
In testimony whereof we, the incorporators first above named, hereunto set our hands, and affix our seals, this 18th day of June, the year of our Lord One Thousand Eight Hundred and Ninety.

John D. Rockefeller (seal)
E. Nelson Blake (seal)
Marshall Field (seal)
Francis E. Hinckley (seal)
Fred T. Gates (seal)
Thomas W. Goodspeed (seal)

"EXHIBIT 3."

This Agreement, made this ________ day of __________, A. D. 19______, by and between The University of Chicago, an Illinois corporation (hereinafter called the "University"), and Trustees of the Rush Medical College, also an Illinois corporation (hereinafter called the "College"),

Witnenseth as follows:

Whereas, the University and the College, after extended and careful consideration of the subject of medical and surgical education and the existing condition of the same, and of the best course to pursue in order to advance, improve and enlarge the facilities for such education, and make the same more efficient, and thereby promote the well-being of the public, believe that the making and carrying out of this contract is the best course to pursue to attain the desired objects, and will render the work of the parties in connection with medical and surgical education more effective than it otherwise would be, and will broaden the scope of the same, and also tend to economy, and greatly benefit the cause of medical and surgical education and the public; and,

Whereas, the University has obtained in subscriptions and gifts approximately $5,300,000, to be used and applied by it to the work of medical and surgical education; and,

Whereas, all of the property of the College hereinafter described (except the Nicholas Senn Hall hereinafter mentioned, the funds for the erection of which were obtained in the manner hereinafter stated) and hereby covenanted and agreed to be conveyed, transferred
and assigned by the College to the University, was purchased by the College with its own moneys, obtained by it from tuition fees and other fees the College had received from its students and moneys received by it for services rendered by it to other persons or corporations, and donations of money and property, all of which donations were free from any trust, express or implied, created by any of the donors thereof, and without any requirement by any of said donors as to the purpose or purposes for which the same should be held, owned, used or expended by the College, or any specification by any of said donors regarding such purpose or purposes; and,

Whereas, the College is now the absolute owner of all of said property, real and personal, hereinafter described (subject to all mortgages, liens and incumbrances thereon) and said property is the only property, real or personal, now owned by the College, except certain trust funds hereinafter referred to; and,

Whereas, the College is at the present time wholly dependent for its income upon tuition fees and other fees received from students, and moneys it may receive from other persons for services rendered and upon the income from the trust funds referred to in paragraph 6, infra, of this agreement, and the average annual net income of the College from all said sources, remaining after payment of necessary charges and expenses, has during the last five years not exceeded $4,000 and said net income during the year preceding the date hereof has not exceeded that amount; and,

Whereas, the net income of the College is wholly insufficient to enable it to make such changes and additions to its present medical school and laboratory, and the equipment thereof, as are necessary to meet the advances in medical and surgical science and to keep the same up to modern methods and afford the public the most efficient service, and, in fact, is wholly insufficient to enable the College to make proper provision out of its income against depreciation in its present property; and,

Whereas, the University of Chicago is already conducting, and has for some years conducted, a medical school on its quadrangles on the south side of the City of Chicago; and,

Whereas, the University intends, from its present resources and out of the moneys obtained from said subscriptions and gifts, or from other sources, to develop a medical and surgical school near its quadrangles situated on the south side of the City of Chicago, and in connection therewith to construct and equip a hospital containing approximately two hundred (200) beds, and to make all necessary and proper provisions for the operation and maintenance of said medical and surgical school and hospital; and,

Whereas, the University has also been intending to establish and maintain a school for medical and surgical education and research on the west side of the City of Chicago and near the present site of the College, and, in connection therewith, to construct and equip a new laboratory building, costing with its equipment not less than $400,000, to be occupied and used for the purposes of said school; and,

Whereas, the College now owns the real estate situate at the northeast corner of South Wood and West Harrison streets in the City of Chicago, having a frontage of approximately 147 feet on said West Harrison street and of approximately 100 feet on said South Wood street.
(subject to all mortgages, liens and incumbrances thereon), said property being described as follows, to wit:
Lot 10 to 16 inclusive in McKay's Resubdivision of Block 11 of Ashland's Addition to Chicago of the east half Section Eighteen (18), Township Thirty-nine (39) North, Range Fourteen (14), East of the Third (3d) Principal Meridian; and,

Whereas, the College heretofore and about the year A. D. 1875, constructed a building and improvements on the western portion of said last described real estate and has equipped the same as a medical and surgical school (the total original cost of said building being, approximately, $54,500) and has occupied and used the same for said purposes for a period of more than forty years past, and is now occupying and using the same for said purposes; and,

Whereas, on or about the 30th day of October, A. D. 1900, Dr. Nicholas Senn, of Chicago, Illinois, proposed to the College that he would donate to it the sum of $50,000 to be paid in December, 1900, in cash or in securities, to be applied to the erection of an east wing of the College, upon the following conditions: (1) That the building should be known as "Nicholas Senn Hall"; (2) that the College should become the medical department of the University of Chicago as soon as it might be deemed advisable, and (3) that the College should agree to pay Dr. Nicholas Senn the sum of $1250 on the first day of July, 1901, and a like sum on the first days of January and July thereafter during his lifetime; and

Whereas, the College accepted said proposition of said Dr. Nicholas Senn and entered upon plans for carrying the same into effect and thereafter said Dr. Nicholas Senn paid the College said sum of $50,000; and,

Whereas, under date of April 19, 1901, a certain agreement in writing was entered into between the College and said Dr. Nicholas Senn wherein and whereby, after reciting the said proposition and the acceptance thereof by the College and the payment to the College of said $50,000 by said Dr. Nicholas Senn, the College covenanted and agreed to construct said building to be called "Nicholas Senn Hall," and to take suitable steps to constitute said College the medical department of the University of Chicago as soon as and whenever it might be deemed advisable and feasible so to do, and further covenanted and agreed to make the payments to said Dr. Nicholas Senn set forth in his said proposition; and,

Whereas, further donations in aid of the construction of said Nicholas Senn Hall, aggregating approximately $55,000, were thereafter made by other persons; and,

Whereas, the total cost of said Nicholas Senn building and the equipment thereof was approximately $128,000, and said total cost exceeded the amount so contributed by said Dr. Nicholas Senn and other doctors by approximately the sum of $43,000 and said excess was paid by the College out of its own moneys; and,

Whereas, the value of said parcel of real estate so owned by the College, as aforesaid, on which its medical and surgical school and said Nicholas Senn Hall were constructed, as aforesaid, does not exceed $30,000; and,

Whereas, the College also now owns (subject to all mortgages, liens and incumbrances thereon) the following described real estate, to wit:
Lots 3 to 7 inclusive in Resubdivision of Block 4 of Assessors' Division of the east half of the southeast quarter of Section Eighteen (18), Township Thirty-nine (39) North, Range Fourteen (14), East of the Third Prin-
principal Meridian; which said described tract of land is situated on said South Wood street, opposite the parcel of land on which, as aforesaid, the medical and surgical school of the College and said Nicholas Senn Hall, have been constructed, as aforesaid; on which said Lots 3 to 7 inclusive in said Rosedivision of said Block 4 of said Assessor's Division, a Laboratory Building was erected by the College in the year A. D. 1893, the cost of such original construction being approximately $83,000, and the value of the real estate upon which said Laboratory Building was so constructed, being approximately $20,000; and,

Whereas, the College also now owns certain personal property consisting of books, charts, pictures, surgical equipment, laboratory supplies and accessories, pathological specimens and other educational equipment and accessories; and,

Whereas, the College has a right of re-entry in case there has been or may be hereafter a breach under the provisions of a certain deed bearing date January 2, 1884, and heretofore recorded in the Recorder's Office of Cook County, Illinois, executed by the College, as grantor, to the Presbyterian Hospital, as grantee; and,

Whereas, the College is also the owner of Lot 109 in Division Two of Block A in Oakwood Cemetery in Cook County, Illinois;

Now, therefore, it is mutually covenanted and agreed between the parties as follows:

1. The College hereby covenants and agrees that upon the execution and delivery of this agreement, it will convey, assign and transfer to the University all of the property, real and personal (including said Nicholas Senn Hall) of which the College is the owner, as aforesaid (except the trust funds referred to in paragraph 6, infra, of this agreement), subject to all mortgages, liens and encumbrances on any of said property, real or personal, and will also assign and transfer to the University all cash remaining on the execution and delivery of this instrument in the hands of the College as its own absolute property, after deducting therefrom all indebtedness of the College theretofore incurred by it on account of operating or other expenses of any and every kind and nature whatsoever; and the University hereby assumes and agrees to pay all of said mortgages, liens and encumbrances and to save the College harmless from any liability on account of the same, or any of the same, and also further covenants and agrees that it will use all of said property, real and personal (or its proceeds, in case of a sale), to promote the general interests of medical education and to qualify young men to engage usefully and honorably in the professions of medicine and surgery.

2. The University hereby covenants and agrees that, upon the execution of this agreement, it will proceed to develop its said medical and surgical school near its said quadrangles on the south side of the City of Chicago, and, for use in connection therewith, will construct, equip and maintain there, or at some other place in the City of Chicago suitable for that purpose, a hospital, containing approximately two hundred (200) beds, and will complete said hospital and put it in operation, with all convenient speed, and, in any event, within ten (10) years from the date hereof.

3. The University hereby covenants and agrees that, upon the execution of this agreement, it will proceed, at its own expense, to tear down said medical and surgical school building of the College, and on the tract of land on which it now stands, construct and equip a new labora-
tory building, capable of occupancy and use as a school for medical education and research, said building with its equipment to cost not less than $400,000—said building and equipment to be in accordance with modern methods for the construction and equipment of laboratories for medical and surgical education and research, and will let the contracts for such construction within one (1) year from the date hereof, said building to be completed with all convenient speed and, in any event, within five (5) years from the date hereof; and the University further covenants and agrees that it will operate said new laboratory building and equipment and pay all the expenses of any and every kind and nature whatsoever of such operation.

4. The College hereby covenants and agrees to, and hereby does, assign and transfer to the University, subject to the consent of the other parties to said contracts, all existing contracts between the College and the Presbyterian Hospital, Otho S. A. Sprague Memorial Institute, Home for Destitute Crippled Children, Children's Memorial Hospital and Central Free Dispensary, and other institutions (if any), and the University hereby assumes, and agrees to perform, each and all of the covenants of the College contained in each and all of the said existing contracts and to indemnify and save harmless the College from any and all liability under the same.

5. The College hereby grants to the University the exclusive right to use, in connection with its work of medical and surgical education, the designation “Rush Medical School of the University of Chicago,” or any other designation it may desire containing the word “Rush,” until such time as the College shall desire to use, and shall begin to use, in connection with its work

in medical or surgical education, some designation containing the word “Rush,” and the University hereby covenants and agrees to use such designation, containing the word “Rush,” as a designation for its own postgraduate medical or surgical work, until the College itself desires, as aforesaid, to use and begins to use the same.

It is expressly understood and agreed that the obligation hereunder of the University to use the name “Rush” shall cease and determine, in case said name (either by itself or in combination with other words) is adopted or used by any other corporation, institution, or person, or association of persons, in connection with any medical or surgical education or work in the State of Illinois, and such adoption or use is adjudged permissible by the judgment or decree of any court of competent jurisdiction in the State of Illinois.

6. It is expressly understood and agreed that all trust funds now held by the College shall, notwithstanding this agreement, continue to be held in trust by the College upon and subject to the same trusts upon and subject to which they are now held, including the following trust funds: (1) Freer Prize Fund; (2) H. M. Lyman Memorial Prize Fund; (3) Manheimer Library Fund; (4) A. D. Thomson-Bovian Fellowship Fund; (5) Nicholas Senn Fellowship Fund; (6) John Phillips Fund and (7) certain real estate situate in Mitchell County, Iowa, devised to the College by the will of Lillian G. Swale, of Mason City, Iowa, for the endowment of scholarships.

In witness whereof, the parties hereto have caused this agreement to be executed by their respective officers duly thereto authorized, in accordance with resolutions of their respective Boards of Trustees, and
their respective corporate seals to be hereto affixed the day and year first above written.

The University of Chicago,

By

President of its Board of Trustees.

Attest:

_____________________________________

Secretary.

Trustees of Rush Medical College,

By

Its President.

Attest:

_____________________________________

Secretary.
State of Illinois, \( \text{ ss.} \)
County of Cook, \( \text{ ss.} \)

IN THE
Circuit Court of Cook County

IN CHANCERY.

TRUSTEES OF RUSH MEDICAL COLLEGE, \( \text{ Complainant,} \)

vs.

THE UNIVERSITY OF CHICAGO AND EDWARD J. BRUNDAGE, as Attorney-General of the State of Illinois, \( \text{ Defendants.} \)

In Chancery.

DECREE.
(Entered January 4, 1924.)
STATE OF ILLINOIS,  
COUNTY OF COOK.  

IN THE CIRCUIT COURT OF COOK COUNTY.

Trustees of Rush Medical College,  
Complainant,  

v.s.  
The University of Chicago  
and Edward J. Brundage,  
as Attorney General of the State of Illinois,  
Defendants.  

In Chancery.  

DEGREE.

This day this cause coming on to be heard upon the bill of complaint of the complainant, Trustees of Rush Medical College, heretofore filed herein on behalf of said complainant by its solicitors, Scott, Bancroft, Martin & McLeish, and upon the answer of the defendant, The University of Chicago, by Tenney, Harding, Sherman & Rogers, and Phillips, Mack & O'Bryan, its solicitors, and upon the answer of the defendant, Edward J. Brundage, as Attorney General of the State of Illinois, heretofore filed herein by himself and upon the replication heretofore filed herein by the complainant to each and all of said answers, and upon the report of Roswell B. Mason, Master in Chancery of this court, made and filed herein under and in pursuance of an order heretofore duly entered herein, referring this cause to said master to take evidence and report the same to this court, and upon the evidence and exhibits contained in said
Master's report and upon the evidence, oral and documentary, introduced in open court, and the complaint now coming into court and moving that a decree be entered herein, as prayed in its said bill of complaint, and said solicitors for each of said defendants being present in court and having been heard, and the court having considered the issues and all of the evidence and exhibits contained in said Master's report, and also the oral and documentary evidence introduced in open court, and the arguments of counsel, and having considered all of the same and being fully advised in the premises;

THE COURT DOETH FIND, that it has full, complete and perfect jurisdiction over each and all of the parties to this suit and also of the subject matter of this suit.

AND THE COURT DOETH FURTHER FIND AS FOLLOWS:

That the complainant was organized under a special Act of the Legislature of the State of Illinois, approved March 2, 1837, entitled "An Act to Incorporate the Rush Medical College"; that subsequently said Act was amended by said Legislature by an Act, approved December 23, 1844, entitled "An Act to Amend an Act entitled 'An Act to Incorporate the Rush Medical College'"; that, subsequently, said Legislature passed an Act, approved February 10, 1857, authorizing the Trustees of the complainant to make a loan, said last mentioned Act being entitled "An Act to authorize the Trustees of Rush Medical College to make a loan"; and that subsequently, said Legislature passed an Act, approved February 13, 1865, enabling the complainant to fund its indebtedness and to borrow money, entitled, "An Act to enable Rush Medical College of Chicago to fund its present indebtedness and to borrow money."

That a true and correct copy of all of said Acts of the Legislature of Illinois hereinafter referred to, is attached to the bill of complaint herein, marked "Exhibit 1," and made part thereof.

That the defendant, The University of Chicago, is a corporation, duly organized under the Act of the Legislature of Illinois, entitled "An Act concerning Corporations, approved April 18, 1872, and in force July 1, 1872," and all Acts amendatory thereof; and that a true and correct copy of the certificate of incorporation of said The University of Chicago, issued under date of September 10, 1890, by Isaac N. Pierson, then Secretary of State of the State of Illinois, certifying that "The University of Chicago" is a legally organized corporation under the laws of this state, is attached to the bill of complaint herein marked Exhibit 2, and made part thereof, and that said certificate was duly recorded in the Recorder's office of Cook County, Illinois, on September 20, 1890.

That continuously ever since its organization as a corporation as aforesaid, and up to the present time, the complainant has been engaged in the work of promoting the general interests of medical education and of qualifying young men to engage usefully and honorably in the professions of medicine and surgery.

That the complainant now owns the real estate situate at the northeast corner of South Wood and West Harrison streets in the City of Chicago, having a frontage of approximately 147 feet on said West Harrison street and of approximately 100
feet on said South Wood street (subject to all mortgages, liens and incumbrances thereon), said property being described as follows, to wit: Lots 10 to 16 inclusive in McKay's resubdivision of Block 11 of Ashland's Addition to Chicago of the East half (E.\(\frac{1}{2}\)) of Section 18, Township 39 North, Range 14, East of the Third Principal Meridian.

That the complainant heretofore and about the year A. D. 1875, constructed a building and improvements on the western portion of said real estate and has equipped the same as a medical and surgical school (the total original cost of said building being approximately $54,500), and has occupied and used the same for said purposes for a period of more than forty years past, and is now occupying and using the same for said purposes.

That said building is now in such a condition that it will very soon have to be torn down and replaced.

That on or about the 30th day of October, A. D. 1900, Dr. Nicholas Senn, of Chicago, Illinois, proposed to the complainant that he would donate to it the sum of $50,000 to be paid in December, 1900, in cash or in securities, to be applied to the erection of the east wing of said school upon the following conditions: (1) That the building should be known as the 'Nicholas Senn Hall'; (2) that the complainant should become the medical department of the University of Chicago as soon as it might be deemed advisable, and (3) that the complainant should agree to pay to Dr. Nicholas Senn the sum of $1,250 on the first day of July, 1901, and a like sum on the first days of January and July thereafter during his lifetime; that the complainant accepted said proposition of said Dr. Nicholas Senn and entered upon plans for carrying the same into effect, and that thereafter said Dr. Nicholas Senn paid the complainant said sum of $50,000.

