

That said tower was constructed in accordance with the terms of said agreement, and attached to and situated upon the premises described in the pretended trust deed hereinafter referred to, at a cost of about \$30,000, and a report of said construction and the cost and expenses thereof was made to the said University of Chicago by the said society under date of July 19, 1865, whereupon the following resolutions were adopted by the board of trustees of said University of Chicago, to wit:

"1. *Resolved*, That we have listened with great pleasure to the report of the Astronomical Society now presented to the board. And do hereby place upon record our appreciation and grateful acknowledgments of the efforts of the Hon. J. Y. Scammon specially, and of the society generally, which have secured to this university, in connection with the main building, a magnificent observatory 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 Hon. J. Young 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 his 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";

That subsequently, on or about the 4th of July, 1866, another resolution was passed by the said board of trustees, assigning and setting apart certain rooms in the said university's building, immediately adjoining said observatory, for the perpetual use of said society, to wit:

"*Resolved*, That the rooms immediately adjoining the Dearborn Tower, and communicating therewith, be per-

manently set apart for the use of the Chicago Astronomical Society, and the professor of astronomy in this institution, and that the same be given into the charge of said society."

That on or before the first day of October, 1871, the said board of trustees set apart, for the permanent use of said society, the said real estate upon which to place said meridian circle.

And your orator further sheweth unto your honors, that said tower so erected, and accepted, and the rooms and real estate so set apart as aforesaid have been in the exclusive and continuous control and management of said society, and your orator as the successor thereof, from the date of the erection of said tower, and the date of the assignment of said rooms and real estate, to the present time; and that the same have been supplied and maintained at the exclusive cost and expense of the said society and your orator, as the successor thereof, during the said period.

And your orator further represents unto your honors that the said defendant insurance company, at the time of the erection of said observatory tower and the execution of said pretended trust deed had full notice and knowledge of all of said agreements and conditions aforesaid, respecting the erection of said Dearborn Observatory, the permanent and perpetual use, control, and management thereof, and the supplying of the same with expensive apparatus, and all matters pertaining to the rights, property, and privileges of said astronomical society, and your orator, as successor thereof, in and to the same, and the said real estate.

And your orator further represents unto your honors that the said society, and your orator as the successor



thereof, have at their own exclusive cost and expense, employed and kept in constant service at said observatory from the date of the establishment thereof, in immediate charge of observations and experiments, persons skilled in the science of astronomy; and that the discoveries made through the medium of the celebrated instruments and appliances owned by your orator, and located at said observatory as aforesaid, have been given to the public at large without charge, and such has been the importance of the original investigations inaugurated and the discoveries so made, that the knowledge of astronomy has been greatly increased thereby, and the high reputation of the Chicago Astronomical Society is now well established, not only in America, but in Europe, thereby enabling your orator in this regard to be of important service to the public generally, if permitted to remain undisturbed in the possession and enjoyment of its said property and the privileges acquired in good faith as aforesaid, in connection with the said defendant university.

And your orator further represents unto your honors, that in the year 1867, after the erection of said tower and the establishment therein of the telescope and other property of said society as aforesaid, the members of the board of directors of said society applied to the general assembly of the State of Illinois for authority to become a corporation of said state, and in conformity with such request, an act entitled, "an act to incorporate the Chicago Astronomical Society" was passed, and February 19, 1867, was approved, which said act was subsequently and during the said month of February, 1867, accepted by the "Chicago Astronomical Society" as its charter, and thereby this complainant became possessed of all the property, rights and effects of said Astronomical Society of Chicago.

Your orator further complaining, sheweth unto your honors, that the various contributions, donations, and subscriptions as hereinbefore alleged, were made by the donors respectively, and received by the said Astronomical Society of Chicago, and by your orator as the successor thereof, upon the faith, understanding, and condition that the observatory, for the erection of which, and the equipment thereof with proper apparatus, the same were made, was to be erected and maintained solely and forever, for the advantage of the public, and that the right to the management and use of the said tower, known as "Dearborn Observatory," and the said real estate should be perpetual in the said society and its successors, of which conditions and donations the said Union Mutual Life Insurance Company and the said University of Chicago had full notice and knowledge.

Your orator further represents unto your honors that the said defendant University of Chicago, disregarding its authority in this behalf and the agreements and conditions aforesaid, executed and delivered to one Levi D. Boone, as trustee, a pretended trust deed, dated February 8, 1876, to secure a pretended indebtedness to said defendant Union Mutual Life Insurance Company, of \$150,000, or thereabouts, in which said document it was amongst other things provided: That in the event of the non-payment of the principal sum of said indebtedness or any part thereof, or the interest thereon when due, the real estate and appurtenances described in said document—including therein the said university grounds and buildings, and the said Dearborn observatory attached thereto as aforesaid—might be sold without reservation or exception at public auction, to the highest bidder, to satisfy the indebtedness in said document stated, a copy of which said document is



hereto attached, marked "Exhibit B," which your orator prays may be made a part of this bill of complaint.

