honors that said information and bill of complaint, and your orator's original bill herein were filed upon the same day, but your orator shows that service of process was had upon the defendants in your orator's said original bill of complaint in this court prior to the obtaining of service of process upon the defendants in said information and bill of complaint so filed in the Circuit court of Cook county as aforesaid, and that the facts and circumstances concerning such service of process are as follows:

That on, to wit, the 19th day of February last, between the hours of ten and eleven o'clock A. M., due service of pro-

cess was had by the marshal of this court upon the defendants in your orator's said original bill of complaint; that at the hour of two o'clock and forty-seven minutes P. M. of the same day, the sheriff of said Cook county made an attempted service of process under said information and bill filed in the Circuit court of Cook county as aforesaid, upon one A. G. Fowler as the reputed agent of your orator, whereas the only lawfully authorized attorney or agent of your orator within the State of Illinois, upon whom legal process can be duly served in accordance with section 50, of chapter 75, of the Revised Statutes of Illinois, entitled "Insurance," is one Robert B. Kendall, who has been duly appointed by your orator as its attorney, to receive service of process in this state under said section 50; that no other or different service of process under said information and bill was ever had upon your orator, until, to wit, the 9th day of March instant, when process thereunder was served by the sheriff of Cook county upon said Kendall; and that your orator has never appeared to said information and bill in the Circuit court of Cook county, or in any way submitted to the jurisdiction of said court, and by reason of the premises, your orator is advised and does and will insist that this court has acquired prior and paramount jurisdiction over the subject-matter of the controversy involved, both in the original bill of complaint herein as well as in the said information and bill in the Circuit court of Cook county.

Your orator further shows unto your Honors that after the filing of said information and bill in the Circuit court of Cook county, and on, to wit, the 25th day of February last, said Stephen A. and Robert M. Douglas were joined as parties defendant to said information and bill in said Circuit court of Cook county, and thereafter and on,

to wit, the same day, said Stephen A. and Robert M. Douglas filed in said cause in the Circuit court of Cook county, their certain cross-bill of complaint against the people of the State of Illinois, Carter H. Harrison, Isaac N. Arnold, Levi D. Boone, the University of Chicago, John C. Burroughs and the Board of Regents of the University of Chicago, together with your orator, for certain relief therein prayed, and for the purpose of more fully advising your Honors as to the nature of said cross-bill, and the relief therein sought, your orator files herewith a copy of the same, which is marked Exhibit B, and made a part hereof.

Your orator further represents unto your Honors that the said Luther Laflin Mills as such states attorney, and the said Carter H. Harrison, Isaac N. Arnold, Stephen A. Douglas and Robert M. Douglas threaten and intend to proceed forthwith with the prosecution of said cause in the Circuit court of the county of Cook against your orator and the other defendants therein; that such further prosecution of said cause will greatly delay, hinder and embarrass your orator in the prosecution of its bill of complaint herein, and will lead to unnecessary and vexatious litigation and a multiplicity of suits; that this court have by means of the premises, as your orator is advised and believes, acquired prior and paramount jurisdiction over the matters and things involved in said respective causes, and being fully empowered to grant any and all necessary relief to all parties therein, the further prosecution of said cause in the Circuit court of Cook county will necessarily lead to a conflict of jurisdiction between this court and said Circuit court of Cook county, for the prevention of which said defendants should be enjoined as hereinafter prayed.

And your orator, while denying the right of either or any of the parties complainant in said information and bill, as well as in said cross-bill in the Circuit court of Cook county, to the relief therein prayed, or to any relief whatever as against your orator, nevertheless hereby offers to submit to abide by whatever order or decree may be made in this cause upon its final disposition in this court, or upon appeal to the Supreme court of the United States, touching the respective rights, titles or interests of any of said parties, which may be properly determinable in this case upon the proper presentation thereof to this court in this case by cross-bill or otherwise, as they may be advised.

Wherefore your orator makes parties defendant to this and to its original bill, the said University of Chicago, a corporation created by and existing under the laws of the State of Illinois; N. K. Fairbank, president, and O. W. Barrett, secretary of the board of trustees of said corporation; Levi D. Boone; Samuel S. Boone; Luther Laflin Mills, states attorney of the county of Cook, in the State of Illinois; Carter H. Harrison, mayor of the city of Chicago and ex-officio a regent of the University of Chicago; Isaac N. Arnold, also a regent of said University, and Stephen A. Douglas and Robert M. Douglas; and prays that they may be required to make full, true and perfect answer unto this, your orator's amended and supplemental bill, as well as to your orator's original bill herein; but without oath, their answers under oath being hereby expressly waived; that said defendants, and each of them, their agents and attorneys, may be enjoined and restrained until the further order of this court from any further proceedings in said cause in the Circuit court of Cook county, either upon said original information and bill

therein, or upon the said cross-bill of the said Stephen A. and Robert M. Douglas; that upon the final hearing hereof such injunction may be perpetuated, and that your orator may have such other and further relief in the premises as the nature of the case may require and to equity may seem meet; and your orator will ever pray, etc.

E. R. BLISS,

Solicitor for said Union Mutual Life Ins. Comp'y.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

On this 12th day of March, 1881, personally appeared before me, E. R. Bliss, and made oath that he is the solicitor of the above named complainant, and that he has read the above bill and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated to be on information and belief, and as to those matters he believes them to be true.