That thereafter under date of April 19, 1901, a certain agreement in writing was entered into between the complainant and said Dr. Nicholas Senn, wherein and whereby after reciting the said proposition and the acceptance thereof by the complainant and the payment to the complainant of said $50,000 by said Dr. Nicholas Senn, the complainant covenanted and agreed to construct said building to be called "Nicholas Senn Hall," and to take suitable steps to constitute the complainant the medical department of said University of Chicago as soon as and whenever it might be deemed advisable and feasible so to do, and further covenanted and agreed to make the payments to said Dr. Nicholas Senn set forth in his said proposition.

That thereafter, further donations in aid of the construction of said Nicholas Senn Hall, aggregating approximately $35,000 were made by other persons; that said Nicholas Senn Hall was erected on the eastern portion of the real estate hereinbefore described; that the total cost of said Nicholas Senn Hall and the equipment thereof was approximately $128,000 and that said total cost exceeded the amount so contributed by said Dr. Nicholas Senn and other donors by approximately the sum of $43,000, and that said excess was paid by the complainant out of its own moneys.

That the value of said parcel of real estate so owned by the complainant, as aforesaid, on which its said medical and surgical school and said Nicholas Senn Hall were constructed, as aforesaid, is approximately $22,500.
That the complainant also now owns (subject to all mortgages, liens and incumbrances thereon) the following described real estate, to wit: Lots 3 to 7 inclusive in the Resubdivision of Block 4 of Assessors Division of the East half of the Southeast Quarter of Section 18, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, which said described tract of land is situate on West Harrison Street, opposite the parcel of land on which, as aforesaid, the medical and surgical school of the complainant and said Nicholas Senn Hall have been constructed, as aforesaid, and that on said Lots 3 to 7 inclusive in said Resubdivision of said Block 4 of said Assessor's Division, a Laboratory Building was erected by the complainant in the year A. D. 1893, the cost of the original construction of the same being approximately $83,000, and that the value of said described real estate upon which said Laboratory Building was so erected is approximately $20,000.

That the complainant also now owns certain personal property, including books, charts, pictures, surgical equipment, laboratory supplies and accessories, pathological specimens and other educational equipment and accessories.

That said personal property is of value in connection with the work of carrying on medical and surgical education, but that it is of small value for purposes of sale. That said complainant is also the owner of a cemetery lot in Oakwood Cemetery in Cook County, Illinois.

That the complainant also has a right of re-entry, in case there has been, or may hereafter be, a breach of condition under the provisions of a certain deed bearing date January 2, 1884, and heretofore recorded in the Recorder's Office of Cook County, Illinois, executed by the complainant, as grantor, to the Presbyterian Hospital, as grantee.

That all of the property of the complainant herebefore described (except said Nicholas Senn Hall hereinebefore mentioned, the funds for the erection of which were obtained in the manner hereinebefore found) was purchased by the complainant with its own moneys obtained by it from tuition fees and other fees which the complainant had received from its students and moneys received by it for services rendered by it to other persons and corporations, and donations of money and property, all of which donations were free from any trust, express or implied, created by any of the donors thereof, and without any requirement by any of said donors as to the purpose or purposes for which the same should be held, owned, used or expended by the complainant, or any specification by any of said donors regarding such purpose or purposes.

That the complainant is now the absolute owner of all of said property, real and personal, herebefore described, including said Nicholas Senn Hall (subject to all mortgages, liens and incumbrances thereon) and that said property is the only property, real and personal, now owned by the complainant, except certain trust funds hereinafter referred to.

That at the present time the complainant is wholly dependent for its income upon tuition fees and other fees received from students, and moneys it may receive from other persons for services rendered, and upon the income from said trust funds herein-
after mentioned, and that the average annual net income of the complainant from all said sources, remaining after the payment of necessary charges and expenses, has, during the last five (5) years preceding the filing of this bill, not exceeded $4,000, and that during the year immediately preceding the filing of this bill said net income has not exceeded said amount.

That in the great fire of 1871 all of the property then held by the complainant was destroyed, and that the total amount received by it from insurance on same did not exceed the sum of $2,500.

That the expenses of conducting medical and surgical colleges have, ever since the incorporation of the complainant, rapidly increased, from time to time, and at the present time are very much larger than in the past, owing to the advances in medical and surgical education, and in the sciences allied thereto, and the increased cost of material and operation, and that said expenses will continue to increase in the future.

That the net income of the complainant at the present time is wholly insufficient to enable it to make such changes in, and additions to, its present medical school and laboratory, the equipment thereof, as are necessary to meet the advances in medical and surgical science, and to keep said medical school and laboratory, and the equipment thereof, up to modern methods, and afford the public the most efficient service, and that said net income is wholly insufficient to enable the complainant to make adequate and proper provision out of the same to cover depreciation in its present property.

That in the opinion of competent witnesses, and

the court finds the fact to be, that the time has arrived when, in view of the advances in medical and surgical science, the complainant cannot continue as a complete medical school without obtaining a large endowment.

That the defendant, The University of Chicago, has full power and authority under its charter to engage in the work of medical and surgical education.

That the objects for which said University of Chicago was organized, as set forth in its said certificate of incorporation hereinbefore referred to, are as follows:

"2. The particular objects for which said corporation is formed are to provide, impart, and furnish opportunities for all departments of higher education to persons of both sexes on equal terms; to establish, conduct, and maintain one or more academies, preparatory schools, or departments, such academies, preparatory schools, or departments to be located in the City of Chicago or elsewhere as may be deemed advisable; to establish, maintain, and conduct manual-training schools in connection with such preparatory departments; to establish and maintain one or more colleges, and to provide instruction in all collegiate studies; to establish and maintain a university, in which may be taught all branches of higher learning, and which may comprise and embrace separate departments for literature, law, medicine, music, technology, the various branches of science, both abstract and applied, the cultivation of the fine arts, and all other branches of professional and technical education which may properly be included within the purposes and objects of a university, and to provide and maintain courses of instruction in each and all of said departments; to prescribe the courses of study, employ professors, instructors, and teachers, and to maintain and control the government and discipline in said University, and in each of the several departments thereof, and in each of the several academies,
preparatory schools, or other institutions subordinate thereto, and to fix the rates of tuition, and the qualifications for admission to the University and its various departments; to receive, hold, invest, and disburse all moneys and property, or the income thereof, which may be vested in or intrusted to care of the said corporation, whether by gift, grant, bequest, devise, or otherwise, for educational purposes; to act as trustee for persons desiring to give or provide moneys or property, or the income thereof, for any one or more of the departments of said University, and for any of the objects aforesaid, or for any educational purposes; to grant such literary honors and degrees as are usually granted by like institutions, and to give suitable diplomas; and generally to pursue and promote all or any of the objects above named, and to do all and every of the things necessary or pertaining to the accomplishment of said objects or either of them."

That said University of Chicago has for some years past conducted, and is now conducting, a medical school on its quadrangles on the south side of the City of Chicago, and that it has obtained in subscriptions and gifts the sum of approximately $5,300,000 to be used and applied by it to the work of medical and surgical education, and that said sum has heretofore actually been received by and is in the possession of said University of Chicago, to be used and applied by it to said work.

That by the terms of said gifts and subscriptions, $300,000 of said total of $5,300,000 must be applied to the erection of a laboratory building on the West Side of the City of Chicago; that $1,000,000 of said $5,300,000 must be applied to a hospital to be erected on the South Side of the City of Chicago, and that the remaining $4,000,000 is to be held by the University of Chicago as a trust fund and the income thereof applied by it to any of its work of medical or surgical education irrespective of the location in which that work is carried on, and that such part of said income could be applied to the work of medical and surgical education carried on by said University of Chicago on the real estate which, under said proposed contract between said complainant and said University of Chicago, is to be conveyed by said complainant to said University of Chicago, as it was for the best interest of medical and surgical education should be applied for that purpose on that property.

That said University of Chicago has stated to the complainant that it intends, from its present resources and out of the moneys obtained from said subscriptions and gifts or from other sources, to develop its said medical and surgical school, situated on the south side of the City of Chicago, and, in connection therewith, to conduct and equip a hospital, containing approximately 200 beds, and to make all necessary and proper provisions for the operation and maintenance of said medical and surgical school and hospital; and has also stated to the complainant that it has been heretofore intending to establish and maintain a school for medical and surgical education and research on the west side of the City of Chicago, near the present site of the medical and surgical school of the complainant, and, in connection therewith, to construct, equip and maintain a new laboratory building, costing, with its equipment, not less than $400,000, to be occupied and used for the purposes of said school.

That in view of the facts hereinbefore found, the complainant and said University of Chicago have
given an extended and careful consideration to the subject of medical and surgical education and the existing condition of the same, and to the subject of the best course to pursue in order to advance, improve and enlarge the facilities for such education, and make the same more efficient, and thereby promote the well-being of the public.

That, as a result of such consideration, a draft of a proposed contract between the complainant and said University of Chicago has been prepared, a copy of which said draft is attached to the bill of complaint, marked "Exhibit 3" and made a part thereof.

That the present resources of the complainant are wholly insufficient to enable it to carry on the work of medical and surgical education as effectively as it would be carried on if the proposed contract, a copy of which is attached to the bill of complaint herein, were executed and carried out.

That in the opinion of competent witnesses, and the court finds the fact to be, that the proposed contract, if executed and carried out, will result in the development of a very much stronger school of medicine than either the complainant or the defendant, said University of Chicago, could develop alone, and will result in great service to medical education in this country and will be of service to said complainant and to said University of Chicago and to the people.

That the making and carrying out of said proposed contract set out in said "Exhibit 3" will advance, improve and enlarge the facilities for medical and surgical education, and make the same more efficient, and thereby promote the well-being of the public, and will render the work of the complainant and said University of Chicago, in connection with medical and surgical education, more effective than it otherwise would be, and will broaden the scope of the same, and will also greatly benefit the cause of medical and surgical education and the public.

That the bill of complaint alleges that questions may be made as to whether the complainant and said University of Chicago have power, under the law and under their respective charters, to enter into said proposed contract, and as to the propriety of the provisions therein contained, or of some of said provisions, and that the complainant is unwilling to enter into said contract until it has first been submitted to the court, and a decree entered by the court passing upon said questions, and finding that said contract is within the corporate powers of the complainant and of said University of Chicago, and that none of its provisions are objectionable on any other grounds, and approving the contract.

That the complainant is a charitable corporation, and not a corporation organized for pecuniary profit; that under its charter, none of its property, and none of its net income, after paying its running expenses, can be distributed among, or expended for the benefit of, any persons whomever, but all of its property and its net income must be applied to the purposes authorized by its charter, that is to say, to the promotion of the general interests of medical education and to qualify young men to engage usefully and honorably in the professions of medicine and surgery.

That the complainant now holds certain trust funds, referred to in paragraph 6 of the draft of the
proposed contract (set out in said "Exhibit 3" to the bill of complaint) and excepted therefrom.

That all of the said trust funds are held by the complainant for the purpose of furthering the medical and surgical education of young men, namely (1) the Freer Prize Fund, (2) H. M. Lyman Memorial Prize Fund, (3) Mannheimer Library Fund, (4) A. D. Thomson-Bevan Fellowship Fund, (5) Nicholas Senn Fellowship Fund, (6) John Phillips Fund, and (7) certain real estate situate in Mitchell County, Iowa, devised to the complainant by the will of Lillian G. Swale of Mason City, Iowa, for the endowment of scholarships. That the income of said Freer Prize Fund and of said H. M. Lyman Memorial Prize Fund is to be expended in giving prizes for excellence in students’ work; that said Mannheimer Library Fund consists of medical books and of a further sum of Five Thousand ($5,000) Dollars to be used for the purpose of founding, augmenting or perpetuating a medical library; and that said A. D. Thomson-Bevan Fellowship Fund and said Nicholas Senn Fellowship Fund are fellowships in surgery, and that said gift by the will of Lillian G. Swale is for the endowment of scholarships. That by the terms of none of the instruments creating said Funds is it required that the income of any part of the principal or interest shall be expended in connection with medical or surgical work carried on by the complainant itself, and that all of said trusts could be administered by the complainant if the proposed contract between it and said trusts by the complainant in accordance with their terms.

And it is ordered, adjudged and decreed, as follows:

That the making and carrying out of the proposed plan embodied in the proposed contract, a draft of which is attached to the bill of complaint herein, marked Exhibit 3, will advance, improve and enlarge the facilities for medical and surgical education and will make the same more efficient and will promote the well being of the public and will render the work of the complainant and said University of Chicago, in connection with medical and surgical education, more efficient than it otherwise would be, and will broaden the scope of the same and greatly benefit the cause of medical and surgical education and the public; that all the provisions contained in said contract are proper provisions and that said complainant and said defendant, The University of Chicago, should be authorized to enter into said contract, and that said University of Chicago has full power and authority, under its charter, to enter into all its covenants and agreements contained in said contract and to perform the same.

It is further ordered, adjudged and decreed that said complainant and said University of Chicago be, and they hereby are, authorized to enter into said proposed contract and to carry out the same, according to its terms. Leave is hereby given to any of the parties hereto to apply to the court for instructions in regard to any matter which may arise regarding the execution of said contract or the carrying out of any of the details thereof.
IT IS FURTHER ORDERED that all of the costs and expenses connected with this proceeding (including solicitors’ fees) of the defendant, the University of Chicago, shall be paid by it, and that all of the other costs and expenses connected with this proceeding (including solicitors’ fees) of the other parties hereto shall be paid by the complainant.

And said defendant, Edward J. Brundage, as Attorney General of the State of Illinois, now comes and prays an appeal to the Supreme Court of Illinois, and the same is hereby allowed.

Entr:

Ira Ryner,
*Judge.*
No. 15904

IN THE
Supreme Court of Illinois.

February Term, 1924.

TRUSTEES OF RUSH MEDICAL COLLEGE,
Complainant below and Appellant,

v.

THE UNIVERSITY OF CHICAGO,
Defendant below and Appellee,
and

EDWARD J. BRUNDAGE, as Attorney General of the State of Illinois,
Defendant below and Appellant.

Appeal from
Circuit Court,
Cock County.

Hon.
Ira Byner,
Chancellor.

OPINION OF SUPREME COURT OF ILLINOIS.

Filed April 14, 1924.

__________________________
SOUTHERN ILLINOIS PRINTING COMPANY, FLEXCO.
IN THE

Supreme Court of Illinois.

February Term, 1924.

TRUSTEES OF RUSH MEDICAL
COLLEGE,
Complainant below and Appellee,

v.

THE UNIVERSITY OF CHICAGO,
Defendant below and Appellant,

and

EDWARD J. BRUNDAGE, as Attorney
General of the State of Illinois,
Defendant below and Appellant.

Appeal from
Circuit Court,
Cook County.

Hon. Ira Byner,
Chancellor.

OPINION OF SUPREME COURT OF ILLINOIS.

UNITED STATES OF AMERICA.

State of Illinois, ss.

At a term of the Supreme Court, begun and held at
Springfield, on Tuesday, the First day of April, in the
year of our Lord One Thousand Nine Hundred and
Twenty-four, within and for the State of Illinois.

Present—Chief Justice William M. Farmer,
Justice James H. Cartwright,
Justice Frank K. Dunns,
Justice Clyde E. Stone,
Justice Orrin N. Carter,
Justice Warren W. Duncan,
Justice Floyd E. Thompson,
Edward J. Brundage, Attorney General,
Warren C. Murray, Marshal,
Attest: Charles W. Vail, Clerk.
Be it remembered, that afterward, to-wit, on the 14th day of April, 1924, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

Trustees of Rush Medical College, Appellee,
No. 15904 vs. University of Chicago, Appellee,
Edward J. Brandage, as Attorney General, Appellant.

Docket No. 15904—Agenda 29—February, 1924.


Mr. Justice Thompson delivered the opinion of the court:

In 1837 an act was passed incorporating Rush Medical College under the name of "Trustees of the Rush Medical College," the object of the corporation being "to promote the general interests of medical education and to qualify young men to engage usefully and honorably in the professions of medicine and surgery." Shortly thereafter it established a school of medicine and surgery in Chicago and up to this time has continuously conducted such a school. In 1871 substantially all its property was destroyed in the great Chicago fire. Since then it has, from donations made to it by its professors and other people and out of fees collected by it from students, purchased real estate situate at the corner of South Wood and West Harrison streets, in the city of Chicago, and has erected buildings thereon. One of the buildings was erected in 1875 and was then equipped as a medical and surgical school. In 1893 a laboratory building was erected across the street from the original building. About ten years later, through the generosity of Dr. Nicholas Senn and other friends of the school, Nicholas Senn Hall was built as an addition to the old college building. For twenty-five years the first two years of medical instruction has been given at the University of Chicago, and the last two years of such instruction, which consists largely of clinical work, has been furnished by Rush Medical College. In 1918 a third year was added, so that the college had the responsibility of the last three years' training of medical students. The college has never had an endowment fund, and has been able to attain the high rank among medical colleges which it holds, because of the generosity of physicians and surgeons interested in research work and medical education. A hundred or more clinical teachers have donated all their teaching service, and many of them have contributed from their private funds to keep their departments up to standard. If it had not been for the loyalty of this faculty the college would have discontinued its work years ago.

