

A. J. Howe, recalled for defendant:

This is the new scholarship that I referred to (producing paper.) It is now in use. It was authorized by the executive committee January 25, 1876, as shown by their record, on page 127. The resolution is as follows:

"Resolved, that the executive committee authorize the founding, during the year ending January 1, 1877, of one hundred perpetual transfer scholarships, to be invested and held sacredly as an endowment for the support of instruction in the university.

"Resolved, that the chancellor be directed to have prepared and presented to this committee at the next meeting, a proper form of certificate or deed of such scholarship."

The form of new scholarship was adopted February 3, 1876; the record on page 128 is as follows:

"THURSDAY, February 3, 1876.

"Adjourned meeting of the executive committee at the Brevoort House. Present, Messrs. Boone, Blake, Burroughs, Thompson and Barrett. Dr. Boone in the chair. Chancellor reported form for certificate of scholarship, endorsed by Mr. Thomas Hoyne, attorney of the university which was, after amendment, adopted."

That is all I find with regard to the new scholarship. That is the form devised in accordance with the resolution. I do not know that any scholarships have been sold for which certificates of that form have been given. Dr. Anderson would be likely to know.

I have the books here, and find entries in regard to scholarships. Page 13, September 3, 1857, of the records of the board of trustees, the resolution offered by Dr. Burroughs, as follows:

"Resolved, that no scholarship subscription be received for a sum less than \$1,000; that the number be at present limited to fifty, and to be subscribed by persons not residing in the city of Chicago, and to young men (to be designated by subscribers) who are intending to prepare themselves for the ministry, but nothing contained in this resolution is intended to give any preference to members of any particular denomination.

"Dr. Boone offered the following as a substitute: "Whereas, it is understood that a number of subscriptions have been offered to the university, based upon the scholarship system; and, whereas, no action of this board has been taken on the subject, therefore,

"Resolved, that the agents be directed to take no subscriptions upon that principle upon the next meeting of the board, and that a committee of three be appointed to report upon the subject at the next meeting.

"Rev. Mr. Joslyn moved that the whole subject matter of the above resolution be referred to a committee of three to report at the next meeting."

The next thing I find is on page 56 of the collection book, under date August 2, 1865. This is a collection book for 1864-65. I find no entries in this book with reference to scholarships. I don't know whether it was the only collection book used. D. Volentine owns two scholarships and this shows he has paid \$1,000. I do not find under that entry any charge to him, except the sum of \$1,000. As to the other accounts on this book the charges are to subscriptions. William Jones is treated the same as Volentine, and D. W. Stockwell is the same. Stockwell is credited as having paid \$1,000; all the other names in this book are each charged with subscriptions. This is the only collection book which I have access to.

There must be a number of others somewhere. My testimony respecting the Voluntine and Stockwell \$1,000 is based upon the collection book and my knowledge of the fact that these gentlemen held their scholarships.

I find in the record of the trustees a reference to the list of scholarships made by Charles H. Rowe; I find it on pages 146-7; I find on page 146, he was appointed treasurer of the university, and on page 147 I find the following:

"It was also voted that the treasurer be directed to pay over to the endowment committee all the moneys paid in on account of scholarships, with an account of the amounts paid and by whom paid, and that such moneys be separately invested for and on account of scholarships, and that the treasurer be requested to make up a detailed statement of scholarships for the secretary to enter upon the records."

That resolution was adopted November 2, 1869. Rowe was made treasurer at that meeting, according to this record. I know that he made a list, for I know his handwriting and am familiar with the list. I have made search for it among the books of the university that were in Mr. Barrett's office and in your (Mr. Driggs') office. Copy produced in my former examination was made from list, which Rowe prepared under that resolution. Rowe lived in the building. I saw him every day and was familiar with him and what he said about the affairs of the institution. I had charge of the finances, when he came there from September 9, 1871, until January 16, 1874, and I had used the list in the prosecution of the collection of funds inside. At page 71 of the records of the executive committee, I find a reference to the issue of scholarships at the meeting of January 16, 1874. It was voted to issue

"a certificate of scholarship in consideration of the payment of \$1,000 to the university to Mr. Calvin Sampson, of North Adams, Massachusetts." Also, "a transferable scholarship for the same consideration to Mrs. Catharine Avery, of Bristol, Illinois."

Cross Examination.

I find a regulation in regard to the manner in which scholarships shall be designated on page 92, when not designated by the real owners. I find also that free scholarships were given to the sons of Judge Douglas about the time of his death; also one to the son of Professor Johnson, who was Latin professor there. On page 15 of the records of the trustees, June 8, 1861, I find the following:

"The chair appointed on that committee (on scholarships previously authorized) Dr. Boone, Rev. Mr. Boyd and Mr. J. H. Woodworth. On motion, it was resolved to add Rev. Mr. Burroughs to the above committee."

On the subject of free scholarships, I find on page 37 of the same record, as follows:

"That the board of trustees, in testimony of their gratitude to the deceased (that refers to Judge Douglas) for his munificent gifts and valuable service, in behalf of the University of Chicago, tender to his two sons, Robert and Stephen, free scholarships in the institution."

I find also on page 57 of this record the following, under date of July 1, 1863:

"On motion of Dr. Burroughs, it was unanimously voted that a free scholarship in this university be given to the widow of the late Professor Johnson, for the

"education of her only son when she may choose to avail herself of this privilege."

Q. Is that all you find?

A. On page 124 I find the following:

"*Resolved*, that the board accept of Dr. Burroughs as a donation the balance of said amount, amounting to \$605.25, to found six free scholarships for indigent young men desiring an education, and do hereby declare such foundation."

Q. Have you now given us everything that you find in the records concerning the question of scholarships?

A. Yes sir, but I do find another thing in the record which undoubtedly belongs to scholarships on page 90, but nobody would know it, unless he knew the fact that Mr. Boynton had a scholarship; the scholarship was collected at that time. That is the only remaining thing I find in the records. He pays \$1,000, that was for his scholarship, but the record does not show it was for his scholarship. I know at that time that they collected all the money they could for the main building, and collected all they could for scholarships, and I know Mr. Boynton has paid \$1,000, and there is \$1,000 paid and \$1,000 unpaid, he actually has two scholarships.

Q. Aside from this, do you find any other evidence in these records whatever in any shape concerning scholarships?

A. I think not.

Q. Have you made diligent search for such evidence as you could find in these records?

A. I have made very careful search.

Q. Aside from this record book, have you found any

other records, documentary evidence of the issuance of scholarships?

A. Yes, I found in the executive committee record book which I produced, those two references, I have already testified to them, and also in the collection book, those which I have given.

Q. Those have been testified to this morning?

A. Yes, those are all I find.

Q. Do you mean to be understood you have already testified to all evidences of the issuance of scholarships that you have found in any of these books of record belonging to the university?

A. Yes.

Q. I will ask you to read from page 146 of the records of the board of trustees, under date November 4, 1869, a portion of the record of which meeting you have already read, beginning with the sentence "It was voted that all subscriptions, &c."

A. "It was voted that all subscriptions and documentary evidence of the assets of the university held by the treasurer or financial agent or other persons be furnished to the secretary, and that the same be placed at large upon the records."

Mr. DRIGGS: Do you know whether there were any records of the University of Chicago which were destroyed by fire after the date of the meeting from which you have just read an extract?

A. On page 53 of the executive committee record book you will find about the burning of the records. I find a memorandum by John W. Driggs, he was treasurer of the university; he was elected November 4, 1869.

He says: "That the records and doings of the executive committee, from June 29, 1869, to the time of the great fire in October, 1871, were consumed in that great conflagration. The records from that time to January, 1874, were kept by Cyrus Bentley and Rev. Jesse B. Thomas, D.D., but the notes were lost and mislaid and can not be found." That is what I find in regard to the destruction of the records.

Q. There might have been then a record of scholarships made by an officer designated in the resolution of November 4, 1869, destroyed in that fire?

(The form of the question objected to.)

A. There might have been a record made by somebody destroyed in the fire.

Q. There might have been a record and it might have been among those papers?

A. Certainly it might, that covers the period of time. He was appointed in 1869, and gave over the books to me in 1871.

Q. Are there any books which you received in 1871, which you have not found now in this present examination?

A. I can not answer that. I know I found some of the books were issued during that time, I am not certain I found them all.

Q. Do you know what books and papers were destroyed?

A. I do not; none that were in my possession were destroyed, for they were at the university, and out of the range of the fire.

"UNIVERSITY OF CHICAGO.

"Centennial Scholarship.

"(Engraving showing University Buildings.)

