loan should be made for the sum of one hundred and fifty thousand dollars ($150,000), and the papers before executed be held as collateral to said new loan.

I find that at the date of the settlement referred to the sum of one hundred and fifty thousand dollars ($150,000) was due and owing the complainant from the defendant, the University of Chicago, for money actually advanced to it and interest thereon, after deducting all payments made to that time.

I find that for the purpose of carrying out the arrangement made upon the settlement hereinbefore referred to, and for the purpose of securing said loan of one hundred and fifty thousand dollars ($150,000), said defendant, the University of Chicago, executed and delivered to the complainant its principal note for the sum of one hundred and fifty thousand dollars ($150,000), dated February 8, 1876, payable to the Union Mutual Life Insurance Company five (5) years after date, with interest at the rate of eight per cent. per annum, payable on the eighth days of August and February of each year, which note provided that if not paid at maturity it should bear interest at the rate of ten per cent. per annum until fully paid, and at the same time ten interest notes or coupons of even date therewith, also bearing interest at the rate of ten per cent. after due, and upon the same day executed and delivered its deed of trust upon the property mentioned in the bill filed in this cause, which deed of trust and notes were executed by Artemas Carter, vice-president, and O. W. Barrett, secretary, under the seal of said defendant corporation, upon which last mentioned note and coupons I find and report that there is now due and owing the complainant herein, less the payments shown to have been made and credited, as follows:

Upon the principal note the sum of.....$199,133 00
And upon the coupon notes the sum of.... 95,454 40
making the entire sum owing the complainant from the defendant corporation on the first (1st) day of November, A. D. 1884, for principal and interest, the sum of two hundred and ninety-four thousand five hundred and eighty-seven $\frac{40}{100}$ dollars...$294,587 40

I further find that the complainant has paid for special assessments upon said property the sum of two thousand one hundred and fourteen dollars and sixty-one cents ($2,114.61), which, with interest to this date at ten (10) per cent., as provided in the covenant in the deed authorizing said payment, amounts to the sum of two thousand four hundred and twenty-two dollars and ninety-eight cents ($2,422.98).

I find also that there have been payments made by complainant from time to time for insurance upon the buildings of the university conveyed by said deed of trust under covenants authorizing the same, sums which with the interest upon said payments respectively amount altogether to the sum of four thousand two hundred and forty dollars and fifty-six cents ($4,240.56), making a total sum due the complainant on November 1, 1884, upon the principal note and coupon notes and for taxes and insurance, of three hundred and one thousand two hundred and fifty dollars and ninety-four cents ($301,250.94.)

I find and report that all of said sums of money advanced as aforesaid were applied to the use and for the benefit of said University of Chicago, and that said last-mentioned loan was authorized by a resolution of the executive committee of the board of trustees of the Uni-

versity of Chicago, adopted January 25, 1876, and the consent in writing thereto of a majority of said board of trustees, and that said conveyance and note and coupons were respectively executed and delivered in pursuance of such resolution and consent.

I further find and report that it is shown by the testimony that the necessities of the university required the loans of money made by the complainant from time to time as shown, for the purpose of paying the salaries of the professors, defraying the current expenses of the university and in the erection of the building, and that the proceeds of said loans were actually applied in this way, the university having no other resources to which to resort for these purposes.

In addition to the findings of fact hereinbefore reported, I find and report that there is due from the defendant corporation to the complainant, under a covenant contained in said last-mentioned trust deed and established by the testimony as its reasonable solicitor's fee in the foreclosure of said mortgage, the sum of twenty thousand dollars ($20,000), to be added to the amount hereinbefore found due, making with said solicitor's fees the total sum of three hundred and twenty-one thousand two hundred and fifty dollars and ninety-four cents ($321,250.94.)

It is insisted upon the part of the defendant corporation that it is not indebted to complainant in the manner and to the extent charged in complainant's bill, and that if anything is due and owing it from said university, it is only such sums of money as have been advanced by said complainant to it from time to time, together with interest at six per cent. per annum upon such sums from the days when they were respectively advanced to it, which sums,

with interest at six per cent. per annum, amount to this date, after deducting payments made and interest at six per cent. per annum, to the sum of one hundred and fifty-five thousand seven hundred and sixteen dollars and six cents ($155,716.06), and do not include the items of taxes and insurance, and solicitor's fees.

If, therefore, the court should be of the opinion that the legal authority did not exist for the execution of the notes, mortgages and coupon notes hereinbefore referred to, and that the defendant corporation should be held to pay only such sums as were advanced, with interest thereon at the rate of six per cent., then, and in that case, I find and report that there is due and owing from said defendant corporation to complainant, after deducting all payments made by it, exclusive of sums advanced for payment of taxes, special assessments, insurance to this date and solicitor's fees, the sum of one hundred fifty-five thousand seven hundred and sixteen dollars and six cents ($155,716.06).

I attach hereto the statements furnished by the parties respectively, complainant's statement marked "Exhibit A," and defendant's statement, "Exhibit B," showing the manner in which the accounts are stated, and I also return herewith all of the testimony and exhibits taken and offered before me upon this hearing and used by me in the preparation of this report.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court
of the United States for the
Northern District of Illinois.

Dated CHICAGO, November 14, 1884.

Exhibit "A" of Complainant.

Statement showing amount due Union Mutual Life Ins. Co. by Chicago University, on November 1, 1884.

Principal due		$145,000 00
Int. from Feby. 1, '81, to Nov. 1, '84, 10%,	$54,133 00	54,133 00
		$199,133 00
No. 1 Coupon note,	$10,494 49	
No. 2 "	10,639 99	
No. 3 "	10,339 99	
No. 4 "	10,039 99	
No. 5 "	9,739 99	
No. 6 "	9,439 99	
No. 7 "	9,139 99	
No. 8 "	8,839 99	
No. 9 "	8,539 99	
No. 10 "	8,239 99	
		$95,454 40

Advances.