The University of Chicago was incorporated in 1890, its principal objects being "to provide, impart and furnish opportunities for all departments of higher education to persons of both sexes on equal terms; * * * to establish and maintain a university, in which may be taught all branches of higher learning, and which may comprise and embrace separate departments for literature, law, medicine, * * * and all other branches of professional or technical education which may properly be included within the purposes and objects of a university, and to provide and maintain courses of instruction in each and all of said departments." Persons interested in medical education, and especially in the e
establishment of a first-class college of medicine and surgery as a department of the University of Chicago have created an endowment fund of $5,300,000, to be used and applied by the university to the work of medical and surgical education. This fund has been raised by the efforts of the faculty of Rush Medical College and persons interested in the University of Chicago.

After extended and careful consideration of the subject of medical and surgical education and the existing condition of the same, and of the best course to pursue in order to advance, improve and enlarge the facilities for such education and make the same more efficient, the university and the college have prepared an agreement by which the college agrees to convey all the real and personal property which it owns (except certain minor trust funds that will not be affected by the agreement) to the university, and the university agrees to develop a medical and surgical school, and hospital in connection therewith, and to make all necessary and proper provisions for the operation and maintenance of said school and hospital on the university grounds, on the south side of Chicago. The university further agrees to establish and maintain a school for medical and surgical research work on the site of Rush Medical College, on the west side of Chicago, and to construct and equip at that place a new laboratory building costing not less than $400,000, to be occupied and used for the purposes of such school. It is further agreed that the university may designate its medical department as the "Rush Medical School of the University of Chicago," and it agrees to use the name "Rush" in connection with the name of the postgraduate school which is to be erected and maintained on the present site of Rush Medical College.

The Trustees of the Rush Medical College filed its bill in the circuit court of Cook county, setting out all the facts hereinbefore stated in much greater detail than we have considered it necessary to recite them for the purposes of this opinion, and alleging that "the net income of complainant at the present time is wholly insufficient to enable it to make such changes in and additions to its present medical school and laboratory, and the equipment thereof, as are necessary to meet the advances in medical and surgical science, and to keep said medical school and laboratory, and the equipment thereof, up to modern methods and afford the public the most efficient service, and that said net income is, in fact, wholly insufficient to enable complainant to make adequate and proper provision out of the same to cover depreciation in its present property." It suggests to the court that after mature consideration its faculty and governing officers have concluded that its objects and purposes can be best served by its becoming a part of the University of Chicago, and it presents to the court the agreement hereinbefore mentioned and asks the court's advice respecting the administration of the property intrusted to it. It requests the court to direct it to transfer its property to the university in accordance with the agreement, or to grant to it such other and different relief as the nature of the case may require and as the court may deem advisable. It prays that the University of Chicago and the Attorney General may be made parties defendant and that they be required to answer. The university answered, admitting all the allegations of the bill, and submitted to the court for its decision the question of law arising upon the facts shown by the allegations of the bill and such other facts as might be shown by evidence to be taken. The Attorney General answered, admitting most of the facts alleged, but demanding strict proof of the allegation that the net income of the college is insufficient to enable it to
continue to function as a college, and denying that the college has a legal right to transfer its property to the university in accordance with the agreement submitted to the court. The cause was referred to a master, who took and reported the evidence. The chancellor entered a decree in accordance with the prayer of the bill, and the Attorney General appeals.

The Attorney General admits that the findings of fact in the decree are supported by the evidence, but contends that the Trustees of the Rush Medical College, being a charitable corporation created by law for a definite purpose, cannot donate or transfer its funds to another corporation organized for similar purposes.

When Dr. Senn donated to the college $50,000, to be used in connection with other funds donated by members of the faculty and others, to erect an addition to the college building, he specified that the college should become the medical department of the University of Chicago as soon as it might be deemed advisable. As we have said, all other property which the college proposes to transfer to the university is property acquired with funds paid to it for services or donated to it free from any trust, express or implied, created by any of the donors, and without any requirement or specification by any of said donors as to the purpose for which the same shall be used. All the property is held, therefore, for the general purpose of promoting medical education. If this worthy object is to be performed, it is apparent from this record that some arrangement must be made whereby additional funds and additional facilities can be provided. Unless there is some legal obstacle to prevent the scheme sanctioned by the chancellor, it seems sound to conclude that the cause of medical education will be better served by transferring the college to the university as a going concern than to wait until there is a total collapse and then transfer the wreck to the university or some similar institution.

In *Sherman v. Richmond Hose Co.*, 230 N. Y. 462, 130 N. E. 613, testatrix gave $10,000 to the company, with the provision that the income from it should be devoted to the proper uses of the company, which was organized for the purpose of aiding in the suppression of fires in the village of Batavia. Thereafter the village was organized as a city, and the city established a paid fire department. A controversy having arisen with respect to the disposition of this fund, it was held that the fund was impressed with a public trust, and that the city of Batavia should hold it in trust and devote the income therefrom to such uses as would promote fire protection.

In *Starr v. Morningside College, (Iowa)*, 173 N. W. 231, the testator bequeathed $2,000 to Charles City College, to be added to and made a part of its endowment fund. Thereafter the college decided that it was unable to continue longer as a separate institution, and it entered into a merger agreement with Morningside College, which is located in another city. The court held that the gift was one in the interests of education in general, and that the fact that it was to be added to the endowment fund of another college of the same denomination at a different point did not render the gift void.

In *Lapton v. Leander Clark College, (Iowa)*, 187 N. W. 496, Leander Clark donated $50,000 to the college for the purpose of laying the foundation of an endowment fund, one of the conditions of his gift being that the college should bear his name. After his death the trustees of the college concluded that it was unable to maintain and support itself as an independent institution, and entered into negotiations with Coe College for the merger of the two and the transfer to Coe College of the $150,000 endow-
ment fund of Leander Clark College. It was held that the dominant motive and purpose of Clark was to make his gift for educational purposes, and that the transfer contemplated by the merger was not such a breach of obligation by the donee as would cause the fund to revert to the Clark estate.

In Osgood v. Rogers, 186 Mass. 238, 71 N. E. 306, there was a gift by the testator to two specified churches of the same denomination, with the direction to divide the income equally between them for their support and maintenance. One of the churches ceased to exist, and the court held that the entire fund should be used for the benefit of the other.

In People v. College of California, 38 Cal. 166, the college had received from various persons donations for its benefit. Finding itself unable, for want of sufficient resources, to establish an institution of learning, it entered into an agreement with a State college by which it donated to the State a 160-acre tract of land on condition that a State university should be established thereon. This transfer being questioned after the university was established, the entire transaction was submitted to a court. In approving the transaction the court said, among other things: “Under these circumstances it would be an extraordinary casus omissus in the law if the managers of a literary institution without a sufficient endowment to render it effective, were compelled, against their convictions and judgments, to maintain it in its feeble, sickly condition, when by a surrender of its franchise and devoting its property in aid of a new institution of learning a great public good might be accomplished. We entertain no doubt whatever of the power of the president and trustees of the college not only to surrender their franchise, but to transfer the corporate

property, after the payment of debts, to the State for the use of the university. The end proposed to be accomplished by the president and trustees was not only lawful and within the scope of their powers but was eminently meritorious and conducive to the public interest. The fact that a portion of the funds of the college were the result of voluntary donations to it can in no degree impair the power of the trustees to surrender its franchise and dispose of its property in the manner proposed. * * * The donations were voluntary offerings by patriotic citizens in aid of the cause of education, and the management and disposition of the fund was confided absolutely to the president and trustees, subject only to such restrictions and limitations as the law imposed upon them.”

In Central University of Kentucky v. Walters’ Exrs., 122 Ky. 65, 90 S. W. 1066, in holding that the consolidation of a college and a university did not release the Walters estate from liability on a promise to contribute to the endowment of the Henry Bell Walters Professorship of Mathematics, the court said: “As there is nothing in the note or in the contemporaneous transaction binding the payee to apply the money otherwise than in the maintenance of a chair of mathematics in its university being conducted for Christian education, there was no limitation upon the power of the payee to change the location of its school or schools, or to change the manner of their government, or the adoption of particular means of effectuating the general purpose for which the institution was founded.”

In Mason v. Bloomington Library Ass’n, 237 Ill. 442, there was a bequest in trust to establish, in connection with a named library corporation, an art studio for the
advancement of education in art. The corporation named conveyed all its property to another library association. In holding that the fund should be administered by the second corporation, the court held that the bequest was not for the benefit of the corporation named but was a charitable bequest for the purpose of establishing and maintaining an art studio, which was to be carried on for the advancement of education in art for the benefit of the public, and that it was proper for a court of chancery to carry out the original object through the new library association.

Rush Medical College has for three-quarters of a century been one of the leading institutions in the country engaged in teaching medicine and surgery. After this long and honorable career it finds itself, because of changed conditions, unable to continue its usefulness. Its buildings and equipment are out of date and its facilities for instruction according to modern standards are inadequate. It has no funds with which to correct this situation, and unless the plan presented, or some plan similar to it, is adopted, its career must soon end. The transfer of the property of the college to a similar charity under conditions which assure continuation of the use of the property in accordance with the purposes of the charter of the college, so that the fulfillment of the charitable purpose will be accomplished and the efficiency of this educational institution increased, is not a diversion of the funds to a purpose foreign to that to which they were dedicated. If the college had presented its problem to a court of chancery without suggesting a remedy the court would have referred the case to a master, with directions to suggest a plan to carry out the object for which the college was organized. The fact that a plan is suggested by persons whose loyalty to the
IN THE
Supreme Court of Illinois.
February Term, 1924.

TRUSTEES OF RUSH MEDICAL
COLLEGE,
Complainant below and Appellee,
vs.
THE UNIVERSITY OF CHICAGO,
Defendant below and Appellant,
and
EDWARD J. BRUNDAGE, as Attorney
General of the State of Illinois,
Defendant below and Appellant.

Appeal from
Circuit Court,
Cook County.

Hon.
Ira Rymer,
Chancellor.

OPINION OF SUPREME COURT OF ILLINOIS.
Filed April 14, 1924.

IN THE
Supreme Court of Illinois.
February Term, 1924.

TRUSTEES OF RUSH MEDICAL
COLLEGE,
Complainant below and Appellee,
vs.
THE UNIVERSITY OF CHICAGO,
Defendant below and Appellant,
and
EDWARD J. BRUNDAGE, as Attorney
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Appeal from
Circuit Court,
Cook County.

Hon.
Era Byner,
Chancellor.

OPINION OF SUPREME COURT OF ILLINOIS.

UNITED STATES OF AMERICA.
STATE OF ILLINOIS, ss.
At a term of the Supreme Court, begun and held at
Springfield, on Tuesday, the First day of April, in the
year of our Lord One Thousand Nine Hundred and
Twenty-four, within and for the State of Illinois.
Present—Chief Justice William M. Farmer,
Justice James H. Cartwright,
Justice Frank K. Dunn,
Justice Clyde E. Stone,
Justice Olin N. Carter,
Justice Warren W. Duncan,
Justice Floyd E. Thompson,
Edward J. Brundage, Attorney General,
Warren C. Murray, Marshal,
Attest: Charles W. Vail, Clerk.
Be it remembered, that afterward, to-wit, on the 14th
day of April, 1924, the opinion of the Court was filed in
said cause and entered of record in the words and figures
following, to-wit:

Trustees of Rush Medical College,  
Appellee.

No. 15904  
vs.

University of Chicago,  
Appellee.

Edward J. Brundage, as Attorney
General,  
Appellant.

Appeal from Cook.

Docket No. 15904—Agenda 29—February, 1924.

Trustees of the Rush Medical College, Appellee, v. The
University of Chicago et al.—(Edward J. Brundage,
Attorney General, Appellant).

Mr. Justice THOMPSON delivered the opinion of the
court:

In 1837 an act was passed incorporating Rush Medical
College under the name of "Trustees of the Rush Med-
ical College," the object of the corporation being "to
promote the general interests of medical education and
to qualify young men to engage usefully and honorably
in the professions of medicine and surgery." Shortly
thereafter it established a school of medicine and sur-
gery in Chicago and up to this time has continuously con-
ducted such a school. In 1871 substantially all its prop-
erty was destroyed in the great Chicago fire. Since then
it has, from donations made to it by its professors and
other people and out of fees collected by it from students,
purchased real estate situate at the corner of South
Wood and West Harrison streets, in the city of Chicago,
and has erected buildings thereon. One of the buildings
was erected in 1875 and was then equipped as a medical

and surgical school. In 1893 a laboratory building was
erected across the street from the original building.
About ten years later, through the generosity of Dr.
Nicholas Senn and other friends of the school, Nicholas
Senn Hall was built as an addition to the old college
building. For twenty-five years the first two years of
medical instruction has been given at the University of
Chicago, and the last two years of such instruction, which
consists largely of clinical work, has been furnished by
Rush Medical College. In 1918 a third year was added,
so that the college had the responsibility of the last three
years' training of medical students. The college has
never had an endowment fund, and has been able to
attain the high rank among medical colleges which it holds,
because of the generosity of physicians and surgeons in-
terested in research work and medical education. A hun-
dred or more clinical teachers have donated all their
teaching service, and many of them have contributed
from their private funds to keep their departments up to

standard. If it had not been for the loyalty of this fac-
ulty the college would have discontinued its work years
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The University of Chicago was incorporated in 1890,
its principal objects being "to provide, impart and fur-
nish opportunities for all departments of higher educa-
tion to persons of both sexes on equal terms; * * * to
establish and maintain a university, in which may be
taught all branches of higher learning, and which may
comprise and embrace separate departments for litera-
ture, law, medicine, * * * and all other branches of
professional or technical education which may properly
be included within the purposes and objects of a uni-
versity, and to provide and maintain courses of instruc-
tion in each and all of said departments." Persons in-
terested in medical education, and especially in the es-

tablishment of a first-class college of medicine and surgery as a department of the University of Chicago have created an endowment fund of $5,300,000, to be used and applied by the university to the work of medical and surgical education. This fund has been raised by the efforts of the faculty of Rush Medical College and persons interested in the University of Chicago.

After extended and careful consideration of the subject of medical and surgical education and the existing condition of the same, and of the best course to pursue in order to advance, improve and enlarge the facilities for such education and make the same more efficient, the university and the college have prepared an agreement by which the college agrees to convey all the real and personal property which it owns (except certain minor trust funds that will not be affected by the agreement) to the university, and the university agrees to develop a medical and surgical school, and hospital in connection therewith, and to make all necessary and proper provisions for the operation and maintenance of said school and hospital on the university grounds, on the south side of Chicago. The university further agrees to establish and maintain a school for medical and surgical research work on the site of Rush Medical College, on the west side of Chicago, and to construct and equip at that place a new laboratory building costing not less than $400,000, to be occupied and used for the purposes of such school. It is further agreed that the university may designate its medical department as the “Rush Medical School of the University of Chicago,” and it agrees to use the name “Rush” in connection with the name of the postgraduate school which is to be erected and maintained on the present site of Rush Medical College.

The Trustees of the Rush Medical College filed its bill in the circuit court of Cook county, setting out all the facts hereinbefore stated in much greater detail than we have considered it necessary to recite them for the purposes of this opinion, and alleging that “the net income of complainant at the present time is wholly insufficient to enable it to make such changes in and additions to its present medical school and laboratory, and the equipment thereof, as are necessary to meet the advances in medical and surgical science, and to keep said medical school and laboratory, and the equipment thereof, up to modern methods and afford the public the most efficient service, and that said net income is, in fact, wholly insufficient to enable complainant to make adequate and proper provision out of the same to cover depreciation in its present property.” It suggests to the court that after mature consideration its faculty and governing officers have concluded that its objects and purposes can be best served by its becoming a part of the University of Chicago, and it presents to the court the agreement hereinbefore mentioned and asks the court’s advice respecting the administration of the property intrusted to it. It requests the court to direct it to transfer its property to the university in accordance with the agreement, or to grant to it such other and different relief as the nature of the case may require and as the court may deem advisable. It prays that the University of Chicago and the Attorney General may be made parties defendant and that they be required to answer. The university answered, admitting all the allegations of the bill, and submitted to the court for its decision the question of law arising upon the facts shown by the allegations of the bill and such other facts as might be shown by evidence to be taken. The Attorney General answered, admitting most of the facts alleged, but demanding strict proof of the allegation that the net income of the college is insufficient to enable it to
continue to function as a college, and denying that the college has a legal right to transfer its property to the university in accordance with the agreement submitted to the court. The cause was referred to a master, who took and reported the evidence. The chancellor entered a decree in accordance with the prayer of the bill, and the Attorney General appeals.

The Attorney General admits that the findings of fact in the decree are supported by the evidence, but contends that the Trustees of the Rush Medical College, being a charitable corporation created by law for a definite purpose, cannot donate or transfer its funds to another corporation organized for similar purposes.

When Dr. Seun donated to the college $50,000, to be used in connection with other funds donated by members of the faculty and others, to erect an addition to the college building, he specified that the college should become the medical department of the University of Chicago as soon as it might be deemed advisable. As we have said, all other property which the college proposes to transfer to the university is property acquired with funds paid to it for services or donated to it free from any trust, express or implied, created by any of the donors, and without any requirement or specification by any of said donors as to the purpose for which the same shall be used. All the property is held, therefore, for the general purpose of promoting medical education. If this worthy object is to be performed, it is apparent from this record that some arrangement must be made whereby additional funds and additional facilities can be provided. Unless there is some legal obstacle to prevent the scheme sanctioned by the chancellor, it seems sound to conclude that the cause of medical education will be better served by transferring the college to the university as a going concern than to wait until there is a total collapse and then transfer the wreck to the university or some similar institution.

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In Starr v. Morningside College, (Iowa,) 173 N. W. 231, the testator bequeathed $2,000 to Charles City College, to be added to and made a part of its endowment fund. Thereafter the college decided that it was unable to continue longer as a separate institution, and it entered into a merger agreement with Morningside College, which is located in another city. The court held that the gift was one in the interests of education in general, and that the fact that it was to be added to the endowment fund of another college of the same denomination at a different point did not render the gift void.