Your orator further represents unto your honors that the said defendant, the Union Mutual Life Insurance Company, alleging that default had been made in the payment of said sum of money, or some part thereof, and that the said Levi D. Boone, trustee, declined to advertise and sell said premises, as provided in said trust deed, filed in this honorable court on or about the eighteenth day of February, 1881, its certain bill of complaint against the University of Chicago, a corporation of the State of Illinois; N. K. Fairbank, president, and O. W. Barrett, secretary, of the board of trustees of said corporation; Levi D. Boone and Samuel S. Boone, citizens of the State of Illinois, praying, amongst other things, that said pretended trust deed might be declared to be a mortgage and foreclosed; that an accounting might be taken of what is due to said insurance company, and that the said defendant university might be decreed to pay the amount so found to be due, and upon default in that behalf, that the mortgaged premises should be sold, under the provision in said trust deed contained, to satisfy and discharge such decree, and for other relief; that subsequently, on or about the twelfth day of March, 1881, said defendant insurance company filed in said cause its amended and supplemental bill, making certain persons therein named parties, and praying other and further relief; which said bill and amended and supplemental bill are attached hereto, and marked, respectively, "Exhibit C" and "Exhibit D," and which your orator prays may be made a part of this bill of complaint.

Wherefore your orator sheweth unto your honors, that it is the manifest intention of the said Union Mutual Life

Insurance Company, as disclosed by its prayer in its said bill set forth, to subject the said real estate and appurtenances thereunto belonging, to public sale without reservation or exception whatsoever, and thereby to utterly ignore the rights and property of your orator in and to the said Dearborn observatory, the said telescopes, and the other property and appliances of great value located therein and upon the ground adjacent thereto which have been erected, maintained, and used exclusively and continuously by your orator in connection with the said observatory since the date of erection and purchase thereof under the agreements and conditions herein before set forth.

And your orator further represents unto your honors, that it was not made a party defendant to said bill of the Union Mutual Life Insurance Company so filed as aforesaid, and that no defendant in said bill named, has, up to this time, asserted the rights and interests of your orator in said premises as herein set forth, or in a manner sufficiently definite and certain, as your orator is informed and believes, to fully protect its said rights, property, interests, and privileges so acquired as aforesaid.

And your orator further represents unto your honors, that afterwards, on or about the 14th day of July, 1881, said defendant university filed its answer to said bill of complaint, a copy of which answer is hereto attached, marked "Exhibit E," which exhibit your orator prays may be made a part of this bill of complaint.

And your orator further sheweth, that the said University of Chicago has not now, nor hath it ever had, any other or greater powers than are set forth in said answer.

And your orator further complaining, sheweth unto



your honors, that the legal title to all said real estate and premises was, and still is, in the board of trustees of the University of Chicago, and not in the defendant university corporation, charged with certain trusts set forth in and contemplated by the act of incorporation of said defendant, and subject to the interests, rights, and privileges so acquired as aforesaid of the said astronomical society, and your orator as the successor thereof; that said defendant university corporation never acquired nor held the legal title to said premises or any part thereof; that the said board of trustees has never given its assent or approval to the execution or delivery of the said pretended trust deed, and if any attempt has been made in that regard by the said board, or the individual members thereof, the same has utterly failed to accomplish a legal act in that behalf, since, as your orator is informed and believes, and so charges the fact to be, the assent or approval was obtained, if any there was, by means of a memorandum or paper circulated amongst the members of said board of trustees at their various places of business or residences, for the purpose of obtaining their individual concurrence or assent, without any formal meeting or consideration whatsoever as a board.

And your orator further represents unto your honors, that it has been advised by counsel, and believes and humbly insists, that said pretended trust deed executed and delivered as aforesaid to Levi D. Boone, trustee, is void in law as a mortgage or lien upon the estate and premises therein described, and therefore ought not to prevail as such; that the same as it now exists is a cloud upon said real estate and premises and upon the title of your orator in and to the said Dearborn tower, and the rights and privileges acquired therein and in connection with said university as an institution of learning, by means whereof your

orator suffers great and constant embarrassment, financially and otherwise, in the operation and maintenance of said observatory, and is prevented from acquiring the substantial and necessary aid now proffered, that would otherwise flow freely to its support and encouragement from various sources stimulated by philanthropy and earnest desire for the general good of the public in the advancement of learning in the special department of astronomy.

Your orator further sheweth unto your honors, that it has been advised by counsel, and believes, that a decree as prayed in said bill of the Union Mutual Life Insurance Company in said suit against the University of Chicago and others, would operate to divest your orator of its property, rights, interests, and privileges, in and to said Dearborn tower, and thereby prevent the fulfillment of the conditions of the agreements of your orator with the various donors, contributors, or subscribers hereinbefore referred to, and utterly defeat the charitable and educational enterprise which has been inaugurated, fostered, and maintained as aforesaid for the good of the public.

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

Your orator prays that that the said pretended trust deed between the University of Chicago and Levi D. Boone, trustee, may be declared void and of no effect as a lien upon the rights, interests, or property of your orator, or upon the real estate and appurtenances in said deed described;

That the said Union Mutual Life Insurance Company,



its officers, agents, and representatives, may be perpetually restrained from further asserting, publishing, or prosecuting said pretended trust deed as a lien upon the real estate and premises described therein;

That your orator may have such other or further relief in the premises, as the nature of the circumstances of this case may require, and to this honorable court may seem meet;

That the relief hereby prayed may be granted upon a hearing in this case, or that such orders may be entered, whereby the rights of your orator, as hereinbefore set forth, may be heard, and the relief herein prayed may be granted in the aforesaid cause now pending in this honorable court, wherein the Union Mutual Life Insurance Company is complainant, and the University of Chicago and others, are defendants.