May 6, '83, Quit Claim for lamp posts,	$2,114 61	Int. @ 10%,	$308 37
2-1-78 Insurance	500 00	"	337 50
4-7-79 "	431 23	"	240 04
5-27-80 "	325 00	"	143 90
5-7-79 "	431 23	"	236 43
5-5-81 "	425 00	"	148 32
5-6-82 "	425 00	"	105 65
4-10-83 "	425 00	"	66 26
	$2,962 46		$1,278 10 } 2,962 46 }
			$4,240 56
			$2,422 98

Amount due Company November 1st, 1884 ..... $301,250 94

Attorney's fees as established by the testimony 20,000 00

Total, including attorney's fees $321,250 94

Exhibit "B" of Defendant.

Dr. The University of Chicago, in Acct. Current with The Union Mutl. Life Ins. Co. of Maine. Cr.

	Int. at 6% per annum to Nov. 1st, 1884—360 days to year.	Amount Advanced	Time. Yrs	Mos	Dys	Amount of Interest.
1861, June 29	To cash advanced	$ 24,000 00	23	4	2	$ 33,608 00
1864, June 24	" " "	1,000 00	20	4	7	1,221 15
Sept. 20	" " "	5,000 00	20	1	11	6,034 15
Oct. 11	" " "	10,000 00	20	0	20	12,033 33
1866, Aug. 7	" " "	2,500 00	18	2	24	2,735 00
" 16	" " "	3,000 00	18	2	15	3,277 50
" 20	" " "	5,000 00	18	2	11	5,459 15
Sept. 11	" " "	3,000 00	18	1	20	3,265 00
" 13	" " "	2,500 00	18	1	18	2,720 00
Oct. 18	" " "	9,831 90	18	0	13	10,639 86
1869, July 12	" " "	25,000 00	15	3	19	22,954 16
1876, Feby. 8	" " "	13,643 84	8	8	23	7,147 18
1884, Oct. 31	" interest balance of	86,747 22				
		$191,222 96				$111,094 48

	Int. at 6% per annum to Nov. 1st, 1884—360 days to year.	Amount Advanced	Time. Yrs	Mos	Dys	Amount of Interest.
1867, Oct. 1	By cash paid Co.....	$ 3,000 00	17	1	0	$ 3,075 00
1869, Oct. 1	" " " "	3,000 00	15	1	0	2,715 00
1870, Sept. 1	" " " "	2,220 00	14	2	0	1,887 00
" 1	" " " "	3,000 00	14	2	0	2,550 00
1872, Mch. 1	" " " "	1,600 00	12	8	0	1,216 00
Apr. 1	" " " "	1,400 00	12	7	0	1,057 00
Sept. 1	" " " "	275 27	12	2	0	200 75
1873, Mch. 1	" " " "	1,000 00	11	8	0	700 00
July 1	" " " "	2,000 00	11	4	0	1,360 00
1874, Nov. 1	" " " "	8,300 00	10	0	0	4,980 00
1875, Jan. 1	" " " "	489 66	9	10	0	289 10
Feb. 1	" " " "	102 86	9	9	0	60 25
July 1	" " " "	3,485 31	9	4	0	1,951 60
Oct. 1	" " " "	290 00	9	1	0	158 05
Dec. 1	" " " "	50 00	8	11	0	26 73
1876, July 16	" " " "	100 00	8	4	0	50 00
Oct. 26	" " " "	100 00	8	0	5	48 08
" 26	" " " "	93 80	8	0	5	45 20
1878, Mch. 28	" " " "	5,000 00	6	7	3	1,977 50
1884, Oct. 31	" balance of interest					86,747 22
" 31	" balance down.....	155,716 06				
		$191,222 96				$111,094 48

1884, Nov. 1, to balance down, $155,716 06.

Chicago, Oct. 29, 1884.

E. & O. E.

Duncan Campbell, *Acct.*

Endorsed: Filed Nov. 17, 1884.

W. H. Bradley, *Clerk.*

Opinion of Judge Blodgett in Foreclosure and Scholarship Cases.

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

UNITED STATES CIRCUIT COURT.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
UNIVERSITY OF CHICAGO ET AL. } IN CHANCERY.

OPINION.

BLODGETT, J.:

This is a bill to foreclose a trust deed, given by the University of Chicago to Levi D. Boone, trustee, dated February 8, 1876, whereby the ten-acre tract of land upon which the university buildings are situated, in the city of Chicago, is conveyed to secure the payment of the promissory note of the university, bearing even date with the trust deed, for the sum of $150,000, with interest thereon at the rate of eight per cent. per annum, payable semi-annually, to complainant, in five years from date; the interest being secured by coupon notes, which by their terms bear interest at the rate of ten per cent. per annum after due. The trust deed also contains covenants that the grantor will pay all taxes and assessments on the premises, and keep the buildings insured in a certain sum for the benefit of the holder of the indebtedness; and it is alleged by the bill that there is not only due a large portion of the principal sum of $150,000, together with

interest thereon, and interest upon the coupon notes at the rate stipulated, but that complainant has been compelled to pay large sums to redeem the property from tax sales and for premiums on insurance, by reason of the default of the university in not keeping its covenants for the payment of the same, for all of which complainant claims a lien upon the mortgaged premises.

Two defenses are interposed:

1st. That the tract of land in question was donated to the university by the late Hon. Stephen A. Douglas, for the purposes of a university, with an express agreement that the title thereto should forever remain in the university, for the purposes of education, and that no part of the same should ever be sold, or alienated, or used for any other purpose whatever, and hence that the university had no power to convey the land by the trust deed in question.

2d. That the defendant, the University of Chicago, being a corporation solely for educational purposes, had no power to borrow money, and no power to execute a conveyance of its real estate for the purpose of securing the payment of such money.

A brief history of the mode by which the principal defendant acquired this land, and of the origin and history of this indebtedness, as shown by the proofs in the case, seems to me necessary for the proper consideration of the questions here raised.

