

"that it may be necessary or advisable to secure an additional loan in order to defray existing liabilities in anticipation of collections of subscriptions already obtained, and to be obtained, for that purpose. Therefore, resolved, that the proper officers of this board be, and they are hereby authorized to negotiate a loan, not to exceed \$25,000, and to execute and deliver the necessary note or notes and mortgage or trust deed on the property of the university to secure the payment of such loan." Do you recollect the meeting at which that resolution was passed?

A. Yes, sir.

Q. Do you recollect of the passage of the resolution?

A. Yes, sir, I do.

Q. What was done under the resolution by way of executing a mortgage; I will call your attention, in connection with this question, to Exhibit F, state what it is, and generally what was done under the resolution which I have read?

A. In September, 1869, I presume that was the date, the trustees proceeded in accordance with the resolution at the annual meeting in July to negotiate and to obtain of the Union Mutual Life Insurance Company a further loan of \$25,000, making an aggregate amount of \$100,000; I forget whether they took up the other mortgage or executed a second mortgage; my impression is they executed a second mortgage on the premises of the university for the additional \$25,000, the mortgage which I have here and note of the university.

Q. Read the note.

A. I have here a note for \$25,000, dated July 6, 1869. "University of Chicago. Three years after date, for value

"received, the University of Chicago promises to pay to the Union Mutual Life Insurance Company of Maine, or order, \$25,000, with interest at eight per cent. per annum, payable semi-annually, both principal and interest being payable at the office of the said insurance company, at the city of Boston, Massachusetts. This note is secured by a trust deed, which deed is stamped with a \$25 stamp. J. Young Scammon, vice-president of the University of Chicago." Then follows a mortgage of the same date. I had an impression that this occurred later, I call this a mortgage; I think it is a trust deed.

Q. Who was that trust deed of 1869 executed by?

A. It is executed by J. Young Scammon, as vice-president of the University of Chicago, and Cyrus Bentley, as secretary of the board of trustees. I know the signatures of Scammon and Bentley; these are both their genuine signatures; note was executed by J. Young Scammon, vice-president of the University of Chicago; that is his signature, that must have been a second mortgage upon the property already covered by the mortgage of \$75,000 of 1866. The \$25,000 thus borrowed in 1869 was also largely used in closing up deficits on the main building. It was found that the first \$25,000 borrowed for the purpose was not nearly enough to pay up outstanding bills, and upon the death of Mr. Woodworth, the treasurer, it was found necessary to fund those obligations, to borrow money to pay them, in other words. A small portion of it was used for paying arrearages of interest to the company, and for other general expenses, the bulk of it for arrearages on the main building.

Q. I will hand you now the mortgage for \$150,000, dated in 1876, and the notes, principal and coupons connected therewith, and ask you to examine them, and state

what you know generally about their execution, the mortgage being marked Exhibit "G," and the notes H 1, H 2, etc.

(Objected to.)

Q. I desire to read you in that connection some resolutions: On December 4, 1875, the records heretofore introduced in evidence show a meeting of the executive committee, December 4, 1875, at the Brevoort house: "Present, Boone, Burroughs, Thompson, Jones, Rust, and Barrett. Moved by Dr. Burroughs, seconded by Mr. Jones, that a committee of three be appointed to devise ways and means for raising money for immediate wants. Carried. And Messrs. Rust, Jones, and Barrett were appointed such committee." (Page 122.)

Meeting of the executive committee, December 7, 1875: "Records of the executive committee. Present, Burroughs, Jones, Rust, Barrett, Boone, and Thompson. The chairman of the committee of ways and means, appointed December 4th, reported as follows: Your committee have had an interview with Mr. Secombe, chairman of the finance and investment committee of the Union Mutual Life Insurance Company, who expressed a willingness to report in favor of a loan to the university of \$20,000. Upon motion of Dr. Burroughs, and seconded by Mr. Jones, the committee were instructed to take immediate steps to secure a loan of \$20,000. Carried." (Page 124.)

"Meeting of the executive committee, January 25, 1876:

"Present, Messrs. Burroughs, Blake, Cheney, Thompson, Jones, and Gassette. The following resolutions were offered by Mr. Jones, and seconded by Mr. Blake:

"*Resolved*, that the loan negotiated by H. A. Rust, O. W. Barrett and Fernando Jones, a committee of this executive committee, appointed December 4, 1875, with the Union Mutual Life Insurance Company of Maine, for the sum of \$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 note or notes of the University of Chicago, and trust deed, to secure payment thereof, upon the land on 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 papers.

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

"*Resolved*, 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 the said insurance company be held by him, or said insurance company, and that all payments made on said securities be applied on the payment of interest or interest and principal of the loan now authorized."

"I hereby certify that the above and foregoing resolutions were unanimously adopted by the executive committee of the board of trustees of the University of Chicago, January 25, 1876.

"NORMAN T. GASSETTE,

"*Secretary pro tem.*"

I also call your attention to Exhibit C: "The undersigned being a majority of the trustees of the University of Chicago hereby express our consent to and approval of the loan of \$150,000 of the Union Mutual Life Insurance Company of Maine, authorized and empowered by the executive committee of the board of trustees on the 25th day of January, 1876, and also give our approval and consent to the execution of the note or notes and trust deed for the security of said loan.

"THS. HOYNE.	FERNANDO JONES.
"HORATIO O. STONE.	H. M. THOMPSON.
"J. A. SMITH.	J. C. BURROUGHS.
"ROBERT HARRIS.	D. B. CHENEY.
"GEORGE WALKER.	E. NELSON BLAKE.
"L. H. SMITH.	NORMAN T. GASSETTE.
"J. R. DOOLITTLE.	H. A. RUST.
"WILLIAM F. COOLBAUGH.	JOHN VAN OSDEL.
"JOSEPH F. BONFIELD.	J. K. POLLARD.
"HENRY GREENEBAUM.	O. W. BARRETT.
"ARTEMAS CARTER.	A. B. MEEKER.
"LEVI D. BOONE.	F. E. HINCKLEY."

Now please state what you know in regard to the execution of the principal note and coupons and mortgage and the passage of these resolutions?

A. I know, in a general way, such a meeting of the executive committee was held; that it was resolved to obtain a new loan of the Union Mutual for the purpose of taking up the other two loans of \$100,000 and of securing additional cash means for the wants of the university; that a loan of \$150,000 was negotiated with the company, and the mortgage ordered to be made upon the premises the university for that amount, the old mortgages to be taken up by it; that a note was executed by Artemas

Carter, as vice president, and O. W. Barrett, as secretary, for the amount of \$150,000, being a judgment note, and that a mortgage was executed by the same officers, Artemas Carter, as vice president, and O. W. Barrett, as secretary, to secure payment of the note with the ten coupon notes herewith exhibited attached to it. The signatures to the mortgage, of Artemas Carter, as vice president, and O. W. Barrett, as secretary, are their genuine signatures; I know their handwriting. I do not know whether the notes and mortgage shown me were executed at the time, except the fact that they are signed by the officers of the university evidences it. I have no personal knowledge of the papers as such.

Q. What do you know about the execution of this authority of the executive committee marked Exhibit B?

(Objected to.)

A. I remember the executive committee met in the winter of 1876, and passed an order accepting the loan that had been negotiated by a sub-committee, and authorized the execution of a mortgage upon the university premises for \$150,000 for that purpose. The board of trustees did not know of the action of the executive committee or give their consent to it at that time.

Q. Do you know whether the action of the executive committee was ever reported to the board when it was in session as a board?

(Objected to.)

A. I would like to correct an answer I gave at another day in one slight particular; I think I stated in the former evidence that it was reported at the next annual meeting; on reflection subsequently I was reminded that before that an order had been passed by the trustees, directing

that all official reports be made at the semi-annual meeting which would occur in January. In my former testimony, I had the impression it was made at the annual meeting which would occur the last of June. My recollection now is that at the semi-annual meeting in January the report of the executive committee to the trustees showed the execution of this loan, that it was reported to the trustees at their regular semi-annual meeting in January, that would be 1877.

Q. Is this all the correction you want to make in your former testimony?

A. The meeting being changed, what I said in regard to the attendance at that meeting—I mentioned a number of names who were present at that meeting, who were present at the annual meeting—the attendance at the semi-annual meeting would be different, and was not as numerous as at the annual meeting, it was a small meeting. I said I would, even in the absence of a record of approval of the report of the executive committee still believe that a vote of approval was passed. I would not correct that, but if there is no record of it, I would say that it took the course that was often done, of the president announcing the report of the executive committee would be approved, if there is no objection, will be regarded as approved if there is no objection, and without a motion was pronounced approved. I have no doubt it was thus approved, if not by direct motion, in that way. I think probably I ought to say why I am so confident on that point, which is that I have a distinct recollection that in riding home with Mr. Rust after that meeting we spoke of the fact that there had been no objection made to that loan as we had rather anticipated there would be.

Exhibit C now shown me is a consent of a majority of

the trustees to that loan. I could not state on what date these several signatures were obtained, but know that some of them were obtained on the same day that the action of the executive committee occurred, and some of them immediately after, a day or two or very soon after. The action of the executive committee purports to take place on December 4, 1875. The paper Exhibit C had been drawn on the day when the executive committee met and was signed by several persons at that meeting, or at the room in which the meeting met and immediately adjourned; others were obtained the next or some days after.