"No. \$

"This Indenture, made this day of in
"the year of our Lord one thousand eight hundred and
" , between the University of Chicago, party of
"the first part, and of county of
" State of party of the second part:
"Witnesseth, for and in consideration of one thousand
"dollars, paid by the party of the second part to the University of Chicago, the receipt of which is hereby acknowledged, the said university guarantees unto the
"said party of the second part, his heirs, executors, administrators, and assigns forever, one scholarship in the
"University of Chicago; but subject to and upon the following conditions, viz:

"The said scholarship shall entitle the said party of the
"second part, his heirs and assigns, to have in Douglas
"College of the said university, one student for and during every collegiate year thereof, the said student to be
"admitted and to receive instruction in every department,
"class, or course of lectures or instruction in the said
"Douglas College, free of tuition; provided, however,
"that the said student shall be admitted to the said college, and entitled to the privileges herein secured, subject to all the laws and regulations at any time in force
"by order of the local managers of the said university,
"for the government and discipline of the said college,
"and to all fees and charges to which other students
"therein of like grade are subject, with the exception of
"tuition.

"This scholarship shall be transferable only on the

"books of the said university, in the city of Chicago,
"upon the surrender of this certificate.

"Witness the corporate sign and seal of the University
"of Chicago, by the hand of its proper officers, this
"day of

President.

Secretary."

(Across the face of the above blank form of scholarship, is printed in large figures in outline, "1876.")

John K. Pollard, for defendant:

I was a trustee of the Chicago University and find my signature on complainant's "Exhibit C." The paper was brought to me by, I think, Mr. Barrett; but I am not positive, and I signed it without reading or knowing anything about it, only he said it was a resolution passed by the board. I do not think the subject matter of that mortgage and the execution of that paper was considered at any meeting of the board when I was present. Think I never had any conversation with my associate trustees in regard to the mortgage referred to in "Exhibit C." My impression is I signed it at Holden's office on La Salle street; happened to be there by accident and some one brought me the paper.

The first subscription I made to the university was in 1857, \$5,000, in this way: Mr. Smith, my partner, his wife was sick and he was up on the lake shore with her; Mr. Joslyn was anxious to have a large subscription and I made a subscription of \$5,000 for Smith and Pollard, subject to the approval of Mr. Smith so far as one half was concerned. The other half was a *bona fide* subscription, which I paid from time to time; and I think I also

paid that year \$500 of that. I completed the payment in the course of two or three years, paper distributed over two or three years. I was well acquainted with Stephen A. Douglas and had knowledge when I made this subscription respecting the donation of land to the university. My knowledge was from what I talked with Douglas and Burroughs that it was made as a donation for—

(Objected to unless written statement is produced.)

I understand it was put in writing.

(Objected to as before.)

I understood from Douglas himself, talked with him many times with reference to it, at least half a dozen, that he desired to contribute that land for the purposes of the university, and that he designed it to be perpetual, put it in such a way it should not be sectarian at all, and could not be disinherited by the action of the board at any time. I made my payments on the face of that understanding, and any papers I signed for them I signed with that understanding. I know of other contributions made at that time by Samuel Hoard, Charles Walker, Levi D. Boone, Col. Taylor, James H. Woodworth, Hiram A. Tucker, Mason Briggs, Walter S. Gurnee, John T. Edwards, M. D. Smith and others. Most of these were \$5,000 subscriptions, some of them from one to five thousand. All of them I have named were paid, more or less; I know that from my general knowledge and talk with Burroughs and others, and also having at a later date examined all the books, accounts and papers, which papers I don't suppose are in existence now; I suppose they are burned up; if you could find them it would be easy to show the amounts paid.

Q. How much was paid, according to your recollection, before August 30, 1858?

A. The best of my recollection is, as to my own, that I paid \$500. My best recollection is Col. Taylor, they couldn't get him for more than a thousand dollars, and he gave his check for it on the spot, and the others were paid in proportion; I should say most of the \$5,000 subscriptions were paid at least a thousand dollars of it, and the smaller ones in proportion.

Q. Were there any other subscriptions, large or small, paid, to your knowledge, before August 30, 1858?

A. There was a good many smaller subscriptions, and some of them were paid the same day the subscriptions were made. There was a special effort made about that time to get money for the building. I could not remember any particular names further than I have stated.

Q. I will ask you whether or not there was an agreement signed by Stephen A. Douglas and John C. Burroughs, in the year 1856, respecting the donation of this ten acres you have spoken of?

A. My best judgment is there was such an agreement and that I have seen it. I think I was first made a trustee in 1857, L. D. Boone was then a trustee.

Q. Did you ever talk with Mr. Boone respecting the provisions of this donation by Mr. Douglas?

(Objected to.)

A. I have no recollection now of having any conversation upon that special point, except at the time I guaranteed the first \$25,000 of bonds, then the question came up about the nature of them. This was the statement that the others made at the time why they wanted us personally and specially to guarantee them.

Q. Who do you mean by "us"?

A. I mean myself and Woodworth and Hoard, and, I think, William Jones; certainly five or six. They required us to give a personal guaranty we would pay the bonds and the interest, and the reason was the nature of the trust was such it was not satisfactory security; that these reservations and the fact it was for the purpose and given in the way it was, and they would not loan money except they had this complete, absolute, positive, personal guaranty of responsible parties, which we gave. He was representing the Union Mutual Life Insurance Company; I think he was agent of the company.

Q. Did you sign any paper respecting that loan?

A. I don't remember.

Q. When Dr. Boone made these statements to you respecting the loan and desiring the guaranty of yourself and others who were trustees of the university, was he then representing the Union Mutual Life Insurance Company, the complainant in this case?

A. I have always supposed he was.

Q. Did you suppose so then?

A. I did, and I have always supposed the money was borrowed of them, this very \$25,000.

Cross-Examination.

I have heard of the fact that Douglas made an absolute deed of those premises to the university, but have never seen it.

(The deed on page 9 of defendant's answer shown witness.)

It seems to be an absolute deed, dated August 30, 1858.

Q. I will call your attention to some minutes on page 25 of the records of the university.

(Objected to.)

"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*. Minutes of last meeting read. L. D. Boone then made a statement with regard to the arrangement made by the executive committee for issuing bonds for a loan based on a deed of the university, furnished by Judge Douglas. He concluded his remarks by offering the following resolution, which was accepted:

"*Resolved*, by this board, that the university grounds and the buildings to be located thereon be mortgaged and conveyed by trust deed, as herein provided, as security for loan or loans of money, not exceeding the sum of \$25,000, for a term of not exceeding five years, to secure the erection of the university building, and that the president or vice-president, or secretary of the board be, and are hereby authorized and directed to execute such trust deed or mortgage as they may think proper of the said grounds and building, to secure such loan or loans of money and to execute bonds therefor, bearing interest at the rate not exceeding ten per cent., payable semi-annually, the principal 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 any reasonable expense that may be necessary in effecting said loan.

"*Resolved*, that in order to place the security of the loan beyond question, the members of the board and other friends of the university be requested to guarantee payment of the bonds and coupons above authorized, and that the financial agent of the university be directed to place the bonds in the hands of William Jones, Esq. thirty thousand dollars of its bills receivable to indemnify said guarantors against loss upon said guaranty.

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

Witness continues: I don't remember that, I might have been present and might not. I remember there were some personal guaranties put in Jones' hands for the protection of the guarantors. I guaranteed the bonds only once. I could not say they were the bonds referred to in this resolution, but presume they were; I was thinking it was earlier than 1858; may be mistaken as to this, I think it was early as 1858.

Q. Do you remember that the guaranty was for the first loan that the university made?

A. That was the only guaranty that I ever made. It was the first loan in the shape of bonds as security.

J. Y. Scammon, re-called for defendant:

Counsel for defendant read in evidence extracts from the minutes of the board of trustees of the University of Chicago.

(These extracts are the same heretofore printed in full in this abstract as a part of the testimony of J. Y. Scammon in his former examination in behalf of the de-

fendant, for which reason they are not repeated here. The resolutions again read comprise the following from the records of the board of trustees: Meeting of March 20, 1863, page 51; June 31, 1863, page 55; July 14, 1863, page 61, and June 30, 1865, page 75.)

Counsel for defendant also read from page 79 of the record of trustees of the meeting of June 30, 1865, as follows: "It was moved and carried that the astronomical society be requested to report the condition of its affairs as related to the university at the next meeting."

Also on page 81 at a meeting held July 19, 1865, the following: "Mr. Scammon then presented the following report of the astronomical society. The following are the names of the subscribers, and the amount by them respectively subscribed and paid in."

(Here follows a statement in detail headed "The Astronomical Society of Chicago in account with J. Young Scammon," in which are set forth various items of debit and credit, for which see defendant's testimony pages 85, 86, 87 and 88.)

RECAPITULATION.

"Cost of building tower as per statement annexed	\$23,966 25
"Cost of telescope payment to Clark & Sons. 10,000 00	
"Cost of dome and track.....	2,240 35
"W. W. Boyington's bill.....	164 50
"Exchange on drafts sent Clark & Sons....	15 75
	<hr/>
	\$37,486 85

"RECEIPTS.