On the 2d day of April, 1856, Hon. Stephen A. Douglas entered into a contract with Dr. J. C. Burroughs, by which Judge Douglas agreed to donate the tract of land in question, on condition that Dr. Burroughs should secure the organization of a board of trustees of a univer-

sity, said board to consist of certain persons named in the contract, and should assign to such board the said contract, and that said board should proceed to prepare plans, which were to be satisfactory to Judge Douglas, for a university building to be erected on said land at a cost of not less than $100,000, and that the foundation of such building should be completed by the first day of January, 1857, and at least $25,000 expended on the building by the first day of May, 1857; the further sum of $25,000 by the first of May, 1858; and the remaining sum of $50,000 within or prior to the expiration of the year 1860; and, in case of failure to perform such conditions, or any part of them, said agreement was to be null and void; but if said conditions were performed, then, on completion of the buildings, a deed in fee simple of said tract of land, free of all incumbrances, was to be executed to said board of trustees.

On the 10th day of November, 1856, no work having been done toward the erection of the buildings, an endorsement of extension was made in writing upon the back of the contract in the following words:

"I, Stephen A. Douglas, party of the first part to the "foregoing agreement, do hereby extend the time for "laying the foundations of the university until the first "day of May, and for expending the first sum of $25,000 "until the first day of October, 1857. All the other condi- "tions 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 ex- "pressed in said agreement, and that no part of the same "shall ever be sold or alienated or used for any (other) "purpose whatever. "S. A. Douglas."

At the session of the general assembly of this state, which convened in January, 1857, a special charter or act of incorporation for the contemplated university was obtained, which was approved by the governor of the state January 30, 1857, and on the 30th of May, 1857, the charter was accepted by the trustees and corporators named in the act, and the university was organized and became, and has continued to be, a corporation to the present time, under the corporate name and style of "The University of Chicago," the object of the incorporation being declared by the terms of the act to be: "The pro- "motion of general and professional education, the appli- "cation of science to agriculture and manufactures, and "the cultivation of the fine arts"; and with power to sue and be sued, contract and be contracted with, to buy and sell and take and hold real and personal property.

The third section of the charter contains the following clause: "The board may acquire by gift, grant, devise, "or purchase, any real or personal property; and may "use, sell, lease, or otherwise dispose of, any and all "property belonging to the university in such manner as "they may deem most conducive to its interests. Pro- "vided, that real estate shall not be sold without the con- "sent of a majority of the trustees."

On the 4th of July, 1857, the corner stone of the university was laid with appropriate ceremonies, but a serious financial revulsion having occurred throughout the country, and especially in the north-west in the early part of the year 1857, it was found impossible to obtain sufficient funds to proceed with the building as required by the terms of the contract with Judge Douglas; and up to the first of September, 1858, the erection of the building required by the contract had not proceeded be-

yond the expenditure of between seven and eight thousand dollars in putting in the foundations.

About the first of September, 1858, Judge Douglas and wife executed and delivered a warranty deed in due form, conveying in fee simple to the trustees of the University of Chicago, the tract of land described in the contract with Dr. Burroughs, and being the same tract covered by the trust deed to Boone, which it is now sought to foreclose. This deed is wholly unconditional, and contains no restriction or limitation upon the title with which it clothed the university.

About the first of September, 1858, and so near the time of the execution and delivery of the deed from Judge Douglas to the university that they may be deemed contemporaneous acts, the board of trustees, by a resolution duly passed and entered of record, authorized a loan of $25,000 to be made, for the purpose of obtaining funds for the erection of the university buildings, and authorized the conveyance of the university grounds and the buildings to be located thereon, by mortgage or trust deed as security for such loan, and in pursuance of such authority, twenty-five bonds for the sum of one thousand dollars each, dated the first day of September, 1858, and payable in five years from date, were issued, and the payment thereof secured by a trust deed of the tract of land now in question, to Mark Skinner, Esq., as trustee.

This original trust deed is not produced in evidence, and was probably destroyed in the great Chicago fire of October, 1871; but the proof shows quite satisfactorily that it was executed by Judge Douglas, who was at that time president of the board of trustees. These bonds seem to have been sold upon the market, and a portion of

them were purchased by this complainant soon after their issue; and by the first of April, 1861, complainant had become the owner and holder of the entire issue. An extension of the time for the payment of this indebtedness was asked by the university, which was agreed to by the complainant, and a new trust deed was given to Levi D. Boone, as trustee, in September, 1861, to take up the $25,000 of bonds issued in 1858. A further loan of $15,000 was then, in April, 1864, negotiated with complainant, and another trust deed given to Boone, as trustee, to secure the same. In August, 1866, a further loan of $25,000 was obtained from complainant, and both the previous loans remaining unpaid, they, as well as the new loan of $25,000, amounting in the aggregate to $75,000, were included in a new trust deed, and in July, 1869, a further loan of $25,000 was obtained from complainant, which was also secured by trust deed on the said premises; and, finally, on the 8th of February, 1876, all these loans, together with the accrued interest upon the same, and the interest on the interest were funded and consolidated into one sum, which, together with the further sum of $13,143.84, loaned by the complainant at that time, made up the indebtedness of $150,000 mentioned in the trust deed, which it is now sought to foreclose. The $13,143.84, cash obtained at the time the last trust deed was given, was used mainly, if not wholly, to pay floating indebtedness due to professors, teachers and others, the proceeds of the previous loans having been used in the construction of the university buildings.

Upon these facts it seems to me that the limitation of inalienability imposed by Judge Douglas upon the title of the university to the land in question, must be considered as

having been fully waived by him. In the first place, the fact that the deed, by which the title is conveyed to the university, contains no limitation upon the right of the grantor to incumber or alienate, is of itself very pregnant, if not conclusive proof of an intention to waive the condition imposed by the terms of extension of the contract, for the reason that it is either the consummation and completion of that contract with a waiver of all the conditions, or it is a new and different donation from that contemplated by the contract with Dr. Burroughs of April 2d, and the extension thereof of November 10, 1856.