Counsel for complainant offered in evidence the following: Deed of trust from the University of Chicago to Levi D. Boone, dated October 20, 1864, signed by Charles Walker as vice-president, and Justin A. Smith as secretary, marked "Exhibit E."

Also a paper purporting to be a resolution of the executive committee, authorizing a loan by the Union Mutual Life Insurance Company, dated August 6, 1866, on the back of which is endorsed what purports to be the consent of a majority of the trustees, marked "Exhibit D."

Also note, dated September 1, 1866, purporting to be executed by the University of Chicago to the Union Mutual for \$75,000, due September 1, 1871, with interest at eight per cent. per annum, marked "Exhibit D."

Also deed of trust, dated September 1, 1866, executed by the university to Levi D. Boone as trustee, marked "Exhibit D."

(Note. The last three documents offered, being the resolution of the executive committee, authorizing a loan of \$75,000, with the consent of a majority of the trustees

endorsed on the back thereof; the note of September 1, 1866, for \$75,000, and deed of trust of same date securing this note, are fastened together, and each of the three papers is marked "Exhibit D.")

Also note, dated July 6, 1869, for \$25,000, executed by the university to the Union Mutual, due three years after date, with interest at eight per cent. per annum, being the same note identified by the witness Burroughs and marked "Exhibit F 1."

Also deed of trust, dated July 6, 1869, executed by the university to Levi D. Boone, as trustee, marked "Exhibit F."

(Objected to.)

Mr. SWETT: You made a remark these old notes were to be canceled or something like that; I want to call your attention to this, "that the notes and mortgages 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 payments of the interest or interest and principal of the loan now authorized;" was it not understood that Boone should continue to hold these old loans as collateral?

A. No, sir; it was not. The record you show me refers to other securities entirely, which were put in his hands as collateral to this.

Mr. DRIGGS: I will ask you if, as a matter of fact, these other mortgages respecting which you have been testifying about to-day, ought to have been canceled and delivered up to the university authorities?

A. I can only say in answer to that, that the mort-

gage of 1866 for \$75,000, was for the purpose of taking up the prior mortgages of 1861 and 1864, and that the mortgage of \$150,000 in 1876 was for the purpose of taking up the two prior mortgages of 1866 for \$75,000, and 1869 for \$25,000.

J. T. Kretzinger, for complainant:

Identifies the signature to Exhibit C, of F. E. Hinckley.

Lyman B. Tichenor, for complainant:

I am a clerk for D. G. Hamilton, who represents the Union Mutual, as agent in their tax matters; he has charge of their tax matters in this city. At the request of Mr. Hamilton, or the Union Mutual, I recently took up certain tax deeds from the city of Chicago upon the property known as the University of Chicago involved in this mortgage. I made the payment May 16, 1883; I took up three special assessments: Special assessment number 1,840, levied in 1872 for lamp-posts, at the intersection of University Place and Rhodes avenue, and one lamp-post about 150 feet east of said Rhodes avenue, on University Place. The amount of the assessment was \$41. The next was warrant number 1,842, levied in 1872, for three lamp-posts on Rhodes avenue, from Crittenden avenue to University Place; Crittenden avenue is the street just north of the Theological Seminary; the amount is \$58.52; these were sold to the city of Chicago, October 26, 1872; the property was sold for these special assessments. These two were sold in one sale. The next is warrant number 2,646, levied in 1877, curbing and paving University Place from Cottage Grove avenue to Rhodes avenue, \$1,999.20. That is the street adja-

cent to the property. The sale for the non-payment of that assessment was August 22, 1877. I paid the city comptroller to procure the release or quit-claim deeds for the sales under the three assessments made—\$2,114.61, May 16, 1883. The amount was computed by the amount of assessments, and \$15.89 costs, charged by the city for making the deed and getting out tax deeds; no interest. The amount paid was simply the amount of assessments and fifteen dollars charged by the city for costs and expenses, tax deeds, etc. The two conveyances now shown me, dated May 16, 1883, signed by Carter H. Harrison and Theodore T. Gurney, one for the consideration of \$105.01, the other for the consideration of \$2,009.60, in each of which the city purports to convey to David G. Hamilton the university grounds in controversy, are the original deeds received from the city; I received from the city comptroller a receipt or voucher for the settlement then made, which I produce.

Counsel for complainant offers in evidence the receipt in question, signed by Theodore T. Gurney, comptroller, and by Harold V. Hayes, tax redemption clerk, of \$2,114.61, marked "Exhibit I."

Also the affidavit of Leonard Swett, entitled in this cause, sworn October 24, 1883, to the fact that the originals of the tax deeds from the county clerk to the city of Chicago, under tax sales mentioned, are not in the possession or control of complainant, marked "Exhibit J."

Also certified copy from the recorder's office of Cook county, of a certain tax deed, executed by Hermann Lieb, as county clerk, to the city of Chicago, August 23, 1875, conveying the premises in controversy, with other

property, for the non-payment of taxes, marked "Exhibit K."

Also certified copy from the recorder's office of Cook county, of tax deed from E. F. C. Klokke, county clerk, to the city of Chicago, dated June 28, 1880, conveying to the city the premises in controversy for non-payment of certain assessments, marked "Exhibit L."

Also an original conveyance by the city of Chicago to David G. Hamilton, for the sum of \$105.01, conveying the premises in controversy, marked "Exhibit M."

Also original conveyance by the city to David G. Hamilton, for the consideration of \$2,009.60, conveying the premises in controversy, marked "Exhibit N."

Also original conveyance executed by David G. Hamilton and Mary J, his wife, to the Union Mutual Life Insurance Company, dated September 11, 1883, conveying the premises in controversy, marked "Exhibit O."

(Counsel for defendants objects to the testimony of the witness Tichenor, and to the foregoing exhibits, as incompetent and immaterial.)

Counsel for complainant states that they have caused the tax deeds in question to be taken up, and the title acquired thereunder by the city of Chicago, to be conveyed to the complainant in this cause, solely in trust to secure the payment of the mortgage indebtedness due from the University of Chicago to the complainant, and that upon payment of such indebtedness with costs, all title and interest acquired under such tax titles, and conveyance to complainant will be released to defendant, the University of Chicago.

L. B. Otis, for complainant: I am a brother of James Otis now absent from home, and am familiar with his signature. I have no doubt that is his genuine signature to Exhibit D.

O. W. Barrett, recalled for complainant: Reads from the records of the meeting of the trustees of the university, held September 7, 1858, page 25, as follows:

"Chicago, September 7, 1858. The board met at the
"First Baptist Church, Hon. Charles Walker in the
"chair. The recording secretary being absent, J. A.
"Smith was made secretary *pro tem*. The minutes of
"the last meeting were read. Dr. L. D. Boone then
"made a statement in regard to an arrangement made by
"the executive committee for issuing bonds for a loan
"based upon a deed of the university grounds, furnished
"by Judge Douglas. He concluded his remarks by offer-
"ing the following resolutions, which were adopted:

"*Resolved* by the board, that the university grounds
"and the buildings to be located thereon, be mortgaged
"or conveyed by trust deed as herein provided, as secur-
"ity for a loan or loans of money not exceeding the sum
"of \$25,000, and for a term not exceeding five years, to
"secure the erection of the university building, and that
"the President or Vice-President and Secretary of the
"board be, and they are hereby authorized and directed
"to execute such trust deed or mortgage as they may
"think proper of the said ground and buildings to secure
"such loan or loans of money, to execute bonds therefor,
"bearing interest at and after a rate not exceeding 10 per
"cent. per annum, payable semi-annually, the principal
"and interest to be made payable at the city of New

"York, interest coupons to be attached and to be signed
"by the secretary of said board.

"*Resolved*, that L. D. Boone, James H. Woodworth
"and William Jones, or either of them, be a committee to
"negotiate the sale of said bonds, and that the executive
"committee pay the reasonable expenses that may be
"necessary in effecting said loan.

"*Resolved*, that in order to place the security of our
"loan beyond question the members of the board and
"other friends of the university be requested to guaran-
"tee the payment of the bonds and coupons above autho-
"rized, and that the financial agent of the university be
"directed to place in the hands of William Jones, Esq.,
"\$30,000 of its bills receivable to indemnify said guaran-
"tors against loss on said guaranty.

"The board then adjourned until to-morrow afternoon
"at three o'clock."

MR. HIGH. We now offer in evidence the proceedings
of the meeting of September 7, 1858, as just read by the
witness from the record.

(Objected to as incompetent and immaterial.)

COMPLAINANT'S EXHIBITS.

EXHIBIT A.

An act incorporating the University of Chicago. (This act is set forth in full as a part of the answer of the university, page 22, *ante*.)

EXHIBIT B.

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 of December, 1875), with the Union Mutual Life Insurance Company of Maine, for the sum of one hundred and fifty thousand (\$150,000) dollars, 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 the 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 papers.

Resolved, Second, that so much of the above authorized loan as is necessary be appropriated to the payment of the two loans now due to said insurance company, for the aggregate amount of one hundred thousand dollars and the unpaid interest thereon, and the balance to the general wants of the university.

Resolved, Third, that the notes and mortgages 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 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.

EXHIBIT C.

The undersigned, being a majority of the trustees of the University of Chicago, hereby express our consent to and approval of the loan of one hundred and fifty thousand dollars with the Union Mutual Life Insurance Company of Maine, authorized and approved by the executive committee of the board of trustees on the 25th of January, 1876, and also give our approval and consent to the execution of the note or notes and trust deed for the security of said loan.