May it please your honors to grant unto your orator the most gracious writ of subpoena of the United States of America, to be directed to the said, the Union Mutual Life Insurance Company and the said University of Chicago, thereby commanding them, and each of them, at a certain day and under a certain pain therein to be specified, personally to appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to and perform and abide such order and decree therein as to your honors shall seem meet, and your orators will ever pray, &c.

THE CHICAGO ASTRONOMICAL SOCIETY,  
By J. YOUNG SCAMMON, *President*.  
CHARLES H. S. MIXER, *Secretary*.

WILLARD & DRIGGS,  
*Solicitors for Complainant*.

THOMAS HOYNE, *of Counsel*.

STATE OF ILLINOIS, }  
COOK CO. } ss.

Charles H. S. Mixer, being duly sworn, deposeth and saith: that he is the secretary of the above named complainant, and that he has read the above bill and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated to be on information and belief, and as to those matters, he believes them to be true.

CHARLES H. S. MIXER.

Subscribed and sworn to before me this 13th day of September, 1881.

CHAS. RANDOLPH,  
*Notary Public*.



ANSWER OF INSURANCE COMPANY TO BILL OF  
ASTRONOMICAL SOCIETY.



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

UNITED STATES CIRCUIT COURT.

IN CHANCERY.

THE CHICAGO ASTRONOMICAL SOCIETY  
vs.  
THE UNION MUTUAL LIFE INSURANCE COMPANY ET AL. } BILL.

Answer of the Union Mutual Life Insurance Company.

The separate answer of the Union Mutual Life Insurance Company, one of the defendants, to the bill of complaint of the Chicago Astronomical Society, complainant in the above entitled cause.

This defendant, saving all benefit of exception to the said bill of complaint, for answer thereto, or unto so much thereof as it is advised it is material for it to answer, answering, says:

As to all and singular the averments in said bill of complaint contained concerning the formation in the year 1863, of an association known as the "Astronomical Society of Chicago"; the alleged contributions made to such society for the purchase of a telescope and appliances therefor; the conditions or agreements upon which such alleged contributions were made; the rights and privileges of such contributors, as in said bill alleged; the names of such contributors and the amounts of their



alleged contributions respectively; the alleged negotiations had by said society with the trustees of the defendant, the University of Chicago, for the construction of a building or tower, wherein to locate said telescope and its appliances; the pretended considerations which induced said society to enter into such alleged agreement with the said defendant university; the pretended agreement between said society and said university concerning the location of an observatory tower in connection with the university building, which together with certain rooms in such building and certain real estate upon which to place said meridian circle, should remain under the exclusive and perpetual control of said astronomical society, as in said bill alleged; the pretended construction of such tower in accordance with such pretended agreement; the alleged report of such construction by said society to said university; the resolutions alleged to have been adopted by the board of trustees of said university under the dates of July 19, 1865, and July 4, 1866, respectively; the alleged setting apart by said board of trustees for the use of said society, of the real estate upon which to place such meridian circle; the exclusive and continuous control and management of such rooms and real estate by said astronomical society, and the support and maintenance thereof by said society, as in said bill alleged—this defendant has no knowledge or information, except as derived from said bill of complaint, and therefore neither admits nor denies the same, but puts complainant upon strict proof of each and all of such allegations.

Further answering, this defendant denies that, at the time of the alleged erection of such observatory tower and the execution of the deed of trust in said bill of complaint mentioned, it had any notice or knowledge of all or any of

the alleged agreements and conditions in said bill set forth respecting the erection of said Dearborn Observatory, or of the use, control or management thereof, or of the pretended rights and privileges of said complainant in and to the same and to the real estate upon which the same is situated, as in said bill set forth.

As to the allegations in said bill of complaint concerning the employment by said society and by said complainant as its successor, of persons skilled in the science of astronomy in connection with such observatory; as to the pretended discoveries made thereby, or as to the importance of the same; as to the alleged incorporation in the year 1867 of said complainant; as to the acceptance of the act of such incorporation, as alleged; as to the rights thereby acquired by complainant; as to the understanding and condition upon which the alleged contributions, donations and subscriptions in said bill set forth were made and received—this defendant has neither knowledge nor information, except as derived from said bill of complaint, and therefore neither admits nor denies the same, but puts complainant upon strict proof of each and all of such allegations.

Further answering, this defendant denies that it had any notice or knowledge of such pretended conditions or donations as complainant hath, in and by its said bill of complaint, averred.

Further answering, this defendant admits the execution of the deed of trust by said University of Chicago to Levi D. Boone, dated February 8, 1876, to secure an indebtedness to this defendant of one hundred and fifty thousand dollars, but denies that the same was executed by said university in disregard of its authority, or in disregard of



certain alleged conditions and agreements, as in said bill of complaint averred; and this defendant admits that it is provided in and by said deed of trust that in the event of the non-payment of the principal of said indebtedness, or of the interest thereon, the real estate in said deed of trust described, including the buildings thereon, shall be sold at public auction to satisfy such indebtedness.

This defendant admits that it has filed in this court its bill of complaint for the foreclosure of said deed of trust, as well as its amended and supplemental bill, as in said bill of complaint set forth, and admits that it is its intention to subject said real estate and the appurtenances thereunto belonging to public sale, without reservation or exception, and to disregard the pretended rights of said complainant in and to said premises and the appliances therein, and upon the ground adjacent thereto, and that complainant is not a party defendant to such foreclosure proceedings, and that said university has filed its answer to said bill of complaint; but it denies that the said university has not now and never has had any other or greater powers than are set forth in its said answer, but on the contrary avers that said university had full power and authority to make said loan of one hundred and fifty thousand dollars, and to secure the same by such deed of trust, and that such deed of trust is a prior and paramount lien upon the premises therein described.