E. R. BLISS.

Subscribed and sworn to before me this 12th day of March, A. D. 1881.

[SEAL.] EDWARD R. SWETT,
Notary Public.

Here follow exhibits.

(Endorsed.)

Filed March 12, 1881.

W. H. BRADLEY, *Clk.*

ANSWER OF THE UNIVERSITY OF CHICAGO.

UNITED STATES OF AMERICA, } ss.
NORTHERN DISTRICT OF ILLINOIS. }

IN THE CIRCUIT COURT THEREOF—IN CHANCERY.

THE UNION MUTUAL LIFE INSURANCE COMPANY

v.

THE UNIVERSITY OF CHICAGO; N. K. FAIRBANK,
President, and O. W. BARRETT, Secretary of the
Board of Trustees of said University; LEVI D.
BOONE, and SAMUEL L. BOONE.

Original Bill.

THE UNION MUTUAL LIFE INSURANCE COMPANY

v.

THE UNIVERSITY OF CHICAGO; N. K. FAIRBANK,
President, and O. W. BARRETT, Secretary of the
Board of Trustees of said University; LEVI D.
BOONE, SAMUEL S. BOONE, LUTHER LAFLIN MILLS,
State's Attorney, *et al.*

*Amended and
Supplemental
Bill.*

The separate answer of said defendant, the University of Chicago, to the bill and amended and supplemental bill of complaint of said Union Mutual Life Insurance Company, complainant.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage that may be had or taken by reason of the manifold errors and insufficiencies in said bill and amended and supplemental bill contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material to be answered unto, answering, says:

That it admits that it is a corporation created by and existing under certain laws of the State of Illinois, said laws being, as this defendant avers, as follows, viz.:

AN ACT INCORPORATING THE UNIVERSITY OF CHICAGO. § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, that Stephen A. Douglas, William B. Ogden, Hiram A. Tucker, Charles A. Walker, Samuel Hoard, James H. Woodworth, Levi D. Boone, E. D. Taylor, John H. Kinzie, Robert H. Clarkson, John C. Burroughs, Mason Brayman, Walter S. Gurnee, James Dunlap, Ichabod Clark, Charles H. Roe, Elijah Gove, Henry G. Weston, Simon G. Miner, Noyes W. Miner, and their associates and successors in office, are hereby constituted a body corporate, by the name of "The University of Chicago." The object of this incorporation being the promotion of general and professional education, the application of science to agriculture and manufactures, and the cultivation of the fine arts. The said corporation shall have perpetual succession, with power to sue and be sued, contract and be contracted with; to make and use a common seal, and to alter the same at pleasure; to buy and sell, and to take and hold real and personal property.

§ 2. The persons hereinbefore named are hereby appointed trustees of the said corporation. The said trustees, upon the call of any three of their number, issued in writing to each of the others, shall meet for the purpose of organization and the transaction of business; and, within one year from the passage of this act, they, or a quorum of them, in a regular meeting, shall choose, by ballot, fifteen other persons, to constitute, with themselves and the President of the University (who shall always be a trustee by virtue of his office), the full board of trustees of thirty-six members. Eleven members present at any regular meeting shall constitute a quorum for the transaction of business. When the full number of trustees is chosen, the board shall be distributed by lot into five classes, numbered first, second, third, fourth and fifth; and the term of office of the first class shall expire at the second annual meeting thereafter, and that of each of the other classes annually thereafter, in the order of their numbers, when, in each case, the vacancy thus created shall be filled by a new election, by ballot. Vacancies occurring by death, resignation or removal from office, shall be filled, by ballot, at the next meeting of the board; and the members thus elected shall belong to the class in which the vacancy occurred. If any member shall fail to attend the annual meeting of the board for two years in succession, his place shall be declared vacant, and be filled by a new election. The board shall meet annually, at or in the vicinity of the University, on a day which it shall previously designate; and special meetings shall be called by the President, on the request of nine members, setting forth, in writing, the objects of such special meetings.

§ 3. The board shall have power to choose its own officers and prescribe their duties; to establish such ordinances and by-laws for the

government of its own proceedings as it may deem necessary; *provided*, that the same shall not be contrary to the constitution of the United States, nor of the State of Illinois. The board is charged with the superintendence and government of the university, with power to create different departments in addition to the usual collegiate department, as a department of law, of medicine, of agriculture, and such others as it may deem necessary; and to prescribe courses of study, and maintain discipline and government in each; to elect a president, and, at its discretion, a vice president, of the university, and all necessary professors, tutors and instructors, and to prescribe the duties and fix the salaries of each; to fix the rate of tuition and the terms of admission to the university; *provided*, that, otherwise than that the majority of the trustees and the president of the university shall forever be of the same religious denomination as the majority of this corporation, no religious test or particular religious profession shall ever be held as a requisite for admission to any department of the university, or for election to any professorship, or other place of honor or emolument in it, but the same shall be open alike to persons of any religious faith or profession. The board may acquire—by gift, grant or devise or purchase—any real or personal property; and may use, sell, lease, or otherwise dispose of, any and all property belonging to the university, in such manner as they may deem most conducive to its interests; *provided*, that real estate shall not be sold without the consent of a majority of all the trustees. The board may appoint of its own number, an executive committee of not less than five members, to be charged with the interests of the university in the intervals of the sessions of the board, and may prescribe the duties of such executive committee, and delegate to it all or any portion of the powers of the board.