- | | |
|-----------------------|------------------------|
| 1 THOS. HOYNE, | 13 FERNANDO JONES, |
| 2 HORATIO O. STONE, | 14 H. M. THOMPSON, |
| 3 J. A. SMITH, | 15 J. C. BURROUGHS, |
| 4 ROBERT HARRIS, | 16 D. B. CHENEY, |
| 5 GEO. C. WALKER, | 17 E. NELSON BLAKE, |
| 6 L. H. SMITH, | 18 NORMAN T. GASSETTE, |
| 7 J. R. DOOLITTLE, | 19 H. A. RUST, |
| 8 W. F. COOLBAUGH, | 20 J. K. POLLARD, |
| 9 JOSEPH F. BONFIELD, | 21 JOHN M. VAN OSDEL, |
| 10 HENRY GREENEBAUM, | 22 O. W. BARRETT, |
| 11 ARTEMAS CARTER, | 23 A. B. MEEKER, |
| 12 LEVI D. BOONE, | 24 F. E. HINCKLEY. |

EXHIBIT D.

Deed of trust, dated ~~December~~^{September} 1, 1866, executed by the University of Chicago by Charles Walker, vice-president of the board of trustees, and Cyrus Bentley, secretary, under the corporate seal, conveying to Levi D. Boone, as trustee, the premises in controversy as security for a note of even date of \$75,000, payable five years after date, with interest at the rate of 8 per cent. per annum, containing the usual covenants, and recorded in Book 349 of Deeds, page 626.

EXHIBIT D.

Resolved: That consent and authority be and the same are hereby unanimously given to the execution of a mortgage upon the ten acre tract of land situate in the city of Chicago, Illinois, upon which the buildings of the university are situated, with all the improvements thereon, to the Union Mutual Life Insurance Company of Maine, to secure the payment of a sum not exceeding seventy-five thousand dollars, to be loaned by said company to said university for five years from the first day of September next, at the rate of 8 per cent. per annum, and that the president or vice-president and secretary of the board be and they are hereby authorized and directed to execute a note to said company for said sum, and also a mortgage or trust deed in the name of the university upon said tract of land, to secure the same, and affix the corporate seal of the University of Chicago to said mortgage.

I hereby certify that at a regular meeting of the executive committee of the board of trustees of the

University of Chicago, held August 6th, A. D. 1866, the foregoing resolution was unanimously adopted.

Given under my hand, at Chicago, this 6th day of August, 1866.

CYRUS BENTLEY,
Secretary of the Ex. Com.

We, the following named members of the board of trustees of the University of Chicago; do hereby consent to the foregoing resolution, and the execution and delivery of the note and mortgage therein mentioned:

J. Young Scammon, Sam. Hoard, J. C. Burroughs, Jas. K. Burtis, J. H. Woodworth, Charles Walker, William Jones, Thomas S. Dickerson, E. J. Goodspeed, L. D. Boone, Cyrus Bentley, Chas. Hill Roe, James Otis, Lyman Trumbull, James E. Tyler, Edwin H. Sheldon, Thos. H. Beebe, E. D. Taylor, J. A. Smith, J. K. Pollard, Wm. Shannon, Chas. Hill Roe, Thos. Hoyne.

EXHIBIT D.

Note dated Chicago, September 1, 1866, executed by the University of Chicago, by Charles Walker, vice-president of the board of trustees, and Cyrus Bentley, secretary, under the corporate seal, for the payment of \$75,000 to the Union Mutual Life Insurance Company, due September 1, 1871, with interest at eight per cent. per annum, guaranteed by Samuel Hoard and others, with various endorsements of interest.

EXHIBIT E.

Deed of trust, dated October 20, 1864, executed by the University of Chicago, by Charles Walker, vice-president, and Justin A. Smith, secretary, under the corporate

seal, conveying the premises in controversy to Levi D. Boone, as trustee, to secure the note of the university for the sum of \$15,000, payable to the Union Mutual Life Insurance Company twelve months after date, with interest at eight per cent. per annum, which deed of trust contains the usual covenants, and was recorded October 28, 1864, in book 235 of deeds, at page 460.

EXHIBIT F.

Deed of trust dated July 6, 1869, executed by the University of Chicago, by J. Young Scammon, vice-president, and Cyrus Bentley, secretary of the board of trustees, under the corporate seal, conveying the premises in controversy to L. D. Boone as trustee, to secure a promissory note executed by the university to the Union Mutual Life Insurance Company for the sum of \$25,000, due three years after date, with interest at eight per cent. per annum, which deed of trust contains the usual covenants, and was filed for record in the recorder's office July 10, 1869, and recorded in book 525 of deeds, page 55.

EXHIBIT F I.

Note dated July 6, 1869, executed by J. Y. Scammon, vice-president of the University of Chicago, to the Union Mutual Life Insurance Company, for the payment of \$25,000, three years after date, with interest at eight per cent. per annum, with various payments endorsed thereon.

EXHIBIT G.

(Deed of trust in controversy in this cause.)

THIS INDENTURE, made this eighth (8th) day of February, in the year of our Lord one thousand eight hundred

and seventy-six, between the "University of Chicago," a corporation under an act of the legislature of Illinois, and located in the city of Chicago, in the State of Illinois, party of the first part, and Levi D. Boone, of the city of Chicago, county of Cook, and State of Illinois, party of the second part, as trustee, as hereinafter specified (and in case of the death, absence or removal from said county of Cook, refusal or inability to act, of said party of the second part, then Samuel S. Boone, of said city of Chicago, shall be and he is hereby appointed and made successor in trust to said party of the second part under this deed, for the uses and purposes hereinafter expressed, with the same power and authority as said trustee.)

Witnesseth, That whereas, the said University of Chicago is justly indebted to the Union Mutual Life Insurance Company of Maine, in the sum of one hundred and fifty thousand (150,000) dollars, secured to be paid by a certain promissory note bearing even date herewith, payable to the order of the said Union Mutual Life Insurance Company, five years after the date thereof, with interest thereon at eight per cent. per annum, payable semi-annually, on the 8th day of August and of February, in each and every year until the whole of said principal note is fully paid, which interest installments are further evidenced by ten (10) interest notes, each for the sum of six thousand (6,000) dollars; both principal and interest being payable at the office of said insurance company in the city of Chicago, Ills., and both principal and interest to draw interest at eight per cent. after due, until paid.

And whereas, the said party of the first part is desirous of securing the prompt and full payment of said promissory notes, and interest that may accrue thereon, in whose hands soever the same may be.

Now, therefore, the said party of the first part, in consideration of the premises, and for the purposes aforesaid, and in the further consideration of one dollar to it in hand paid by the said party of the second part, the receipt whereof is hereby confessed, has and does hereby grant, bargain, sell and convey unto the said party of the second part, his successor in trust aforesaid, and his and their heirs and assigns, all the following described lands and premises, situate in the city of Chicago, county of Cook, and State of Illinois, to wit:

That part of the south half of the N. E. $\frac{1}{4}$ of Sect. 34, T. 39, N. R. 14 E., of 3rd P. M., 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 the lots in Okenwald subdivision, "lying next north of Grove-land 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 six hundred and fifteen (615) feet, thence east parallel to, and fifty feet north of the north line of lots in the said Okenwald 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-west along the center of Cottage Grove avenue six hundred and thirty-six (636) feet to the place of beginning, containing ten acres, more or less, to centers of surroundings streets, being the same land deeded by Stephen A. Douglas to said University of Chicago.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments, privileges and appurtenances thereunto belonging, to the said party of the second part, his successors in trust, aforesaid, and his and their heirs and assigns forever; in trust nevertheless,

that in case of default in the payment of the said promissory notes, or either of them, or any part thereof, according to the tenor and effect of said notes, or in case of waste or non-payment of taxes or assessments, or neglect to procure or renew insurance, as hereinafter provided, or in case of the breach of any of the covenants or agreements hereinafter mentioned, then and from thenceforth it shall be lawful for the said party of the second part, or his successors in trust, on application of the legal holder of said promissory notes, or either of them, to enter upon, possess, hold and enjoy the above granted premises, and either with or without such entry, to sell and dispose of said premises hereby granted, and all right, title, benefit and equity of redemption of said party of the first part, its successors and assigns therein, at public auction, at the north door of the chamber of commerce, in the city of Chicago, in the State of Illinois, or on said premises, or any part thereof, as may be specified in the notice of such sale, for the highest and best price the same will bring in cash, thirty days' previous notice of such sale having been given by publication once in each week, for four successive weeks, in the Chicago Legal News, or in any newspaper at that time published in said city of Chicago, and to make, execute and deliver to the purchaser or purchasers at such sale, good and sufficient deed or deeds of conveyance for the premises sold; and out of the proceeds or avails of such sale, and the purchase money paid thereon, after first paying all costs of advertising, sale and conveyance, including the reasonable fees and commissions of said party of the second part, attorneys' fees, and all other expenses of this trust, including all moneys advanced for insurance, taxes, and other liens or assessments, with

interest thereon at ten per cent. per annum, then to pay the principal of said notes, whether due and payable by the terms thereof or not, and interest on said notes up to the time of such sale, rendering the overplus (if any) unto the said party of the first part, or its legal representatives or assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money; which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part, its successors and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through or under said party of the first part, or any of them.