As to the averment in said bill of complaint that the legal title to all the said real estate and premises was and is in the board of trustees of the University of Chicago and not in the university as a corporation, and that the same is charged with certain trusts and subject to certain pretended interests and rights of said complainant, and that the defendant, the University of Chicago, as a corpo-

ration never acquired or held the legal title to said premises—this defendant avers and insists that, as appears by the charter or act of incorporation of said university, the board of trustees and the university, as a corporation, are one and the same corporate body, the terms board of trustees and university being used in said charter as synonymous, and that whatever rights, powers and functions are, by such charter, conferred upon the board of trustees are thereby and to the like extent conferred upon such university; and this defendant denies that such board of trustees acquired the title to said premises charged with any trusts or subject to any pretended interests or rights of complainant, as by its bill of complaint is averred, and denies that said board of trustees never gave its assent or approval to the execution of said deed of trust, and on the contrary avers that the making of such loan of one hundred and fifty thousand dollars and the execution of such deed of trust to secure the same were fully and lawfully authorized, ratified and approved by such board of trustees.

Further answering, this defendant avers and insists that, even if it were true, as alleged in said deed of trust, that the title to said premises was exclusively in the board of trustees of said university and not in said university as a corporation, yet the ratification and approval of the making of such loan and of the execution of said deed of trust to secure the same as above set forth operated as a conveyance to such trustee of any and all interest or title that such board of trustees might have in and to said premises, and that said board of trustees, as well as said University of Chicago, are hereby estopped in law and in equity from questioning or denying the execution and validity of such deed of trust.



Further answering, this defendant denies that such deed of trust is void as a mortgage or lien upon the premises therein described, or that the same constitutes a cloud upon such premises or upon the pretended title and rights of complainant therein, and, on the contrary avers, as the fact is, that such deed of trust was in all respects fully and lawfully authorized and executed by the proper parties thereto, and that the same constitutes a valid and first lien upon such premises.

And this defendant avers and insists, that by reason of the non-payment of the indebtedness thereby secured, it became and now is entitled to a foreclosure of said deed of trust and to a sale of said premises in satisfaction of such indebtedness, in accordance with the terms and provisions of said deed of trust.

This defendant admits that a decree, as prayed by its said bill of foreclosure, would operate to divest said complainant of its pretended property rights, interests and privileges in and to said premises; and this defendant avers and insists that it is entitled to such decree, and that the pretended rights and interests of said complainant, if any, in and to said premises are in all respects subordinate and subject to the prior and paramount lien of said deed of trust.

Further answering, this defendant avers that prior to the making of said loan of one hundred and fifty thousand dollars to said university, as hereinbefore set forth, this defendant had loaned and advanced to said university other sums of money, at the dates and in the amounts following, to wit: about the month of October, 1864, the sum of fifteen thousand dollars; about the month of September, 1866, the sum of seventy-five thousand dollars, and

about the month of July, 1869, the sum of twenty-five thousand dollars, and that each of such loans was secured by notes and deeds of trust duly authorized and legally executed by said university and its board of trustees, conveying to the said Levi D. Boone, as trustee in each of said prior deeds, the same premises described and conveyed in and by said deed of trust of February 8, 1876, and that each of such prior deeds of trust was duly recorded in the recorder's office of Cook county, at or about the time of its execution; that the greater portion of such prior loans remained unpaid to this defendant at the time of the execution of said loan of one hundred and fifty thousand dollars, and became merged therein and constituted a part of said loan of one hundred and fifty thousand dollars then made by this defendant to said university, as aforesaid; that at the dates of all such prior loans and advances, and of the execution of the various deeds of trust securing the same, as well as the date of said loan of one hundred and fifty thousand dollars, and of the execution of said deed of trust of February 8, 1876, securing the same, the said University of Chicago was seized in fee simple, and was in actual possession of all those parcels of real estate in the said bill and in said deeds of trust respectively described, with the improvements and appurtenances thereon and thereto pertaining, free from all incumbrances except the incumbrances securing said several loans to this defendant; and this defendant, believing that said University of Chicago was so authorized and entitled, and that said premises were in fact so free from all incumbrances, as aforesaid, made said several loans to said university as above set forth, including said loan of one hundred and fifty thousand dollars; and said university, at the dates of said several loans, by its proper officers in that behalf duly authorized, executed its deeds of trust respect-



ively securing said several loans as hereinbefore set forth, and each of said deeds of trust contains a covenant on the part of said university to and with the trustee therein named, that said university was lawfully seized of said premises, and that the same and every part thereof were free from all incumbrances, as by the said deeds of trust, reference being thereto had, will more fully appear; and this defendant avers that the amount of such loans was actually paid by this defendant to the said university at the time of the execution of said several deeds of trust, as hereinbefore set forth, and the notes and deeds of trust securing the same were delivered by said university to this defendant as security therefor; and this defendant avers that at and before the date of the execution of said several notes and deeds of trust, and of the payment of said sums of money respectively, this defendant had no notice whatever of the several supposed conditions and agreements in said bill of complaint set forth, or of the supposed rights and equities in and to said premises which are asserted by complainant in its said bill of complaint, or of any other conditions, limitations, rights or equities whatsoever that in anywise affected the said premises, or any part thereof, or impaired the prior and paramount lien secured to this defendant by said deeds of trust respectively; wherefore this defendant avers that it occupies the position of a *bona fide* purchaser of said premises for a good and valuable consideration and without notice of the pretended conditions, rights, agreements and equities asserted in and by said bill of complaint; of all which matters in this paragraph set forth, this defendant claims the same benefit upon the hearing to which it would have been entitled by way of plea to said bill of complaint.