"Subscriptions received.....	\$13,000 00
	24,186 85
	<hr/>
	\$37,486 85."

(Counsel for defendant again read in evidence the resolutions heretofore given in full upon the examination of J. Y. Scammon, when first called in behalf of defendant, thanking Mr. Scammon for his services and naming the observatory "Dearborn Observatory"; also on pages 104, 5 of the trustees' record the resolution heretofore printed in full, setting aside certain rooms for the use of the Astronomical Society.)

J. Y. Scammon continues:

The paper now shown me is a communication which I made to the trustees of the university as president of the Astronomical Society, April 6, 1868. It reads as follows:

"To the board of trustees of the University of Chicago:

"The Chicago Astronomical Society beg to announce to the trustees that the meridian circle being now about to be shipped from Europe (it having been completed) it is necessary to build a small building to receive it. The tract of land in the college or university grounds directly east of and adjoining to Crittenden avenue, seems the most suitable and convenient for this purpose. They therefore ask that a strip of the same, extending east from Crittenden avenue, say sixty-six feet, be appropriated and set apart for the perpetual use of said society, for the purposes of placing the building in the same for the accommodation of the meridian circle, said society to leave south of its building sufficient space for a passage from the south side of Crittenden avenue to the university building. Early action is desired in this matter, as the society desires to proceed at once to the

"erection of said building in order to have it in readiness
"for the instrument on its arrival.

"J. YOUNG SCAMMON, *President*.
"April 6, 1868.

"*Resolved*, that there be granted to the Chicago Astronomical Society the use of a piece of the university lands of the width of Crittenden avenue, immediately east of and adjoining the same, and extending from the terminus of Crittenden avenue, on the east side of Rhodes avenue, thirty feet in depth, for the reception of and the use thereon of the meridian circle recently manufactured for said society, and for such other uses in connection therewith as said society may require, it being understood that said society is to leave a sufficient space south of its building for a passage from Crittenden avenue to the university.

"*Resolved*, that a walk be laid out extending from the south side of Crittenden avenue, as extended, through Rhodes avenue to the university building."

Witness continues: The officers of the university reported to me that that resolution was adopted. I don't know whether by the trustees or the executive committee. I suppose by the executive committee, because the trustees were not then in session. I find the record is burned up. I know the proper officers reported to me that this was done, and thereupon I took possession of the land.

Counsel for defendant reads from the records of the executive committee, page 58, a memorandum, as follows:

"Memorandum. The records of the doings of the executive committee from the 29th of June, 1865, to the

"time of the great fire in October, 1871, were consumed
"in that great conflagration.

"(Signed) JOHN W. DRIGGS,
"Secretary of the Executive Committee."

F. E. Hinckley, for defendant:

I find my signature attached to Exhibit "C." Can't fix the date when I signed it. I remember that the paper was brought to me by Dr. Burroughs at my office, and signed by me there. It was stated that it was necessary to have the signatures of the trustees to this paper to effect a renewal of the loan of the insurance company. I never consulted with the board upon the subject. Don't think it was ever discussed by the board in my presence. I was a trustee when I signed that paper. There was no consultation, except the statement made by Burroughs. I was busy at the time, and the paper was signed without much consideration of the matter.

E. D. Taylor, for defendant:

Am acquainted with the University of Chicago. Was very well acquainted with Stephen A. Douglas. Was one of the trustees appointed at the request of Douglas. Douglas consulted me a good deal about it before he made the donation. I guess it was in writing.

Q. State whether or not you had a conversation with Douglas, respecting a grant or donation which was proposed to be made to the University of Chicago.

(Objected to).

A. My understanding from Douglas was; he had concluded there had been a good many different churches

after him to make that donation, and he consulted me before he did it, and finally concluded to make it to the Baptist church, with two reservations—one that it should never be conducted as a sectarian institution; the next was that the ten acres should never be diverted, either diverted or mortgaged, from the intention of the school, to a permanent school then and forever, and if they wanted to raise money they could go on and get their donations and build the buildings, but must not involve the grant of the ten acres. That is all I know about it. I frequently made donations; can't recollect the amounts nor the dates. I furnished them with coal a winter or two, and think I was one of the first who subscribed a thousand dollars in money, and paid it when subscribed, in the early part of 1850. After that I gave them other donations, and helped them raise money time and again. I subscribed it with the understanding I had from Douglas. I was familiar when I made these donations, with the conditions of the donations made by Douglas. He consulted me constantly about it, and when he concluded he made his arrangements with the Baptist church. I had a great many consultations, and he showed me the writings he had drawn up about the reservations. I told him the first one suited me exactly. The other I had nothing to do with. He told me he had made two reservations in his own handwriting. I think that was the agreement that was delivered to Dr. Burroughs. Colonel Dunlap contributed, I guess, among the first \$5,000. Whether he paid it down I don't know. I think they took a great many subscriptions payable in installments. Think I was one of the original board of trustees. I subscribed before the incorporation. We went right to work raising money. Think I made payments before the act was

passed. As soon as Douglas had fixed it, Burroughs went on getting subscriptions to complete the house.

Cross-Examination.

When I made this donation I did not know the university had borrowed money of the Union Mutual. Think I was trustee when the first loan was made of Haines. I assented to that loan, if it was necessary for me to do so. Don't recollect of the university borrowing \$25,000 of the Union Mutual in 1861; think I recollect of their having borrowed \$15,000; I was a trustee at that time, but did not attend to the loan. I remember of their borrowing \$75,000 in 1866 through Boone of the Union Mutual, but never consulted about it. I had a conversation with Douglas before and after he made the gift; think the gift is a contract in writing between him and Burroughs. Douglas read the contract with me and consulted with me before he made it. He read me the reservations as I state to you, one about the different churches, no sectarianism to be exercised, although it should be under the control of the Baptist people. The other was the thing to be inalienable; should not be jeopardized by raising money to build the building, so as to break the school up.

David Voluntine, for defendant:

Am acquainted with the Chicago University; was one of the original trustees; I subscribed \$2,000; some of it was paid in installments; the first payment was made, upon my books, July, 1865, \$1,000. My recollection is it was paid before 1865, perhaps the last payment was made then, I can't give the dates; I paid \$2,000; I had some acquaintance with Douglas.

Q. State in full your understanding or knowledge about it, Mr. Voluntine?

(Objected to.)

A. I can't say that he told me anything respecting it. Dr. Burroughs told me more than any other one. I understood this \$1,000 in 1865 was given for university purposes, the university to be perpetuated there. The paper now shown me is a scholarship I am entitled to in consideration of my donation.

(Certificate of scholarship produced and read by Mr. Driggs, being in the same form heretofore printed in full).

Witness continues: The papers now shown me are permits to visit the university and observatory on account of my being a contributor.

(The permits read by Mr. Driggs as follows):

"Dearborn Observatory at the University of Chicago.

"Admit D. Voluntine and family, of Aurora, contributor to university.

"J. YOUNG SCAMMON, *President Executive Board*.

"THOMAS HOYNE, *Secretary Executive Board*.

"UNIVERSITY OF CHICAGO.

"This is to certify that D. Voluntine and family, of Aurora, by the payment of \$50, is entitled to a life privilege in the observatory of the University of Chicago, on such days as may be set apart for the public use of the telescope. This certificate is not transferable save when the holder removes from the state.

"M. G. CLARK, *Financial Secretary*."

J. C. Burroughs, for defendant:

I was acquainted with Stephen A. Douglas in his lifetime. The agreement set forth on pages 6, 7, 8 and 9 of the answer of the university, with some errors, seems to be a copy of the agreement Douglas made with me, the original of which I now produce as follows:

"This agreement, made this second day of April, in the year of our Lord eighteen hundred and fifty-six, between Stephen A. Douglas, of the county of Cook, State of Illinois, of the first part, and John C. Burroughs, of the city of Chicago, of the second part, witnesseth, that the said party of the first part, in consideration of the covenants and agreements hereinafter contained, and of the sum of one dollar in hand paid by the party of the second part, the receipt of which is hereby acknowledged, agrees and binds himself, his heirs, executors, administrators and assigns, to donate and grant unto the said party of the second part, all that certain piece or parcel of land situate, lying and being near the southern boundary of the present city of Chicago, Illinois, and being a part of the south half of the northeast quarter, section thirty-four (34) of township thirty-nine (39) of range fourteen (14) east, and bounded as follows: On the east by the street or avenue known as 'Cottage Grove avenue,' on the north and south by two parallel lines commencing on Cottage Grove avenue at points immediately opposite two parks, described on a map made by J. E. Boyd in July, 1855, as Groveland Park and Woodland Park, at a distance of fifty feet respectively, from the north line of Groveland Park and from the south line of Woodland Park and running west to a north and south line at and at such distance from the center of Cottage Grove avenue, as that within the four