And in case of a foreclosure of this trust deed, as provided by section thirteen of an act of the general assembly of the State of Illinois, entitled, "An act to revise the law in relation to mortgages of real and personal property," approved March 26, 1874, or under any law of this state, upon default and application made to the said party of the second part, or his successor in trust, as aforesaid, by any *cestui que trust* under this deed, it shall and may be lawful for the said party of the second part, in his own name, or otherwise, by suit in any court of competent jurisdiction, to obtain a decree for the sale and conveyance of the whole or any part of said premises for the purposes herein specified, by said party of the second part as such trustee, or as special commissioner, under order of court, and out of the proceeds of any such sale, to first pay the costs of such suit, including his reasonable charges as attorney and solicitor therein, in addition to, and besides the costs of advertising, sale, conveyance, and moneys advanced with interest, as above provi-

ded, then to pay the amount found by the court to be due and payable upon the indebtedness aforesaid. And in case of any suit or proceeding at law or in equity wherein said party of the second part shall be made a party by reason of his trusteeship under this deed, he shall be allowed and paid his reasonable costs, charges, attorneys' and solicitors' fees, in such suit or proceeding by said party of the first part, and the same shall be a further charge and lien upon said premises under this deed, to be paid out of the proceeds of sale thereof, if not otherwise paid by said party of the first part.

And in case of the appointment by any court of a new trustee to execute the trusts hereby created, the sum of two hundred (200) dollars for the attorney's or solicitor's fee of the petitioner in such proceeding, and all other expenses of such appointment, and the execution of said trust, shall be allowed and taken from the proceeds of the sale of said premises.

And in consideration of the money paid as aforesaid to the said party of the first part, and in order to create a first lien and incumbrance on said premises under this deed, for the purposes aforesaid, and to carry out the foregoing specific application of the proceeds of any sale that may be made by virtue hereof, the said party of the first part does hereby release and waive all right under, and benefit of, the exemption and homestead laws of the State of Illinois, in and to the lands and premises aforesaid, and the proceeds of sale thereof, and agree to surrender up possession thereof to the purchaser or purchasers at such sale, peaceably on demand.

And the said party of the second part, with or without re-advertising, is hereby authorized and empowered to postpone or adjourn said sale from time to time at his

discretion; and also to sell the said premises entire, without division, or in parcels, as he may prefer or think best.

And the said University of Chicago, for itself and its successors and assigns, covenants and agrees to and with the said party of the second part, his successor in trust hereinbefore named, and their assigns, that at the time of the ensealing and delivery of these presents it is well seized of said premises in fee simple, and has good right, full power and lawful authority to grant, bargain and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and incumbrances whatever, and that it will warrant and forever defend the same against all claims whatsoever, and that the said party of the first part will in due season pay all taxes and assessments on said premises, and exhibit once a year, on demand, receipts of the proper persons to said party of the second part, showing payment thereof, until the indebtedness aforesaid shall be fully paid; and will keep all buildings that may at any time be on said premises, during the continuance of said indebtedness, insured in such company or companies as the holder or holders of said notes may from time to time direct, for such sum or sums as such company or companies will insure for, not to exceed the amount of said indebtedness, except at the option of said party of the first part, and will assign, with proper consent of the insurers, the policy or policies of insurance to said party of the second part, as further security for the indebtedness aforesaid. And in case of the refusal or neglect of said party of the first part, or either of them, thus to insure or assign the policies of insurance, or to pay taxes, said party of the second part, or his successor in trust, or the holder of said notes, or

either of them, may procure such insurance, or pay such taxes, and all moneys thus paid, with interest thereon at ten per cent. per annum, shall become so much additional indebtedness, secured by this deed of trust, and to be paid out of the proceeds of sale of the lands and premises aforesaid, if not otherwise paid by said party of the first part. The above indebtedness is for a loan of money authorized by resolution of the executive committee of the board of trustees of the University of Chicago, adopted January 25, 1876, and the consent in writing thereto of a majority of said board of trustees, and this conveyance is executed and delivered in pursuance of such resolution and consent.

In case of full payment of all the indebtedness aforesaid prior to any sale of the lands and premises above described, or any part thereof, and a performance of the covenants and agreements herein made, to be performed by the said party of the first part, then a reconveyance to be made to the said party of the first part, its successors or assigns, at its expense. And in case any notice of sale of said premises, or any part thereof, shall be published, and the said indebtedness shall be paid after any such publication and before sale, the said party of the first part shall pay for such publication, and also attorneys' and trustees' fees for services, and all expenses therein to the date of such payment.

And it is stipulated and agreed, that, in case of default in any of said payments of principal and interest, according to the tenor and effect of said promissory notes aforesaid, or either of them, or any part thereof, or of a breach of any of the covenants or agreements herein, by the party of the first part, successor or assigns, then, and in that case, the whole of said principal sum hereby se-

cured, and the interest thereon to the time of sale, may at once, at the option (without notice thereof to said party of the first part, its successors, assigns or legal representatives) of the legal holder thereof, become due and payable, and the said premises be sold in the manner, and with the same effect, as if the said indebtedness had matured.

And said party of the first part, for itself and its successors and assigns, does further covenant and agree to, and with said party of the second part, his successor in trust aforesaid and his heirs and their assigns, that in case of a sale and conveyance, as aforesaid, of said premises, any deed or deeds of conveyance made in pursuance of such sale, shall be *prima facie* evidence of the due compliance with and performance of the terms, conditions and requirements of the deed of trust, by the party of the second part, or his successor in trust aforesaid, in advertising and making such sale and conveyance, to the extent of the recitals contained in such deed or deeds.

In witness whereof, the said party of the first part has caused these presents to be signed, sealed and delivered on the day and year first above written by its president or vice president and secretary.

Signed, sealed and delivered in the presence of

ARTEMAS CARTER, *Vice President.* [SEAL.]

O. W. BARRETT, *Secretary.* [SEAL.]

[SEAL OF THE UNIVERSITY OF CHICAGO.]

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

I, Daniel L. Boone, a notary public in and for the said county, in the state aforesaid, do hereby certify, that Artemas Carter and O. W. Barrett, personally known to me

to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this eighth day of February, A. D. 1876.

DANL. L. BOONE,
Notary Public.

Notarial Seal of
Daniel L. Boone.

[On the back of said deed is endorsed the following:]

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

This instrument was filed for record in the recorder's office of Cook county, aforesaid, on the 15th day of February, A. D. 1876, at 10 o'clock A. M., and recorded in book 660 of records, on page 3.

JAS. STEWART,
Recorder.

EXHIBIT H.

(Principal Note in controversy in this cause.)

\$150,000. CHICAGO, Illinois, February 8, 1876.

Five years after date, for value received, the University of Chicago promises to pay to the order of the Union Mutual Life Insurance Company of Maine, the principal sum of one hundred and fifty thousand (\$150,000) dollars, with interest thereon at the rate of eight per cent. per annum, payable half-yearly, to wit: On the eighth day of August and of February in each year, until said principal sum is fully paid, and in case this note is not

paid at maturity, or should be declared to be due for a failure to comply with the conditions mentioned herein, and in the trust deed made to secure the same, by the legal holder thereof, as is provided in said trust deed, then this note shall bear interest at the rate of ten per cent. per annum, until fully paid, both principal and interest being payable at the office of said company in the city of Chicago, with exchange on New York. The several installments of interest aforesaid, for said period of five years, are further evidenced by ten interest notes or coupons of even date herewith.

It is further expressly agreed, that if default be made in the payment of any one of the installments of interest aforesaid, at the time and place aforesaid, when and where the same becomes due and payable, and such default shall continue for thirty days after such installment becomes due and payable, as aforesaid, then and in that event, the said principal sum of one hundred and fifty thousand (\$150,000) dollars, shall at the election of the legal holder hereof, at once become and be due and payable, anything hereinbefore contained to the contrary notwithstanding; such election to be made at any time after the expiration of said thirty days, without notice.

The payment of this note is secured by trust deed on real estate in the city of Chicago, Illinois.

The University of Chicago, by
ARTEMAS CARTER, *Vice Pres.*,
O. W. BARRETT, *Sec'y*.

Annexed to which note is a warrant of attorney in the usual form, signed by the University of Chicago by Artemas Carter, Vice President, and O. W. Barrett, Secretary, under the corporate seal, authorizing the confession of judgment upon the note in question.

On the back of this note are endorsed the following payments:

7, '76, Rec'd on account of int.	\$100 00
10, 17, '76, Rec'd on account of int.	100 00
10, 26, " " " " " "	13 80
Rept. 7402 Rec'd on account of int.	80 00
Mch. 28, 1876, Rec'd on account of principal. .	5,000 00

EXHIBIT H 1.

(Coupon Note in controversy.)

\$6,000.

CHICAGO, ILLINOIS, February 8, 1876.

Due to the order of The Union Mutual Life Insurance Company of Maine, six thousand (\$6,000) dollars, on the 8th day of August, 1876, without grace, at the office of said company, in the city of Chicago, with exchange on New York, with interest at the rate of ten per cent. per annum after maturity; being for an installment of interest due on that day upon a certain promissory note of even date herewith, payable to the order of the Union Mutual Life Insurance Company of Maine, five years after its date, for the sum of one hundred and fifty thousand dollars, secured by a trust deed upon real estate in the city of Chicago, Illinois, and made by the University of Chicago.