Further answering, this defendant avers that, at the

dates successively of the making of each of said last three loans above specified, to wit, the loan of seventy-five thousand dollars of September, 1866, the loan of twenty-five thousand dollars of July, 1869, and the loan of one hundred and fifty thousand dollars of February, 1876, each and all of the loans preceding said loans respectively remaining in great part unpaid, it was agreed between said university and this defendant that this defendant should retain and hold the notes and deeds of trust securing each of said preceding loans respectively, as collateral and additional security for the new loan then made. And this defendant avers that in accordance with such agreement it has retained and still retains all of such prior notes and deeds of trust respectively, and that under and by virtue of such agreements so successively made as aforesaid, it now holds the first three notes and deeds of trust securing said first three loans respectively as collateral and additional security for the payment of the last loan of one hundred and fifty thousand dollars above set forth.

Further answering, this defendant avers, that before and at the time of the exhibiting by complainant of its bill of complaint in this cause, the said University of Chicago was and for more than twenty years then last past had been in the open, notorious and exclusive possession of the premises in said bill of complaint, and in said deeds of trust described, which possession was and during all such period had been adverse to any and all other claimants, including the complainant in this cause; and this defendant claims the same benefit hereof upon the hearing, to which it would have been entitled by way of plea to said bill of complaint.

Further answering, this defendant shows that said complainant had not in and by its said bill of complaint made



or stated any such cause as entitles it to the relief therein prayed, or to any relief whatever at the hands of this defendant; and this defendant claims the same benefit hereof upon the hearing to which it would have been entitled by way of demurrer to said bill of complaint.

All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court may direct, and prays to be hence dismissed with its reasonable costs in this behalf sustained.

UNION MUTUAL LIFE INSURANCE COMPANY,

By SWETT & HASKELL,

*Its Solicitors.*

LEONARD SWETT,

J. L. HIGH,

*Of Counsel.*

BILL OF COMPLAINT OF MONS ANDERSON AND OTHERS IN  
SCHOLARSHIP CASE.



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

## UNITED STATES CIRCUIT COURT.

MONS ANDERSON ET AL.  
vs.  
THE UNION MUTUAL LIFE INSURANCE COMPANY ET AL. } IN CHANCERY.

### Bill of Mons Anderson et al.\*

*To the Judges of the United States Circuit Court in  
Chancery sitting:*

Mons Anderson, of the State of Wisconsin; A. A. Bowen, of Illinois; D. W. Stockwell, of Illinois; James Schoonhoven, of Illinois; J. C. Hopkins, of Illinois; D. D. Green, of Illinois; as well for themselves as for numerous and all others similarly situated, bring this their bill of complaint against the Union Mutual Life Insurance Company, a corporation created by and existing under the laws of the State of Maine, and the University of Chicago, a corporation created by and existing under the laws of the State of Illinois; and thereupon your orators complain and say that the said defendant, the University of Chicago, is a public institution of learning, controlled and managed by a board of trustees; that Stephen A.

\* By stipulation, dismissed as an original bill, December 15, 1884, and filed as a petition of intervention in the foreclosure case of Union Mutual Life Insurance Company vs. University of Chicago *et al.*



Douglas, by his contract in writing entered into with John C. Burroughs, dated the second day of April, A. D. 1856, and by his indorsement on the same, made November 10, 1856, agreed to convey to certain trustees named in said contract or agreement a valuable tract of land in the city of Chicago, consisting of ten acres, the same being described in said contract (a copy of which is hereto attached marked Exhibit "A," and made a part of this your orators' bill of complaint), for grounds for a university, and upon conditions set forth in said contract, viz:

*First.* That the said Burroughs should, within a reasonable time, procure the organization of a board of trustees of a university, according to the statutes of the State of Illinois, to consist of Stephen A. Douglas, Hiram A. Tucker, William B. Ogden, John H. Kinzie, Charles Walker, E. D. Taylor, Samuel Hoard, James H. Woodworth, Levi D. Boone, Walter S. Gurney, Mason Brayman, Rev. Mr. Clarkson, and John Burroughs, residents of the city of Chicago, and James Dunlap, of Jacksonville, Illinois, Henry G. Weston, of Peoria, Illinois, Simon G. Minor, of Canton, Illinois, N. W. Minor, of Springfield, Illinois, Charles Roe, of Belvidere, Illinois, and such other persons as they may appoint, to whom said contract should be assigned.

*Second.* That said trustees should procure plans of a building for a university.

*Third.* Building to be erected on the premises therein described, to cost not less than one hundred thousand dollars.

*Fourth.* Twenty-five thousand dollars to be expended upon said building within one year from the first day of

May then next, provided that the foundation shall be completed within the present year; and

*Fifth.* The further sum of twenty-five thousand dollars within two years from the first day of May next; and

*Sixth.* The further sum of fifty thousand dollars within or prior to the expiration of the year 1860.