"lines thus described there shall be embraced ten acres
 "of ground, inclusive of a space thirty-three feet in width
 "on each of the four sides of said plat, to be set apart
 "along with an equal quantity of the adjacent ground, for
 "the purpose of a sixty-six feet street on all sides of said
 "tract. The condition of this agreement is such that if
 "the said John C. Burroughs, party of the second part,
 "shall fail within a reasonable time to procure the organ-
 "zation of a board of trustees of a university according
 "to the statutes of the State of Illinois, to consist of the
 "following persons, viz.: Stephen A. Douglas, Hiram A.
 "Tucker, Wm. B. Ogden, John H. Kinzie, Chas. Walk-
 "er, E. D. Taylor, Samuel Hoard, James H. Woodworth,
 "Levi D. Boone, Walter S. Gurney, Mason Brayman,
 "Rev. Mr. Clarkson, and John C. Burroughs, residents
 "of the city of Chicago, and James Dunlap, of Jackson-
 "ville, Illinois, Elijah Gove, of Quincy, Illinois, Chas. H.
 "Roe, of Belvidere, Illinois, Henry G. Weston, of Peoria,
 "Illinois, Simon G. Miner, of Canton, Illinois, and N. W.
 "Miner, of Springfield, Illinois, and such other persons as
 "they may appoint, to which trustees this agreement
 "shall be assigned, and which board of trustees shall
 "procure the plans for a building such as shall be mutu-
 "ally agreed upon by them and the party of the first part
 "aforesaid, all differences to be referred to the decision
 "of Thomas U. Walters, architect of the National Capi-
 "tol at Washington, D. C.; said building to be erected
 "on the premises hereinbefore described, and to cost not
 "less than one hundred thousand dollars, to be expended
 "as follows: Twenty-five thousand dollars within one
 "year from the first day of May next: provided, the
 "foundation shall be completed within the present year,
 "and the further sum of twenty-five thousand dollars

"within two years from the first day of May next, and
 "the further sum of fifty thousand dollars within or prior
 "to the expiration of the year one thousand eight hundred
 "and sixty.

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

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

"S. A. DOUGLAS, [SEAL.]

"J. C. BURROUGHS, [SEAL.] "

"Signed in the presence of

"NICHOLAS VEDDER.

"CHARLES DE SELDING.

Acknowledged in the city of Washington under date of
 March 2, 1856, before Charles De Selding, commissioner
 for the State of Illinois.

Upon the back of said paper is the following:

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

"CHICAGO, November 10, 1856.

"S. A. DOUGLAS."

Counsel for defendant offers this original agreement with endorsement thereon in evidence.

(Objected to as incompetent, immaterial and irrelevant.)

Q. Dr. Burroughs, will you please state the circumstances connected with the subject matter set forth in this agreement of April 2, 1856, and the execution of it by Mr. Douglas and yourself?

A. The circumstances in general were, that I had a year or two previous to this contract taken up the idea of starting a university here at Chicago; that in November, 1855, I went to Terre Haute, where Mr. Douglas was stopping, and asked him if he would not give some land for that purpose; receiving some encouragement that he would, I told him that I would call upon him next spring in Washington; I went there about the first of March,

and after about a month of negotiations of various kinds secured from him this agreement for that purpose.

Q. In your conversation with Judge Douglas respecting the donation of this land, what was the understanding between you and him respecting the purpose of the university which is referred to in the agreement—what kind of a university, and what was to be its object?

(Objected to.)

A. In addition to the purposes expressed in the contract, I remember that Mr. Douglas specially emphasized the idea that the university contemplated should be for general public education and should be non-sectarian; I do not remember any other objects than those; I had not then any assurance of being able to comply with the terms of the agreement respecting the procuring of means within the time stated; no contributions had then been made. The matter was not known to anybody but Mr. Douglas and myself at the commencement of our negotiations. On receiving this contract, I laid the matter before sundry parties at the east, and received encouragement of assistance in such an enterprise. I then came to Chicago, and brought together as many leading gentlemen here as I could reach and laid the matter before them; the result of it was that a subscription was opened for this object in July, 1856, and a very considerable amount, as I remember—about \$225,000—was subscribed, within a year, the most of it during 1856. Also under the terms of the contract Mr. Douglas came on here, and we had the ground described in the instruments surveyed, and I was personally put in possession of it, and had some work, such as fencing and staking off the ground for the projected building, done upon it, and some stone for building purposes thrown upon it, before, however, any university

was incorporated. In the winter of 1856-7 I procured a charter from the legislature for the university property.

Q. I notice that the extension endorsed on this agreement by Stephen A. Douglas is dated Chicago, November 10, 1856; please state the circumstances concerning the execution of that endorsement, and why it was necessary?

A. The contract provided that a charter should be procured and a given amount expended within a given time, the 1st day of May, 1857, the first \$25,000 was to be expended within one year, but it being found impracticable, as the legislature did not meet, to procure such a charter and proceed with the building within that time, Mr. Douglas extended the time, as appears by the endorsement upon the original contract.

Q. I notice in the endorsement a condition and understanding that the title to said land shall forever remain in said university for the purposes referred to in said agreement, and that no part of the same shall ever be sold or alienated, or used for any other purpose whatever; do you know why that provision was inserted in that extension, Doctor, or what the circumstances were respecting it?

(Objected to as irrelevant and incompetent.)

A. The reasons were that in the first negotiations between Mr. Douglas and myself reference had been made to the liability of colleges to go into debt and encumber their property, and I proposed to Mr. Douglas that we should try to tie the thing up so that it could not be done, and drawing this contract myself, I accidentally left out that provision, neither of us at the time noticing it, but when it was found necessary to extend the time I suggested to him that he should put that in and he did so.

Q. What was his purpose, if you know, and your understanding with him respecting that feature of his donation, when he executed the original agreement?

(Objected to.)

A. It was the same as that which appears in that written extension. The failure to insert it in the first was a mere oversight. It was a free gift from Douglas. I think one dollar was paid.

Counsel for defendant offers in evidence a certified copy of an amendment to the charter, marked "Exhibit 1 to "Dr. Burroughs' Deposition," which is as follows:

"An Act to amend the Charter of the University of Chicago.

"Be it enacted by the People of the State of Illinois, represented in the General Assembly:

"That the board of trustees of the University of Chicago shall, at the next annual meeting of said board, be increased by the addition thereto of seven new trustees, making the full board of trustees, including the president of the university, number forty-three.

"Said board of trustees shall be divided into six classes, numbered, respectively, first, second, third, fourth, fifth and sixth, and that at the next annual meeting of said board of trustees said board shall elect seven trustees to succeed the class whose term of office then expires, to hold their office for the term of five years, and shall also elect seven other persons to complete the number of trustees above named, who shall hold their office for the term of six years, and at all subsequent annual elections of trustees of said university the persons who shall be elected to succeed the trustees whose terms of

"office shall then expire shall hold their office for the term of six years.

" Provided, that this act shall in no way affect the term of office of the president of said university.

" SECTION 2. This act shall be a public act, and shall be in force from and after its passage.

" F. CORWIN, *Speaker of the House of Representatives.*

" J. DOUGHERTY, *Speaker of the Senate.*

" Approved March 30, 1869. JOHN M. PALMER, *Governor.*"

Q. The next indorsement on this agreement, Doctor, is the assignment executed by yourself; will you please state the circumstances concerning the execution of that assignment?

A. There were no circumstances excepting that it was provided in the agreement that I should make the assignment when the corporation was completed, and I did so to carry out the terms of the agreement. I exhibited the original agreement at the interviews with friends in the east. They became familiar with its contents by reading it. Generally, I should say, that the subscribers had an understanding of the plan and purpose of this donation—not all of them in every particular and detail. Think no subscriptions were obtained by correspondence. Most of them were made by personal application of myself or some agent. Work was begun upon the construction of the building in the spring of 1857. I had excavations made for a foundation, and something like a foundation begun, and on the 4th day of July following, there was a formal corner-stone laid with public ceremonies, at which Mr. Douglas was present and spoke. The financial revulsion of 1857 ensuing immediately after, rendered all collections

of subscriptions impossible, and the future prosecution of the building was suspended until the summer of 1858, when the building of the south wing of the university was begun, and carried on to completion the next spring.

The paper now shown me seems to be a copy of the history of the university enterprise previous to July 4, 1857, which I drew up. I have looked over this paper, and am prepared to say, it is a copy of the statement which I drew up and deposited in the corner-stone of the university, which was laid on the 4th of July, 1857.

Counsel for defendant offers the paper in evidence, as follows:

" COPY OF RECORD.

" July 4th, 1857.

" The corner-stone of the university was laid this day, under imposing ceremonies, and in presence of a large concourse of citizens. Addresses were delivered by Hon. I. N. Arnold, Hon. S. A. Douglas, and other gentlemen, and the following statement of the origin and progress of the enterprise of establishing this university was read by Rev. J. C. Burroughs, namely:

" HISTORY OF THE UNIVERSITY.