In Lupton v. Leander Clark College, (Iowa,) 187 N. W. 496, Leander Clark donated $50,000 to the college for the purpose of laying the foundation of an endowment fund, one of the conditions of his gift being that the college should bear his name. After his death the trustees of the college concluded that it was unable to maintain and support itself as an independent institution, and entered into negotiations with Coe College for the merger of the two and the transfer to Coe College of the $150,000 endow-
ment fund of Leander Clark College. It was held that the dominant motive and purpose of Clark was to make his gift for educational purposes, and that the transfer contemplated by the merger was not such a breach of obligation by the donee as would cause the fund to revert to the Clark estate.

In Osgood v. Rogers, 186 Mass. 238, 71 N. E. 306, there was a gift by the testator to two specified churches of the same denomination, with the direction to divide the income equally between them for their support and maintenance. One of the churches ceased to exist, and the court held that the entire fund should be used for the benefit of the other.

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In Central University of Kentucky v. Walters' Exrs., 122 Ky. 65, 90 S. W. 1066, in holding that the consolidation of a college and a university did not release the Walters estate from liability on a promise to contribute to the endowment of the Henry Bell Walters Professorship of Mathematics, the court said: "As there is nothing in the note or in the contemporaneous transaction binding the payee to apply the money otherwise than in the maintenance of a chair of mathematics in its university being conducted for Christian education, there was no limitation upon the power of the payee to change the location of its school or schools, or to change the manner of their government, or the adoption of particular means of effectuating the general purpose for which the institution was founded."

In Mason v. Bloomington Library Ass'n, 237 Ill. 442, there was a bequest in trust to establish, in connection with a named library corporation, an art studio for the
advancement of education in art. The corporation named conveyed all its property to another library association. In holding that the fund should be administered by the second corporation, the court held that the bequest was not for the benefit of the corporation named but was a charitable bequest for the purpose of establishing and maintaining an art studio, which was to be carried on for the advancement of education in art for the benefit of the public, and that it was proper for a court of chancery to carry out the original object through the new library association.

Rush Medical College has for three-quarters of a century been one of the leading institutions in the country engaged in teaching medicine and surgery. After this long and honorable career it finds itself, because of changed conditions, unable to continue its usefulness. Its buildings and equipment are out of date and its facilities for instruction according to modern standards are inadequate. It has no funds with which to correct this situation, and unless the plan presented, or some plan similar to it, is adopted, its career must soon end. The transfer of the property of the college to a similar charity under conditions which assure continuation of the use of the property in accordance with the purposes of the charter of the college, so that the fulfillment of the charitable purpose will be accomplished and the efficiency of this educational institution increased, is not a diversion of the funds to a purpose foreign to that to which they were dedicated. If the college had presented its problem to a court of chancery without suggesting a remedy the court would have referred the case to a master, with directions to suggest a plan to carry out the object for which the college was organized. The fact that a plan is suggested by persons whose loyalty to the
No. 15904

IN THE

Supreme Court of Illinois.

February Term, A. D. 1924.

TRUSTEES OF RUSH MEDICAL COLLEGE, Complainant below and Appellee, ex.

THE UNIVERSITY OF CHICAGO, Defendant below and Appellee, and

EDWARD J. BRUNDAGE, as Attorney General of the State of Illinois, Defendant below and Appellant.

Brief and Argument for Appellee, Trustees of Rush Medical College.

Frank H. Scott,
Horace H. Martin,
Solicitors for said Appellee.

Robert T. Mack,
Counsel for said Appellee.

Brief and Argument for Appellee, The University of Chicago.

Tennyson, Harding, Sherman & Rogers,
Phillips, Mack & O'Bryan,
Solicitors for Appellee, The University of Chicago.

Horace Kent Tennyson,
Bernard Flexner,
Counsel for said Appellee.
IN THE
Supreme Court of Illinois.

February Term, A. D. 1924.

TRUSTEES OF RUSH MEDICAL COLLEGE,
Complainant below and Appellee,

vs.

THE UNIVERSITY OF CHICAGO,
Defendant below and Appellee,

and

EDWARD J. BRUNDAGE, as Attorney
General of the State of Illinois,
Defendant below and Appellant.

Appeal from
Circuit Court,
Cook County.

Hon.
Ira Ayres,
Judge, Presiding.

STATEMENT.

The record in this case shows that none of the property, real or personal, of this appellee, the Trustees of Rush Medical College, which, under the proposed contract between it and The University of Chicago is to be transferred to the University, is subject to any express trust, created by any donor as to the purpose for which such property should be used, or any requirement or specification by the donor regarding such purpose, but that all of said property was either purchased by this appellee with its own moneys, received by it for services rendered by it to other persons and corporations, or with donations free from any trust, requirement or specification by the donors. (Abstract, 92; 88-91.)
The record also shows that, in view of the financial condition of this appellee and its general situation, and the other facts shown by the evidence and found in the decree, the charitable objects of this appellee, as expressed in its charter, can be preserved from a threatened failure and more effectively carried out, and greater protection and benefit accrue to the public, by its transferring such property to The University of Chicago, under the proposed contract by which the latter binds itself that said property shall be held and used by it for the same charitable purposes for which it is held and used by this appellee. (Abst., 92-94; 96-98.)

BRIEF.


See the following authorities, which are fully stated under Point III infra of our Argument:

Duke v. Fuller, 9 N. H. 536.
People of California v. President and Trustees of the College of California, 38 Calif. 166.
Hayter v. Trego, 5 Russell's Ch. 113.
Central University of Kentucky v. Walter's Executors, 90 S. W. Rep. 1066.
In re Scrimger's Estate, 206 Pa. St. 65.
6 Cyc. of Law and Prac. p. 977.
ARGUMENT.

I.

The Statement of Facts contained in the brief for the Attorney General (Br. and Arg. for Atty. General, 1-2), states correctly the prayer of the bill in this case and also the other allegations of the bill and the contents of the answers of The University of Chicago and the Attorney General. (Br. and Arg. for Atty. Gen., pp. 2-9.)

The reference to the Master was to take evidence and report it to the court. Evidence was so taken by the Master and reported and the case then came on for final hearing before the court and on that hearing, as recited in the decree appealed from (Abst., 86), further evidence, oral and documentary, was introduced in open court. On consideration of the evidence and exhibits contained in the Master's Report, and also of the oral and documentary evidence introduced in open court, and of the arguments of counsel, the court below entered the decree appealed from (which is set out in full at pp. 86-101 of the abstract of record), which approves the arrangement embodied in the proposed contract between this appellee and The University of Chicago, attached as "Exhibit 3" to the bill. (Abst., 22-29.)

The position of the Attorney General on this appeal is stated in his brief (p. 9) as follows:

"This appellant does not question the correctness of the findings of fact contained in the decree, but believes it to be his duty in the public interest to submit to the highest tribunal of this state the important question as to the right and authority of a charitable corporation, incorporated under a special Act of the Legislature for a specific object, to transfer to another charitable corporation all of its physical property in the manner and form as contemplated by the decree."
And the Attorney General thereupon proceeds in his brief to say (p. 9) that he
"takes the position that conceding the facts to be as found by the decree, it appears from the bill and
the decree that the decree was erroneous for the reasons stated in the assignment of errors."

That is, as we understand it, the Attorney General merely questions the right and authority of a charitable
corporation to transfer its physical property to another charitable corporation even when such transfer is ap-
proved and authorized by a court of chancery, in the ex-
ercise of its jurisdiction over charitable trusts.

We do not understand the Attorney General as cont-
tending that if such right and power can exist in any
case, the facts found in the decree do not constitute such
case as justifies a court of chancery in entering a de-
cree sanctioning such a transfer, or as objecting, on any
ground, to the decree, except the specific ground above
stated.

It is true that the seventh assignment of error by the
appellant is (Abst., 102) that:
"The defendant, the University of Chicago, has
no power and authority in its charter to engage in
the work of medical and surgical education."

But no attempt is made in appellant's brief or argu-
ment to support this assignment of error, and in fact it
is not even referred to by counsel (see Appellant's brief,
11-17) and it may therefore seem unnecessary to dis-
cuss the point.

We will, however, call the court's attention to the fact
that the certificate of incorporation of The University of
Chicago (which constitutes its charter) was introduced
in evidence and is set out as Complainant's Exhibit "I"
to the Master's Report (Abst., 82), and that the ob-
jects for which the University was organized, as stated
in that certificate, and alleged in the bill (Abst., 7-8),
and found by the final decree (Abst., 84-85), included
the following:
"The particular objects for which said corporation
is formed are to provide, impart and furnish
opportunities for all departments of higher educa-
tion, * * * ; to establish and maintain a university,
in which may be taught all branches of higher learn-
ing, and which may comprise and embrace separate
departments for literature, law, medicine, music,
technology, the various branches of science, both ab-
tract and applied, the cultivation of the fine arts
and all other branches of professional and technical
education which may properly be included within the
purposes and objects of a university, and to provide
and maintain courses of instruction in each and all
of said departments; to prescribe the courses of
study, employ professors, instructors and teachers,
and to maintain and control the government and dis-
cipline in said University and in each of the several
departments thereof * * * and to fix the rates of
tuition and the qualifications for admission to the
University and its various departments."

In this certificate of incorporation, it is further stated
that the University shall have power
"to receive, hold, invest and disburse all moneys and
property, or the income thereof, which may be vested
in or intrusted to the care of said corporation,
whether by gift, grant, devise or otherwise, for edu-
cational purposes; to act as trustee for persons de-
siring to give or provide moneys or property, or the
income thereof, for any one or more of the depart-
ments of said University, or for any of the objects
aforesaid, or for any educational purposes."

In view of these powers of the University, it seems to
us too clear for argument that the University has power
and authority under its charter to engage in the work of
medical and surgical education, and to perform its cove-
nants contained in the proposed contract, including its
covenant (Abst., 27)
"that it will use all of said property, real and per-
sonal, or its proceeds in case of a sale, to promote the general interests of medical education and to qualify young men to engage usefully and honorably in the professions of medicine and surgery."

II.

Before discussing the question as to whether the lower court erred in approving the arrangement, embodied in the proposed contract between the University of Chicago and this appellee, we wish to call the court's attention to the charter of this appellee, and to certain facts in regard to the history of our client, the property it now holds, its financial condition, and the protection and advantages that will accrue to the public from the carrying out of the arrangement.

The Act of the Legislature of March 2, 1837 (which is set out in full at pp. 12-15 of the Abstract of Record) under which this appellee was organized, provided that "the object of incorporation shall be to promote the general interests of medical education, and to qualify young men to engage usefully and honorably in the professions of medicine and surgery."

The decree finds (Abst., 88) that ever since its organization as a corporation and up to the present time, this appellee has been engaged in the work of promoting the general interests of medical education and of qualifying young men to engage usefully and honorably in the professions of medicine and surgery.

The decree further finds (Abst., 93) that in the great Chicago fire of 1871, all of the property of this appellee was destroyed and that the total amount received by it from insurance on same did not exceed the sum of $2,500.

Since the fire of 1871, this appellee has, out of fees collected by it from students and from donations made to it by its professors and by other people, purchased all the real estate described in the proposed contract and erected buildings thereon (Abst., 88; 90-91; Complt.'s Exhibits E, F and G; Abst., 36), and the decree further finds (Abst., 92)

"that all of the property of the complainant herebefore described (except said Nicholas Senn Hall, herebefore mentioned, the funds for the erection of which were obtained in the manner herebefore found) was purchased by the complainant with its own moneys obtained by it from tuition fees and other fees which the complainant had received from its students, and moneys received by it for services rendered by it to other persons and corporations, and donations of money and property, all of which donations were free from any trust, express or implied, created by any of the donors thereof, and without any requirement by any of said donors as to the purpose or purposes for which the same should be held, owned, used or expended by the complainant, or any specification by any of said donors regarding such purpose or purposes.

That the complainant is now the absolute owner of all said property, real and personal, herebefore described, including said Nicholas Senn Hall (subject to all mortgages, liens and encumbrances thereon), and that said property is the only property, real and personal, now owned by the complainant, except certain trust funds hereinafter referred to."

In regard to the funds for the erection of said Nicholas Senn Hall, referred to in the decree just quoted, the decree finds (Abst., 89-90) that the total cost of the Hall and the equipment thereof was approximately $128,000; that of said amount Dr. Nicholas Senn contributed $50,000, one of the conditions of his contribution being (Abst., 89.)

"that the complainant should become the medical department of The University of Chicago as soon as and whenever it might be deemed advisable and feasible so to do."
This condition was incorporated into an agreement in writing between this appellee and Dr. Senn, by which this appellee agreed to construct the building and to take suitable steps to constitute this appellee the Medical Department of The University of Chicago as soon as and whenever it might be deemed advisable and feasible. (Abst., 90.)

It accordingly appears that if this appellee executes and carries out the proposed contract, it will be complying with this condition imposed by Dr. Senn in making his contribution of $50,000.

In addition to the $50,000 contributed by Dr. Senn, $35,000 was contributed by other persons and the remaining $43,000 was paid by this appellee out of its own moneys. (Abst., 90.)

Nicholas Senn Hall was constructed on real estate, of which this appellee was the absolute owner (Abst., 90) and, when erected, the Hall became the property of this appellee (as found in the decree, Abst. 92, quoted supra)—there being no provision in the agreement with Dr. Senn or in any of the agreements with the other donors, affecting the title to the land upon which the Hall was erected. (See those agreements, Compl.'s Exhibits J, K, L, M, N, O and P, Abst. 37, Transcript of Record 78-79.)

At the present time this appellee owns the real estate at the northeast corner of South Wood and West Harrison streets in Chicago, described in the decree and proposed contract and worth approximately $22,500. (Abst., 88-89.) This appellee, about the year 1875, constructed a building and improvements on a portion of said real estate and equipped the same as a medical and surgical school at a cost of approximately $54,500 and it has occupied and used the same for that purpose for a period of more than forty (40) years past and is now occupying and using the same for said purpose, but said building is now in such a condition that it will very soon have to be torn down and replaced. (Abst., 89.)

This appellee also owns another piece of real estate on West Harrison Street, on which in the year 1893, it constructed a Laboratory Building at a cost of approximately $83,000. (Abst., 91.) The value of the real estate upon which the Laboratory Building was so erected (which is opposite the parcel on which its medical and surgical school was constructed), is approximately $20,000. (Abst., 90-91.)

The only other property which this appellee now owns consists of certain personal property, including books, charts, pictures, surgical equipment, laboratory supplies and accessories, pathological specimens and other educational equipment and accessories. (Abst., 91.) This personal property is of value in connection with the work of carrying on medical and surgical education, but is of small value for purposes of sale; and it also appears that the appellee is the owner of a cemetery lot in Oakwoods Cemetery and has a right of re-entry (for condition broken) under a certain deed which it made in January, 1884, to the Presbyterian Hospital of Chicago as grantee. (Abst., 91-92.)

The cost of the two pieces of real estate above mentioned and of the buildings and improvements thereon and of the personal property above referred to, as above stated, shown by the evidence and found by the decree, to have been met out of this appellee's own moneys, received by it as fees for services or donated to it free of any trust, created by donors. (Abst., 92.)

In regard to the trust funds above referred to, the de-
cree enumerates them and finds (Abst., 98-99) that they
are held by this appellee “for the purpose of furthering
the medical and surgical education of young men,” and
further finds (Abst., 99) that none of the instruments
creating those funds require that the income, or any part
of the principal of those funds,

“shall be expended in connection with medical or
surgical work carried on by the complainant itself,
and that all of said trusts could be administered by
the complainant, if the proposed contract between
it and The University of Chicago is executed and
carried out, and that the execution and carrying out
of said contract would not interfere with the admin-
istration of said trusts by the complainant in accord-
ance with their terms.”

The correctness of this finding is undisputed.

And as already stated, these trust funds are not to be
transferred or assigned to The University of Chicago
under the proposed arrangement between it and this
appellee, but they are all of them to remain in the pos-
session and control of this appellee to be administered
by it as trustee thereof. (Abst., 98-99.)

It accordingly appears that none of the property, real
or personal, of this appellee, which is, under the ar-
range ment, embodied in the proposed contract, to be
transferred to The University of Chicago, is held by this
appellee upon any trust created by any person, and
that none of said property was purchased with
funds donated to this appellee on any trust or with any
requirement by any of the donors as to the purpose for
which the same should be held, used or expended by this
appellee, or any specification by any of the donors re-
arding such purpose or purposes.

Our position accordingly is that the only limitation,
restriction or qualification, to which that property is
subject, is that it must be used for the general purpose
for which this appellee was organized, viz: “to promote
the general interests of medical education and to qualify
young men to engage usefully and honorably in the pro-
fessions of medicine and surgery,” and that this appel-
lee cannot use it for any other purpose or dispose of
it unless, when so disposed of, it is to continue to be
used for that purpose, and, under the proposed arrange-
ment with The University of Chicago, it covenants that
it will use it for that purpose.

In other words our position that if a charitable cor-
poration holds property, real or personal, which is not
subject to any express trust created by any donor, or
to any requirement by any donor as to the purpose for
which such property shall be used, or any specification
by the donor regarding such purpose, and it appears
that such corporation’s financial condition and its gen-
eral situation is such that it is not, or probably will not,
be able to carry out its charitable purpose, and that
such charitable purpose can be more effectively carried
out, and greater protection and benefit accrue to the
public, by transferring such property to another cor-
noration, to be held and used by it for the same pur-
pose for which it was held and used by the proposed
transferor, a court of chancery has the power, in a pro-
ceeding to which the Attorney General, as the represen-
tative of the public, is made a party, to approve the
making of such transfer.