By the terms of the contract with Dr. Burroughs, no deed was to be made until at least $100,000 had been expended in the erection of buildings, and in case of a failure to have expended at least $50,000 on such buildings by the first of May, 1858, the contract to convey was to be null and void. At the time the deed was made only about $7,000 had been expended on the buildings, and the donor certainly had the right to treat the contract as forfeited. Under these circumstances Judge Douglas not only made the conveyance, but the board of trustees, of which he was not only a member, but the president, by formal resolution, entered of record, authorized a loan of $25,000 to be secured by a mortgage or trust deed upon the premises, and he, as president of the board, undoubtedly executed the trust deed. It seems to me that, if Judge Douglas had not intended to wholly waive this element of inalienability, he would have inserted it in his deed, where it properly ought to have appeared, instead of depending upon it as it stood in the extension clause of the agreement with Dr. Burroughs. As the latest and final act of the grantor, this deed must, I think, be taken as the final expression of the kind of title with which he

intended to invest this corporation. The agreement with Dr. Burroughs and the extension were but preliminary steps to the title, and had never been recorded, and it does not seem to me probable that, if he had intended still to insist upon the inalienability of this title he would have neglected to insert it as a condition of his deed. The fact that this important feature of the title as at first contemplated was left to rest only on the back of the original preliminary contract, and not carried forward into the final deed, would, as I have said, seem to be proof enough that the original purpose of the donor had been changed at the time he made the deed.

When we add to these suggestive facts the further fact that the same meeting of the board of trustees which authorized the first loan of $25,000 also passed a resolution of which he, as president of the board, must have been cognizant, thanking Judge Douglas for his liberality in waiving the terms of his original contract, the proof becomes fully complete and convincing that it was at the time this deed was made no longer the intention of Judge Douglas to insist that the university should hold the title without power to alienate or dispose of it. It is not probable that he anticipated that the indebtedness which he by his sanction and official act allowed to be made a burden upon this property in September, 1858, would ever be increased by further loans and accumulating interest to the immense sum now due, but he, I have no doubt, removed the restriction and intended that the board of trustees of the corporation should from this time have plenary power to deal with the property in all respects as if no such restriction had ever been suggested or contemplated by either party to the transaction.

Without discussing, then, the evidence in the record

bearing upon the question of notice to the complainant of the existence of this restrictive clause in the contract between Judge Douglas and Dr. Burroughs, and whether this restriction is brought home to complainant through the knowledge of Dr. Boone, I am of opinion that the restriction was wholly waived, and that the university took, by its deed from Judge Douglas, an unlimited fee simple title.

This brings me to the final question: Was the execution of this trust deed beyond the powers of this corporation, and is it, therefore, void and inoperative as a conveyance to secure to the complainant the sums of money and performance of the conditions, which it, upon its face, purports to secure? The power of this corporation to contract and be contracted with, to buy and sell, take and hold real and personal property, is as ample and comprehensive as that with which trading corporations are usually clothed. The only restriction upon the exercise of that power is, that real estate shall not be sold without the consent of a majority of the trustees, and the proof in this case shows not only that the execution of the trust deed now in question was actually consented to by a written instrument signed by a majority of the trustees, but that the executive commitee of the board, who, under the by-laws, could exercise all the powers of the board, authorized the execution of this trust deed, and their action was duly reported to the next meeting of the full board of trustees, at which a majority were present, and ratified and approved by the board. Indeed, I may say that the proof shows the performance, as it seems to me, of all the technical forms and conditions precedent necessary to make this conveyance binding upon the university corporation, and leaves only open for discussion the

naked power under the law to make this conveyance for the purposes for which it was made.

While this is a corporation for educational purposes and not a secular trading corporation, there can be no room for doubt that the legislature has clothed it with all the powers necessary to make a valid conveyance of any of the real estate of which it should become seized. It was evidently contemplated that this corporation would acquire real estate by gift or donation, and that it might have occasion to sell and convey the same, and power to do all this is expressly granted by the charter. Nor do I find any restriction in this power of alienation in the eighth section of the charter, which declares:

"No gifts, grants or devise made to the university for a "particular purpose shall be applied to any other purpose, "and every grant, gift, or devise made with the intention "of benefiting the said university shall be construed lib- "erally in the courts according to the intent of the "grantor, donor or devisor." This section undoubtedly applies to gifts made to the university for specific objects, such as to found and maintain professorships in certain branches of instruction, a library, or a particular course of study, and is intended to prevent such donations or gifts from being diverted to the general purposes of the institution.

With this full power to contract and be contracted with, the power to borrow money must be implied as one of the things which this corporation was authorized to do, and I am quite clear that it was the intention of the legislature to clothe the corporation with full discretionary power to make such use of its real estate and credit as its board of trustees deemed best for its interests, subject only to the condition that the conveyance of real estate,

whether conditional or absolute, should be consented to by a majority of the trustees. Whether such consent should be expressed by a written instrument individually signed by a majority of the trustees, or whether it must be consented to at a formal meeting of the board is wholly immaterial, because the proof shows a consent in writing and a ratification by the board, which is in all respects as binding as a consent obtained before the act was done.

The general rule as to the power of a corporation like this defendant, is well stated in Jones on Mortgages, Sec. 102: "A corporation, if capable of holding real estate, has, like "a person, the power of conveying it in mortgage, un- "less it is under some disability imposed by statute or "implied from its duties to the public."

And this principle was fully applied in the case of *Aurora Agricultural Society* v. *Packard*, 80 Ill., 263. It is said by the same learned author: "A religious corpo- "ration has, in general, under our laws, the same right to "mortgage and create liens on its real estate that any "corporation has; having the power to hold and enjoy "real estate, unless there be an express prohibition, it has "the power to mortgage it."

Jones on Mortgages, Sec. 126.
Madison Ave. Church v. *Olive St. Church*, 41 N. Y. Sup. Ct., 369.
Walroth v. *Campbell*, 28 Mich., 111.

The following cases, among the many cited by the learned counsel for complainant, seem to me to fully justify the conclusion at which I have arrived:

Attorney General v. *Warren*, 2 Swanst., 306.