" The leading facts in the history of the enterprise which has brought us together in these beautiful shades, on this festal day of freedom, to join in laying the foundation of a building dedicated to the sacred cause of learning, are briefly as follows:

" For years the attention of many persons interested in the cause of education has been directed to the city of Chicago, as the natural center of an institution of learning of the highest character, which should be identified with the city, share in its progress, and stand to it and the great

"country which surrounds it in a relation like that of the
"old seats of learning in the East to the cities in which
"they are located.

"In the spirit of these views, the Hon. S. A. Douglas
"had publicly indicated his willingness to devote ten acres
"of his grounds adjacent to the southern limits of the
"city, as a site for a university, so soon as a responsible
"organization should be formed to accept of it for the
"purpose.

"In the month of December, 1855, proposals were
"made to Mr. Douglas by the Rev. J. C. Burroughs, on
"behalf of several gentlemen of Chicago, for the accept-
"ance of his liberal offer, and the carrying out of the
"long cherished design, and on the second day of April,
"1856, an arrangement with Mr. Douglas was completed.

"On the 3d of July following, the persons named as
"trustees of the grant met at the office of Mason Bray-
"man, Esq., in the city of Chicago, and organized by the
"appointment of Hon. Charles Walker chairman, and
"J. O. Brayman, Esq., secretary. After due deliberation,
"the following vote was unanimously cast:

"*Resolved*, That in accepting the grant of Hon. S. A.
"Douglas, the trustees record their high appreciation of
"his munificence, and their cordial interest in carrying
"out the noble object which it contemplated.

"An executive committee was also appointed, with
"powers to make all necessary arrangements for the
"immediate prosecution of the enterprise. The execu-
"tive committee met on the 8th of July, and organized,
"by the appointment of Hon. Samuel Hoard as chairman,
"and Rev. J. C. Burroughs as secretary. The Rev. J. B.
"Olcott was appointed general financial agent, and Rev.
"A. J. Joslyn and J. C. Burroughs authorized to co-oper-

"ate with him in soliciting subscriptions and otherwise
"forwarding the work.

"On the 31st of July, the books were opened for sub-
"scriptions, and within the next two weeks such progress
"had been made, that one hundred thousand dollars had
"been subscribed, mostly by members of the First Baptist
"Church, in Chicago, and the amounts since obtained
"from persons in Chicago, and from persons in different
"parts of the state, make up an aggregate at the present
"time of full one hundred and seventy-five thousand
"dollars.

"On the 30th day of January, 1857, the legislature of
"this state passed an act of incorporation, by which legal
"existence was given to the institution, under the name
"and style of the University of Chicago, of which the
"following gentlemen were made trustees, viz: Stephen
"A. Douglas, W. B. Ogden, Hiram A. Tucker, John
"Kinzie, Charles Walker, E. D. Taylor, Samuel Hoard,
"James H. Woodworth, Levi D. Boone, Walter S. Gur-
"nee, Mason Brayman, Robert H. Clarkson, John C.
"Burroughs, James Dunlap, Elijah Gove, Noyes W.
"Miner, Henry G. Weston, Charles Hitt Roe, Ichabod
"Clark.

"The trustees met on the 21st of May last and organ-
"ized according to the provisions of the charter, by the
"choice of the Hon. S. A. Douglas as president, Charles
"Walker and James H. Woodworth vice-presidents, the
"Rev. R. H. Clarkson recording secretary, the Rev. J.
"A. Smith corresponding secretary, H. A. Tucker
"treasurer, and Mason Brayman and L. D. Boone audi-
"tors. The following persons were elected additional
"trustees, viz: William Jones, Thomas Hoyne, the Rev.
"Justus Bulkley, D. Volentine, Rev. W. G. Collins, J. K.

"Pollard, J. K. Burtis, R. S. Thomas. The board of regents was partially filled by the following elections: "Hon. Joel A. Matteson, Hon. John Moore, Rev. W. G. Howard, D. D., Hon. John Young Scammon, Hon. W. Bryan, Hon. I. N. Arnold, Hon. N. P. Judd, Cyrus Bentley, Wm. Price, Nicholas P. Iglehart, A. B. Stone, "Wm. B. Kern, and Rev. H. J. Eddy.

"At the same meeting the executive committee presented to the board several sets of designs and plans for the university buildings, prepared by architects of the city, and after careful examination made choice of those prepared by Messrs. Boyington and Wheelock, and instructed the executive committee to take immediate steps towards the erection of a building on the basis of this plan. The corner-stone of the building was ordered to be laid on the ensuing 4th of July. In pursuance of that order we are here to-day.

"An adjourned meeting of the board of trustees was held on the second of July, when a committee was appointed to have under consideration the organization of a board of instruction. The committee subsequently reported recommending the establishment of several chairs, the immediate election of a president and one professor, with a view to the organization of classes early in the coming autumn. The report of the committee is now before the board, to be taken up at an adjourned meeting to be held Monday next, July 6th.

"Such a meager record is all the history of which the University of Chicago can to-day boast. When, in any coming time, long after those who are to-day active in this work shall have been gathered to their fathers, other hands shall disentomb this insignificant memorial from its rocky sepulchre, may it be found to have ex-

"panded into a history equal to the highest expectations of the thousands in all parts of this land who are to-day earnestly desiring the success of this enterprise, equal in greatness and equal in beneficent results achieved and promised in the cause of learning, humanity and religion."

(On the back of this paper is an endorsement, as follows):

"History of the university to July 4, 1857. Deposited in the corner stone."

J. C. Burroughs continues: Means were obtained for the erection of the south wing from the collection of subscriptions, from some advances by William Jones, and finally from a loan procured in 1858. The south wing cost about \$32,000. There was borrowed toward these expenses \$25,000, the balance was upon collections of subscriptions. Up to that time there had been donations, aside from the land referred to in the Douglas agreement. Thomas Hoyne had given lots to the value of \$5,000, which were sold for that amount. Dr. Boone had given some lots. Sundry parties in the country, whose names I do not remember, contributed some land. Mr. Hazen, of Canton, I think, was one; Mr. Wiley, of Galva, and Mr. Warren, of Warrenton, I think, and Dr. Babcock's wife, of Galva. There were probably others whom I do not remember.

Mr. DRIGGS: I find on the records of the board of trustees a record of a meeting held on the 6th day of July, 1856, in which record appears the following:

"At a meeting of the trustees named in a grant of land made by the Hon. Stephen A. Douglas, for a site for a

"university in the city of Chicago, held in the office of
 "M. Brayman, Esq., on the 6th day of July, 1856, the
 "following gentlemen were present in person or by
 "proxy: E. D. Taylor, H. A. Tucker, J. H. Woodworth,
 "Charles Walker, Samuel Hoard, M. Brayman, J. C.
 "Burroughs, James Dunlap, S. G. Miner, Ichabod Clark,
 "C. H. Roe, H. G. Weston."

"The meeting organized by choosing Charles Walker,
 "president, and Jas. D. Brayman, secretary. The instru-
 "ment in writing conveying the site having been read
 "and discussed, it is unanimously resolved that the grant
 "and trust be accepted.

"On motion the following trustees were appointed an
 "executive committee, with power to act in all matters
 "pertaining to the contemplated university, until another
 "meeting of the board: L. D. Boone, Samuel Hoard, R.
 "R. Clarkson, M. Brayman, and J. C. Burroughs.

"On motion the executive committee were instructed
 "to present to the next meeting a list of officers for per-
 "manent organization.

"On motion, *Resolved*, That in accepting the grant of
 "Hon. S. A. Douglas, the trustees record their high ap-
 "preciation of his munificence, and their cordial interest
 "in carrying out the noble object which it contemplated.

"On motion, the meeting of trustees adjourned to the
 call of the executive committee.

"CHAS. WALKER, *Chairman*.

"JAS. O. BRAYMAN, *Secretary*."

J. C. Burroughs continues: I notice from this record
 that certain gentlemen are said to have been present
 either personally or by proxy; I recollect four as having
 been at that meeting, and others whose names appear

there as either present personally or by proxy are persons
 who are named in the agreement between Mr. Douglas
 and myself as trustees of the contemplated university, and
 as persons to whom this agreement should be assigned.
 There were immediately meetings of sundry of these gen-
 tlemen here in the city held earlier than this. This was
 the first meeting that was at all formal. Dr. Boone was
 generally at all meetings for consultation of this enter-
 prise; he does not seem to have been present at that
 meeting. My impression is that he was there, and why
 his name does not appear in that record I don't know. I
 should say Boone was familiar with the execution of the
 document and its endorsement and assignment at about
 that time. He accepted the position of trustee and acted
 as trustee from the beginning; that agreement was shown
 to Dr. Boone very soon after my arrival home with him
 from Washington. Don't think I have any recollection
 whether Boone was present when that extension of time
 was granted and cognizant of that endorsement upon the
 agreement at the time or not; I have only a general rec-
 ollection that the extension was made when sundry of the
 trustees of the contemplated university were together.