The said trustees having failed in part to expend said sums of money within said mentioned times,

*Seventh.* The further condition indorsed on the back of said contract for a valuable consideration, duly made and accepted by said parties as follows, to wit: "I, Stephen A. Douglas, party of the first part of the foregoing agreement, do hereby extend the time for laying the foundation of the university until the first day of May, and for expending the first sum of twenty-five thousand dollars until the 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 other purposes whatever.*"

Your orators further say that said organization was effected as above provided, by the said John C. Burroughs, and that he duly assigned the said contract (a copy of which assignment being hereto attached and made a part of this your orators' bill of complaint, and marked Exhibit "B") to said trustees, on the seventh day of May, 1857, and all the other conditions of said



agreement having been fulfilled to his satisfaction, the said Stephen A. Douglas conveyed said land to said trustees by his warranty deed, dated the thirteenth day of August, A. D. 1858, his wife joining in said conveyance and releasing her dower in said real estate (a copy of which deed is hereto attached marked Exhibit "C," and made a part of this your orators' bill of complaint), and which deed was recorded in the recorder's office in the county of Cook, on the thirteenth day of September, 1858.

And your orators further show unto your honors, that said conveyance was made subject to and in pursuance of the conditions of said contract and agreement so made as aforesaid, with John C. Burroughs, and by him assigned to said trustees as aforesaid, in trust for the purposes of a university for the benefit of the public, and subject to the conditions imposed by said assignment and the endorsement thereon; one of which was as aforesaid that "no part of said real estate *shall ever be sold or alienated, or used for any other purposes whatever.*"

Your orators further show unto your honors that in conformity with and in pursuance of the conditions and the intentions of said agreement, and in execution of said trust, said trustees and their successors have solicited and received donations from the public to a large amount, in the aggregate not less than one hundred and fifty thousand dollars, upon the express condition and representation that said property should never be alienated or used for any other purpose than a university, a large part of which was donated upon such representations before said deed was made, and with the said moneys have built large and expensive buildings on said land, for the purpose and adapted to the uses of a university.

That for the better facilitating and promoting the objects and intentions of the founder of said university, and of said trust, said directors caused a special act of incorporation to be passed by the legislature of the State of Illinois, approved March 30, 1857—special reference to which is hereby made—by which said act of incorporation and the amendment thereto, said university was made an institution of the State of Illinois, and the State of Illinois constituted the special guardian and trustee thereof, and made responsible for the faithful execution of the trust and intent expressed in said agreement jointly with said trustees as aforesaid, to the end that there should be forever maintained and kept up a university for the benefit of the present and all future generations, and that the land conveyed by said agreement and said deed as aforesaid, for the purposes of said university should never be "*alienated or used for any other purpose whatever.*" That in fact your orators have a right to believe and rely upon the fact that the said State of Illinois has acted upon and in accordance with the authority conferred by said act and amendment thereto since the date thereof, and taken charge and oversight of said university, through a board of regents authorized and named by said act, and that hitherto said land and the buildings thereon have been in fact used for a university, "*and for no other purpose,*" as intended by said founder, Stephen A. Douglas, as expressed by said agreement. •

Your orators further show unto your honors that, relying upon the facts above stated, that said property should and would never be alienated or used for any other purposes than a university, according to the intent and agreement of its illustrious founder and said trust; the act of incorporation by the legislature of the State of Illinois;



the state guardianship authorized by said act; the supposed actual assumption and exercise of said guardianship, and the fact that said university has hitherto been in active existence as a university, where hundreds and thousands of the youth of the state and of other states have been educated and fitted for usefulness in life; your orators have been induced to purchase what are denominated scholarships of said university; in other words, to make an agreement with the trustees aforesaid with the approval of the regents of said university, whereby the said board of trustees, in consideration of one thousand dollars in cash paid by the holder of said contract or scholarship, have agreed in writing to permit said holder of such contract or scholarship to send one student to said university without charge perpetually, and which said scholarship is negotiable by its terms. A copy of such contract is hereto attached marked Exhibit "D," and made a part of this your orators' bill of complaint.

Your orators further show unto your honors that they and each of them have respectively paid to said trustees the sum of one thousand dollars for said scholarship, and now hold said scholarship; and that the total or aggregate amount which has been paid to said trustees for such scholarships, upon such representations, is not less than seventy thousand dollars; all of which interest and estate your orators represent in this suit. Your orators further show unto your honors that these scholarships, for which said trustees have received for the benefit of said university the aggregate amount of seventy thousand dollars, as aforesaid, under said agreement, conveyance and representations, are a perpetual, equitable lien and charge upon the university property held in trust by said board of trustees and regents, among the other objects and pur-

poses of the said trust, for the perpetual fulfillment of the conditions of said scholarships by said board of trustees and regents, on the part of and in behalf of said university.

But your orators further represent that notwithstanding the facts herein set forth, all of which they well knew, the vice-president and secretary of the executive committee of the university corporation, in fraud of the rights of the public, and in disregard of their duties in the premises, as such officers, on the eighth day of February, A. D. 1876, attempted to make, or made a pretended trust deed of said real estate so held in trust by said board of trustees to Levi D. Boone, one of said trustees, to secure a pretended indebtedness to said defendant, the Union Mutual Life Insurance Company, of one hundred and fifty thousand dollars, or thereabouts, in which said document, among other things, it is provided: that in the event of the non-payment of the principal sum of said indebtedness or any part thereof or the interest thereon when due, the real estate and appurtenances described in said document, including therein the said university grounds and buildings, may be sold without reservation or exception at public auction to the highest bidder to satisfy said indebtedness, a copy of which said pretended trust deed is hereto attached marked Exhibit "E," and made a part of this your orators' bill of complaint.