ARTEMAS CARTER, *Vice-Pres.*

O. W. BARRETT, *Sec'ty.*

Exhibits H 2, H 3, H 4, H 5, H 6, H 7, H 8, H 9 and H 10 respectively, are coupon notes for the payment of semi-annual installments of interest on the principal note of \$150,000, maturing respectively at intervals of six months, until the maturity of said principal note, said

coupons being, in all other respects, similar to Exhibit H 1, above set forth, and all bearing interest at the rate of ten per cent. per annum, after maturity.

EXHIBIT I.

City Comptroller's Office.

CHICAGO, 188

Received of D. G. Hamilton, twenty-one hundred and fourteen $\frac{61}{100}$ (2,114 $\frac{61}{100}$) dollars for two quit-claim deeds of property, known as Chicago University grounds, in section 34, 39, 14, for tax interest of city of Chicago in said property acquired by two tax deeds as follows: one tax dated June 28, 1880, recorded in book 1,003, page 99; also tax deed dated August 23, 1875, recorded in book 555, page 178.

THEODORE T. GURNEY,
City Comptroller,
By HAROLD V. HAYES,
Tax Redemption Clk.

EXHIBIT I 1.

Receipt of O. W. Barrett for \$500, paid by the Union Mutual for insurance upon the university buildings, February 1, 1878.

EXHIBIT I 2.

Similar receipt for \$431.23, paid by the Union Mutual for insurance, May 7, 1879.

EXHIBIT I 3.

Similar receipt for \$325, paid by the Union Mutual for insurance, May 27, 1880.

EXHIBIT I 4.

Similar receipt for \$425, paid by the Union Mutual for insurance, May 5, 1881.

EXHIBIT I 5.

Similar receipt for \$425, paid by the Union Mutual for insurance, May 6, 1882.

EXHIBIT I 6.

Similar receipt for \$425, paid by the Union Mutual for insurance, April 10, 1883.

EXHIBIT J.

Affidavit of Leonard Swett, sworn October 24, 1883, stating that he is solicitor for the Union Mutual Life Insurance Company; that the original of the tax deed executed by E. F. C. Klokke, as county clerk of Cook county, to the city of Chicago, dated June 28, 1880, as recorded in book 1003, page 99, is not in the control of complainant or in its power to produce the same, and has not been intentionally destroyed or disposed of for the purpose of introducing a copy thereof.

EXHIBIT K.

Certified copy of tax deed, dated August 23, 1875, executed by Hermann Lieb as county clerk of Cook county to the city of Chicago, conveying, among other premises, the university grounds in controversy for the non-payment of taxes under sale had October 26, 1872.

EXHIBIT L.

Certified copy of tax deed, dated June 28, 1880, executed by E. F. C. Klokke, as county clerk of Cook county, to the city of Chicago, conveying the university grounds in controversy for non-payment of taxes under sale had August 22, 1877.

EXHIBIT M.

Quit claim deed, dated May 16, 1883, executed by the city of Chicago by Carter H. Harrison, mayor, Theodore T. Gurney, comptroller, and John G. Neumeister, city clerk, conveying to David G. Hamilton the university grounds in controversy for the consideration of \$105.01.

EXHIBIT N.

Quit claim deed, dated May 16, 1883, executed by the city of Chicago, by Carter H. Harrison, mayor, Theodore T. Gurney, comptroller, and John G. Neumeister, city clerk, conveying the university grounds in controversy to David G. Hamilton for the consideration of \$2,009.60.

EXHIBIT O.

Quit claim deed, dated September 11, 1883, executed by David G. Hamilton and Mary J., his wife, conveying to the Union Mutual Life Insurance Company of Maine, all the estate acquired under and by virtue of the two quit claim deeds from the city of Chicago to said Hamilton above set forth, in the university grounds in controversy, for the consideration of \$2,221.54.

ABSTRACT OF DEFENDANT'S TESTIMONY.

J. Y. Scammon, for defendant:

I have known the Chicago Astronomical Society from its inception and before its birth, and ever since. It is a corporation incorporated under the act given in volume 2 of the private laws of 1867, page 258.

(Counsel for complainant objected to all testimony concerning the Chicago Astronomical Society.)

Counsel for defendant offers in evidence the act of incorporation, as follows:

"An act to incorporate the Chicago Astronomical Society. Whereas, an association has been formed in the city of Chicago called the Chicago Astronomical Society, the object of which is to support an observatory, and diffuse astronomical knowledge; now, in order to encourage the objects of said association,

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, that J. Young Scammon, Thomas Hoyne, William B. Ogden, W. H. Wells, James H. Woodworth, D. J. Ely, J. K. Pollard, Louis C. Jones, Ezra B. McCagg, John C. Burroughs, A. H. Mixer, Thomas B. Bryan, and their associates and successors, forever, are thereby created a body politic and corporate, by the name of the "Chicago Astronomical Society," and, by that name, shall have perpetual succession, shall be capable in law to sue and be

sued, plead and be impleaded, within all courts of competent jurisdiction; may receive, acquire and hold real and personal property and effects, and dispose of the same at pleasure; may have a common seal, and alter the same at their pleasure; may make such constitution, regulations and by-laws as may be requisite for its government, and for carrying out the objects of the society, and may alter the same at their pleasure.

2. The constitution and by-laws of said society, now in operation, shall govern the corporation hereby created, until altered or repealed by the association, and the present officers of the executive or observatory board shall be the officers of said association, and their tenures of office, powers and duties shall continue the same as now prescribed, appointed by the constitution of said society, until otherwise regulated or changed by the directors of said observatory.

3. All the moneys, property and effects of said society, except the land of the University of Chicago, upon which the observatory tower is erected, shall be held and managed by the directors of said society, the management of all the affairs of said society, the management and observations of the observatory, the employment of a professor or professors of astronomy, and their assistants, the raising of funds and disbursements thereof, and the support and maintenance of said observatory, shall be vested in the directors of said observatory, who shall constitute from their own number an executive or observatory board of said directors; and the members of said observatory board shall hold their offices according to the tenure prescribed by the constitution and by-laws of said society; and the said executive board shall appoint the president, vice-president, the secretary and treasurer of

said board, who shall also act as the officers of said society; and the said board shall transact, regulate and manage all matters pertaining to the said observatory, keep a full and complete record thereof, and make safe and proper investments of all moneys and funds subscribed or entrusted to their care, so as to permanently support and endow the observatory. This society, being an institution formed and maintained solely for the advantage of the public, it and its property and estate, of every name and description, are hereby declared to be exempt from all taxation under the authority of this state.

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

Approved February 19, 1867.

J. Y. Scammon continues:

I am acquainted with the University of Chicago, and have been one of the trustees and vice-president of the board for a good many years. Have been connected with the institution since its incorporation. The Dearborn Observatory is connected with the University of Chicago, and its director is professor of astronomy, and gives instruction in the university. The Astronomical Society built and now occupies one of the towers of the university, under an agreement with the university and board of trustees. The tower was built under an agreement of the board of trustees of the university, with the Chicago Astronomical Society, and built by that society; I think it was a verbal agreement, but I believe the records of the university show it in their books. The agreement was made with me personally; I was a promoter of the Astronomical Society, and contributed and paid all the money for building the tower out of my own pocket. I could not tell without

reference to my memoranda, how much that was; it was a good deal of money; it is on the books of the Astronomical Society, which will be brought in. A large number of gentlemen contributed money to buy the telescope and fit it up. The records of the society show who they were, and the amounts subscribed. The list of names and the amounts attached thereto make a total sum of \$56,800. The following list of names is taken from the records of the Chicago Astronomical Society, and gives the names and the respective amounts subscribed, and is as follows:

"Mr. Colbert also reported as far as the same can be ascertained, the names of all those persons, together with the amount subscribed and paid by each towards the foundation of the observatory, the purchase of the telescope and its equipment and support, before the great fire of October, 1871, in which the records of the organization and the list of said subscribers were all destroyed, said list of names so reported being as follows: J. Y. Scammon (cost of building observatory), \$30,000."

Then follow names of subscribers comprising two subscribers for \$5,000 each; fourteen subscribers for \$500 each; one subscriber for \$200; ninety-five subscribers for \$100 each; and two subscribers for \$50 each.

Mr. Scammon continues:

The \$5,000 contributed by Walter S. Gurnee was for the purchase of a meridian circle; that was not put in the main building, but another building was erected for it on the university premises, west of the university. In addition to building the tower, I paid the salary of the professor of astronomy and director of the observatory, and

furnished him a house to live in for many years, until the great fire made me unable to do so; I paid all the expenses, and in fact virtually maintained the observatory until that time; it was a monument to my deceased wife and I took care of it as long as I was able.

In 1862 certain gentlemen of us met together to consult about establishing an astronomical observatory in Chicago, and in 1862-3 we formed an astronomical association, and by subscription raised money enough to buy a telescope. That association which we then formed adopted a constitution and was fully organized, and we acted under it until 1867, when we got the act of incorporation which has been offered in evidence. You will see that this act recognizes our existence, constitution, etc. I will read from the records of the astronomical society a report of the committee of the board of directors of the Chicago Astronomical Society, touching the relations existing between the University of Chicago and the Chicago Astronomical Society, and will state from my independent recollection that I know the facts therein stated are true. This extract is found on pages 63 to 68 inclusive, of said records, and is as follows:

"Adjourned meeting of directors.

"A meeting of directors was held January 30, 1878, at 4:30 P. M., in room 28 Tribune building, pursuant to adjournment. The president, Hon. J. Y. Scammon, in the chair.