Witness identifies signature of Stephen A. Douglas and
 wife to the warranty deed executed by them of the prem-
 ises in controversy to the trustees of the university, which
 deed is hereinbefore set forth in full as a part of the an-
 swer of the university.

Counsel for defendant offers in evidence the deed in
 question.

Mr. DRIGGS: I find on page 25 of the records of the
 university, in the proceedings of a meeting held under
 date September 8, 1858, the following resolution:

"*Resolved*, That the thanks of this board be presented

"to the Hon. S. A. Douglas for his liberality in waiving
 "the terms of the original contract for the conveyance of
 "the university grounds, and giving us a deed of the land
 "donated by him for the university.

"*Resolved*, That the executive committee of the board
 "be authorized to execute a bond to Judge Douglas as
 "shall be satisfactory to him, and approved by the said
 "executive committee for the faithful carrying out of the
 "university enterprise according to the spirit of the origi-
 "nal contract."

Witness continues: I do not remember the circumstances
 respecting the conveyance from Douglas to the univer-
 sity; I was then at the east; I might have got home by
 the September 8th meeting, but I think not; I was at the
 east when the measure of getting the deed from Douglas
 in anticipation of the time when he was to give it and
 borrowing money upon the property was taken, and re-
 mained away for about two months; I have no knowledge
 that the bond contemplated in that resolution was execu-
 ted, and think it was not. I think it was not a require-
 ment of Douglas but a tender of the trustees.

Q. What conditions did you understand were waived
 by the execution of that deed at that time?

A. When I learned on arriving home, that the deed
 had been given, I understood that it was absolute and by
 its terms would waive all the conditions of the original
 agreement that had not been previously fulfilled; that is
 he gave the deed before the time promised in the original
 agreement and waived the other conditions. There were
 conditions there that money should be expended pro-
 gressively, and the building finished by a given time, and
 that the property should be an inalienable property; all

these were conditions; I understood they were waived by
 the giving of the deed so far as Mr. Douglas was con-
 cerned. The university commenced work October, 1858,
 and has continued to this time. The first educational
 work was begun in the basement of the church before
 there was any building; the south wing was completed in
 the spring of 1859; it was occupied for the purposes of
 the university, I would say before it was really completed.
 It was occupied in May, 1859, and teachers and professors
 were employed; we were then prepared to receive and
 take students; the educational work of the university in
 its buildings commenced in the spring of 1859; the univer-
 sity then had a small library.

Q. Upon the subject of subscriptions and payments
 thereunder, and the donation of land to the university,
 prior to August 30, 1859, the date of the deed from
 Judge Douglas to the board of trustees, will you please
 state the amount of money paid and the amount of land
 donated to the university, and the names of the donors as
 far as you can recollect them?

A. I can only answer approximately without time to
 go to the books and papers, and if the book containing
 the original amounts has been burned, as I have under-
 stood, it is doubtful whether the exact amount can be ob-
 tained, by examination of the books.

Q. We have here all of the old books, perhaps by
 looking at them you can tell whether the one you want is
 missing; we have all the books that were not destroyed
 by fire so far as we were able to find them in the posses-
 sion of the university.

A. I have looked at those and find there is one book
 missing there which I should rely upon for the first ac-
 count. I can state approximately now up to August,

1858, the date of the deed from Douglas. Approximately the amount of subscriptions to that time would be about \$250,000. I can give you a long list of names but it is not exhaustive.

(Witness then gives a list of two subscriptions for \$5,000 each; one subscription for \$3,000; five subscriptions for \$2,000 each; fifteen subscriptions for \$1,000 each; two subscriptions for \$500 each.)

Witness continues: There were others whose names I do not recollect, making an aggregate of \$250,000. Before September, 1858, but a small portion was paid; it could not have exceeded \$5,000 to \$10,000, and some lots to the amount, perhaps, of \$5,000 to \$10,000 more. After that time it would be impossible for me to approximate without a long examination of the books and accounts. I understand the first book of records of the executive committee was burned. In that book there was the first account of expenditures of the south wing. My impression is, upon an examination of these books, I could make something like an answer, but I should not undertake to do it in less than a month. The charter was accepted by the board formally, I think, in May, 1857. The practical fact is that the building cost \$32,000, and we borrowed \$25,000.

[Counsel for defendant then reads to the witness from page 25 of the records of the board of trustees the proceedings of the board at a meeting held September 22, 1858, being the resolution authorizing the execution of a trust deed to secure a loan of \$25,000, hereinbefore printed in full.]

Witness continues: I remember that bonds were issued under those resolutions for \$1,000 each, upon the security of the university site; that Boone sold one or two here

and then went east and sold a small amount in Hartford and then went to Boston, and the Union Mutual Life Insurance Company of Maine took the balance of the bonds which he had, and expressed their willingness to take the whole if he could recall those that he had already disposed of, and I think he did get those that he had already disposed of back, and that thus the Union Mutual Life Insurance Company took the whole \$25,000. Boone was not then the agent of the Union Mutual. I have a general understanding that he became their agent soon after that, probably in the spring of 1859.

Counsel for defendant then reads to the witness from page 43 of the records of the board of trustees, of a meeting held September 11, 1861, the resolution approving a loan of \$25,000, made by Dr. Boone with the Union Mutual, and authorizing the execution of a mortgage upon the university property, being the same resolution hereinbefore printed in full.

It is admitted that the Union Mutual Life Insurance Company, referred to in the resolution just read, is the complainant in this case.

Witness continues: A mortgage or trust deed was executed for the bonds that were issued. I think Mark Skinner was the trustee. Approximately, I remember that the \$25,000, less a year's interest in advance, and commissions to the amount of about \$1,400, was paid to the university. The commissions alone were about \$1,400. Under the terms of that resolution, a mortgage or trust deed on the university site of the buildings for \$25,000 was made, and taken by the Union Mutual as security for the \$25,000 which they had loaned in 1858, this \$25,000 being to take up that loan. I understood that that loan was to be taken up, and the bonds surren-

dered, but I do not find the original mortgage, or the trust deed, or the bonds. It is my understanding that the bonds of this new loan of \$25,000, were guaranteed by individuals. Dr. Boone negotiated that loan, as I understand. He was then agent of the Union Mutual, and a trustee of the university. My impression is, that no money was received from the Union Mutual on the second loan. It was merely to repay them what they had already advanced. I do not know whether the commission was paid them in cash, or entered in the account.

Counsel for defendant then reads from the record of the meetings of the trustees, held October 11, 1864, the resolution authorizing a mortgage upon the premises in controversy, to secure a loan of \$15,000 to the Union Mutual, being the resolution hereinbefore printed in full.

Witness continues: As I understand, this loan of \$15,000 was secured by a second mortgage upon the university site and buildings, to the Union Mutual. I don't know how much money they actually paid, or who negotiated that loan; I was not in the executive committee then. It is my understanding, that their records were burned, from June 29, 1865, to the time of the great fire. The question of dispute in law, relating to the property of the university referred to in this resolution, I think, was in reference to some claim that had been set up by the widow or divorced wife of J. B. Russell, a question of dower. It was not in reference to this loan or mortgage. The circumstances concerning the resolution authorizing the president or vice-president and secretary, to execute title to any real estate necessary to use toward the erection of the building were, that the trustees owned sundry pieces of property in the city and country, and it required by the charter, an authorization of the board of trustees,

before title could be made, and this was the requisite authority, that they might sell such property, and have the proceeds used towards the building; that was the practice.

Counsel for defendant then read to the witness from page 136 of the records of trustees of the meeting held July 2, 1869, the resolution authorizing the loan of \$25,000 hereinbefore printed in full.

Witness continues: Under that resolution the necessary mortgage was made and an additional loan was procured of the Union Mutual for \$25,000. Dr. Boone negotiated that loan. I remember a mortgage or trust deed was executed to the Union Mutual in 1876 for \$75,000. Dr. Boone negotiated that. That \$75,000 was for the purpose of taking up the mortgage of 1861, which was for \$25,000, and the mortgage of 1864, which was for \$15,000, which would be \$40,000; and that after satisfying those two prior mortgages the balance of the \$75,000, less the ordinary and regular commissions and certain arrearages of interest—how much I cannot tell without going to the books—was received by the university from the Union Mutual. Don't know to whom the commissions were paid. They were deducted from the amount we received.

Counsel for defendant then read from page 138 of the records of the minutes of a meeting July 2, 1869, the following:

"The secretary read an amendment to the charter of the university increasing the number of trustees by the addition of seven, to be chosen at the annual election."

"On motion of Mr. McCagg the amendment was adopted."

Counsel for defendant then offered in evidence a document entitled "The First Annual Catalogue of the University of Chicago, of Officers and Students for the "Academic Year, 1859-60."