(See the authorities cited and stated under
Point III, infra, of this Argument.)

While as above stated, under Point I of our Argu-
ment, we understand that the Attorney General merely
raises a question as to the right and power of this ap-
ellee to enter into the proposed contract, even if
approved by a court of chancery, and does not
contend that, even if such right and power exists, the facts found in the decree do not constitute such a case as would justify a court of chancery in entering a decree, sanctioning such an arrangement, we think it may be desirable to quote the findings of the decree which conclusively show that this was a proper case for the entry of such a decree.

The decree finds as follows (Abst. 92-94):

"That at the present time the complainant is wholly dependent for its income upon tuition fees and other fees received from students, and moneys it may receive from other persons for services rendered, and upon the income from said trust funds hereinafter mentioned, and that the average annual net income of the complainant from all said sources, remaining after the payment of necessary charges and expenses, has, during the last five (5) years preceding the filing of this bill, not exceeded $4,000, and that during the year immediately preceding the filing of this bill said net income has not exceeded said amount.

That in the great fire of 1871 all of the property then held by the complainant was destroyed, and that the total amount received by it from insurance on same did not exceed the sum of $2,500.

That the expenses of conducting medical and surgical colleges have, ever since the incorporation of the complainant, rapidly increased, from time to time, and at the present time are very much larger than in the past, owing to the advances in medical and surgical education, and in the sciences allied thereto, and the increased cost of material and operation, and that said expenses will continue to increase in the future.

That the net income of the complainant at the present time is wholly insufficient to enable it to make such changes in, and additions to, its present medical school and laboratory, and the equipment thereof, as are necessary to meet the advances in medical and surgical science, and to keep said medical school and laboratory, and the equipment thereof, up to modern methods, and afford the public the most efficient service, and that said net income is wholly insufficient to enable the complainant to make adequate and proper provision out of the same to cover depreciation in its present property.

That in the opinion of competent witnesses, and the court finds the fact to be, that the time has arrived when, in view of the advances in medical and surgical science, the complainant cannot continue as a complete medical school without obtaining a large endowment."

And the decree further finds (Abst., 95-96) that The University of Chicago has obtained, in subscriptions and gifts, the sum of approximately $5,300,000 "to be used and applied by it to the work of medical and surgical education," and that said sum has heretofore been actually received and is now in the possession of the University, to be used and applied to that work, and also further finds as follows:

"That by the terms of said gifts and subscriptions $300,000 of said $5,300,000 must be applied to the erection of a Laboratory Building on the west side of the City of Chicago; that $1,000,000 of said $5,300,000 must be applied to a hospital to be erected on the south side of the City of Chicago, and that the remaining $4,000,000 is to be held by The University of Chicago as a trust fund and the income thereof applied by it to any one of its work of medical or surgical education, irrespective of the location in which that work is carried on and that such part of said income could be applied to the work of medical and surgical education carried on by said University of Chicago on the real estate, which, under said proposed contract between said complainant and said University of Chicago, is to be conveyed by said complainant to said University of Chicago as it was for the best interest of medical and surgical education should be applied for that purpose on that property."

And after making the findings above quoted, as to the financial resources and condition of this appellant, and the $5,300,000 fund, the large and
increasing expenses of medical education, the insufficienty of this appellee's income to enable it to keep pace with the advances in medical and surgical science, or even to make proper provision to cover depreciation in its present property, and that in view of those advances, this appellee cannot continue as a complete medical school, without obtaining a large endowment, the decree further finds (Abst., 97):

"That the present resources of the complainant are wholly insufficient to enable it to carry on the work of medical and surgical education as effectively as it would be carried on if the proposed contract, a copy of which is attached to the bill of complaint herein, were executed and carried out.

That in the opinion of competent witnesses, and the court finds the fact to be, that the proposed contract, if executed and carried out, will result in the development of a very much stronger school of medicine than either the complainant or the defendant, said University of Chicago, could develop alone, and will result in great service to medical education in this country and will be of service to said complainant and to said University of Chicago and to the people.

That the making and carrying out of said proposed contract set out in said 'Exhibit 3' will advance, improve and enlarge the facilities for medical and surgical education, and make the same more efficient, and thereby promote the well-being of the public, and will render the work of the complainant and said University of Chicago, in connection with medical and surgical education, more effective than it otherwise would be, and will broaden the scope of the same and greatly benefit the cause of medical and surgical education and the public; that all the provisions contained in said contract are proper provisions and that said complainant and said defendant, The University of Chicago, should be authorized to enter into said contract, and that said University of Chicago has full power and authority, under its charter, to enter into all its covenants and agreements contained in said contract and to perform the same."

III.

THE LAW IS WELL SETTLED THAT, UNDER THE FACTS FOUND BY THE COURT THE CIRCUIT COURT HAD THE POWER TO APPROVE THE ARRANGEMENT EMBRACED IN THE PROPOSED CONTRACT BETWEEN THIS APPELLANT AND THE UNIVERSITY OF CHICAGO.

Under this head of our argument, we shall first call the court's attention to the authorities, supporting our position and the principles on which it is based, and will then discuss the cases cited in the brief for appellant.

We refer to the following authorities:

Duke v. Fuller, 9 N. H. 536.
People of California v. President and Trustees of the College of California, 38 Calif. 166.
The will further provided that if this legacy
"shall lapse or fail, or for any cause not take effect
in whole or in part, I give and bequeath the amount
which shall lapse, or not take effect, to Rev. Addi-
son M. Sherman and Edward W. Atwater of Ba-
tavia, New York, or to the survivor, in case one of
them should die before me."

After the death of the testatrix, the legacy was paid
by the executor to the Richmond Hose Company No.
2, which was a corporation incorporated prior to the
death of the testatrix

"for the purpose of aiding and assisting in the ex-
tinguishing and suppressing of fires in the said
Village of Batavia,"

and it was authorized by its charter to take and hold
real or personal property bequeathed or devised to it.

After the death of the testator, the City of Batavia
superseded the Village of Batavia. The city was or-
ganized under a general law which provided for the es-
tablissement of a fire department for the city and re-
quired the continuance of the use for the time being
of the fire companies forming the fire department
of the village, which included Richmond Hose Company
No. 2. Subsequently, the taxpayers of the city adopted
an ordinance at an election to establish a paid fire de-
partment and thereafter the city council passed a res-
olution, disbanding the volunteer fire organizations
of the city, which included Richmond Hose Company No. 2.

The city charter authorized the city

"to take real and personal estate by gift, grant,
bequest or devise, either in trust or perpetuity,
for any purpose of education, art, help, charity,
** or other public use upon such terms as might
be prescribed by the grantor or donor and accepted
by the corporation."

In view of the action taken by the city council, estab-
ishing a paid fire department and disbanding the vol-
unteer fire organizations of the city, which included Richmond Hose Company No. 2, the members of the Hose Company, pursuant to a resolution adopted by them at a meeting held for that purpose, sold substantially all of its personal property except bonds and mortgages, and an application was then made to the Supreme Court for a voluntary dissolution of the Hose Company pursuant to the provisions of the General Corporation Law, and for a distribution of its assets among its members. This application was made upon a petition made by all the members of the corporation and all its officers and directors.

The plaintiff in the suit, Addison M. Sherman (mentioned in the provision of the will above quoted) brought the suit to recover the property representing the legacy to the Hose Company upon the theory that the legacy lapsed or failed because of the situation arising from the establishment of the paid fire department in the City of Batavia and the effort of the Hose Company to secure the distribution of such property among its members. On the hearing in the lower court, that court entered a judgment, dismissing the complaint and a counterclaim filed by certain people to whom Edward M. Atwater had assigned all his interest under the will.

The question then remained what should be done with the $10,000 fund, and, on this point, the court said:

"I think the trial court was entirely right in dismissing the complaint and the counterclaim, but I do not think that the securities and money representing the bequest should be distributed among the members of the Hose Company.

In its last analysis, the idea that underlies the law of charitable uses as applied to the jurisprudence of England is that, when a donor parts with his property absolutely for a charitable purpose, such property shall be forever devoted to a charitable purpose, whether or not the particular char-

ity for which the property may be donated shall exist when the trust becomes operative, and, in case the same does not exist, the property may be devoted under the direction of the Court of Chan

cery to a kindred charity cy pres—that is, as near as may be—to the charity contemplated by the donor, or, in the event of the nonexistence of such charity, the property may be devoted by the crown to some other charity. Another way of stating the idea is that property once devoted to charity shall forever be devoted to charity."

After so stating the English rule, and mentioning the fact that for a time, it had not been fully adopted in New York, and referring to certain subsequent New York legislation, the court said:

"This legislation has been held to restore the rule of the English law governing charitable trusts, Allen v. Stevens, 161 N. Y. 122, 55 N. E. 568; Bow


ningham, 206 N. Y. 601, 100 N. E. 437; Trustees of Sailors' Snug Harbor v. Carnody, 211 N. Y. 286, 105 N. E. 543; Matter of MacDowell, 217 N. Y. 454, 112 N. E. 177, L. R. A. 1916E, 1246, Am. Cas. 1917E, 853; Butcher v. Keeler, 219 N. Y. 446, 114 N. E. 803. In the Matter of MacDowell, supra, it was held that the cy pres doctrine had been re

stored by this legislation.

The plaintiff asserts that the thirty-fourth pro

vision of the will of Adelaide Richmond Konny is authority for his claim to the property repre

senting the legacy. That provision, as already ap

pears, is to the effect that if this bequest, with oth

ers, should lapse or fail, or if for any cause it should not take effect in whole or in part, the legacy should go to the plaintiff and Edward W. Atwater, or sur

vivor, if either should die before the testatrix, etc. I think it needs no argument to show that this claim of the plaintiff is without merit.

Wetmore v. Parker (52 N. Y. 450), supra, is au

thority for the proposition that the legacy to the
Hose Company became the absolute property of the company, whether or not in the present state of the statutory law such proposition need necessarily to obtain. In that connection, it is to be noted that the property was given solely for the purposes of the corporation, which were charitable, and that the will of the testatrix was made, and she died, after the restoration of the doctrine of charitable uses by the legislation already mentioned, and there is room for the assertion of the proposition that this bequest, especially in view of its language, created a charitable trust. In any view of the law upon the subject, it is indisputable that the bequest was dedicated to charity, and we are asked by the respondent Hose Company and the appellants to strike down this charity and permit the property involved to be diverted into private ownership. This we cannot do.

The Hose Company is a charitable organization, and, upon its dissolution, to distribute its assets among its members would be a perversion of the trust for which the assets were contributed. *Bethlehem Borough v. Perseverance Fire Co., 81 Pa. 445; Humane Fire Co. Appeal, 88 Pa. 389*; *Centennial & Memorial Association of Valley Forge, 235 Pa. 206, 83 Atl. 683."

The case was thereupon appealed to the New York Court of Appeals and is reported in 230 N. Y. 462, where the decision was rendered in March, 1921, affirming the judgment of the lower court.

The Court of Appeals held that the gift did not create a trust, but that the title to the property passed immediately to the Hose Company, and then proceeded to decide that the gift was for a public purpose, and that the Hose Company was bound to devote the gift to the purposes of its organization, and that if it should divert it, it would subject itself to an action by the State, and that neither Mr. Sherman, nor the Atwater next of kin, could claim any rights in the fund.

And the court thereupon proceeded to say:

"We have left, therefore, the conflicting claims of the members of the Hose Company, to whom the Special Term awarded the fund, and the City of Batavia, to whom it was given by the Appellate Division, in trust to be used for the protection of its inhabitants against fire. Holding as we do, that this was a bequest for a charitable purpose to a corporation authorized by its charter to receive bequests for that purpose, the answer to this problem is clear. Upon the dissolution of such a corporation, personal property bequeathed to it, dedicated to public and charitable purposes, was disposed of by the State with due regard to the objects to which it was dedicated. It was not the property of the corporation to be divided among its members as would be the property of a purely private or business corporation. It held the property in trust—not a trust imposed by the donor, but by the charter which required the corporation to perpetually devote its funds to such purposes. *Mormon Church v. U. S. 136 U. S. 1, 10 Sup. Ct. 792, 34 L. Ed. 478; Centennial & M. Ass'n, 235 Pa. 206, 83 Atl. 683; Duke v. Fuller, 9 N. H. 536, 22 Am. Dec. 392; Summer Lodge v. Odd Fellows Home, 77 N. J. Eq. 386, 77 Atl. 36; Mason v. Fire Co. 70 Ga. 604, 48 Am. Rep. 585. To hold otherwise would be to permit the destruction of the greater part of the charitable bequests made in this State during the last century."

"* * * Asked to award this fund to individuals, the court has refused so to do. It has held that it is impressed with a public trust. It has said that it results from a gift for charity. It has determined that to award it to the City of Batavia, to be held in trust for fire protection, will most effectually accomplish the general purpose of the bequest under which the fund was created. The exercise of the *cy pres* doctrine always involves a large measure of discretion. Nothing in the record before us shows the improper exercise of that discretion."
In *Duke v. Fuller*, 9 N. H. 536, *supra*, decided in 1838 (s. c. in 32 Am. Dec., 392), by the by-laws of an unincorporated society, Bible Lodge No. 27, it was provided:

"that the furniture and funds of the lodge shall be considered as the joint and equal property of all the members, who shall, by a majority of the votes, have the management thereof, for the good of the craft, or for the relief of indigent and distressed worthy masons, their widows and orphans."

The question before the court was whether, on the dissolution of the lodge, its funds could, by a vote of the acting members, be divided among themselves for their private use.

In holding that this could not be done, the Supreme Court of New Hampshire said:

"It becomes important, in deciding the case before us, to determine the objects of the association known by the name of the Bible Lodge. There is no suggestion that it had ever been incorporated. It appears, however, from the case as drawn, that the association had the ordinary officers of a corporation, such as treasurer and secretary; had funds belonging to it; had an annual meeting, or communication, in May of each year, and was governed by a code of by-laws.

By one of these by-laws it is provided, 'that the furniture and funds of the lodge shall be considered as the joint and equal property of all the members, who shall, by a majority of the votes, have the management thereof, for the good of the craft, or for the relief of indigent and distressed worthy masons, their widows and orphans.' This provision is applicable to all the funds of the association, whether derived from bequests, assessments, contributions, initiation fees, or other causes; and it is quite clear that while such a by-law exists, it is imperative as to the mode in which the funds collected under it shall be appropriated; and it also admits of doubt whether it can be resorted in any manner so as to authorize a different application of funds previously received.

What, then, is the purpose for which these funds were received? Were they received for charitable uses? This can hardly be denied. The words in the by-law referred to are similar to those in the statute of charitable uses, of 43 Elizabeth. The uses enumerated in the preamble of that statute, as charitable, and therefore sustained by law, are 'gifts and devises for the relief of aged and impotent persons; for schools of learning, free schools, and scholars of universities; for the education and preferment of orphans, help of young tradesmen, and handicraftsmen; for relief or redemption of prisoners and the aid or ease of any poor inhabitants,' together with various other objects; 2 Fonbl. Eq. b. 2, pt. 2, c. 1; 2 Story Com. on Eq. sec. 1160.

The by-laws of the lodge appropriate its funds in promoting 'the good of the craft, or for relief of indigent and distressed worthy masons, their widows and orphans.' The good of the craft can only be understood to mean the furtherance of the general cause of free masonry; and this surely cannot have been effected by abandoning the institution entirely and dividing its ancient funds among a few acting members; neither can it be contended that such distribution was made for the relief 'of indigent and distressed worthy masons, their widows and orphans.'

It does not appear how long the funds of the lodge had been in process of collection. The society at its dissolution consisted of but eight members, including the parties to this suit, and the funds exceeded two hundred dollars. It can hardly be supposed that this sum was received from those individuals. It had probably accumulated during a series of years, from the initiation fees and assessments of other members; and it could not have been contemplated that the members to whose immediate care for the time being this fund was transmitted, would by vote appropriate the whole to their private use. Such an appropriation was a breach of the specified object for which the fund was raised, and a violation of the pledged faith of the society.
Equally well might any eleemosynary association, or clearly public institution, the collections of which had been accumulating for many years, divide at any time their property among its acting members, in violation of the expressed design of their institution. Such a proceeding cannot be sanctioned by any court, either of law or equity.

It may be asked, however, what shall be done with the funds or property of such an institution, if the members refuse to keep up their organization, and dissolve the association, as they have done in this instance? Such a dissolution cannot be prevented. It is not only in the power of such an association, but of any body duly incorporated, which was not created for the administration of political or municipal authority, to dissolve itself by its own assent. This has been repeatedly adjudged: 2 Kent. Com., 2d ed., 505; Ang. & Ames on Corp. 507.

But it by no means follows that the members of an association, holding funds in trust, or of a body incorporated for eleemosynary purposes, can, on such dissolution, appropriate its funds among themselves. Mere moneied corporations, whose funds are owned solely by the stockholders, and are not held in any manner for charitable or public use, may do this, but no others. The association may be dissolved, but the trust fund is not, therefore, to be either distributed or abandoned. It is an established maxim in equity, that no trust shall fail for want of a proper trustee. The funds of this and of any other charitable institution, may, therefore, be saved to carry out the original purposes and wishes of the donors or contributors.

"Whenever funds raised for charitable purposes are committed to private individuals, or to a corporation, if there be any abuse or misuse of the same, a court of equity will interfere, at the instance of the attorney general, or the parties concerned, to correct such abuse; and the court may go to the length, in cases of gross mismanagement, of taking the funds away, and committing the administration of them to other hands; and the same course would be pursued in case of an abandonment of them by a dissolution of the association: 2 Story

Com. on Eq. 435, sec. 1191, and authorities there cited; 2 N. H. L. 73.