Atty. General v. *South Sea Co.*, 4 Beavan, 453.
Jackson v. *Phillips*, 14 Allen, 591.
Royal British Bank v. *Turquand*, 6 Ellis & Blackburn, 88 Eng. Com. L., 327.
Bradley v. *Ballard*, 55 Ill., 414.
Paterson v. *Mayor of New York, &c.*, 17 N. Y., 449.
Alleghany City v. *McClurken*, 14 Penn. St., 81.

It is further insisted, that the complainant ought not to be decreed a valid lien for the full amount of the principal note described in the trust deed, because a portion of the sum mentioned in that note is for compound interest, and hence usurious and illegal. It is perhaps enough to say, that under the statute of Illinois, no corporation is allowed to interpose the defense of usury in any action. But aside from this statute, it is well settled that the taking of compound interest is not usurious. And the general rule on that question is so well stated in 3d Parsons on Contracts, that no other authority would seem necessary.

"On the other hand, if an agreement is made to con-
"vert interest already due into principal, or if accounts
"between parties are settled by rests and therefore, in ef-
"fect, upon the principle of compound interest, which
"may be done by an express accounting, or under a cus-
"tom of forwarding accounts quarterly, half yearly, or
"yearly, to the debtor, who acquiesces in them by his si-
"lence, these transactions are valid and sanctioned by the
"law.

* * * * * * *

"If compound interest has accrued, even under a prior

"bargain for it, and been actually paid, it cannot be re-
"covered back; nor are the penalties affixed to the crime
"of usury annexed by such taking; and if a note be given
"for such payment, the note is a sufficient legal consider-
"ation to sustain the action upon it."

And this rule is recognized by the Supreme court of Illinois in *Haworth* v. *Huling*, 87 Ill., 23, and *Meyer* v. *Muscatine*, 1 Wall., 384.

The point is also made in the answer that the money paid by complainant to redeem the property from a sale for an assessment made upon it for the construction of a sidewalk, ought not to be allowed, because the act of incorporating this university expressly exempts the property of the university from taxation or assessment, but I understood the learned counsel for the defendant on the argument to abandon this position. The authorities, I think, however, fully sustain the position that assessments for local improvements which, in effect, are betterments to the property, do not come within a general exemption clause like this.

Buffalo City Cemetery Co. v. *Buffalo*, 46 N. Y., 506.
City of Ottawa v. *Trustees, &c.*, 20 Ill., 424.
Mix v. *Ross*, 57 Ill., 124.

It is also urged that, inasmuch as the deed from Judge Douglas and wife runs to the "Board of Trustees of the "University of Chicago," and as the trust deed in question is in terms a deed from the "University of Chicago" to Boone, trustee, it does not operate to convey the title, because the title by the deed vests not in the University of Chicago, but in the board of trustees of the university.

But the act of incorporation names certain persons, and declares that they and their associates and successors in office are constituted a body corporate by the name of "The University of Chicago," and the persons so named are appointed the trustees with apt provisions for their terms of office, and the election of their successors. Here is then no dual body, but the trustees are the university. But if there were any doubt on that point, the facts bring the case fully within our statute of uses, which in effect declares that when a conveyance is made to any person for the use of another, or for any body politic, the person or body politic for whose use the same is so conveyed, shall thenceforth stand and be held to be in lawful seizin. *Board of Trustees* v. *Schulze*, 61 Ind., 511, very fully meets and answers this point against defendants.

Certain persons who hold what are called scholarships in the university, which entitle them, or those whom they may designate, to the privileges of attendance upon the course of instruction in the institution, which scholarships were, or at least a portion of them, created before the making of any trust deed, or mortgage on the property, and all of which were created before the trust deed now in question, have intervened in this case, and insist that this trust deed is invalid as to them.

It is sufficient to say that these certificates of scholarships do not purport to clothe the holders with any interest in the land, or property, of the corporation. They are, at most, a personal contract between the university and the holders, by which the holders are entitled to the benefits of the university in consideration of the payment made of a certain sum; analogous in their terms and legal effect, it seems to me, to a ticket which might be issued by a railroad company entitling the holder to transportation for a term of years, but which would create no right to control the manner in which the company should dispose of or incumber its real estate, or even manage its affairs.

So, too, the university might have made a contract to employ an officer, or professor, for a term of years, which might have been binding as between the parties, but it would create no right in favor of such person to challenge the validity of any conveyance the corporation should make of its property, even when the effect of the conveyance might be to prevent the performance by the university of its contract.

The intervening petition is dismissed for want of equity. The exceptions to the master's report are overruled; the report is confirmed, and a decree will be entered as recommended by the master.

Opinion of Judge Blodgett in Astronomical Case.

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

UNITED STATES CIRCUIT COURT.

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

OPINION.

BLODGETT, J.:

This is a bill in chancery filed by the Chicago Astronomical Society, in which an estate in perpetuity is claimed in certain rooms in the university building, and in so much of the grounds of the university as is occupied by the Astronomical Observatory and Meridian Circle, and seeking to have the trust deed involved in the preceding suit set aside as a cloud upon the title and the rights of the complainant. The case is submitted upon the proofs so far as applicable in the preceding case. The history of the inception and growth of the astronomical society and its relations to the university, as deducible from the testimony, is briefly this: In November, 1862, a public meeting of citizens of Chicago was held, to take measures for raising funds to establish an astronomical observatory in the city, at which meeting a committee of influential men interested in the object of the meeting was

appointed to solicit subscriptions and take such other action as they should deem advisable, and on the 13th of February, 1863, an amendment to the charter of the university was passed by the general assembly of this state, authorizing the university to establish an astronomical observatory, and to receive donations and bequests of money and property for the founding and maintenance of the same, and to provide for the management of the same, either directly by the board of trustees of the university, or by a board of directors to be appointed by the trustees.