§ 4. To enable the trustees to fulfill the trusts hereby committed to them, and to secure the ends of this corporation, it is hereby declared unlawful for any person to entice any student of the said university into the practice of gaming, or to furnish to any student any device or instrument for gaming, or any intoxicating liquors. And any billiard room, bowling alley, race course or other device or instrument for gaming, or any brothel or house of ill fame, or place where intoxicating liquors are sold or furnished (except for medicinal or mechanical purposes), within one mile of the site of said university, is hereby declared a nuisance, and subject to abatement as such.

§ 5. In addition to the board of trustees there shall be a board of regents of the University, to consist of the Governor of the State of Illinois, the Lieutenant Governor, the Secretary of State, the Speaker of the House of Representatives, the Superintendent of Public Instruction, the judges of the United States court for the Northern and

Southern Districts of Illinois, and of the Supreme court of Illinois, and of the Circuit court of Cook county, and of the Cook county court of common pleas, and Mayor of the city of Chicago, by virtue of their offices, and of fifteen other persons, to be appointed by the board of trustees, one-third of whom shall go out of office annually and their places be filled by the board of trustees.

§ 6. The officers of the board of regents shall be a chancellor and vice-chancellor and a secretary. The Governor of the State of Illinois shall be *ex-officio* chancellor of the University, and the Lieutenant Governor vice-chancellor; and in case of the absence of both the chancellor and vice-chancellor from any regular meeting of the regents, the meeting may appoint a president *pro tempore*; they shall also elect a secretary, and establish such ordinances and by-laws as they may deem necessary for the government of their own proceedings. The board shall meet annually, and the chancellor may, at his discretion, call special meetings, eleven members at any meeting being necessary to constitute a quorum.

§ 7. The board of regents, by itself or its committees, shall annually visit the several departments of the University and examine into the courses of study and the methods of instruction pursued therein, and the manner in which the several trusts connected with the University are fulfilled, and into its general condition and progress, and shall report the results of such examination to the board of trustees, with such advice and counsel respecting all matters pertaining to the University as they may deem important; they shall also report to the legislature any violation of this charter, or other matters which they may deem deserving of the attention of that body, or on which that body shall demand information respecting the management of any officers of the University. At the time of any official visitation of the regents, the books, the records and papers belonging to the University shall be freely opened to their inspection, and all persons connected with it be subject to their call for information or testimony in relation to the subjects of their official investigation, and in the discharge of their respective trusts; both the regents [and] the trustees shall have power to send for persons and papers, and to require the verification of testimony under oath, to be administered by the presiding officer for the time being.

§ 8. No gifts, grants or devise made to the University for a particular purpose shall be applied to any other purpose, and every grant, gift or devise, made with the intent of benefiting the said University, shall be construed liberally in the courts, according to the intent of the grantor, donor or devisor.

§ 9. The said University may grant to students in either of its de-

partments diplomas or honorary testimonials, and may confer such literary honors, degrees and diplomas as are usually conferred by any university, college or seminary of learning in the United States, and the same shall entitle the possessors to immunities and privileges allowed by usage or statute to the possessors of like diplomas from any university, college and seminary of learning in this state.

§ 10. The tract of land, not to exceed one hundred and sixty acres, on which the University is erected, belonging to the said University, is hereby declared exempt from taxation or assessment, for all and any purpose whatever.

§ 11. This act shall be a public act, and shall take effect immediately.

Approved January 30, 1857.

Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the board of trustees of the University of Chicago shall, at the next annual meeting of the said board, be increased by the addition thereto of seven new trustees, making the full board of trustees, including the President of the University, number forty-three. Said board of trustees shall be divided into six classes, numbered respectively first, second, third, fourth, fifth and sixth, and that at the next annual meeting of said board of trustees, said board shall elect seven trustees to succeed the class whose term of office then expires, to hold their office for the term of five years, and shall also elect seven other persons to complete the number of trustees above named, who shall hold their office for the term of six years, and at all subsequent annual elections of trustees of said University, the persons who shall be elected to succeed the trustees, whose terms of office then expire, shall hold their office for the term of six years; *provided*, that this act shall in no way affect the term of office of the President of said University.

This act shall be a public act, and shall be in force from and after its passage.

Approved March 30, 1869.