Witness continues: I contributed toward the observatory. I gave the directors of the university \$500 at one time, and then some small sums, I cannot tell how much. I think I own four scholarships. The south wing of the university building was completed in May, 1859, and the main building in the summer of 1866. The south wing cost in the neighborhood of \$32,000; the main building, without the observatory, \$125,000; the tower of the observatory, about \$25,000. The tower is really a part of the building, connected by a connecting corridor with the main building.

The neighborhood in which the university is situated is a little distance back from the lake shore, with Groveland and Woodland parks in front of the site, extending to the lake. That section has become one of the most desirable in Chicago for residence purposes. It is being built up with first-class costly residences; the building is of Lemont stone, is four stories in height; the main building 103 feet long, with the south wing and the connecting corridor about 75 feet, making the whole front about 175 feet, as I remember it, with towers 150 feet high; and it is a first-class stone structure, one of the handsomest about Chicago. The university has a small library; when I left it consisted of about 5,000 volumes.

I knew Judge Manierre, an attorney of this city, in his lifetime. I think he was not attorney of the Union Mutual, but did some service for that corporation as a friendly service, without fee. He, as I have always understood, signed a certificate passing upon the title of the

university property, along with Mark Skinner. I do not know whether he had any acknowledgment of the agreement between Douglas and myself. I knew some of the officers of the Union Mutual; Mr. Crocker, for many years their president; Mr. Secomb, I think he was the vice-president and superintendent of loans for a time; Mr. Daniel Sharp, their vice-president; Mr. DeWitt, their present president, and Mr. Judd, Mr. Washburne, who was secretary of the company, and Mr. Hollister. I have known all these gentlemen. Mr. Secomb, Mr. Sharp and Mr. DeWitt had, to my knowledge, become acquainted with the agreement between Douglas and myself.

Q. Do you know whether any officer of the Union Mutual Life Insurance Company was acquainted with the terms of that agreement prior to the first loan of September 11, 1861, made by the Union Mutual Life Insurance Company to the university?

A. Dr. Boone did. He was not an officer at that time. The first loan of \$25,000 of bonds was made to a trustee, for the benefit of whoever might purchase the bonds. That was one of the mortgages, the bonds of which were individually guaranteed. I think no officer of the Union Mutual was familiar with the terms of that agreement when the company purchased these bonds. Boone made the negotiation, but he was not then an officer of the Union Mutual. I don't know of any other officer than Boone who had knowledge of the terms of the agreement between Douglas and myself when the mortgage of September 11, 1861, was made, or when the mortgages of October 20, 1864, September 1, 1866, July 6, 1869 and the mortgage of February 8, 1876, in issue in this case, were made. I had a conversation with Mr. Secomb on the subject, I should say in 1877;

Crocker had passed out of office before that. Don't think I ever had a conversation with Crocker about it. After that conversation with Secomb I had a conversation with Mr. Sharp and Mr. DeWitt about it. They expressed themselves as cognizant of the terms before the conversation. I am not able to state when they first became familiar with the terms of the agreement. I don't think their conversation indicated any understanding of that agreement before 1876. I think it would be implied by their allusions that it was new to them that such an agreement existed; they were surprised to know of that. I will add, as to Mr. DeWitt it was not a conversation, but a discussion of the question in a meeting of the trustees of the university. I have no recollection that the conditions of that agreement were published or made known publicly prior to 1876; they were certainly made known to many. I do not think Douglas at this laying of the corner-stone proclaimed his understanding and desire respecting the donation; think the only references that were made to it were by myself, in the paper put in evidence. In making up the mortgage of \$150,000 in the account interest was compounded as generally in making up the accounts between the company and university. I could not tell without going to the books what proportion of the \$150,000 was interest, or of the \$75,000 loan, or any of the others. I only know that arrearages of interest went into both loans, and in both instances they were considerable. Boone was a trustee of the university from its origin in 1857 until 1878 or 1879. I could not tell without going to the accounts how much money was received in the aggregate from the Union Mutual or from contributions and donations. From the establishment of the university till I resigned as president it was supported by the income

of some endowments. There was an endowment of about \$20,000 for the chair of Greek, contributed by some New York parties, and the income and most, if not all, of the principal was absorbed in the support of that chair. There were partial endowments of other chairs subscribed, the subscribers holding the principal in their own hands and paying annual interest upon it. There was an endowment of the astronomical chair subscribed by Mr. Scammon, on which he paid the interest for ten years or more, the principal of which, of course, was not paid. Then there was one for myself, good only as long as I remained in office, amounting to about \$10,000; I believe the income of it was paid. There was about \$1,000 subscribed to the chair of mathematics, the income of which was paid, and, I believe, the principal. Besides the income from these partial endowments was the tuition fees of students, amounting in the best times to about \$10,000 or more a year. There were contributions by sundry parties towards the annual expense, and these subscriptions or funds received on subscriptions of scholarships were used for annual expenses as far as thought necessary. A law-school was opened in connection with the university in 1859. A subscription was given by Mr. Thomas Hoyne in that direction. It was desired by him to be used for the law-school, and the income was for some time paid to the law-school. The university, from its general funds, paid towards the expenses of the law-school, and those sources of income, in addition to the fees of students, supported it for some years. It is still in existence as a part of the university. It is a very respectable law-school, with an excellent faculty and thorough course of instruction. It is a self-supporting institution now. Before the execution of the deed in 1858 there

were contributors who were not subscribers: A. B. Stone, \$500; J. C. Burroughs, \$2,000.

Q. Did J. C. Burroughs make his upon the faith and understanding of that original agreement?

A. He made a good deal of his before there was any agreement. It must have been in the neighborhood of \$2,000 before August 30, 1858. I was the first contributor. Mason A. Brayman gave some before that time; I think Brayman once gave \$100.

Q. Dr. Burroughs, do you think of anything more respecting the transactions of this university that should be stated in a proceeding like this; we want all the facts respecting this institution, as I understand it?

A. Nothing occurs to me now of interest to you or the other side. I have answered your questions as carefully as I could.

Cross-Examination.

In 1856, \$225,000 or \$250,000 of contributions was subscribed. The south wing was built in 1858-59; the subscriptions were not then collected. The cost of the building was approximately \$32,000, and we borrowing \$25,000 would leave about \$7,000 to provide for otherwise. That was all the money that had been received from these previous subscriptions, with something that had been received for incidentals. The donations of lands were outlying property not covered by this mortgage. I saw a very large majority of the subscribers in person.

I understand that the board, in returning thanks to Douglas for waiving the conditions referred to, all the conditions of the original agreement which had not been consummated at that time, embraced the condition in re-

gard to non-alienability of the land. My impression is that the mortgage or deed of trust given to Mark Skinner was signed by Stephen A. Douglas, as president of the board, and Mr. Clarkson as secretary. I was out of the city when the deed was made by Douglas, but my understanding of it, from what was said to me after my return, is that Douglas made the deed in order that the mortgage might be made. The agreement between Douglas and me was not put on record until the last five years. The modification by Douglas was not recorded until the other was. The deed from Douglas was recorded very soon after it was given.

The main building was completed between 1864 and '66, and during its progress I was not an active member of the board, and not on the executive committee, but I learned that, failing to receive subscriptions sufficient for the main building, the trustees borrowed the \$15,000 of 1864, on a second mortgage of the premises, the mortgage of 1861 being still outstanding; that then, in 1866, the financial secretary, who had had charge of the finances during these three years, went out of service. I returned myself to the executive committee, and had to look into the finances again. The interest on the loan of 1861 had been accruing, as also the interest on the loan of 1864, and there were considerable arrearages of interest, which had not been paid for a year or two. It was also found that a very large amount of the bills for the erection of the main building were unpaid, and notes of the university were out, endorsed by individuals, so that the treasurer, who came in when the financial secretary went out, who was Mr. James H. Woodworth, banker, found himself utterly unable to meet the bills. There were, as I remember, \$27,000 of bills for the erection of the main

building by actual account outstanding, in addition to arrearages of interest. It was afterwards found there was a good deal more than that. These bills were very pressing, and, as their only resort, the trustees made an additional loan, taking up the loan of 1861 and the loan of 1864, and merging them in this loan of \$75,000, and getting enough more, as they hoped, to pay these outstanding and pressing claims. That was the history of the making of that \$75,000 loan, as I remember it.

Re-direct Examination.

I conversed with Douglas concerning the conveyance. I told him I thought they had done a very wrong thing. I told him there was a contract between him and me, and this deed was in anticipation of that contract and in violation, and my impression was it was fatal to our enterprise. A concern beginning to go in debt at that stage would be ruined, and Mr. Douglas said a good deal trying to smooth me down, saying the better way was to make no fuss about it, but to let it go on; that he had confidence in the trustees; that it was a temporary expedient, and they could go on; so I was induced to keep quiet and let the thing go on.