The division of the funds in this case was illegal and void; and as this suit is brought by the plaintiff on the ground that, being a member of the association at the time of the dissolution, he is entitled to his distributive share of such funds, it is a suit without legal foundation, and cannot be sustained. No one can rightfully claim such share as his individual property, notwithstanding the vote of the members. The funds should still be held for their due application; and this application can be enforced whenever the proper proceedings are instituted for this purpose."

In *People of California v. President and Trustees of the College of California*, 38 Cal. 166, *supra*, decided in 1869, the College of California was incorporated as a college of science and letters and its trustees received from time to time general donations of money from individuals for the benefit of the college, and also acquired by gift and purchase various parcels of land among which was a 160-acre tract, selected as a site for the college and forming the subject matter of the suit.

The trustees of the college were desirous of creating and carrying on a university, but they found themselves unable, for want of sufficient pecuniary resources, to do so on the scale required by the educational necessities of the State and were desirous of inducing the State to appropriate from the public funds sufficient money to endow a university which would satisfy the wants of the community.

Thereupon, the trustees adopted a resolution which contained an offer to donate to the State Board of Directors of the Agricultural, Mining and Mechanical Arts
College the 160-acre tract for the site of the State College and expressed the wish that the State would forthwith organize and put into operation on the site a university to include a college of mines, a college of engineering, a college of mechanics and a college of agriculture and an academical college, and authorized the president and secretary of the trustees to enter into a contract with said State Board to the effect that whenever a University of California should be established, then the College of California would disincorporate, and, after discharging its debts, pay over its net assets to the University.

The offer embodied in the resolution was accepted and the president and trustees of the college deeded the 160-acre tract directly to the State. The State Legislature thereupon passed an act creating the University of California by the name of the Regents of the University, and it took possession of the tract and expended money in improving it, and also contracted to purchase from the trustees of the college an additional tract of 40 acres.

The College of California retained 200 acres of land, which had greatly increased in value by the location of the university on the 160-acre tract, and also held lands and buildings in Oakland which it used for educational purposes and which had also greatly increased in value, and the value of its property on hand at the time of the suit was at least equal to the whole amount of the donations that had been made to it.

The trustees of the college questioned their power (as proposed in their said offer) to disincorporate, and, after paying debts, to turn over the remaining assets to the university, and this created a cloud on the title of the State to the site of the university, or a claim to the same in the college adverse to the State, and for the purpose of having this adverse claim of the college removed and the legal title of the State quieted, the foregoing facts were agreed upon and submitted to the court.

The questions raised against the validity of the transaction were discussed at length by the California Supreme Court. It was claimed that the transaction was intended to terminate the existence of the college in order that its corporate property might be devoted to the new institution of learning, with a different name and a new management; that the proposition to the State was in part execution of this plan, and that, when the State accepted the proposition, it had notice of the intention and purposes of the trustees in making it; that while the trustees might make such disposition of the corporate property as they believed would conduce to the prosperity of the college, they had no power to destroy it by alienating its property with the avowed intention to terminate its existence and turn over its estate to another institution, and that the State, having taken the conveyance with notice of the unlawful purpose, was not entitled to the aid of a court of equity in order to validate the transaction.

The court, after examining the facts and coming to the conclusion that the transaction was not open to question on the ground of mala fides, and that the president and trustees of the college were actuated only by a praiseworthy desire to build up an institution, commensurate with the wants of the State and capable of dispensing greater benefits to the public than could be anticipated from the College of California, said that, if such laudable purpose failed, it would be solely because of want of lawful power to accomplish it—that the question involved was one merely of power.
The court thereupon proceeded to examine the question of power and held that the power existed, and said:

"Under these circumstances it would be an extraordinary causa omissa in the law if the managers of a literary institution, without a sufficient endowment to render it effective, were compelled, against their convictions and judgments, to maintain it in its feeble, sickly condition, when, by a surrender of its franchise and devoting its property in aid of a new institution of learning, a great public good might be accomplished. We entertain no doubt whatever of the power of the president and trustees of the college not only to surrender their franchise, but to transfer the corporate property, after the payment of debts, to the State for the use of the university. The end proposed to be accomplished by the president and trustees was not only lawful and within the scope of their powers, but was eminently meritorious and conducive to the public interest.

The fact that a portion of the funds of the college were the result of voluntary donations to it can, in no degree, impair the power of the trustees to surrender its franchise and dispose of its property in the manner proposed. The donors must be presumed to have known the law; and must be held to have assented in advance to any lawful exercise of power in good faith by the president and trustees in respect to the corporate franchise and property. In addition to this, the donations were absolute and unconditional. The donors retained no interest, present or future, in the sums donated, nor acquired thereby any interest whatever in the corporate property, nor any right to control it. The donations were voluntary offerings by patriotic citizens in aid of the cause of education; and the management and disposition of the fund was confided absolutely to the president and trustees, subject only to such restrictions and limitations as the law imposed upon them; and, as we have seen, the law does not prohibit them from dissolving the corporation and applying its funds, after payment of debts, towards the endowment of another kindred institution. That the trustees have the power to surrender the franchise, after its debts are paid, is a proposition which admits of no doubt; and if they should do so, without having made any disposition of its property, there being no stockholders or creditors, the personal property of the corporation would vest in the State. (2 Kent Com. 386; Angell and Ames on Corp. sec. 195.) Such real estate as remained undispensed of, and which had been acquired by donation, would revert to the donors. But this rule would not apply to real estate acquired by the corporation by a purchase for value. In such cases the vendor has no further interest in the property or in its application, and on a dissolution of the corporation, if there be no stockholders or creditors, the title would vest in the State, in the same manner as if it were personal property. * * * If the College of California, therefore, had surrendered its franchise, owing no debts, all its personal estate then remaining, and all its real property acquired by purchase for value, would have vested, by operation of law, in the State. It appears from the agreed statement that the whole of the tract of one hundred and sixty acres in contest was acquired by purchase for a valuable consideration, except the fifteen acres conveyed by Pieche and the ten acres conveyed by Blake; and the latter has expressly ratified the conveyance to the State, while the former has conveyed to the college by deed absolute, and released it from any obligation to appropriate the land to any particular use; which is equivalent to a ratification of the conveyance to the State. The president and trustees, therefore, in conveying this tract to the State, in anticipation of an actual dissolution of the corporation, have only accomplished in advance a result which would have ensued by operation of law on a dissolution of the corporation, after the payment of its debts. The case shows that it yet retains property amply sufficient to meet the demands of its creditors, none of whom are here to complain of this transaction."
In
Starr v. Morningside College, et al., 173 N. W. Rep. 231 (1919) (Iowa), supra,
a testator by a codicil to his will provided as follows:
"I give and bequeath unto Charles City College, located at Charles City, Floyd County, Iowa, the
sum of Two Thousand Dollars ($2,000)."
Subsequently the testator executed a further codicil,
one of the provisions of which was as follows:
"Whereas, in the second codicil to my will I willed
and bequeathed to the Charles City College, of
Charles City, Iowa, the sum of two thousand dollars
without making any direction as to the disposition
of said bequest, I do now hereby will and direct that
said sum of two thousand dollars be added to and
made a part of the endowment fund of the said
Charles City College located at Charles City, Iowa,
and that the same be in no manner used or disposed
of by them."
It appeared that this bequest was paid by the executor
in June, 1907, into the endowment fund of the Charles
City College of Charles City, Iowa, and remained a part
of its endowment fund until the same was transferred
by its trustees to the endowment fund of the Morningside
College. Under an agreement of amalgamation, which
is fully set out at page 232 of the report, the $2,000 bec
ame a part of the endowment of Morningside College,
the principal to be kept intact, but the income to be used
for the general maintenance fund of Morningside Colle
geo.
Suit was brought by the testator's heirs and residuary
legatees, claiming that they were entitled to the fund.
In the course of the argument, questions were made
as to whether the gift was absolute, or in trust, as to
whether the doctrine of cy pres applied, and as to the
right of the heirs and residuary legatees to maintain the
action, etc., but on these questions the court did not pass,
saying:
"We prefer to base our determination of the case
on the proposition that the gift was not a condi
tional one, because Charles City College was located
at Charles City, but rather the intention of testator
was to further the cause of education and religion,
and that his intention and bequest may not be de
feated by the mere fact that his purposes are to be
carried out by the successors of the Charles City
College, or the institution with which it was merged
or amalgamated. The principal fund is intact, and
under the agreement and the amended articles of
incorporation of Morningside College the purposes
of the testator are being carried out, and, so far as
it appears, will be."
The court further said:
"That testator may have supposed that the college
would remain at Charles City, because it was
located there at the time the codicil was executed,
will not operate to defeat the bequest in the absence
of such a condition. It is argued by appellant that
the trustees or officers of Charles City College be
trayed their trust, and that the Charles City Colle
ge has been annihilated. But fraud will not be
presumed, and there is nothing to indicate that such
officers were not acting in good faith, and using their
best judgment in the merger of this institution with
Morningside College. We are not impressed with
appellants' argument that the purpose and intention
of testator was as they contend, but, as we have al
ready said, that he intended to make the bequest in
the interest of education. There is no allegation
that the principal fund has been, or will be, diverted
and used for any other purpose than that contem
plated by testator. The agreement entered into be
tween the officers of Charles City College and Mor
ningside College, and the new or amended articles of
incorporation, all of which have been heretofore set
out, shows that the endowment has been, and will be,
used by Morningside College in the same general
plan of endeavor contemplated by Charles City Colle
In Osgood v. Rogers, 71 N. E. Rep. 306, supra, decided in 1904 by the Supreme Court of Massachusetts, a testator gave certain real estate to trustees for his brother and sisters for life, and further provided as follows:

“(2) At the death of my said sisters and brother, I do give, devise and bequeath all my interest in my said real estate in two parts to the Pastor & Deacons of High Street Church and to the Pastor & Deacons of John Street Church to be by them disposed of for the support the said churches in their religious worship, to be equally divided between the said churches—by creating a permanent fund, the interest and income of which whether in the improvement of the said lands or converting the same into funded securities yielding interest thereon—to the said Pastor & Deacons of High St. Church & to the said Pastor & Deacons of John St. Church and their successors forever—the division and enjoyment thereof to be in peace and harmony between the said churches.”

After the death of the testator, the pastors and deacons of the two churches joined in conveying their interest in the real estate to the life tenants in consideration of $6,000, one-half of which was paid to the pastor and deacons of the John Street Church and the other half to the pastors and deacons of the High Street Church. The John Street Church ceased to exist and its meeting house was sold and it voted to discontinue religious worship and to make proper disposition of its funds and other property.

The Supreme Court said:

“It is well settled that if, where there is a general charitable intent, it becomes impracticable, in consequence of a change in circumstances, to administer the trust in the precise manner provided by its creator, the doctrine of cy pres will be applied, and the trust will be administered in a manner that shall conform as nearly as possible to its terms. Attorney Gen. v. Briggs, 164 Mass. 561, 42 N. E. 118; Teak v. Bishop of Derry, 168 Mass. 341, 47 N. E. 422, 38 L. R. A. 629, 60 Am. St. Rep. 401. Usually the matter is referred to a master to report a scheme, but there can, of course, be no objection to the framing of a scheme by this court, or to its adopting one that is proposed. The High Street Church was originally established by the aid and co-operation of the John Street Church. Many of the former members and attendants of the John Street Church attend there, and it is of the same religious denomination, besides being one of the two churches which the testator selected as the objects of his bounty. Taking all of the circumstances into account, it seems to us that the fund should be paid over to the pastor and deacons of the High Street Church, to be administered by them for the support of religious worship in that church in the manner in which the testator directed that it should be used for the support of religious worship in the John Street Church.”

In Hayter v. Trego, 5 Russell’s Chancery, 113, supra, decided in 1830, a testator gave a legacy to a voluntary society whose name was “The Plymouth and Devonshire Asylum for the Reception of Female Penitents.” At the time of the testator’s death, this society was still in existence, but after his death and before his estate was administered, the society was dissolved, the charitable establishment completely broken up, and the furniture and other property belonging to it were sold.

The Master of the Rolls, Sir John Leach, held that the testator having marked out the particular nature of the charity to which he wished the legacy to be applied, the court would execute his intent cy pres, and that the Master must settle a scheme having regard to the testator’s will.
In  

In re Mills' Will, 200 N. Y. Supp. 701, supra, decided in 1923,

the will of a testatrix contained the following provision:

"Sixth. I give and bequeath to the New York Medical College and Hospital for Women, Inc., under the laws of the State of New York, of 19 West 101st Street, New York City, the sum of Five Thousand Dollars ($5,000) for the purposes of said institution."

The New York College and Hospital for Women was incorporated under the New York laws as a charitable institution in 1863, and engaged in the charitable work of operating a college and hospital in the City of New York, until their property was lost to them by foreclosure action in October, 1919.

In February, 1921, the State Board of Regents removed the then trustees from office for refusal to carry into effect the educational purposes of the corporation, and a new Board of Trustees was appointed by the Chancellor of the State University, and at the time of the suit, were acting as such trustees.

At the time of the suit, the real property of the College was in the ownership of The Community Hospital, a newly organized charitable corporation, operating a hospital in the former property of the New York Medical College and Hospital for Women. The latter institution, since the fall of 1919, had not been operating and carrying out its charter powers.

The court, referring to the last named institution, said:

"It is without funds, without effective organization, and is apparently incapable of doing work of a charitable character. If said charitable corporation cannot act, and does not act, then it would appear that the donor's intentions cannot be effectuated by such corporation, because the designated school and hospital is not in a position to comply with the provisions of its charter. An action is now pending in the Supreme Court wherein the New York Medical College and Hospital for Women is the plaintiff and the Community Hospital is defendant, which seeks to set aside the deed to the Community Hospital. The designated school and hospital ceased to be a going concern during the testatrix's lifetime. ""  

Where the particular object of the bequest is in existence as a going concern at the testatrix's death, but later ceases to carry out its functions on account of changed conditions, the fund may be applied cy pres by the court; that is, in those cases where the property once devoted to charity has got adrift. Hubbard v. Worcester Art Museum, 194 Mass. 280, 80 N. E. 490, 9 L. R. A. (N. S.) 689, 10 Ann. Cas. 1025; Osgood v. Rogers, 186 Mass. 228, 71 N. E. 306. In case of consolidation, the original charity ceases to exist, but where a general charitable intent is disclosed the doctrine of cy pres will be applied. Gladding v. St. Matthew's Church, 25 R. I. 628, 57 A. 869, 45 L. R. A. 225; 155 Am. St. Rep. 904, 1 Ann. Cas. 537; People ex rel. New York Phonograph Co. v. Rice, 57 Hun. 486, 11 N. Y. Supp. 249, affirmed 128 N. Y. 591, 28 N. E. 251. Personal Property Law, Sub. 12 (Chapter 701 of the Laws of 1893, as amended by Laws 1909, c. 144, Sub. 1) confers upon the Supreme Court the power to administer the subject matter of charitable trust cy pres. In such a proceeding, the Attorney General of the State is a proper and necessary party. ""  

The general charitable purpose was prominent in her (i.e., the testatrix's) mind. At her death the particular charity was not operating, but the charitable intention could be carried out by other and similar charities. The purpose of the charity could be carried out; the donation was a valid gift to public charity in its broad sense, to be administered by the court, whether the gift is a trust, or a donation. Matter of Allen, supra, 111 Misc. Rep. 128, 181 N. Y. Supp. 398; Gladdings v. St. Matthew's Church, supra; Tiede v. Bishop of Derry, 168 Mass. 341, 47 N. E. 423, 38 L. R. A. 629, 60 Am. St. Rep. 401. The
gift in the instant case was to the objects of the corporation, not to itself. Bliss v. American Bible Society, 2 Allen (Mass.) 334; In re Deming's Will (Sur.) 112 N. Y. Supp. 170. The gift was marked as charitable. To hold otherwise would be to permit the destruction of the greater portion of charitable bequests made in this State during the last century. Sherman v. Richmond Hose Co., 230 N. Y. 462, 472, 130 N. E. 613. The gift was for the general purposes of the hospital. Those purposes are of a public nature and are defined in the certificate of incorporation. The gift created no trust. It was a charitable donation impressed with a public trust imposed by the charter.


In such a case, if for any reason the donee is incapable of effecting the trust, the court will not allow the gift to fail for want of a donee. The doctrine of cy pres is applied by the court, not only where a trust existed, but where property has been bequeathed to a corporation authorized to take and hold it for charitable purposes. "If circumstances have so changed that a literal compliance with the term of the gift is impracticable, then it may order the gift to be administered so as best to accomplish its purpose."
The court may act on information of the State. It may act of its own motion.'

In Lakatong Lodge No. 114 of Quakertown v. Board of Education of Franklin Township, Hunterdon County, 92 Atl. 870 (1015), supra, the facts were as follows:

For the purpose of securing to the children of the vicinity facilities for a higher grade of education than the district school conferred, citizens of Franklin Township contributed a fund which was used in the purchase of a lot of land and the erection thereon of a two-story schoolhouse. Title to the land was taken in the name of five men as "Trustees of the Franklin Education Association," with grant and habendum to them and "to their successors in office." The trustees conducted an academy on the first floor of the building until 1866, when, because of financial failure, the undertaking was abandoned and the property was turned over to the public school authorities of the district, who thereafter, up to the time of the commencement of the suit, had carried on the business of public education in the first floor of the building. Shortly before the proceeding was brought, the building was condemned as unfit for school purposes, and in order to erect a new one on the site, the defendant was about to tear it down, when it was stopped by a temporary restraining order. The complaint had occupied the second story of the building as a tenant and also claimed that it had purchased the lot. The defendant in its answer denied such purchase and set up that the Franklin Education Association was a charitable trust and that, upon becoming defunct, the further performance of the trust was turned over to the public school authorities by the trustees, with the intent and effect of vesting in them the full title to, and control over, the school property, and that, after this answer was
filed, the complainant procured from the heirs at law of one Clifton (who was the grantor in the deed under which the trustees of the Franklin Education Association acquired title), a deed to the lot, and laid claim to same in a supplemental bill.