This defendant, further answering, says that the enterprise which resulted in the incorporation of this defendant, as aforesaid, as an institution of learning, took formal shape April 2, 1856, by the execution on that day of the following document, viz.:

This agreement, made this second day of April, in the year of our Lord eighteen hundred and fifty-six, between Stephen A. Douglas, of

the county of Cook, State of Illinois, of the first part, and Jno. C. Burroughs, of the city of Chicago, of the second part. Witnesseth, That the said party of the first part, in consideration of the covenants and agreements hereinafter contained, and of the sum of one dollar in hand paid by the party of the second part, the receipt of which is hereby acknowledged, agrees and binds himself, his heirs, executors, administrators and assigns, to donate and grant unto the said party of the second part, all that certain piece or parcel of land situate, lying and being near the southern boundary of the present city of Chicago, Illinois, and being a part of the South half of the Northeast quarter of Section thirty-four (34), of Township thirty-nine (39), of Range fourteen (14) East, and bounded as follows: On the east by street or avenue known as "Cottage Grove Avenue;" on the North and South by two parallel lines commencing on Cottage Grove Avenue at points immediately opposite two parks, described on a map made by J. E. Boyd in July, 1855, as Groveland Park and Woodland Park, at a distance of fifty feet, respectively, from the North line of Groveland Park and from the South line of Woodland Park—running West to a North and South line at such distance from the center of Cottage Grove Avenue, as that within the four lines thus described there shall be embraced ten acres of ground, inclusive of a space thirty-three feet in width on each of the four sides of said plat, to be set apart along with an equal quantity of the adjacent ground, for the purpose of a sixty-six feet street on all sides of said street. The condition of this agreement is such that if the said John C. Burroughs, party of the second part, shall fail within a reasonable time to procure the organization of a board of trustees of a University, according to the Statutes of the State of Illinois, to consist of the following persons, viz.: Stephen A. Douglas, Hiram A. Tucker, Wm. B. Ogden, John H. Kinzie, Charles Walker, E. D. Taylor, Samuel Hoard, James H. Woodworth, Levi D. Boone, Walter S. Gurnee, Mason Brayman, Rev. Mr. Clarkson and John C. Burroughs, residents of the city of Chicago, and James Dunlap, of Jacksonville, Illinois, Elijah Gove, of Quincy, Illinois, Chas. H. Roe, of Belvidere, Illinois, Henry G. Weston, of Peoria, Illinois, Simon G. Miner, of Canton, Illinois, and N. W. Miner, of Springfield, Illinois, and such other persons as they may appoint, to which trustees this agreement shall be assigned, and which board of trustees shall procure the plans for a building such as shall be mutually agreed upon by them and the party of the first part aforesaid, all differences to be referred to the decision of Thomas U. Walters, architect of the National Capitol at Washington, D. C.; said building to be erected on the premises hereinbefore described, and to cost not less than one hundred thousand dollars, to be expended as follows: twenty-five thousand dollars within one year from the first day

of May next, provided the foundation shall be completed within the present year; and the further sum of twenty-five thousand dollars within two years from the first day of May next, and the further sum of fifty thousand dollars, within or prior to the expiration of the year one thousand eight hundred and sixty.

Then in case of the failure of the said party of the second part to perform the conditions above named, or any part of them, this agreement shall be null and void, otherwise it shall remain in full force and virtue, and then on the completion of the building as aforesaid, the said party of the first part agrees for himself, his heirs, administrators, executors and assigns, that he will execute and deliver to the board of trustees aforesaid, or their successors in office, for the purposes of the University hereinbefore mentioned, a good and sufficient deed of conveyance assuring to said board of trustees or their successors in office the fee simple of the premises above described, free from incumbrance. And the said party of the first part further agrees to give to the party of the second part immediate possession of the before mentioned premises.

In witness whereof the said parties of the above agreement hereunto set their hands and seals, the day and year above written.

Signed in the presence of }
NICHOLAS VEDDER.
CHARLES D. SELDEN. }

S. A. DOUGLAS. [SEAL.]
J. C. BURROUGHS. [SEAL.]

Acknowledged, in City of Washington, D. C., March 2, 1856, before Charles D. Selden, Commissioner for Illinois.

That on the 6th day of July, 1856, a majority of the persons named as trustees in the foregoing instrument effected a temporary organization as a board of trustees, and accepted the grant and trust with which their names were thus identified, and proceeded to take the steps necessary to perform the conditions of said agreement, and thereby to consummate an evident purpose to do a great public benefit. That in response to the solicitations of said trustees, and others acting in harmony with them, a large number of philanthropic individuals, with knowledge of the terms and conditions of the aforesaid agreement, contributed large sums of money towards the erection of University buildings upon the said tract of land,

upon the faith, understanding and express condition that said grounds and University buildings, when completed, should be used solely and perpetually for the purposes defined in the said act of incorporation of this defendant, viz: "*the promotion of general and professional education, the application of science to agriculture and manufactures, and the cultivation of the fine arts,*" and thus should forever constitute a public charity which the law and public would protect.

And this defendant, further answering, saith that the said trustees having to some extent failed to fully comply with the terms of the said agreement for the donation of said land, the said donor, Stephen A. Douglas, generously extended the time for such compliance by an endorsement upon said agreement in words and figures following:

I, Stephen A. Douglas, party of the first part of the foregoing agreement, do hereby extend the time for laying the foundation of the University until the first day of May, and for expending the first sum of twenty-five thousand dollars, until the 1st day of October, 1857. All the other conditions remaining in all respects as stated in said agreement. This extension of time is granted on the condition and with the understanding that the title of said land shall forever remain in said University for the purposes expressed in said agreement, and that no part of the same shall ever be sold or alienated, or used for any other purpose whatever.

CHICAGO, Nov. 10, 1856.