Your orators further represent to your honors, that the said Union Mutual Life Insurance Company allege that default has been made in the payment of said sum of money or some part thereof, and that said trustee, Levi D. Boone, declined to advertise and sell said premises, as provided in said trust deed, and has filed its certain bill of complaint in this honorable court, on or about the 18th



of February, A. D. 1881, against the University of Chicago, said defendant herein, N. K. Fairbank, president, and O. W. Barrett, secretary of the board of trustees of said corporation, Levi D. Boone and Samuel R. Boone, citizens of the State of Illinois, praying that said pretended trust deed may be declared to be a mortgage and foreclosed; that an account may be taken of what is due the said insurance company, and that said defendant, the University of Chicago, may be decreed to pay the amount so found to be due, and upon default in that behalf that the mortgaged premises, the property of the university, be sold under the provisions in said trust deed contained to satisfy and discharge such decree, and for other relief. And that subsequently, on or about the 12th day of March, A. D. 1881, said defendant Union Mutual Life Insurance Company filed in said cause its amended and supplemental bill, making certain persons herein named parties, and praying other and further relief, which said bill and amended and supplemental bill are hereto attached, and marked respectively Exhibits "F" and "G," and which your orators pray may be made a part of this bill of complaint. By which proceeding, your orators represent, it is manifestly the intention of said Mutual Life Insurance Company, said defendant herein, to subject the said real estate and appurtenances thereunto belonging to public sale, without reservation or exception whatsoever, and thereby to utterly ignore the rights of your orators, and to place it utterly out of the power of the trustees and regents of said university to fulfill the conditions of said scholarships, and to render the property and interests of your orators therein utterly worthless, to alienate the property conveyed in trust by the said Stephen A. Douglas for university purposes, and utterly

to defeat the public object and purposes for which it was expressly donated to the public, as hereinbefore set forth.

Your orators further represent, that the said Levi D. Boone, trustee in said pretended trust deed, to whom said property was conveyed for the purposes aforesaid, was the agent of said insurance company, and also one of the trustees of said university at the time said trust deed was executed, and had been such trustee from the first organization of the university board of trustees, to whom the original agreement was assigned as above set forth, by John C. Burroughs, and also that his principal, the insurance company, knew the terms and conditions of said agreement and the indorsement thereon, and understood the same, and that they colluded with the university corporation and said vice-president and secretary of said executive committee, who, without authority, executed said trust deed, and attempted to alienate and convey the property of said university, contrary to the trust of which he, said Boone, was one of the trustees and executors; contrary to the intent of said trust, and in fraud of the rights of the public as well as your orators, in said university.

And your orators further represent unto your honors, that afterward, on or about the 14th day of July, 1881, said defendant university filed its answer to said bill of complaint of said defendant insurance company, a copy of which answer is hereby attached and marked Exhibit "H," and made a part of this bill of complaint.

And your orators further represent, that the legal title to all said real estate at the time of the execution of said trust deed was, and that it still is, in the board of trustees of the University of Chicago, and that it was not and is



not in the defendant university corporation; that said university corporation never acquired or held the legal title to said real estate, or any part thereof, and could not legally convey the same; that the said board of trustees has never legally given its consent or approval to the execution of said pretended trust deed, or the delivery thereof to said defendant insurance company.

And your orators further represent unto your honors, that they have been advised by counsel, and believe and humbly insist, that said pretended trust deed, executed and delivered as aforesaid to Levi D. Boone, trustee, is void in law as a mortgage or lien upon the estate therein described, and ought not to prevail as such. That it is a menace to the rights of your orators, and threatens to deprive your orators and the public of their equitable rights, interests and privileges in said university and the property thereof, as hereinbefore set forth; by means of which your orators suffer great and constant embarrassment. That said scholarships are thereby rendered insecure, their negotiability and value greatly impaired, and their sale for their real value thereby hindered and embarrassed; and that such a decree as prayed for by said insurance company would operate to absolutely divest your orators of all their interests, property and privileges which they hold, and of right ought to enjoy, and which the State of Illinois has undertaken to assure to them, by virtue of said scholarships, by entirely destroying the university, and thereby totally defeat the object of the charitable enterprise which has been inaugurated, fostered and maintained as aforesaid for the public good.

To the end, therefore, that said defendants may, if they can, show cause why your orators should not have the relief hereby prayed, and full, true and perfect answer

make, not under oath, the oath being expressly waived, to all and singular the premises as fully and particularly as if the same was hereinafter repeated, your orators pray the said pretended trust deed between the University of Chicago and Levi D. Boone, trustee, may be declared void and of no effect as a lien upon the rights and interests of your orators, or upon the real estate and appurtenances in said deed described.

That the said Union Mutual Life Insurance Company, its officers, agents and representatives may be perpetually restrained from further asserting, publishing or prosecuting said pretended trust deed as a lien upon the real estate and premises described therein.

Your orators further pray, that the contracts and liability of the University of Chicago to your orators, and the interests and claims of your orators, created by said scholarships, may by decree of this honorable court be made a perpetual lien and charge upon the real estate and appurtenances belonging to said university, and that the title of said real estate is, and shall forever remain inalienable in said trustees, and shall forever be used for the purposes of a university, according to the original intent of its founder, and according to the terms of his agreement with said trustees.