At a meeting of the trustees of the university, held June 30, 1863, a communication was presented by one of the members of the board recommending the board to found an observatory in connection with the university, and urging the importance of immediate measures for the erection of an observatory tower, "the property of "the observatory to be vested with the other property of "the university." And at a meeting of the trustees, held July 7, 1863, it was resolved that steps be immediately taken for the completion of the main building of the university, the erection of which had become indispensable for the proposed observatory, and that subscriptions be secured for that purpose.

At a meeting of the trustees, held July 11, 1863, a series of three resolutions was adopted providing in substance that the observatory of the Astronomical Society of Chicago should be established at the university, and constitute a part of the university, but the control and management of the same were to be vested in the directors of the society, who should be nominated by the members of the society and confirmed by the board trustees; of

that the building or addition to the university should constitute a part of the property of the university, and be subject to the control of the trustees, saving to the directors the right and authority of control and management.

At about this time Mr. J. Y. Scammon proposed to contribute a sum sufficient to construct the observatory tower, and other liberal citizens contributed funds for the purchase of the large telescope, the meridian circle, and other apparatus necessary for the equipment of the observatory, and it would appear from the proof that as early as June 30, 1865, the tower had been completed through the generosity of Mr. Scammon, at a cost to him of over $30,000, while others had, with equal liberality, furnished the means for the purchase of the large telescope, the meridian circle, and other necessary instruments.

At a meeting of the board of trustees, held on the 6th of July, 1866, a resolution was adopted permanently setting apart for the use of the Chicago Astronomical Society and the professors of astronomy in the institution, the rooms immediately adjoining the tower and communicating therewith. In 1863 the sum of $5,000 for the purchase of a meridian circle was contributed by Mr. Walter S. Gurnee, and the circle established on a small plat of ground in the vicinity of the university buildings; and from the time the tower was completed and the instruments put in place, the use of the telescope and the course of instruction by the professors of astronomy has been one of the features of the scheme of study held out in the circulars of the institution to attract students, but up to the time of the great Chicago fire, in October,

1871, Mr. Scammon paid the salary and expenses of the professor of astronomy, in addition to his contribution for the construction of the tower.

On the 19th of February, 1867, a special charter was granted by the general assembly of this state, incorporating the Chicago Astronomical Society, most of the incorporators named being members of the board of trustees of the university, and, presumably, although the proof is not explicit on that point, the incorporators named in this special charter were members of the voluntary astronomical society which had been formed, and had an existence from a time soon after the movement for the erection of the observatory took shape.

The only provision of this special charter, which seems to have any bearing upon the questions in this case, is found in the 3d section as follows: "All the money, prop-"erty and effects of said society, except the land of the "university of Chicago, upon which the observatory "tower is erected, shall be held and managed by the "directors of said society; the management of all the "affairs of said society, the management and observations "of the observatory, the employment of a professor or "professors of astronomy and their assistants, the raising "of funds and the disbursement thereof, and the support "and maintenance of said observatory shall be vested in "the directors of said observatory." No conveyance was ever made from this voluntary society to the society created by this special act of incorporation, and no conveyance, written contract, or agreement was ever made by the university to either society, conveying to, or clothing the society with any property in the university lands, save by the resolution which assigned certain rooms to the use of the society.

My own conclusion from the undisputed facts is, that the movement for the building of the observatory and its equipment with the requisite instruments, was intended by all the parties as a contribution to the university, and for the purpose of encouraging subscriptions and to recognize the right of those who contributed to have a voice in the selection of professors directing the course of astronomical study, and, to some extent, controlling this special scientific branch of study and observation, which it was expected to inaugurate and maintain in the university with the aid of the tower and instruments, a separate board of control was provided for by the resolutions of July 14, 1863, and the special charter, but the intention that the property should be and remain the property of the university, is so fully expressed by all the proceedings, as to leave it clear that whatever property was contributed, or purchased by contributors, should be the property of the university.

The relation established between the university and the society, or those who contributed to the fund for building the tower and supplying it with instruments, is substantially like that which many founders of professorships in educational institutions reserve to themselves, that of nominating the instructors and suggesting or directing the course of study, and otherwise exercising a controlling influence in the conduct of the particular branch of the university course which they have contributed to organize.

The resolutions adopted by the board of trustees, on motion of Mr. Scammon, the most generous giver and active promoter of the movement, start out with the proposition, that the observatory of the Astronomical Society of Chicago be established at the university, and constitute a part of said university; but the control and

management of the same, that is of the observatory, shall be vested in the directors of said observatory, who shall be nominated by the members of said association, that is the astronomical society, and confirmed by the trustees of the university. Another resolution provided that, in case the association failed to nominate such directors, then the trustees should appoint them without such nomination; and the third resolution expressly stated that the building or addition to the university to be erected for the observatory shall constitute a part of the property of the university; while from the time it was built and furnished, the observatory and its appliances were treated and inventoried as assets of the university, although most of the active members of the astronomical society were members of the university board of trustees, and must have been aware of such claim; and in a series of resolutions adopted at a meeting of the trustees, on the 30th of June, 1865, is one thanking Mr. Scammon specially and the astronomical society generally for having secured to the university, in connection with the main building, a magnificent observatory tower and telescope to be placed therein, and also directing that the west tower of the university, erected at the expense of Hon. J. Y. Scammon, as an astronomical observatory, be designated as "Dear-"born Tower," in accordance with the expressed wish of Mr. Scammon. The proof in that regard fails to show to whom the bills of sale, if any, were taken for the astronomical instruments placed in and used with the observatory, such as the large telescope, the meridian circle, etc.; it certainly does not show that the title thereto was ever specially vested in the astronomical society, although it is no doubt true that these instruments were purchased with funds raised mainly through the efforts and agency