S. A. DOUGLAS.

And this defendant further saith that an organization having been effected under its said charter on the 21st day of May, 1856, the said John C. Burroughs, on or about the 27th day of May, 1857, executed and delivered the following assignment of the aforesaid agreement, viz:

I, John C. Burroughs, the party of the second part, named in the within agreement, for the consideration of one dollar to me in hand paid, and in pursuance of the condition contained in said agreement,

do hereby assign, transfer, set over and convey to the University of Chicago, the trustees thereof and their successors in office, forever, all my rights, title and interest in and to the grants, premises and lands, and all other rights, privileges and conditions whatsoever, contained in and conferred by the within contract, for the use and purposes therein expressed.

In witness whereof I have hereunto set my hand and seal, this twenty-seventh day of May, 1857.

J. C. BURROUGHS. [SEAL.]

Signed and sealed in presence of }
W. G. HOWARD,
J. J. HOWARD. }

And this defendant, further answering, saith that said Stephen A. Douglas was the president of the board of trustees of this defendant from the time of its organization in May, 1856, until his death in June, 1861, and was familiar with all the transactions of said board; and all the preliminary conditions of the said agreement having been performed to his satisfaction, he, the said Douglas, executed and delivered to said board of trustees the following deed of conveyance his wife joining therein to release her dower.

This Indenture, made this thirteenth day of August, in the year of our Lord one thousand eight hundred and fifty-eight, between Stephen A. Douglas, of the city of Chicago, and State of Illinois, and Adele Douglas, his wife, parties of the first part, and the board of trustees of "The University of Chicago," party of the second part:

Witness: That said party of the first part, for and in consideration of the sum of one dollar, to him in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said party of the second part, and their successors and assigns, all the following described lot, piece or parcel of land, situated in the county of Cook and State of Illinois, to wit: That part of the South half of the North East quarter of Section thirty-four (34), in Township thirty-nine (39), North of Range fourteen (14), bounded and described as follows: beginning at a point in the center of Cottage Grove Avenue, fifty (50) feet due South of the South line of the lots in Oakenwald Subdivision lying next North of Groveland Park, running thence West parallel with said South line of lots, and fifty (50) feet from said line if

extended, a distance of six hundred and twenty-seven (627) feet; thence due South a distance of six hundred and fifteen (615) feet; thence East on a line parallel to and fifty (50) feet North of the North line of the lots in said Oakenwald Subdivision, lying next South of Woodland Park, a distance of seven hundred and ninety (790) feet to the center of Cottage Grove avenue, thence North-westwardly along the center line of said avenue six hundred and thirty-six (636) feet to the place of beginning, containing ten (10) acres. A strip of land thirty-three (33) feet wide around the entire tract of land above conveyed, to constitute and form the one-half of a street to be hereafter laid out around said tract, sixty-six feet in width, the other half of said street so to be opened to be dedicated for that purpose by said party of the first part.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances, to have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, their successors and assigns forever.

And the said Stephen A. Douglas, party of the first part, for himself and his heirs, executors and administrators, doth covenant, grant, bargain and agree to and with the said party of the second part, their successors and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law, in fee simple, and hath good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances, of what kind or nature soever; and the above bargained premises in the quiet and peaceable possession of the said party of the second part, their successors and assigns, against all and every person lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof, the said parties of the first part hereunto set their hand and seals, the day and year first above written.

S. A. DOUGLAS. [SEAL.]

ADELE DOUGLAS. [SEAL.]

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

I, Calvin D'Wolf, a justice of the peace in and for said county, in the state aforesaid, do hereby certify that Stephen A. Douglas and Adele, his wife, personally known to me as the persons whose names are subscribed to the annexed deed, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

And the said Adele, wife of the said Stephen A. Douglas, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband; and that she does not wish to retract the same.

Given under my hand and seal, this 30th day of August, A. D. 1858.

CALVIN D'WOLF, J. P. [SEAL.]

And which said deed was recorded in the recorder's office of the county of Cook, on the 13th day of September, 1858.

And this defendant, further answering, saith that in the operation and management of said trust, and pursuant to and in conformity with the spirit and intention of the original enterprise as hereinbefore set forth, large and expensive buildings have been erected upon said tract of land, and equipped with costly apparatus and fixtures appropriate and necessary to the proper accomplishment of the high purposes contemplated, which said buildings and fixtures have been erected and supplied by the aid of money contributed and donated by various persons, estates, societies and organizations, amounting in the aggregate to over \$200,000.

That one of the aforesaid buildings is an observatory erected by the aid of funds, amounting in the aggregate to about \$100,000, contributed by persons especially interested in the science of astronomy, and whose donations were made upon the express condition and understanding that the said building, with the fixtures and apparatus pertaining thereto, should be forever maintained, occupied and used for the purpose of teaching that important science, and for no other purpose whatever.

That a large number of scholarships in said university have been purchased by money, contributed for that purpose by various parties, amounting in the aggregate to over \$70,000, upon the express condition and agreement that the same should be perpetual, and that the certificates evidencing such purchases respectively, and the right to receive the benefit and advantage incident to such scholarships, should be forever transferable at the will of the owner and holder of the same, to and for the use and benefit of such persons as might from time to time be selected and designated by such owner.

That certain other donations and contributions have been made by various other parties, establishing and endowing certain professorships in said university, upon the like condition and understanding that the same should be perpetual.