The court after passing on some of the other questions involved in the case said:

"Upon the abandonment of the academy, the trustees turned the school building over to the defendant, the public school authorities, for the carrying out of the trust, and, in the doing of this, it took the course that a court of equity would have taken, had application for directions been made at that time. The defendant, in its answer, avers that this amounted to a dedication, and that the title became vested in the public. I doubt that there was a dedication whereby the fee passed, for, in the absence of any scheme judicially approved, the trustees of a charity may not make a cy pres application of the estate upon their own authority, even though it be desirable. MacKenzie v. Trustees, 67 N. J. Eq. 652, 61 Atl. 1037, 3 L. R. A. (N. S.) 227.

Upon the defendant amending its cross bill, to which the Attorney General must be made a party, I will advise a decree appointing the defendant trustee of the charity, to be applied according to the doctrine of cy pres. Green v. Blackwell, supra; Trenton v. Howell (Ch.) 63 Atl. 1110. This will put the title at rest."


the Humane Fire Company, a corporation (which was held by the court to be a charitable corporation) sold some of its property, and it was alleged that it was about to give up its organization and disband. Thereupon the plaintiff, on behalf of himself and all other parties interested, brought suit alleging that they were entitled, as members of the corporation, to the property of the corporation, and that part of that property had been unlawfully divided among the other members of the corporation.

In holding that the plaintiffs were not entitled to relief, the Supreme Court of Pennsylvania said:

"It would thus seem to have been assumed that the defendants, co-members of the company with the plaintiff, had disposed of and used to their own profit and advantage, property in part belonging to the plaintiff, and that for such part not only they but the company must account. Now if this assumption be correct, then is the conclusion also correct; but if it be so that this property belonged to the company and not to its members, then is this conclusion wrong and the decree founded upon it is also wrong. This is not a trading corporation designed to make money for its shareholders, whose money has purchased its property and in which property every such shareholder has a right, proportioned to the amount of his contribution, but it is a charity, incorporated as a public benefit, and it consequently holds its property, which has been contributed by the public, in trust for that public. There are no shareholders in companies of this kind, and if any contributions have been made to this company by the members thereof, they were made as gifts and donations for the public good, and these members themselves are but trustees and agents to carry into effect this charitable organization. That a voluntary association of individuals, who have contributed funds for a purely public purpose, will be regarded as a charity was ruled in *Thomas v. Ellmaker*, 1 Pars. 98; and that such association has been incorporated alters neither its design nor nature, but only gives it a legal status which it would not otherwise possess. Such being the case, it is very clear that when the members of this company undertook to divide among themselves the corporate property, they did so without right."

But the court then proceeded to hold further that the plaintiff had no standing in court as he was seeking to
enforce a right of the corporation against its officers for making the illegal distribution without showing any reason why the corporation itself could not enforce it.

In


A bill in equity was filed by the Attorney General of Pennsylvania against the Pauline Temporary Home, a charitable institution, incorporated for the establishment and maintenance of a home for poor children. The corporation had abandoned its operations and sold its property and held the proceeds subject to such disposition as should be directed by the court. In the lower court, a Master was appointed to report a scheme for the administration of the fund, and a number of charitable institutions presented claims thereto, among them a Children's Aid Society, to whom the decree of that court awarded the fund.

On appeal the Supreme Court of Pennsylvania, in affirming the decree, said:

"The appellant does not contend that the contributors to the Pauline Temporary Home have any legal right to direct the application of the fund after its use as originally contemplated has ceased. Its contention was that their wishes and recommendation should have weight with the court in determining the question of its future application. Conceding much force to this position, we have nothing before us to show that the court below did not give proper regard to their suggestions. It is true the fund was not awarded to the appellant. It was claimed by a number of charitable institutions. They are all meritorious and deserving of aid, but we cannot say the court erred in awarding the fund to the Children's Aid Society. The object of said Society appears to be nearer in accord with that of the Pauline Temporary Home than that of any other of the societies named. The matter was very much in the discretion of the court below, and we would not reverse, unless for a clear abuse of discretion. No such abuse appears in this case. The decree is affirmed."

In

*Central University of Kentucky v. Walters' Executors*, 90 S. W. Rep. 1066, *supra*, decided by the Court of Appeals of Kentucky in February, 1906,

The court held that the consolidation of the college and the university owned and conducted by the Northern and Southern Presbyterian Churches was not a diversion of the purpose of the original incorporators or of those whose means set the institutions on foot.

In this case Ann W. Walters executed her note for $4,000, which note read as follows:

"Feeling a deep interest in Christian education, and especially in the education of young men for the gospel ministry, I promise to pay to the order of the board of curators of the Central University of Kentucky the sum of four thousand dollars ($4,000) to the sum of $35,000, contributed by my late husband, S. P. Walters, for the endowment of the Henry Bell Walters Professorship of Mathematics in said university."

This note was given before the consolidation.

In holding that the consolidation did not release the estate of Mrs. Walters (who was dead) from liability on the note, the Supreme Court said:

"As there is nothing in the note, or in the contemporaneous transaction, binding the payee to apply the money otherwise than in the maintenance of a chair of mathematics in its university, being conducted for Christian education, there was no limita-
tion upon the power of the payee to change the location of its school or schools, or to change the manner of their government, or the adoption of particular means of effectuating the general purpose for which the institution was founded. The very nature of the enterprise, on the contrary, looked to improvement. It contemplated, by every reasonable implication, that new methods, new people, even new ideas, would be employed, when approved by the governing body of the institution. A college means, or ought to mean, growth; the elimination of the false; the fostering of the true. As it is expected to be perpetual in its service, it must conform to the changed condition of each new generation, possessing an elasticity of scope and work commensurate with the changing requirements of the times which it serves. For the past to bind it to unchangeableness would be to prevent growth, applying the treatment to the head that the Chinese do to the feet. Presbyterians as a body have always been noted as patrons of education. This characteristic, shared signal by the Wailerses, will not, upon mere conjecture, be restricted into the unnatural, self-destructive channel now contended for by apologists. Their subscriptions to this college, in the absence of some limitation in the agreement, must be conclusively deemed to have been in accord with the general purpose of the educational movement then undertaken by the body of the church, and necessarily subject to the power of the governing constituency of the institution to conform its course and adopt such means to the accomplishment of its great purpose, as are not inconsistent with its object or with the charter granted by the state. So, when the governing body and all the constituents of the corporation have decided to change the location of the university, to include a broader field of work, to add new forces and bring to its aid additional endowment, all tending to the same end contemplated in its establishment, the enterprise is not abandoned, but is continued; and subscriptions made to it are enforceable, whether their consideration is the maintenance of the original institution or particular chairs therein, if such chairs are in fact maintained by the new institution. This is in no sense an appli- plication of the cy pres doctrine; the substitution by the court of an equivalent for the charitable use selected by the donor. The finding is, on the contrary, that the original object still exists and is being conducted to all intents and purposes, as contemplated by the donor and the trustees. Therefore there is not a failure of the consideration of the note sued on."

In Summer Lodge No. 180, I. O. O. F. v. Odd Fellows Home of New Jersey, 77 Atl. Rep. 36 (decided by the Court of Chancery of New Jersey, in June, 1910), the New Jersey statute, under which the Odd Fellows Home was incorporated, provided, "that the sole and exclusive objects of incorporations under this Act shall be to relieve or support such of the members thereof, or such other persons as shall by sickness, casualty, old age, or other causes, be rendered incapable of attending to their usual occupation or calling, * * * to give and extend benevolent and charitable relief and assistance to persons who are not members or corporators * * * and other charitable objects; any one or more of the above objects may be provided for in the constitution and by-laws of such corporation."

The constitution adopted by the corporation provided:

"That the purpose of this corporation is to purchase a home for, and to support and maintain aged and indigent Odd Fellows in such a manner as the by-laws may prescribe." The by-laws also provided for the making of contributions by lodges to the corporation and contributions were so made. Subsequently at a meeting of representatives of the different lodges, who were members of the corporation, a resolution was passed to the effect that the corpora-
tion be dissolved and that the directors discharge its indebtedness and expenses, and distribute the remaining funds among the different lodges who were members of the Home, according to the amount actually contributed by them as dues from the time of the institution of the Home.

The case presented a question as to whether the dissolution was, under New Jersey law, effective, but the court held that it was unnecessary to decide that question on the ground that, if it were conceded that such power existed, the corporate property could not be distributed among the lodges who had made contributions.

In so holding, the court said:

"It will be remembered from the recital of facts that this corporation, under the act incorporating it, could not use its funds in any other manner, except as provided in the act; that by its certificate of incorporation it set forth that its sole and exclusive object was the relief of indigent, aged, or disabled members. By its constitution it recites that its purpose is to purchase a home for and to support and maintain aged and indigent Odd Fellows in the manner the by-laws prescribe. The by-laws prescribe that any lodge or encampment of the Independent Order of Odd Fellows might become a member by paying one cent a week for each of its members, and that such member, i.e. the lodge or encampment, had the privilege of applying for the admission of inmates, the essential details concerning which application and admission of such inmates having been heretofore set forth. **

It is entirely clear that such donations were made to this corporation for its charitable purposes. ** Whatever may be determined to be the proper thing to do with these funds, I am clearly of the opinion that it is improper for them to be distributed among the lodges who happened to be members of the defendant corporation at the time that the dissolution proceedings were undertaken. **

Whatever funds are now in the hands of the defendant corporation arose out of donations made to it; these were undoubtedly for the benevolent, not to say charitable, purposes which it was carrying on. I do not find that the so-called members thereof have any right to divert those funds to their individual uses, or, by any proceedings, to obtain these funds from the defendant corporation and take them to themselves.

If this corporation has the right to dissolve under the law, and is unable to properly dispose of the funds without the interposition of this court’s aid, it should make such proper application to this court, bringing the proper parties before it, and raising the issue in a proper manner, to have this court then pass upon the question which would then have to be considered."

In

*Lupton, et al. v. Leander Clark College, 187 N. W. Rep. 496* (decided by the Supreme Court of Iowa in April 1922),

the Supreme Court of Iowa held where a person contributed money to a college for the purpose of laying the foundation of an endowment fund for it, and such person died, that neither the trustees of his estate nor the beneficiaries under a residuary clause in his will could maintain an action to enjoin a merger of the college with another college and the transfer to the latter of such endowment fund. (See the full opinion of the court at pp. 497-501 of the report.)

In


an unincorporated fire company having property was incorporated, the charter declaring the object to be “the protection of the property of our fellow citizens from fire.”
The Supreme Court said:

"The charter declares that the incorporators have for their 'object the protection of the property of our fellow citizens from fire.' Thus the sole purpose for which it was incorporated is clearly and distinctly expressed.

Its object was not for the private gain and profit of its members, but for the public benefit. It existed for no other or different purpose. The property which it acquired, in aid of its object, was therefore for charitable uses. * * * Within the limits of its charter, the defendant in error had all the rights of a corporation—it held the legal title to property—but it held it in trust for the uses and purposes of its creation, that was for the protection of the property of their fellow citizens from fire. It had no right to divest the property of that general trust nor to divert it from that general purpose. The corporation may in good faith dispose of any specific article, using the proceeds thereof in the acquisition of new or improved apparatus, to be used for the purpose mentioned in its charter. In whatever form the company changes the property, the trust still inheres. It cannot sell it and divide the proceeds among its members. The company held its property subject to the supervisory power of a court of equity. * * * In case the contributors to the erection of a church edifice, discover the corporation is not using it according to the trust for which it is held, surely it will not be contended that they on their own motion can go and take adverse possession of the building. The property does not belong to the contributors, but to the corporation, to be used by the corporation according to its charter.

The same principle applies to a fire company. Whatever may be subscribed or otherwise donated, is given to the corporation to be used by it for the object and purpose declared in its charter. The rights of cestuis que trustentis therein must be protected and enforced in and through the courts. Roshi's Appeal, 19 P. F. Smith, 462."

In

*In re Serminger's Estate*, 206 Pa. Rep. 65, supra, decided in February, 1922, by the Supreme Court of Pennsylvania,

A will provided that at the termination of certain life estate interests in the property, it should be given to the Roman Catholic Asylum and others, corporations, societies and institutions in San Francisco. It appeared that the corporation, conducting that asylum at the date of the will, had been dissolved before the death of the testator by expiration of its charter, and that after his death a new corporation was organized and had taken over the management of the same asylum. The court held that the new corporation was entitled to the benefit of the gift; that the children in the institution were the real beneficiaries and that the appropriate custodian of the fund, at the termination of the life estate, was the corporation then operating the institution.

In 6 Cyclopedia of Law and Proc., at page 977, it is said:

"2. Disposition of Property on Dissolution. On dissolution the property of a charitable organization does not revert to the donors, nor may it be divided among the members of the association, but it should be devoted to the purpose most nearly akin to the intent of the donors, under the direction of the court."

We also submit that the principles on which we rely for the affirmance of this decree have been fully recognized and approved by this court in the case of


In that case, a testatrix gave the residue of her estate to certain trustees in trust

"to establish, in connection with the Bloomington
Library Association, an art studio or art gallery and studio, meaning thereby a suitable place wherein works of art will be collected, kept, preserved or exhibited for the advancement of education in art, the conduct, management and supervision of which art gallery and studio shall be in charge of the officers of the Bloomington Library Association. * * * The said trustees may, in their discretion, turn over to said Library Association the whole or a part of the principal sum of said fund for the use aforesaid, or may pay from the whole, or a part thereof, at interest upon good security, collect the interest thereof and pay the same as collected to said Bloomington Library Association for the use as aforesaid."

This court said:

"The next contention arises over the proper construction to be placed upon the ninth paragraph of the will. The Bloomington Library Association was incorporated under and by virtue of a special act of the legislature approved February 23, 1897, which act designates the objects for which the association was organized to be, 'to establish and maintain a library and reading room, to procure literary and scientific lectures and otherwise promote the intellectual improvement of its members,' and said association succeeding to all the property rights of a voluntary association theretofore existing in the City of Bloomington known as the Ladies' Library Association, and said association was empowered by said act to create a capital stock not to exceed in amount $100,000, which was divided into shares of $50 per share, to raise a fund for the purpose of promoting the objects of the association, including the erection of a building for its use, and it was provided that after the payment of all expenses any surplus arising from the rents and profits of any real estate or buildings purchased or built by the association with such capital stock should annually be divided pro rata among its stockholders, and the act was declared to be a public act. On June 1, 1895, Sarah B. Withers conveyed to the said association a lot situated in the City of Bloomington, upon the condition, among other things, that the said association should erect or cause to be erected upon said lot a building suitable for its library, and to accommodate its members and the public under the usual and customary regulations adopted for the government of such associations. The association accepted the said conveyance and erected a building on said lot at a cost of more than $20,000, and equipped the same with furniture, etc., and placed therein its books, pictures, etc., at a cost of about $25,000, and used and conducted the same as a public library and reading room until June 18, 1894. On that day said association conveyed to the board of directors of the Withers Public Library, an association organized under the laws of the State of Illinois, all its property of every character, in trust, upon the condition, among other things, that the same should be used as a free public library for the use and benefit of the inhabitants of the City of Bloomington forever, and the property has been used, and is now used, for such purpose, and since the execution of said conveyance said Bloomington Library Association has ceased to exercise any of its charter powers and has no property of any consequence.

We think it clear that the ninth paragraph of Emily T. Perry's will created a trust to establish an art studio or art gallery and studio, wherein works of art were to be collected, preserved and exhibited for the advancement of education in art. While the testatrix provided that the studio or studio and art gallery mentioned in paragraph 9 of her will should be carried on in connection with the Bloomington Library Association, she did not create a trust for the benefit of said library association, but, on the contrary, she created by that paragraph of her will a trust for the benefit of the public, for the purpose of erecting an art studio or art gallery and studio, which was to be carried on for the advancement of education in art. That the creation of a trust to establish the benefit of the public an art studio or art gallery and studio for the advancement of education in art is, within the meaning of all the authorities, a charitable trust, we have no question, (Kern v. Kern, 223 Ill. 527) and we think it equally clear that as the Bloomington Library Association has ceased to exist as a going association.
for the purpose of exercising its charter powers, 
(Miller v. Riddle, 227 Ill. 53), under the doctrine of


cy pres, as understood in this State, a court of chan-
cery has the power to substitute the Withers Public
Library in the place of the Bloomington Library
Association, for the purpose of administering and
carrying into execution, through said trustees, the
trust created by the ninth paragraph of said will.

In Kemmerer v. Kemmerer, supra, this court, on
page 338, quoted with approval the following lan-
guage from Story's Equity Jurisprudence: 'If the
bequest be for charity it matters not how uncertain
the persons or the objects may be, or whether the
persons who are to take are in esse or not, or whether
the legatee be a corporation capable, in law, of tak-
ing or not, or whether the bequest can be carried
into exact execution or not, for in all these and the
like cases the court will sustain the legatee and give
it effect according to its own principles; and where
a literal execution becomes inexpedient or imprac-
ticable, the court will execute it as nearly as it can
according to the original purpose, or as (as the tech-
nical expression is) cy pres.' The Appellate Court,
we are of the opinion, did not, therefore, err in hold-
ing that the fund which the ninth paragraph of the
will provided should be set aside for charity should
be administered by the trustees in connection with
the Withers Public Library instead of in connection
with the Bloomington Library Association, under
the provisions of the ninth paragraph of said will.