of members of this society. But I think the inference is a fair one, from what is disclosed in the proof, that the contributors to the fund with which these instruments were purchased, assumed that the instruments were to be placed in the university and to be its property, subject only to such control as should be exercised by the directors nominated by the society, and confirmed by the trustees of the university. The "control" reserved to these directors so nominated by the society, was not to be a property control or ownership, but the control as to the use to be made of them as adjuncts to the course of study and observation to be pursued in the university. The telescope obtained and mounted on this observing tower was the largest then known in the world, and it was undoubtedly expected that much astronomical work would be done with it in connection with other astronomical observers in other parts of the world, in which the university would have no direct part, but which would be conducted by the members of the society or persons appointed by the society, and it was this kind of use and work, as it seems to me, which was to be specially controlled by the directors designated by the society. The allotment of rooms in the university to the use of the society and to the professors of astronomy in the university is wholly consistent, it seems to me, with the idea that the society was a mere co-laborer with the astronomical department of study in the university and implies no property rights there. The word "permanently," used in the resolution assigning rooms to the astronomical department, does not there mean perpetually, but is like the permanent assignment of rooms to the other professors in the institution. Made up, as this society was, mainly of members of the board of trustees of the university, they

are chargeable with notice of the fact that at the time the observatory was built, and the instruments placed there and the meridian circle mounted, the land of the university with the buildings placed thereon, was subject to the first loan of $25,000; that this loan has never been paid, but that in 1864, 1866, 1869 and 1876, further loans were made from this complainant, each of which were secured by trust deeds on the property; and all this has been done without objection from this complainant, or any assertion of right, up to the filing of this bill in 1881; and it seems to me it would be palpably unjust and inequitable to now hold that the complainant has rights in the property paramount to those conveyed by the trust deed of February 8, 1876, for the benefit of the defendant, the Union Mutual Life Insurance Company.

It is urged that the complainant has had possession, but that possession has not been such an exclusive, open possession, hostile to and independent of the university, as would constitute notice to persons dealing with the university and put them on inquiry, but it was in form a mere permissive possession, which was entirely consistent with the assumption of absolute and paramount ownership and control by the university.

In coming to this conclusion, I am not unmindful of the fact that, by a decree of this court finding the defendant's trust deed a superior equity to that of this society, the generous motives of the builder of this observatory and of the contributors to its splendid scientific furnishings, may all be defeated, but I cannot see how they can be protected without doing a deeper wrong to this insurance company, which has, in good faith, advanced to the university these large sums of money.

The title to the telescope and other instruments may have been vested in the society, and if the proof showed such fact, I should be inclined to consider them as fixtures belonging to the society which it could remove if, for any reason, the society should be unable to conduct its work at the university.

The bill must therefore be dismissed for want of equity.

Decree in Foreclosure and Scholarship Cases.

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

UNITED STATES CIRCUIT COURT.

UNION MUTUAL LIFE INSURANCE COMPANY
vs.
UNIVERSITY OF CHICAGO ET AL. } IN CHANCERY.

DECREE OF FORECLOSURE.

This cause came on this day to be heard upon the pleadings and proofs, and upon the report of Henry W. Bishop, one of the masters in chancery of this court, dated November 14, 1884, and filed herein November 17, 1884, and the court having heard the arguments of counsel for the respective parties, and being now fully advised in the premises, it is ordered, adjudged and decreed that the exceptions of the defendant, the University of Chicago, to the report of said master be, and they are hereby each of them severally overruled, and that the said report and all things therein contained, save only the findings of said master as to the amount due to complainant if computed with interest at the rate of six (6) per cent. per annum, be and the same are hereby ratified, confirmed and approved.

And the court doth further find that there was due to the complainant from the defendant, the University of

Chicago, on the first day of November, A. D. 1884, upon the principal and coupon notes in said bill of complaint described, together with the amounts paid by the complainant for special assessments and insurance upon the premises in said bill of complaint and hereinafter described, with interest thereon as provided in the deed of trust in said bill of complaint set forth, together with the reasonable solicitors' fees of said complainant in foreclosing said deed of trust, the total sum of three hundred and twenty-one thousand two hundred and fifty dollars and ninety-four cents ($321,250.94), upon which sum so found due interest is to be computed for all purposes of this decree at the rate of six per cent. per annum, since said first day of November.

And the court doth further find, adjudge and decree that all the material allegations of said bill of complaint, and the amendments and supplements thereto, are true; that the defendant, the University of Chicago, at the date of the execution of the notes and deed of trust in said bill of complaint described, to wit, February 8, 1876, was the owner in fee simple of the premises in said deed of trust, and hereinafter described; that its title to said premises was absolute and without conditions, restrictions or limitations of any nature whatsoever; that it had full power and authority to sell or mortgage said premises or any portion thereof; that it had full power and authority to make the several loans, and execute the several notes and deeds of trust in said original and amended and supplemental bills, and in said master's report set forth, including said principal note of one hundred and fifty thousand dollars ($150,000), dated February 8, 1876, with the coupon notes accompanying the same, and the deed of trust of the same date, conveying to Levi D. Boone as

trustee, the premises therein and hereinafter described, as security for said loan of one hundred and fifty thousand dollars; that said notes and deed of trust of February 8, 1876, were duly authorized by the executive committee of the board of trustees of said university, and were executed pursuant to the consent in writing of a majority of said trustees; that the said notes and deed of trust of February 8, 1876, were in all respects duly and lawfully authorized and executed; that by virtue thereof the complainant has a valid and first lien upon the premises in said deed of trust, and hereinafter described, as security for the indebtedness herein found due from said defendant, the University of Chicago, to said complainant, and that the rights and interests of all the defendants in this cause, in said premises, are subject and inferior to the lien of said complainant.

It is thereupon ordered, adjudged and decreed that the said defendant, the University of Chicago, do pay or cause to be paid to the complainant in this cause, within ten (10) days from the entry of this decree, the said sum of three hundred and twenty-one thousand two hundred and fifty dollars and ninety-four cents ($321,250.94), with interest thereon at the rate of six per centum per annum from the first day of November, A. D. 1884, to the date of said payment, and also pay into court the costs in this cause, to be taxed by the clerk of this court, and in default of so doing that all and singular the said premises mentioned and described in the said bill of complaint and deed of trust, and hereinafter described, or so much thereof as may be sufficient to satisfy the amount due to the complainant as hereinbefore adjudged, together with interest thereon as aforesaid, and the costs in this cause, and which may be sold separately without material in-

jury to the parties interested, be sold at public auction to the highest bidder for cash, by Henry W. Bishop, one of the masters in chancery of this court.