And this defendant, further answering, saith that the said complainant, through its representative and agent, Levi D. Boone, had full knowledge of the conditions and trusts hereinbefore set forth, under which the title to the real estate hereinbefore described was taken, and the various other donations were received, on behalf of this defendant, and that any indebtedness, if any now exists

against this defendant, and in favor of the said complainant, the same is the result of negotiations between the said Levi D. Boone, as the agent of said Union Mutual Life Insurance Company, and the said Levi D. Boone, as one of the trustees of the University of Chicago, which said relationship existed and continued from the date of the organization of the said board of trustees to the day of 1879, and of which said relationship the said complainant had full notice and knowledge.

And this defendant, further answering, denies that on the date alleged in said bill, or at any other time, it in fact made application for a loan of \$150,000, or that said sum was at said time or any other time advanced and paid to this defendant. This defendant on said day received from said complainant, no greater sum than \$13,000, or thereabouts, and that the difference between said sum and the principal sum of \$150,000, is made up of various items, the nature and correctness of which this defendant, for want of accurate knowledge in this regard, cannot admit, but demands strict proof.

And to that part of said bill of complaint wherein it is alleged that this defendant executed and delivered to said Levi D. Boone a certain deed of trust in the nature of a mortgage, and thereby conveyed the lands and tenements therein described as a security for the payment of the alleged indebtedness in said bill of complaint set forth, and that the execution of said instrument was lawfully authorized, and that this defendant is attempting to defeat the claim of said complainant by denying that this defendant had authority to execute said pretended trust deed, and to convey said premises in manner and form as alleged in said bill, this defendant, further answering, saith that it

hath not now, nor hath it ever had, any other interest in said premises than that which this defendant received by virtue of the various documents hereinbefore set forth, nor has this defendant any other or greater powers over the said premises or otherwise than those hereinbefore shown. Wherefore, this defendant submits to the court whether—in view of the fact that the deed of conveyance from said Douglas was made to the *board of trustees* of the University of Chicago, and in view of the powers by law delegated to this defendant and to the said board of trustees respectively—the said pretended trust deed “*between the University of Chicago, a corporation of the State of Illinois, party of the first part, and Levi D. Boone, of the city of Chicago, party of the second part, as trustee,*” operated to convey any title, interest or estate in said premises.

And this defendant, further answering, denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill and amended bill charged, without this, that there is any other matter, cause or thing in the said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is not true, to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct.

And this defendant prays the same advantage of its aforesaid answer as if it had pleaded or demurred to the said bill of complaint, and this defendant prays leave to

be dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE UNIVERSITY OF CHICAGO,
 { SEAL OF THE }
 { UNIVERSITY OF CHICAGO. }
 By GALUSHA ANDERSON,
Its President.

Attest: GALUSHA ANDERSON,
President of the University of Chicago.

WILLARD & DRIGGS,
Solicitors for Defendant.

(Endorsed.)

Filed July 14, 1881.

W. H. BRADLEY, *Cl'k.*

AMENDMENTS TO ANSWER OF THE UNIVERSITY
OF CHICAGO.

UNITED STATES OF AMERICA, }
NORTHERN DISTRICT OF ILLINOIS. }

IN THE CIRCUIT COURT THEREOF.

THE UNION MUTUAL LIFE INSURANCE COMPANY }
v. } *Original Bill.*
THE UNIVERSITY OF CHICAGO ET AL.

Amendments to the Answer of the defendant,
University of Chicago.

This defendant, reserving unto itself all rights, etc., by leave of court first had and obtained, amends its said answer as follows:

By inserting on page eight (8), line twenty-eight (28), after the word "on," the words "or about," and on the same page and line, by striking out the figures "1856," and inserting in lieu thereof the figures "1857."

By inserting on page twelve (12), line twenty (20), after the word "Boone," the words "and other agents and attorneys of said complainant."

By inserting on page thirteen (13), line twelve (12), after the word "proof," the words, "and this defendant, further answering, says that a large portion of the said sum of \$150,000 is composed of items of interest calcu-

"lated and charged at a rate in excess of that allowed by
"the statutes of the State of Illinois."

Without this, etc.

THE UNIVERSITY OF CHICAGO,
By GALUSHA ANDERSON,
President.

WILLARD & DRIGGS,
Solicitors.

M. W. FULLER,
Of Counsel.

(Endorsed.)

Filed Dec. 27, 1883, as of July 10, 1883.

W. H. BRADLEY, *Clerk.*

ANSWER OF N. K. FAIRBANK AND O. W. BARRETT.

UNITED STATES OF AMERICA, }
NORTHERN DISTRICT OF ILLINOIS, } ss.

IN THE CIRCUIT COURT THEREOF—IN CHANCERY.

THE UNION MUTUAL LIFE INSURANCE COMPANY }
v. }
THE UNIVERSITY OF CHICAGO, a corporation of the }
State of Illinois; N. K. FAIRBANK, President, and } *Original Bill.*
O. W. BARRETT, Secretary of the Board of Trustees of said corporation, LEVI D. BOONE and SAMUEL S. BOONE.