That your orators may have such other and further relief in the premises as the nature of the circumstances of this case may require, and to this honorable court may seem meet.

That the relief hereby prayed for may be granted upon a hearing of this case, or that such orders may be entered whereby the rights of your orators, as hereinbefore set forth, may be heard, and the relief herein prayed may be



granted in the aforesaid cause now pending in this honorable court, wherein the Union Mutual Life Insurance Company is complainant, and the University of Chicago and others are defendants.

May it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America, to be directed to the said Union Mutual Life Insurance Company and the University of Chicago, thereby commanding them and each of them, at a certain day and under a certain pain therein to be specified, personally to appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to and perform and abide such order and decree therein as to your honors shall seem meet, and your orators will ever pray.

JAMES SCHOONHOVEN.  
D. W. STOCKWELL.  
MONS ANDERSON.  
E. A. BOWEN.  
J. C. HOPKINS.  
D. D. GREEN.

A. J. GROVER, *Solicitor*,  
35 Major Block.

STATE OF ILLINOIS, }  
COOK COUNTY. } ss.

A. J. GROVER, being duly sworn, on oath deposes and says, that he is solicitor for complainants, and has read the above bill and knows the contents thereof, and that the same is true so far as stated as of his own knowledge, and that the matters stated therein as of information and belief are true to the best of his knowledge and belief.

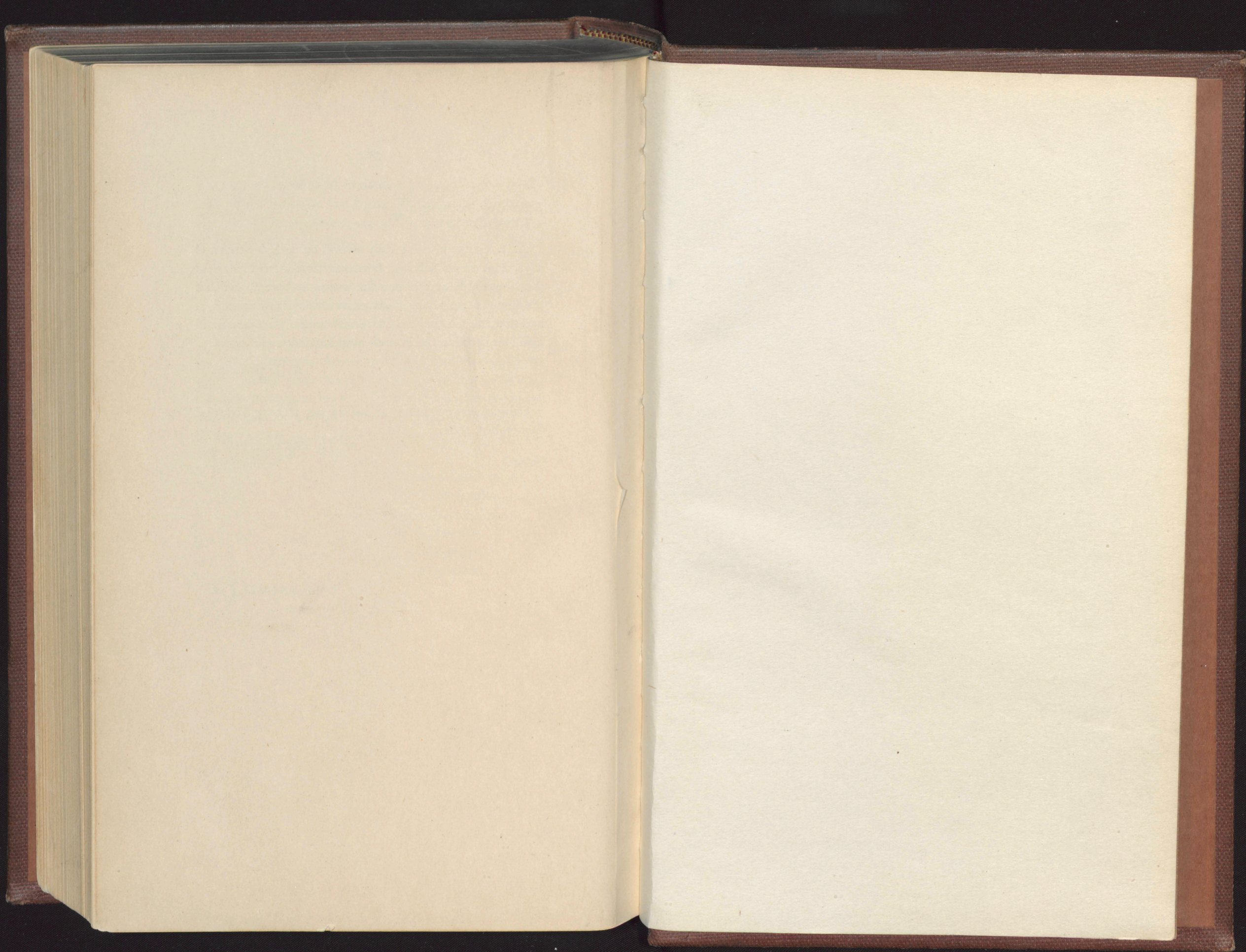
A. J. GROVER.

Subscribed and sworn to before me, this 13th day of September, 1881.

[SEAL.]

JOHN H. BATTEN, JR.,  
*Notary Public.*







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