And it is further ordered that the said master make such sale at the north door of the custom house and post-office in the city of Chicago, in the county of Cook and State of Illinois, and that he give public notice of the time and place of such sale by publishing an advertisement thereof once a week, for three (3) successive weeks, in a newspaper published in the city of Chicago, in said county and state, the first publication of said notice being not less than twenty-one (21) days previous to the time of such sale; that the complainant or any of the parties to this cause may purchase at such sale; that the said master shall give to any purchaser at such sale a certificate of sale, pursuant to the laws of the State of Illinois, concerning the sale of real estate by virtue of a decree of foreclosure of mortgage, and shall cause a duplicate of such certificate to be recorded, as required by law.

The premises authorized to be sold under and by virtue of this decree are the following described lands and premises situated in the city of Chicago, county of Cook, and State of Illinois, to wit: that part of the south half ($\frac{1}{2}$) of the north-east quarter ($\frac{1}{4}$) of section thirty-four (34), township thirty-nine (39), north range fourteen (14) east, of the third principal meridian, bounded as follows, to wit: Beginning at a point in the center of Cottage Grove avenue fifty (50) feet due south of the south line of the lots in Okenwald subdivision, "lying next north of Groveland Park," running thence west parallel with said south line of lots, and fifty (50) feet from said line, if extended, a distance of six hundred and twenty-seven (627) feet, thence due south six

hundred and fifteen (615) feet, thence east parallel to and fifty (50) feet north of the north line of lots in the said Okenwald subdivision, lying next south of "Woodland Park," a distance of seven hundred and ninety (790) feet, to the center of Cottage Grove avenue, thence northwestwardly along the center of Cottage Grove avenue six hundred and thirty-six (636) feet to the place of beginning, containing ten (10) acres, more or less, to centers of surrounding streets, being the same land deeded by Stephen A. Douglas to said University of Chicago, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

It is further ordered that if the said premises, or any parcel thereof, shall at such sale be struck off and sold by the master to the complainant in this cause, the complainant shall be required to pay to the master only so much of the complainant's bid as shall, taken together with other moneys paid to the master at such sale on bids for parcels by other persons, if any there be, be sufficient to satisfy the expenses of the sale, and the master's fees, disbursements and expenses, and the costs of this suit, and also any excess of the remainder of the amount of said bid, after such payment over the amount due the complainant under this decree for indebtedness secured by said mortgage.

It is further ordered that said master make report to this court of such sale and of his acts and doings hereunder, for approval and confirmation, and for further direction herein, and that he retain from the moneys received by him on said sale the amount of his fees, disbursements and commissions thereon, and bring the residue of such moneys, if any, into court, to abide the further order of this

court, and that he take the receipt of the clerk of this court therefor, and file the same with said report; and if the price for which said premises shall be so sold shall be insufficient to satisfy the amount so found and adjudged to be due to the complainant, with the interest thereon and the costs of suit and expenses of sale as aforesaid, that the said master specify the amount of such deficiency in his said report of sale. And it is further ordered that the clerk of this court hold such moneys so to be paid him by said master, subject to the further order and direction of this court in this cause.

It is further ordered that if any sale made by said master under this decree shall be confirmed by this court, and if the land so sold shall not be redeemed according to the laws of the State of Illinois, the master in chancery of this court shall, after the expiration of the time allowed by law for such redemption, execute and deliver to the legal holder of any certificate of sale issued under this decree, a deed of conveyance of the land in such certificate described, which shall not have been so redeemed.

And it is further ordered, adjudged and decreed that the defendants in this cause, and all persons claiming by, through or under them, or either of them, since the filing of the original bill of complaint in this cause, be forever barred and foreclosed from all equity of redemption and claim of, in and to said above described land and premises, and any part and parcel thereof, which shall be sold as aforesaid, under this decree, and which shall not be redeemed according to law.

And it is further ordered, adjudged and decreed that upon the execution and delivery of the deed or deeds of conveyance as aforesaid, the grantee or grantees, his or

their heirs or assigns, be let into possession of the portion of said mortgaged premises so conveyed to him or them, and that any of the parties to this cause, who may be in possession of said premises or any part thereof, and any person who since the commencement of this suit has come into possession under them, or either of them, on the production of said master's deed of conveyance and of a certified copy of the order of this court confirming the report of said sale, surrender possession thereof to such grantee or grantees, his or their heirs or assigns.

And the court having further considered the petition of intervention by Mons Anderson, A. A. Bowen, D. W. Stockwell, James Schoonhoven, J. C. Hopkins and D. D. Green, filed in this cause in behalf of themselves and all others similarly situated as the owners of certain certificates of scholarship issued by the defendant, the University of Chicago, in and by which petition it is prayed that such scholarships be made a perpetual lien and charge upon the premises above described, prior and paramount to the lien of said deed of trust; and the court having heard the arguments of counsel thereon, and being fully advised in the premises, it is ordered, adjudged and decreed that said petition be and the same is hereby dismissed out of this court for want of equity.

And upon motion of counsel for the complainant, it is further ordered that this cause be, and the same is hereby, dismissed without prejudice as to the defendants, Robert M. Douglas and Stephen A. Douglas.

From which order and decree the defendants pray an appeal, which is allowed, and it is ordered that the same do operate as a supersedeas upon the defendants filing herein a good and sufficient bond in the penal sum of

eighty thousand dollars, conditioned according to law, with sureties to be approved by the court, and it is further ordered that if said defendants elect not to have said appeal operate as a supersedeas, then the bond, for the purposes of such appeal, may be in the penal sum of two thousand dollars.

And the court reserves to itself the right, at this or any future time, to make any further or supplemental order touching the mode of making sale hereunder, or the officer by whom such sale shall be made, or the postponement of said sale as to all or any part of the property on said premises claimed by the Chicago Astronomical Society.