THE UNION MUTUAL LIFE INSURANCE COMPANY }
v. }
THE UNIVERSITY OF CHICAGO, a corporation of the } *Amended and*
State of Illinois; N. K. FAIRBANK, President, and O. } *Supplemental*
W. BARRETT, Secretary of the Board of Trustees of } *Bill.*
said corporation; LEVI D. BOONE, SAMUEL S. BOONE,
LUTHER LAFLIN MILLS, State's Attorney, et al.

The joint and several answers of N. K. Fairbank and O. W. Barrett, two of the defendants to the bill and the amended and Supplemental bill of the Union Mutual Life Insurance Company, complainant.

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, they, these defendants,

severally answering say, that they deny each and every allegation in said bill of complaint set forth.

And these defendants deny all, and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this that there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is not true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct.

And these defendants pray the same advantage of their aforesaid answer as if they had pleaded or demurred to the said bill of complaint. And these defendants pray leave to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

N. K. FAIRBANK,
O. W. BARRETT.

WILLARD & DRIGGS,
Solrs. for Defendants.

(Endorsed.)

Filed July 16, 1881.

W. H. BRADLEY, *Clk.*

SECOND AMENDMENT AND SUPPLEMENT TO BILL
OF COMPLAINT.

UNITED STATES OF AMERICA, } ss.
NORTHERN DISTRICT OF ILLINOIS. }

CIRCUIT COURT UNITED STATES.

THE UNION MUTUAL LIFE INSURANCE COMPANY, }
v. } In Chancery.
THE UNIVERSITY OF CHICAGO, ET AL. }

Amendment to the Bill of Complaint of the Union
Mutual Life Insurance Company.

Amend by inserting on page 9 of the bill of complaint
after the twenty-fifth line thereof, the following:

And your orator further shows that the making of said
loan and the execution of said notes and deed of trust
were authorized by the executive committee of the board
of trustees of said defendant, the University of Chicago,
and the same were consented to and approved by a
majority of all the trustees of said university.

Supplement to the Bill of Complaint of the Union
Mutual Life Insurance Company.

And your orator, by way of supplement to its original
bill of complaint herein filed, leave of court being first had
and obtained, further shows that since the filing of said
original bill of complaint herein, the defendant, the Uni-

versity of Chicago, has wholly neglected to pay the
assessments for local improvements made by the city of
Chicago upon the premises in said deed of trust described,
and has also wholly neglected to keep the buildings upon
said premises insured, as in and by its covenants in that
behalf in said deed of trust it undertook and covenanted to
do; whereby your orator has been compelled to pay and
has paid large sums of money, since the filing of said
original bill of complaint, on account of such assessments,
and to redeem said premises from sales thereunder, and
has also paid large sums of money to keep the buildings
upon said premises insured; and your orator prays that an
account may be taken of all such payments, with interest
thereon from the dates of such payments respectively, and
that the same may be included in the decree to which
your orator shall be entitled in this cause; and otherwise
your orator prays as it hath already prayed.

THE UNION MUTUAL LIFE INSURANCE COMPANY,
By SWETT, HASKELL & GROSSCUP,
Its Solicitors.

LEONARD SWETT,
J. L. HIGH,
Of Counsel.

(Endorsed.)

Filed July 9, 1883.

W. H. BRADLEY, *Cl'k.*

ANSWER OF THE UNIVERSITY TO THE SECOND
AMENDMENT AND SUPPLEMENT TO
BILL OF COMPLAINT.

UNITED STATES OF AMERICA, } ss.
NORTHERN DISTRICT OF ILLINOIS. }

IN THE CIRCUIT COURT THEREOF.

THE UNION MUTUAL LIFE INSURANCE COMPANY, }
v. } In Chancery.
THE UNIVERSITY OF CHICAGO, ET AL. }

The Separate Answer of the University of Chicago to
the Second Amendment and Second Supplement to
the Bill of Complaint of the said Union Mutual Life
Insurance Company.

This defendant, reserving unto itself all rights, etc., for
answer to complainant's second amended bill, says:

It admits there was action taken by the executive com-
mittee of the board of trustees of the University of Chi-
cago, purporting to authorize the execution of the said
notes and mortgage; but this defendant respectfully sub-
mits to the court the question whether any action of said
committee could or did constitute, confer, or amount to
any valid or legal authority in that behalf, having refer-
ence in this regard to the powers and conditions set forth
in the various documents, made a part of the answer of
this defendant heretofore filed in this cause.

And this defendant further answering, says:

That the records of the proceedings of the board of
trustees contain no record of any consent to or approval

by said trustees, or a majority thereof, of the execution of
the alleged notes and deed of trust set out in the com-
plainant's bill therein; neither hath this defendant in its
possession, nor within its control, any evidence of the
consent or approval of such trustees as alleged by the
complainant in its amended bill herein.

Wherefore this defendant neither admits nor denies the
allegation of the complainant in this behalf, but demands
strict proof thereof.

And this defendant, further answering, says:

That it hath not knowledge whether any payments have
been made by the complainant herein on account of as-
sessments made for local improvements made by the city
of Chicago, upon the premises designated in said supple-
mental bill, and therefore this defendant neither admits
nor denies the allegation in this behalf; but it respect-
fully avers that the law of its creation especially exempts
said premises from taxation or assessment for all and any
purposes whatever; and if any payments were made by
the complainant herein on account of assessments as al-
leged, the same are not a valid or legal charge against
this defendant.