Q. Did he express any opinion as to the fact of that conveyance disposing of any conditions which he made?

(Objected to.)

A. I remember Judge Douglas saying this, as I went to him in my heat. He said to me: "They can't hurt 'that property;'" that is all I know about it.

Q. What did you understand that to mean?

A. I didn't know. I know better now than I did then.

Galusha Anderson, for defendant:

I am president of the university. A small amount of money for its support is received from partial endowments; a considerable amount is received from tuition; including all departments, I believe from \$10,000 to \$12,000 a year; and in addition to that by the voluntary contributions of citizens, amounting to from \$6,000 to \$10,000. I became president in February, 1878, and have been president a little over six years. The number of students, taking the preparatory, college and law department, have numbered not far from three hundred a year. The courses of study are equal to the best institutions of like kind in the country. The young men who sometimes leave our classes, go east to the best colleges in the East, taking their places in the same classes, and always acquitting themselves with honor. The appliances of the university, aside from the Astronomical Society appliances, are limited, but they are sufficient for the practical ends had in view. The library numbers, aside from Congressional reports, about 6,000 volumes, fitted to meet the wants of the students; it is a good, working library. The university has as full a corps of professors as most colleges. We have in all departments about thirteen professors, and one or two lecturers. The total number of students last year was 280; 101 in the preparatory department, seventy-six in the collegiate department, and the rest in the law department. Six classes have graduated during my supervision, the aggregate of these six years graduating classes exceeding any other six years during the history of the institution, one class numbering as high as twenty-six, and the smallest, nine. Not all students pay full tuition aside from scholarships; there is a law of the institution that the children of all Christian pastors

shall be educated at half price, without respect to denomination. There has never been any distinction as to sex, nationality or religious belief, or political belief. We educate both sexes on the same footing precisely, and illustrate constantly the fifteenth amendment of the constitution of the United States as to color. Students come from all families, or any religious belief, or no religious belief.

Cross-Examination.

I include the law school in the city of Chicago known as the Union College of Law, as part of the university; this year there are about 100 students in the law school; it is self-supporting, but they are on the same plan as the other departments; the institution is in the record; our institution has not contributed anything to the support of the Union College of Law during my administration; the college of law is a part of the university; the professors in the college of law are a part of the faculty of the university; I meet them, perhaps, two or three times a year, and am in constant communication with the dean of the college of law; the buildings in which the preparatory and collegiate departments hold their sessions are at 3400 Cottage Grove avenue, and the rooms in which the law department holds its sessions are on Dearborn street; they are about four miles apart; the faculties of the different departments never meet as a common faculty. In May the preparatory department included about 100; there are about 280 students in gross in the university, including the preparatory; about 180 excluding the preparatory. There is a three-years' course in the preparatory department, a four-years' course in the college; I suppose there has been this year seventy-six in the four classes. I would

like to explain why I mean that this college of law is a part of the university: in the records you will find this college of law was organized in 1859, and carried on by the University of Chicago from its general funds, just as the other departments are carried on, until the fire of 1871, when it stood by itself, and has since held that position; it is an organic part of the university, as much as the preparatory department or any other part.

Re-direct Examination.

The law classes recite down in the city in order that they may be within easier reach of the courts; the dean of the faculty is a practising lawyer in the city; some of the students of the university reside in the building and some of the law students as well, and come down town to recite; the diplomas of the law school are signed by myself as president of the university, by the secretary, and also by the president of the North-Western University and its secretary. After the fire of 1871, the North-Western University determined to establish a law school to that university; Judge Booth and Mr. Hoyne, deeply interested in this law school connected with the University of Chicago, asked that they should not multiply law schools, but come into the same relation that had been sustained for ten or eleven years by the University of Chicago, and that was entered into by articles of agreement; that portion of the faculty of the university giving instruction in law, recommend to the trustees of the University of Chicago certain young men as having passed successfully their examinations in the law school; on that recommendation the trustees of the University of Chicago confer the degrees.

A. J. Howe, recalled for defendant:

I have made a careful examination of the records of the trustees and of the executive committee of the university recently; I do not find anything in the records respecting a loan from the Union Mutual to the university of \$75,000, or the execution of a mortgage by the university to the insurance company for that amount; I made a careful examination of the books, and find no reference to it.

Mr. SWETT: I am satisfied there is not; we will stipulate there is not.

John E. De Witt, for defendant:

I was elected president of the Union Mutual Life Insurance Company in July, 1876, and have been president continuously since that time. My first knowledge of the loan by the Union Mutual to the university was after I was elected president and after the mortgage of \$150,000 was executed. I have ordered Mr. John Wain, chief clerk in our real estate and mortgage department, to examine our books with reference to the account with the university. He furnished Mr. Swett with a statement of the different loans and how they were made up. Since I became president, no advances have been made on account of the university except for insurance, taxes and counsel fees. Five thousand dollars was received from the university, I think in 1878, which is shown as an endorsement on the back of the \$150,000 note. It was received under a contract signed at that time for the sale of the company's interest. It was endorsed as a credit on the principal note by an understanding had with Dr. Anderson and the committee, as I recollect. It was on account of that contract; the university did not carry out

the contract. They made the one payment of \$5,000 on account of it. There was some correspondence in relation to an extension, but the Union Mutual declined to extend it. I believe everything is here connected with the university matter; possibly the ledgers may not be here; they are in constant use.

I knew Levi D. Boone; he was an agent of the Union Mutual when I became its president. His agency terminated the latter part of August or the first part of September, 1876. As far as I can gather from the records I find he was medical examiner about 1859; from 1859 to 1864 local agent of the company; in 1861 his bond seems to have been executed to cover his actions as local agent, and in 1864 a power of attorney or appointment was made by the board, which remained in force until 1876. I know nothing about his transactions prior to the time when I became president, except as disclosed by the records and such gossip as I have heard. I have instructed Mr. Wain to see that everything was sent here in accordance with the subpoena. He had access to all the books and accounts of the company at the home office during his examination.

Cross-Examination.

Nothing was concealed from Mr. Wain. To the best of my knowledge, the letter now shown me is a copy of the letter appointing Boone agent of the company in 1859. My impressions are that the bond of himself and L. C. P. Freer, executed November 1, 1861, of \$2,000, was in connection with the appointment of May, 4, 1859, shown in the letter. I have no knowledge of the contents of a document inclosed in this letter.

Counsel for complainant offers in evidence the letter identified by the witness, which is marked "Complainant's Exhibit, No. 1," as follows:

"Union Mutual Life Insurance Company.

"BOSTON, Mass., May 4, 1859.

"*L. D. Boone, M. D.*

"D'R SIR: Yours with enclosures from your Auditor of State, is rec'd, for which please accept my thanks. Herewith I hand you the Auditor's form of appointment of yourself as legal Agent, copy of which you can take and keep. You will please return the appointment sent with the statement, that we may cancel the same. In reply to your several inquiries I would say the Company will require no additional service in consequence of this Legal general appointment, and I am not aware that anything is needed to be said or done by you as such agent, unless perchance some legal service be hereafter made on you, in which case, not very likely to occur—you will advise this office at once, when the Co. will look after the case. I enclose you the usual appointment as Local Agent for Chicago & vicinity. Under this appointment you will act as per instructions therein contained, and in accordance with your own judgment generally, as to what will be (word illegible) and extend the interests (words illegible) the company. The commissions, you will observe, are stated in the letter and reference is there made to payment of the Medical Examiner. I also enclose you letter of appointment as Medical Examiner. In regard to the fees for this service, I would say, that for ordinary examinations in all large Cities Two Dollars is the standing fee. Nothing more is charged at any point, and when the Ins. asked for is quite small, and especially if it be for a short time, say

"1 to 3 years, the Physician usually charges a less fee. This, however, may be confined to cases where, from family history, general appearance, &c., the subject seems to be perfectly sound. I have no doubt you will be governed by common sense principles in your duties as Agent and Medical Examiner. The Co. has its general agent for the purpose of selecting and establishing local agents. He is now at Cincinnati, Ohio. It is not necessary, therefore, that you take up any time for any object beyond the management of your own agency. Should any information likely to be of value to us here, come to you—send us the names of any one desiring an agency, &c., I will be obliged to you to give it to us. Mr. Dubois, Clerk of the Court at Carlinville, was formerly active, but has done nothing since the passage of your present law. If you will address him when you get your certificate, stating to him the fact of our compliance, and express your hope that he will go into it again, I will be obliged to you. The Co. paid a claim of 5,000 D's through Mr. D. in less than 6 mo's from the date of the Policy. I think of nothing more to write, and shall hope to do a large business through you.

"Please address us here when you need documents or information.

"Yours truly,

"(Sg'd) E. R. PRATT, *Pres.*

"P. S. Mr. James (name illegible) is here. I have written in great haste, please excuse."

Mr. *De Witt* continues: The document now shown me is a bond of Levi D. Boone and L. C. P. Freer.