"Present: Messrs. Scammon, Wells, Ranney, Burroughs, Moss, Mixer, Johnson, Willard, Forsyth, Culver, Baker, Hibbard and Colbert. The minutes of the meeting of January 16 were read and approved. The president read the following documents on behalf of the

"committee appointed to report on ownership of the observatory.

"Your committee submit the following facts:

"1. The subject of purchasing a telescope and establishing an Astronomical Society in Chicago was agitated by Mr. M. R. Fory, who proposed the purchase of a telescope in New York (meeting of Ex. Com., Nov. 21, 1862. Dr. Colver, chairman.)

"2. A meeting was subsequently held in Bryan Hall, at which it was agreed to raise a subscription for the purchase of an astronomical telescope, and the plan was adopted which is stated in the accompanying extracts from the records of the university. Subscriptions were made under this heading, and the Astronomical Society of Chicago was formed. The Hon. Thomas Hoyne went to Cambridge, Mass., and bought the telescope for the Chicago Astronomical Society, and the same was paid for by said society, and all expenditures thereon have been paid in the same manner. The action of the board of trustees of the university on this matter at the meetings of July 14, 1863, in 1865; and July 4, 1866, will be found in the following report.

"3. The society was subsequently chartered, and accepted its act of incorporation, and there was never any question raised, so far as your committee are aware, about the respective rights, privileges and property of the society and the university, until since the great fire and efforts to reorganize the society. The relation between the two seems to have been well understood; that while the university owned the legal real estate in the Dearborn tower, the observatory building, that the use in perpetuity of the same, and the rooms immediately adjoining the Dearborn tower and communicating there-

"with, were permanently set apart for the use of the Chicago Astronomical Society, and the professors of astronomy in the institution, and the same were given in charge of the said society.

"It would follow from this understanding that the telescope and fixtures and all that is removable, without injury to the buildings, are absolutely held by the society, with the perpetual right to use the observatory building and the adjoining rooms. In this connection the committee would further state that in their opinion all elections of this society should be reported to the trustees of the University of Chicago for their approval and confirmation."

"The University of Chicago, though reporting the sums expended upon the Dearborn Observatory, as contributions to the university, has never done so in any other sense than as exhibiting that moneys had been contributed and expended for the establishment and maintenance of an astronomical society in connection with the university. The relations between the two corporations have ever been friendly, and entirely free from all friction.

"All of which is respectfully submitted. Jan. 30, 1878. Signed by J. Young Scammon, J. C. Burroughs and W. H. Wells.

"Dr. Burroughs remarked that some time before the great fire the trustees had also set apart, to the perpetual use of the society, the ground now occupied by the building containing the transit telescope.

"On motion of Mr. Hibbard the report was adopted, and the committee discharged.

"The secretary then asked and obtained leave to retire.

"The resignation of Mr. Colbert, submitted at the Oc-

"tober meeting, was brought before the board, and remarks made by several members.

"Mr. Ranney made a statement of terms upon which he thought that the services of Mr. C. might be retained as director of the observatory. After some discussion the matter was referred to a committee, consisting of Messrs. Forsyth, Ranney and Warren, with instructions to report to the board the result of the conference with Mr. C.

"The secretary referred to the coming transit of Mercury over the solar disc, in May, and was instructed to make all needed arrangements for successfully observing the phenomenon.

"The board then adjourned. E. Colbert, secretary."

"EXTRACTS FROM RECORDS OF THE UNIVERSITY."

"The following is the document submitted at the January 30 meeting of directors, as a note of all the records of the board of trustees relating to the Astronomical Society or the Dearborn Observatory:

"March 20, 1863. At a meeting called by the president, the following minute was made: 'The subject of the proposed astronomical observatory being next under consideration, the subject of its location, whether in connection with the university building or separate from it, was discussed at some length, but without arriving at a decision.' The question was submitted to Mr. Boyington, with the request that he would make inquiries with regard to some other observatory, for information that may guide the board. In this connection the following resolution was adopted:

"*Resolved*, that the thanks of this board are due, and hereby tendered to Hon. Thos. Hoyne, for his agency

"in securing the Clark telescope for the university; and that in consideration of his services, the trustees recommend to the observatory committee to make Mr. Hoyne life director of the observatory."

"June 30, 1863. *Sixth annual meeting.* Mr. Scammon, from the observatory committee, appointed at a meeting held with reference to the founding of an astronomical observatory in connection with the university, made a statement to the board on behalf of that committee. 'The amount of that subscription is now \$23,000, with provision, it is believed, for \$7,000 more. The architect reports estimates for the erection of the observatory tower, amounting to \$11,200. Mr. Scammon raised the question of the importance of taking immediate measures for the erection of that part of the university building to which the tower is to be attached. He also read to the board a resolution adopted by the observatory committee, requesting the board to found an observatory in connection with the university, and to appoint directors in accordance with the provision made on that subject in the plans of the committee; the property of the said observatory to be vested as other property of the university. Messrs. Scammon, McCagg and Hoyne were made a committee to report to the board the course proper to be pursued.'

"July 7, 1863. Adjourned meeting. The following resolution, offered by Dr. Evarts, was unanimously adopted: That steps be immediately taken for the completion of the main building of the university, the erection of which has become indispensable to the proposed observatory, and that subscriptions be secured for that purpose.

"July 14, 1863. Adjourned meeting. Mr. Scammon,

"from committee on observatory (*vide* records, June 30 1863), reported the following resolutions, which were unanimously adopted:

"*Resolved*, That the observatory of the Astronomical Society of Chicago be established at the university, and that the same shall constitute a part of the said university, but the control and management of the same shall be vested in the directors of the said observatory, who shall be nominated by the members of the said association and confirmed by the board of trustees of the university, saving to all persons who have contributed \$500 the rights of life director without election.

"*Resolved* (2), That in case the members of the said association neglect or fail to nominate directors, such directors may be appointed by the board of trustees without such nomination. The number of directors, exclusive of life directors, shall never exceed twenty, and seven directors shall constitute a quorum for business.

"*Resolved* (3), That the building or addition to the university to be erected for the observatory shall constitute a part of the property of the university, and be subject to the control of the trustees; saving to the directors of the observatory the rights and authority implied in the foregoing resolutions.

"June 30, 1865. Adjourned annual meeting. Prof. Mixer, among other subscriptions to the university, reported \$25,000 to observatory tower and \$2,700 to astronomical instruments.

"At the same meeting Mr. Hoyne moved that the executive committee (among other things) report to the board the condition and progress of the observatory building and appointments. Adopted.

"At the same meeting it was voted that the astronomical society be requested to report the condition of its affairs as related to the university, at the next meeting.

"ADJOURNED MEETING. At the next adjourned meeting Hon. J. Y. Scammon presented a report of the Astronomical Society, and his account therewith, including names of subscribers and the amount subscribed by each, etc., whereupon the following resolutions were unanimously adopted:

"1. *Resolved*, that we have listened with great pleasure to the report of the Astronomical Society, now presented to the board, and we hereby place upon record our appreciation and grateful acknowledgments of the efforts of Hon. J. Y. Scammon specially, and of the society generally, which have secured the university, in connection with the main building, a magnificent observing tower, and a telescope to be placed therein, the first on this or any other continent.

"2. *Resolved*, that the report of the Astronomical Society be accepted and placed on file.

"3. *Resolved*, that the west tower of the university, erected at the expense of the Hon. J. Y. Scammon as an astronomical observatory, shall be designated as the 'Dearborn Tower,' that being understood to be the wish of Mr. Scammon as an expression of regard for the memory of his deceased wife, whose maiden name was Dearborn.

"4. *Resolved*, that the person hereafter selected by the board of directors of the Astronomical Society shall be the professor of astronomy in the university.

"At the same meeting the executive committee, through the financial secretary, presented a report of the assets and liabilities of the university, in which,

"under 'assets,' appears Dearborn observatory, \$25,000;
"telescope, \$22,000; meridian circle, \$5,000.

"Also in the account of Prof. Mixer, approved by the
"executive committee and presented at the same meeting,
"the subscription list attached to the following (printed)
"form:

"Subscription for the purchase of an astronomical tele-
"scope.

"Meeting, Bryan hall. At a meeting of citizens held
"in Bryan hall, to take into consideration the purchase of
"a telescope for Chicago, a committee was appointed to
"inaugurate the movement, and by them the following
"plan was unanimously adopted:

"Plan for raising funds for the purchase of a telescope.
"I. Any individual who shall contribute \$100 toward
"this object shall receive a life observation ticket for him-
"self and family, not transferable. Any individual who shall
"give \$50 shall receive a life observation ticket for him-
"self only. Any person who shall pay \$30 for this object
"shall receive an observation ticket for himself and family
"for five years, transferable only in case the original
"holder shall remove from the city.

"4. Any person who shall pay \$20 shall receive an
"observation ticket for himself only for five years, trans-
"ferable only, (&c., as above).

"5. The payment of \$10 shall entitle the contributor
"to an observation ticket for one year for himself only,
"transferable, (&c., as above)."

"6. Any individual who shall contribute any amount
"less than \$10 shall be entitled to an equal number of
"observations under favorable circumstances.

"7. All contributions to this object of sums not less than
"\$5 shall be entitled at all times to a free admission to the

"regular course of lectures on astronomy, in connection
"with the proposed observatory.