Without this, etc.

{ Seal of } THE UNIVERSITY OF CHICAGO,
University of }
Chicago. }
By GALUSHA ANDERSON,
President.

WILLARD & DRIGGS,
Solicitors for University of Chicago.
M. W. FULLER,
Of Counsel.

(Endorsed.)

Filed Dec. 27, 1883, as of July 10, 1883.

W. H. BRADLEY, Clerk.

ABSTRACT OF COMPLAINANT'S TESTIMONY.

Counsel for complainant offers in evidence a certified copy of the charter of the University, marked "Exhibit A."

Norman T. Gassette, for complainant:

I was one of the trustees of the University; at one time one of the executive board and at one time chairman of the finance committee. Don't remember what office I held at the time of execution of paper shown me. All I know about the paper is what is evidenced by this certificate signed by myself as secretary: "I hereby certify that the above and foregoing resolutions were unanimously adopted by the executive committee of the board of trustees of the Chicago University, January 25, A. D. 1876. Norman T. Gassette, secretary *pro tem*." I think there is no question that I was a member of the board at that time. I should not have signed it as secretary *pro tem*. unless so elected, but have no recollection otherwise than as appears on that paper. The certificate is all in my handwriting and the signature. Was present when the resolutions were adopted. They were adopted by the executive committee or it would not be so recited. Have no doubt this is the original resolution introduced at that time.

Counsel for complainant offers the paper in evidence, marked "Exhibit B."

(Objected to.)

Counsel for complainant then read Exhibit "B," as follows:

"*Resolved*, first, that a loan negotiated by H. A. Rust, O. W. Barrett, and Fernando Jones, a committee of this executive committee, appointed on the 4th day of December, 1875, with the Union Mutual Life Insurance Company for the sum of one hundred and fifty thousand dollars (\$150,000), for a period of five years, be and the same is hereby approved, and that the president or either of the vice presidents and secretary of the board of trustees be and they are hereby authorized to make, execute and deliver to said insurance company the note or notes of the University of Chicago and a trust deed to secure the payment thereof, upon the land upon which the university stands, together with the improvements thereon, and also to procure the written consent of a majority of said trustees to this loan, and the execution of the above specified paper."

"*Resolved*, second, that so much of the above authorized loan as is necessary be appropriated to the payment of the loans now due to said insurance company for the aggregate amount of \$100,000, and the unpaid interest thereon, and the balance to the general wants of the university."

"*Resolved*, third, that the notes and mortgage now in the hands of L. D. Boone, agent, as collateral security for the payment of the indebtedness now due to said insurance company, be held by him or by said insurance company, and that all payments made on said securities be applied to the payment of the interest or interest and principal of the loan now authorized."

"I hereby certify that the above and foregoing resolu-

"tions were unanimously adopted by the executive committee of the board of trustees of the Chicago University, January 25th, A. D. 1876.

"NORMAN T. GASSETTE,
"Secretary pro tem."

Norman T. Gassette continues:

Have very little personal recollection about the paper, not sufficient to swear to anything as a matter of positive knowledge; have no doubt it was passed, because that is in my handwriting, and I should not have written it unless it recited the facts.

The paper shown me marked "Exhibit C" purports to be an assent by a majority of the trustees of the university. I do not know when it was executed.

Mr. HOYNE: Is there any date to it?

A. Yes; the 25th day of January, 1876.

Mr. DRIGGS: Is that the date of the paper?

A. I do not see any date to it.

Don't know who the trustees were January 25, 1876; should say I was a member because my name appears here. That is all I know about it. I would not have signed it unless I was trustee at the time. What date that was I don't know, my memory in reference to it is very faulty. I don't know the handwriting on the back of Exhibit C nor any of the signatures, as a matter of absolute fact; should believe certain ones original.

Witness identifies signatures to Exhibit C of Joseph F. Bonfield, Levi D. Boone, Fernando Jones, J. C. Burroughs, Norman T. Gassette and O. W. Barrett.

Judging from the book of records shown me and from

its recitals on page 126, I should say it was the record of the executive committee. It is dated on this book here January 25, 1876. That is the meeting which that certificate would indicate that I signed that paper. It is in the handwriting of O. W. Barrett, then secretary. Have no recollection of furnishing minutes of that meeting to him, but if I did there is no doubt I furnished them correctly; they would show who was present, and the results of the meeting. From my mode of doing business, I should say that the paper "Exhibit B" was written on the table at the very meeting, yet it may not have been so.

Cross-Examination.

I have no knowledge of the paper Exhibit B other than what appears by my certificate there. Think I should not have signed it save upon representations made relative to it. Have an indistinct recollection of the whole paper, but don't know about the representations. At the time I signed the paper I had no consultation with the other persons there named as trustees concerning the paper. Have no recollection of any such consultation previous to signing, but think it must have been on consultation.

O. W. Barrett, for complainant:

I was elected secretary of the board of trustees of the executive committee of the University of Chicago February 17, 1876, and was elected a member of the board of trustees July 3, 1874, if this record is correct. Exhibit B now shown me is just what it purports to be. It seems to be a copy—I suppose it is—of a record of January 25, 1876.