"8. All tickets of observation shall entitle the holder
"to the use of the instrument only at such times and un-
"der such regulations as shall be deemed best by the
"directors of the observatory.

"9. All contributors of \$100 and upwards shall con-
"stitute an association to be known as the 'Astronomical
"Society of Chicago,' and from this body shall be chosen
"the directors of the observatory. Any individual who
"shall contribute the sum of \$500 for this object shall
"thereby constitute himself a life director of the society.

"*Resolved*, that the board of trustees of the University
"of Chicago be requested by this committee to found an
"observatory to constitute a part of the said university;
"the property of said observatory being vested as other
"property of the university in the board of trustees; the
"directors of the said observatory to be chosen by them
"in accordance with article 9 of our plan.

"A public spirited citizen of Chicago having nobly vol-
"unteered to donate to the University of Chicago the
"amount of money requisite to enable it to erect a tower,
"provided a sufficient sum can be obtained from the com-
"munity to secure the purchase of an astronomical teles-
"cope, to be placed in an observatory in said tower; we,
"the undersigned, agree to pay the sums set opposite our
"names respectively in the subjoining list, according to
"the above plan, to be paid to the following named gen-
"tlemen constituting the executive committee, or to their
"orders: J. Y. Scammon, J. H. Woodworth, D. J. Ely,
"Thomas Hoyne, C. G. Wicker, Prof. A. H. Mixer, T.
"B. Bryan, S. S. Hayes, Philip Wadsworth, W. H.
"Wells.

"Then follow subscribers' names, beginning with W. B. Ogden, \$5,000, and ending with Walter L. Gurnee, \$5,000, for the purchase of a meridian circle, to be called the 'Gurnee Meridian Circle.' The members recorded as present at the meeting of the board of trustees of the university at which these reports were made and approved, were Charles Walker, J. Y. Scammon, James H. Woodworth, Lyman Trumbull, R. S. Thomas, Samuel Hoard, T. K. Burtis, Thos. S. Dickerson, L. D. Boone, A. J. Joslyn, A. H. Mixer, C. N. Holden, E. B. McCagg, J. E. Tyler, Cyrus Bentley.

"July 6, 1866. Adjourned meeting. On motion of Mr. Scammon, the following was adopted:

"*Resolved*, that the rooms immediately adjoining the Dearborn tower, and communicating therewith, be permanently set apart for the use of the Chicago Astronomical Society and the professors of astronomy in the institution; and that the same be given in charge of the said society.

"Dr. Burroughs offered the following which was referred to the executive committee:

"WHEREAS, Certain parties have subscribed funds in consideration of privileges in the observatory, for which certificates or receipts have been issued, and the payments for which have passed into the general treasury; *Resolved*, That the astronomical society be requested to replace those certificates or receipts by their regular authenticated certificates, and the financial secretary be requested to settle with the president of the astronomical society for the funds which have been paid to him on this account.

"*Resolved*, that the astronomical society be requested at an early moment to consider whether the common

"interests of the astronomical society and the university will allow the extension of any of the privileges of the observatory to past or future subscribers to the university.

"June 26, 1868. The committee to whom it was referred to adjust the account of Dr. Burroughs, report, among other things: in 1863 a subscription was made of \$500 to the observatory, and that the university hereby assumes and agrees to pay the subscription of \$500 made by Dr. Burroughs to the observatory. The report was adopted.

"These are all the allusions to the astronomical society which are contained in records of proceedings of full board of trustees."

J. Y. Scammon continues: The original books of the astronomical society were burned, but the amounts originally contributed were upon my books, as a banker, and I preserved those. In addition to the amount given in the list, I must have paid out \$1,500 or \$2,000 a year for five or six years, for the purpose of this tower and furnishing the observatory, including the telescope, which is not on the books at all. The records of the astronomical society as to the money contributed are correct as heretofore given. The records were all made under my inspection as a member of the board, and I think I was present when that was done. All the subscriptions mentioned in this list were paid; all the money reported as having been contributed was paid in, and all expended upon the observatory and the buildings and apparatus. Aside from what appears on this statement, up to the time of the fire, between ten and twenty thousand dollars, and probably over fifteen thousand dollars was paid. I paid the

salary of the professor, as I stated, and for his house rent, and the ordinary expenses of running the observatory. I and some other gentlemen were constantly putting our hands in our pockets and contributing money, and I should say we probably paid from fifteen to twenty thousand dollars. I ought to say by way of explanation for not keeping a record of it, that I had an abundance of money and could put my hand in my pocket and give away a good deal without its being necessary to keep a record of it.

We made all our agreements with the university, built the building and took possession before we obtained the actual incorporation; that was obtained subsequently; we never made any change in the manner of doing business; it was the same officers, and everything the same, except we voted to conduct it under an act of incorporation. That vote was taken as soon as we could get a copy of the act of incorporation. Since the erection of the tower and up to the present time we have been in possession. After making an agreement with the university we immediately took possession of the ground. I had Mr. Boyington, as architect, drive the piles for the foundation and build the tower of the building, and we have been in exclusive possession since, and no one has ever interfered with us. This connection of the Astronomical Society with the University of Chicago has been valuable to the Astronomical Society and to the university and to the public. The regulations have been changed from time to time; all of the subscribers have been admitted to the observatory, and the public generally, at various times and occasions, but the work of the observatory cannot be carried on and allow everybody to go there at all times. The public have had all the use they were entitled to consistent with the use of the great equatorial for the purposes

for which an astronomical observatory is established. I should say the university has had the use of the observatory to the extent that is required; it is not under the control of the university; it is under the control of the Astronomical Society, but the director of the observatory is the professor of astronomy in the university; that was a part of the arrangement, and therefore it is a part of the University in fact. The science of astronomy is a part of the university course; our directors have, so far as my knowledge extends, always acted as professors of astronomy and taught classes in the university.

Mr. SWETT: You speak of a written contract with the university, is that developed by these records?

A. I think so. This contract was not a written one exactly; we were an astronomical association; we had then no act of incorporation, and there was a verbal agreement made between me, representing the Astronomical Society and the university, but my recollection is that the university at its meeting put on record the agreement that was made between us, and it may be copied in the records of the Astronomical Society, at any rate it is on the records of the university.

G. W. Hough, for defendant:

I am a director of the Dearborn observatory and have been connected with the Astronomical Society since 1879, and am familiar with the work that society has accomplished in the department of science and observations in the observatory connected with the university. The institution was equipped for astronomical observations in the year 1865, under the direction of Professor F. H. Safford. During the first three years the great equatorial

was employed in the examination of nebulae and miscellaneous observations.

From 1868 to 1871 Prof. Safford was engaged on meridian observations, in connection with the principal observatories of Europe and America, for the purpose of forming a great standard catalogue of stars. About two-fifths of the work assigned to the Dearborn observatory was completed at the time of the great fire, which for some years impeded active astronomical work. During the years 1877 to 1880, Mr. S. W. Burnham used the great equatorial for the observation and discovery of double stars. During this period he made some thousands of micrometrical measurements on known stars, many of which are exceedingly difficult, and can only be observed with the most powerful telescopes elsewhere. Mr. Burnham's work with the Chicago telescope has given the instrument a world wide reputation. These double star catalogues and observations have been published by the Royal Astronomical Society of London, and are regarded by astronomers as the most important work of the kind which has appeared in recent years.

In 1878 the Dearborn observatory, under the direction of Professor Elias Colbert, sent out an expedition to Denver, Colorado, to observe the total solar eclipse. The observations were successful, and many important facts regarding the phenomenon were ascertained. Since the year 1879 the planet Jupiter has been made a special study with the great equatorial, and the results which have annually been published, have brought the Dearborn observatory in special prominence before the astronomical world. These observations are regarded as of the highest importance by the prominent astronomers of Europe and America. During the past four years the

satellites of Uranus have been observed with the Chicago telescope. Hitherto these exceedingly difficult objects have only been observed with the 26-inch equatorial at Washington. Besides miscellaneous observations in comets, nebulae, etc., the present director has discovered more than two hundred difficult double stars. In 1881 a new observing chair was designed and constructed for the Chicago telescope, which already has been adopted in all the leading observatories in the United States.

In addition to work of original research for the advancement of science, the observatory has daily furnished standard time to the city of Chicago and others. The director has also annually given instruction in astronomy to the students of the Chicago University. I am still in charge of the telescope; the observatory has a reputation among astronomers of doing first-class work; there are four or five large telescopes in this country that take rank with it, but there are very few, in fact only one or two instruments in the world in use which can do the work of this instrument.

Charles H. S. Mixer, for defendant:

I have been secretary of the Chicago Astronomical Society about five years. Have been connected with it since 1875, I think; am measurably familiar with the secretary's records, but not with the treasurer's records. I understand that record shows the contributions made to the Astronomical Society, with this one qualification, that certain books were destroyed at the time of the great fire, and the secretary's records show that about the year 1874 or '75 there was a careful record made of the names of the original contributors to the funds of the society with the amount contributed; that was made by those

records. I have frequently examined that record and have heard the testimony of Mr. Scammon just given. In addition to the amount stated by him as having been contributed before the fire of 1871, there was a subscription about 1870 for the purpose of purchasing clocks to be used in connection with furnishing time to the city of Chicago; the special subscriptions made at that time amount to about \$1,500, the record of which will be found on pages 118 and 119 of the records of the Chicago Astronomical Society, as follows:

The Chicago Board of Trade.....	\$250 00
One subscriber for.....	100 00
Forty-three subscribers for.....	25 00 each
Seven subscribers for.....	10 00 each
Two subscribers for.....	5 00 each

About the year 1874 and 1875 there was contributed the sum of about \$4,425, for the purpose of repairing and virtually rebuilding the dome. These subscribers and the amounts given are entered on the records of the Astronomical Society, pages 23 and 24, as follows:

Colonel Samuel Stone.....	\$500 00
Thirty-six subscribers for.....	100 00 each
Twelve subscribers for.....	25 00 each
One subscriber for.....	10 00

Mr. Colbert also reported subscriptions from old members as follows:

W. F. Coolbaugh.....	\$100 00
C. M. Henderson.....	25 00
J. Forsythe.....	100 00

There was also a subscription one or two years ago of about \$1,000 for the purpose of purchasing clocks to replace those that were destroyed.

A. J. Howe, for defendant:

I have been connected with the University of Chicago for twenty-one years as a teacher or professor, and am familiar with its course of study and training and the number of its graduates. I have made a statement showing the number of graduates from the university since its incorporation. The course of instruction is essentially the same as the University of Rochester, for instance, Madison University, in the state of New York, and some others of like character. The time devoted to the different departments is about the same; there are modifications in the course of instruction, as in all other institutions in the last few years, notably in the scientific department, by which it has been strengthened and brought to a higher standard. The course of instruction in the United States has remained about the same since, perhaps, 1870 to the present time. The number of students has sometimes been greater considerably than in the University of Rochester, or in Madison University, and sometimes has been a little less. Perhaps the greatest number of students in attendance at any one time was about the year 1869 or 1870. The whole number of graduates in the department of arts and philosophy has been 288; the number in the law department has been 745, thus making over 1,000 graduates. There was for a period of time connected with the university the Rush Medical College. The medical students during that time have not been counted at all. The whole number of different students who have attended the university since 1859 is 2,829; the number connected with the law department, with the exception of this, is 1,229, thus making 4,058 different students who have been connected with the university. The list has been compiled with a

great deal of care from the entire lists of the names. I consider the institution now in a healthy and prosperous condition. There has been no period during the time I have spoken of in which the university has not been in a prosperous condition as regards the number of students or the course of instruction.

Cross-Examination.

It has been supported partly by tuition funds. The bills are made out against the student—usually paid by his parents or sometimes by himself. There is a large class of persons who pay nothing for tuition. Approximately one-third are of that character. There is no other source of revenue except the beginning of an endowment of about \$600, which is on interest, and the interest paid every year. The majority of the current expenses are made out by voluntary subscriptions of persons here or elsewhere. I don't know much about how much it takes to constitute the balance—I have some idea about twelve or fifteen thousand dollars. My judgment would be that the two-thirds tuition contributes about \$5,000 to that amount. The college solicits subscriptions, as I understand, and obtains them from such persons as will subscribe to its support. There was a partial endowment to the Greek professorship by parties in New York, as I understand. I do not know how much was given; think it does not support the department; don't know that it contributes anything to its support now. Don't know of any other sums that the university has received. There was a rumor that Dr. Burroughs received something on an endowment, but I have always had doubts whether he did, and know nothing about it. The college might have had other sources of revenue and

I know nothing about it. I think there are ten or twelve teachers. We meet every school day. Don't think we discuss the college and its means—how it is getting on. There have been periods when that subject has been intensely discussed. Don't think I know what is going on toward getting money to pay my salary. Don't know whether the law school is now supported entirely by fees—supported by the law students; don't know whether the university has ever contributed anything to the support of the law school.

D. W. Stockwell, for defendant:

I reside in Aurora, Illinois. The paper shown me was issued to me on payment of \$1,000 for scholarship in the University of Chicago. It is dated July 9, 1868.

(Testimony concerning scholarship objected to.)

I paid a thousand dollars for a scholarship previous to the giving of this, within a year or two. Think I paid it to Mr. Clark, then financial agent of the university. A number of young men have attended on this scholarship, and also my own daughter is at present attending. I understand that scholarship pays the tuition of the person attending the university.

Scholarship offered in evidence.

(Objected to).

“UNIVERSITY OF CHICAGO.

“CHICAGO, Ills., July 9, 1868.

“This is to certify that D. W. Stockwell, of Aurora, Ills., having paid to the University of Chicago the sum of one thousand dollars, for the purpose of establishing “a perpetual scholarship for the education of young

"men preparatory to the christian ministry, is entitled to
 "the free tuition of such young men as he may designate, and also to his own sons, whether they shall have
 "the ministry in view or not, provided that only one student shall at the same time attend the university, free
 "of tuition by virtue hereof.

"J. C. BURROUGHS,

"*President of the University of Chicago.*

"CYRUS BENTLEY,

[SEAL.] "*Secretary of the Board of Trustees.*"

No objection is made to the foregoing paper on the ground that the signatures have not been proven.

Cross-Examination.

Undoubtedly the money was paid in 1867 or 1868; the parties were at my place; I gave them the money at the time. The paper was afterwards issued to me.

A. J. Howe, recalled for defendant:

The paper shown me is a copy of the list of scholarships in force against the university when Charles H. Howe, who was treasurer, gave me the books and papers. It is a copy of the list copied by him with a great deal of care, he having spent some months in the preparation of it. He is not living. I don't know where the original list is; I hunted for it among the books of the university. This is a copy of a copy which I have in my pocket, which I thought was not in good condition to present; this is a copy made by my wife of that paper, the list of scholarships made out by Dr. Rowe.

It was made by my direction. It was compared with

the original list as made by Rowe. It is the list upon which scholars are admitted to the university under scholarships, with this exception: it terminates in 1873, and there have been, I think, six scholarships added since then; this includes all up to that time. I would not say this is the only paper in the possession of the university upon which, aside from the original scholarships themselves, scholars are admitted, because Professor Bascom has a list of scholarships upon which he, for several years, operated in conducting the internal affairs of the university; whether he got his from that original paper of Mr. Rowe's, or from Mr. Driggs, who succeeded him as treasurer, I don't know; but that list is in a scholarship book which contains nothing else except the names of students, to whom the use of scholarships was assigned; where he got that from I don't know, but that and this are the only ones I know anything about in existence at the present time; I hunted for the original list with Rowe with great care and could not find it. I have no doubt this is a true and correct copy of the original list.

(Counsel for complainant admits it to be a copy of the original, but objects to its introduction.)

(Here follows copy of list of fifty-one scholarships, with names of students assigned thereto for the year 1872-3.)

Witness continues: Mr. Rowe was treasurer and handed me the books. I audited his account in July, and perhaps ran into August, 1871, and after I audited his account his books were left in my possession. My wife copied that; I can not be certain that I was present when she copied it. These represent payments of \$1,000 each. That is what Mr. Rowe spent so much time about. He thought all were not fully paid; he claimed to have spent from three to six months. When a scholar applies for ad-

mission he seldom has the original scholarship. The originals are supposed to be in the possession of parties owning them. It more commonly occurs that the student applies for the use of the scholarship, and he sometimes comes with an order from the party owning them, and sometimes he comes and the party writes us to give him the use of his scholarship, and sometimes neither of these things occur. I hunted for the original record of these scholarships in the institution and could not find it. I know of no original records on the books of these scholarships. Don't think there is any account in the financial accounts showing the money which has been received for scholarships. I can find out when these gentlemen paid \$1,000. I happened to be looking over the books and saw that when the main building was erected the parties who subscribed to the university had scholarships issued to them, and the money was used in the erection of the building; there is where the majority of the money represented by these scholarships went. That will appear in the reports at the end of the year of the collections made; you will find them on the record of the board of trustees, the general reports made by the financial agent. You will find, I do not know how many, of the reports of the financial committee showing how much money it had collected. When \$1,000 was paid by one of those gentlemen, you will find the amount, but it does not say whether it was for one of these scholarships or not. Think the main building was finished in 1866; in my opinion the most of this scholarship money went there. I know we employed an agent to collect everything due the university at that time; out of over \$200,000, I believe he collected about \$55,000, and the scholarship money was nearly all used. My only means of knowing

how much money was put into the university would be by comparing the list of scholarships with the list of names who were reported as paying \$1,000. The Stockwell certificate of scholarship is the oldest form. There never has been but two forms. This is the old form, which gives the right of free tuition to one son or one student for the Christian ministry, whatever denomination he may be, during the whole time the university lives. The other form, as I understand it, does not confine the scholarship to the use of those who are students for the Christian ministry, but can send his own son or assign it to any poor student who is worthy of it. I could not know the money went into the building unless I collected it and saw it paid to the workmen; I have no doubt of it; of course I don't know, because I did not handle the funds; all I know is from conversation with members of the faculty and Dr. Burroughs and those who knew at the time, and perhaps Mr. Clark himself; he is dead.

Q. Do you know anything more about it than what these people told you?

A. That is about all. This paper is a copy that my wife made from a copy which she made. That is copied from a list transferred to me among the books put in my possession. We were very jealous about the scholarships, and did not want any names to appear unless they really existed. Burroughs knows all about it, or has a general knowledge. Mr. Sawyer is not alive; there is no other person now connected with the faculty of the university, who was then connected with it. We talked the matter over together; used to meet every week in faculty meeting, and sometimes talked about the affairs of the university.

(All of the foregoing testimony objected to as hearsay.)