We insist that the grounds on which this Mason case
was decided by this court fully sustain the decree in
the case at bar. The only difference between the Mason case
and the case at bar is that, in the Mason case, the prop-
erty was held upon an express trust created by the donor,
whereas in the case at bar, the property is held for char-
itable purposes imposed by its charter, but, nevertheless,
upon a trust for the charitable objects of that charter.
And we submit that, on the question now before the
court, that difference is wholly immaterial.

Counsel cite three cases as apparently in conflict with
the position we are maintaining, viz.,

Gilman v. Hamilton, 16 Ill. 225.
Northwestern University v. Wesley Hospital,
290 Ill. 206.
Board of Education v. Bakewell, 122 Ill. 339.

None of these cases is opposed to our contention.
A full statement of the facts in Gilman v. Hamilton,
16 Ill. 225, supra, will show that it in no way conflicts
with our position in the case at bar—in fact that it did
not involve the question presented by this record.

In that case, the facts were as follows:

Doctor Blackburn executed a deed of trust conveying
to W. S. Gilman and six other trustees certain lands in
trust for the purpose of establishing an institution of
learning.

This deed of trust directed the trustees to procure
from the Illinois Legislature an act of incorporation for
the institution, if practicable, to which they should con-
voy the lands and transfer the funds, constituting the
fund of the institution; and further directed that, until
such act of incorporation should be procured, the trust-
ees should have power to sell, mortgage or lease the
lands and to apply the avails thereof "to the founding
and upholding of an institution of learning, the object of
which shall be to promote the general interests of edu-
cation and to qualify young men for the office of the,
gospel ministry by giving them such higher instruction
in the Holy Scriptures as to enable them to perform the
duties of that high and holy vocation acceptably in the
world."

The deed further provided that a certain portion of
the premises conveyed should "be the site for the perma-
nent location of the institution hereinafter mentioned, the said parcels of land having been purchased by the said party of the first part (i.e., Dr. Blackburn), and other funds of the institution for that express purpose."

The Legislature passed an act, creating the corporation, but the trustees refused to accept the act on account of alleged incompatibility with the provisions and trusts of the deed of trust. The trustees sold portions of the land from time to time for the purpose of paying taxes on the residue, etc., but made no attempt to proceed with the erection of the institution.

Subsequently the trustees filed the bill, in which they stated that by the use of trust funds in hand, and by further sales of the real estate, they might succeed for several years to come in paying the taxes, but they were satisfied that if some more active agency than they were employing, or could conveniently employ, in the enterprise, were not resorted to, the sales of the real estate would fritter down to a point where it would be necessary for some one to advance the taxes, or the land would have to be sold in default of the payment of them. And the bill then suggested that the best disposal which could be made of the fund was to convey the same in trust to the trustees of Illinois College for the organization and advancement of a theological professorship in that college, to be called the Blackburn Theological Professorship. And the bill then prayed that the court might decree that the lands and other trust property and money might be conveyed to the trustees of Illinois College for the purpose of establishing a theological professorship in said college, to be called the Blackburn Theological Professorship.

A decree was entered by the Circuit Court, authorizing the suggested conveyance, and a conveyance was exe-

cuted by the trustees to the trustees of Illinois College of all the lands for the purpose of establishing the specified professorship. Thereupon the trustees of Illinois College sold the lands, by which sale they raised a fund of $10,000, with which they endowed the designated professorship which they established in that college.

That decree was subsequently reversed by this court (without its deciding the main questions) on the ground that it did not appear that there was evidence to sustain the bill, and the cause was remanded to the Circuit Court. Upon a second hearing in the Circuit Court, it was held that the trustees of Illinois College acquired no title under the conveyance made in pursuance of the original decree, but that the trust fund still remained vested in the trustees under the deed of Dr. Blackburn, and this second decree appointed trustees in the place of the original trustees (who had died, resigned, refused to act, or had removed from the State), and directed the trustees to proceed to sell the lands and with the avails to erect the necessary buildings and to establish the institution in pursuance of the directions of the deed of trust.

This court, referring to the scheme for the conveyance of the property to the trustees of Illinois College, said:

"This scheme as set forth in the decree, shows a palpable violation of this trust in two particulars. First, a waste or destruction of a part of this fund by returning to part of the original donors, $1,075, in satisfaction of their donations as creditors upon the fund, and showed the application of the remainder to another and different, though kindred object at a different place.

One of the express trusts, I might say, conditions of the deed appointing the trustees, declaring the trusts, and conveying the lands and other funds was, 'that the SE1 of the SE1 of section 21, and the NE1 of the NE1 of section 28, in T. 10, N., R. 7 W., be the site for the permanent location of the institution hereinafter mentioned, the said parcels of
land having been purchased by the party of the first part, and other friends of the institution, for that express purpose."

And the objects expressed, were, upon this site to found and build up "an institution of learning, the object of which shall be to promote the general interests of education, and to qualify young men for the office of the gospel ministry, by giving them such instruction in the holy scriptures as may enable them to perform the duties of that high and holy office, acceptably and usefully in the world.""

This court affirmed this second decree of the Circuit Court (after making a modification in it as to the $1,075, referred to supra) on the ground that the scheme adopted by the trustees was in violation of the express trust created by the deed of trust (1) providing for the return of $1,075 of the trust fund to part of the donors of the money expended by Dr. Blackburn in the purchase of the property, and (2) by applying the rest of the trust fund to another and different object at a different place.

Counsel cite the case of Board of Education v. Bakewell, 122 Ill. 339, and say (Br. and Arg. for App., 16-17) that in that case,

"The State Legislature endeavored to dispose of some of the property of the State Normal University on the theory that it was a state institution and not a private corporation."

Counsel then quote from this court's opinion, and then say that,

"It would seem, therefore, that when gifts are made to a charitable corporation they will be held by such corporation as trustee and can only be administered for the special purpose for which such corporation was organized. In the case now under consideration by this court, the appellee, Trustees of Rush Medical College, desires to disregard the purpose for which gifts and donations were made to it and convey and transfer all of its property to another institution."

The Bakewell case is merely authority for the proposition that a private charitable corporation organized "for the special purpose named in its charter," which, in that case, was "the education of teachers for common schools," could not, even with the consent of the state, dispose of the corporate property, to be applied to other purposes—that such property could only be applied (to quote counsel) "for the special purpose for which such corporation was organized."

In the case at bar, as we have shown, supra, this appellee's property is, under the proposed arrangement, to continue to be used for the same purpose for which this appellee was organized, viz.:

"To promote the general interests of medical education and to qualify young men to engage usefully and honorably in the professions of medicine and surgery."

And, as already stated, the proposed contract expressly provided (in paragraph 1, Abst., 27), that the University should so use it, the express language of the provision being that the University "will use all of said property, real and personal (or its proceeds in case of a sale), to promote the general interests of medical education and to qualify young men to engage usefully and honorably in the professions of medicine and surgery."

The case of Northwestern University v. Wesley Hospital, 290 Ill. 205, cited by counsel (p. 15) did not involve any such question as is presented by the record in this case. The conveyance there under consideration (the validity of which this court upheld) was made by the Northwestern University to Wesley Hospital, and contained a condition that Wesley Hospital should maintain a hospital on the land, draw its medical staff from the grantor's faculty, and afford the students of that institution opportunity for observation of the treatment of patients in that hospital.
This court there held (p. 215 of 290 Ill.) that:

"The conveyance was in no sense one made for a charitable purpose, but, on the other hand, was one made solely for the purpose of better enabling appellant to carry out one of its corporate purposes, and as such did not give rise to a charitable trust between the two institutions."

This court then proceeded to hold that:

"The condition referred to was valid but that the Northwestern University was limited to the remedy provided in its deed, viz: a forfeiture of the property and that a court of chancery was not the proper tribunal for enforcing such forfeiture."

We are not questioning the statement by this court in its opinion in that case that a charitable corporation cannot donate its funds to another corporation except as such donation assists to carry out the purpose for which the donor corporation was created, and there is nothing in that statement which is inconsistent with any position we have taken in our argument.

Scott, Bancroft, Martin & MacLesh,
Solicitors for Appellee, Trustees of Rush Medical College.

Frank H. Scott,
Horace H. Martin,
Counsel for said Appellee.

IN THE SUPREME COURT OF ILLINOIS,
February Term, 1924.

No. 15904.

Trustees of Rush Medical College,
Complainant Below and Appellee,

vs.

The University of Chicago,
Defendant Below and Appellee,

and

Edward J. Bruinage, as Attorney General of the State of Illinois,
Defendant Below and Appellant.

Appeal from Circuit Court, Cook County.

BRIEF ON BEHALF OF THE UNIVERSITY OF CHICAGO, APPELLEE.

I.

THE QUESTION OF THE UNIVERSITY'S POWER TO ENGAGE IN MEDICAL EDUCATION.

Among the errors assigned by appellant is one which questions the charter power of The University of Chicago to engage in the work of medical and surgical education. No argument is submitted in appellant's brief in support of this assignment, nor is it even mentioned as a ground of complaint of the Circuit Court's decree. Under the settled practice of the court, the point, even if it had any foundation, would be waived,
and we are relieved from the necessity of noticing it at all.

But notwithstanding this well established rule—a rule essential to a fair hearing in any reviewing court—and although we are inclined to think that the assignment is a mere inadvertence, and that the failure of the Attorney General to argue it indicates his recognition of the fact that the point is not well taken, we deem it our duty to refer to it. The question is one which, quite aside from anything involved in this case, is of fundamental importance to the University, both in connection with what it has done, is now doing, and is planning to do in enlarging the scope of its public usefulness in this branch of education.

That a general charter creating a university and granting it even in general terms, power to give instruction in all branches of learning, including elementary schools, all the higher fields of learning and all branches and departments of technical training, could not be construed as excluding a medical department is, we submit, a clear proposition. No narrow rule of technical construction could be applied to limit and restrict the field of usefulness of such an institution in the public service. But here we are not called upon to construe, but only to read that which is written, and written for the purpose of eliminating doubt. For here the charter of the University in express terms, and eo nomine, includes the power to establish and maintain departments, inter alia, "separate departments for literature, law, medicine, music, technology, the various branches of science, both abstract and applied, and all other branches of professional or technical education which may properly be included within the purposes of a university." (Abst., 19.)

The powers thus broadly granted have been actually exercised by the University for many years in the development, extension and perfection of medical education. To this end it has devoted all the means which the best standards of increasing enlightenment, the power of accumulated funds devoted to this purpose, and the enlistment of the services of the best trained minds could render effective. It is a matter of common knowledge, proved and found in this case as a fact, that medicine, both in practice and in teaching, is no longer one of drugs, or anatomy. Underlying it and interlocking with it are the practical sciences of chemistry, biology and the other applied sciences which are embraced within the various departments of a great university, which are included within the charter of this university, and which it is actually maintaining. The co-ordinated use of all these departments and branches of research and the training and knowledge which results from research, is, in a practical sense, essential to modern medical education.

The University has received, and under its charter is actually holding and using, millions in money and property, given by generous donors for the specific purpose of medical education. The trust for the development of medical education which both its charter and these gifts impose has been carried out with such far-reaching effectiveness that it deservedly holds a position of great prominence in the medical world. A challenge of its power, and by the State which granted the power, both to continue and to enlarge the means of its effective continuance in this field of public usefulness, certainly could not be sustained.
II.

THE GENERAL QUESTIONS INVOLVED IN THE DEGREE OF THE
CHANCELLOR APPROVING THE PROPOSED CONTRACT BETWEEN RUSH MEDICAL COLLEGE AND THE UNIVERSITY.

We have nothing to add either by way of argument, citation of authorities, or comment upon those cited by the Attorney General, to the brief of counsel for Rush Medical College. But a few observations upon the general principles which furnish the guiding rule for the action to be taken both by such corporations and by the State in a situation like this cannot be out of place.

The situation in which Rush Medical College finds itself is one which presents both the question with which its trustees were confronted, the correctness and wisdom of their action with reference to it, and of the Chancellor's decision which gives the State's approval to that action. The question and the action are each practical in the highest and best sense.

The College, after a long and honorable career of great usefulness has because of changed conditions reached a point where that career, and the further accomplishment of its corporate purposes is practically certain to end unless something is done. Its physical property and facilities for medical education according to the reasonable requirements of modern standards are utterly inadequate. Its buildings and equipment are out of date and rapidly declining both in value and usefulness. It has no funds for the repairs or replacement which are essential; it has no endowment to take care of the expenses of effective operation, to say nothing of the enlargement of its equipment and facilities for medical education. Without such enlargement, the end of its career, the termination of its usefulness for the public good is in plain sight. A charitable corporation in the largest sense, it has really itself become an object of charity, in the sense that it cannot continue unless persons charitably disposed and willing to aid this particular institution, give to it the millions necessary for its purposes. This is the merest and barest chance, and the chances are against their doing so; for donors prefer to help growing rather than decadent institutions. If it should cease operations, either now or in a few years, what is to be done with its property which is now devoted to a beneficial public use? It has no stockholders among whom it, or its proceeds, could be distributed. To attempt to ascertain and return it to the donors who from time to time have contributed to its funds, would be impracticable and contrary to approved precedent. It does not escheat to the State. But any of these methods of disposition would involve the destruction of the enterprise, the termination of its usefulness in the public good.

The alternative is to turn it over to a similar corporation under a contract which assures the continuance of the use of the property in accordance with the purposes of the charter of Rush Medical College, so that the fulfillment of the charitable purpose will be accomplished, and with a greatly increased measure of useful efficiency for the public good. To do this is not to divert the property from the charitable use and trust which the charter creates. It is to do exactly the contrary; and the new holder of the property under the contract thus becomes the effective means by which the college continues, and assures the continuance of its corporate and public purpose and trust.
The State is interested in the accomplishment of this purpose, in this continuation of the devotion of the property to charitable uses. And as the Attorney General, as the representative of the State in such matters, has an interest and a standing giving him the right to a voice in the matter, it is proper, and in accord with approved precedents, that the matter be submitted to a chancellor, so that the Attorney General may be heard, and so that the State through its judicial department may pass upon, and give its approval to the plan. This is the theory and the foundation of equity jurisdiction in such matters.

The entire matter has been heard by a chancellor who has given his approval to the proposed contract which will preserve this charity from destruction. The facts clearly show both the necessity of action, and the propriety of his decree.

Respectfully submitted,

Tenney, Harding, Sherman & Rogers,
Phillips, Mack & O’Bryan,
Solicitors for the University of Chicago.

Horace Kent Tenney,
Bernard Flexner,
Robert T. Mack,
Of Counsel.
No. 15904

IN THE
Supreme Court of Illinois.

February Term, A. D. 1924.

TRUSTEES OF RUSH MEDICAL COLLEGE,
Complainant below and Appellees,

ex.

THE UNIVERSITY OF CHICAGO,
Defendant below and Appellees,

and

EDWARD J. BRUNDALE, as Attorney-General of the State of Illinois,
Defendant below and Appellant.

Appeal from Circuit Court, Cook County.

Hon.
Ira Rynearson,
Judge, Presiding.

STATEMENT, BRIEF AND ARGUMENT FOR APPELLANT.

Edward J. Brundage,
Attorney General of the State of Illinois,

George E. Dierssen,
Assistant Attorney General of the State of Illinois,

Solicitors for Appellant.
IN THE
Supreme Court of Illinois.

February Term, A. D. 1924.

TRUSTEES OF RUSH MEDICAL
College,
Complainant below and Appellee,

v.
THE UNIVERSITY OF CHICAGO,
Defendant below and Appellant,
and
EDWARD J. BRUNDAGE, as Attorney-
General of the State of Illinois,
Defendant below and Appellant.

STATEMENT OF FACTS.

The bill in chancery in this case was filed by the
Trustees of Rush Medical College, an Illinois corpora-
tion, against The University of Chicago, also an Illinois
corporation, and Edward J. Brundage, as Attorney-
General of the State of Illinois.

The bill prayed that appellee, Trustees of Rush Med-
icinal College, might obtain the advice, instructions, find-
ings and directions of the court in regard to the question
as to whether a certain proposed contract, a copy of
which was attached to the bill as "Exhibit 3" (Abst.
22), between it and appellee, The University of Chi-

cago, was a contract into which it, and The University
of Chicago had the power, under the law and under their respective charters, to enter, and as to whether or not the provisions of said contract, or any of them, were open to any legal objection, and as to the powers and duties of said appellee, Trustees of Rush Medical College, in the premises, and that in case the proposed contract was found by the court to be a contract into which said appellees had power to enter and that none of the provisions of the same were open to any legal objections, and the court authorized the proposed contract be entered into, then that the contract might be carried out under the supervision, order and direction of the court and the consummation of the same approved by the court, and also prayed for other, further or different relief in the premises.

The bill alleged that the complainant was organized under a special Act of the Legislature of the State of Illinois, approved March 2, 1837, entitled "An Act to incorporate the Rush Medical College," and a copy of that Act was attached to the bill as Exhibit 1. (Abst. 12.) By this Act, certain persons therein named were created a corporation by the name of the "Trustees of the Rush Medical College," with perpetual succession and provision was made that the College should be located in or near Chicago in Cook County, and provided that the number of the Trustees should not exceed seventeen (17), exclusive of the Governor and Lieutenant Governor of Illinois, the Speaker of the House of Representatives and the President of the College, all of whom it was provided should be ex-officio members of the Board of Trustees.

Section 2 of the Act of March 2, 1837, defined the object of the corporation as follows:

"Section 2. The object of incorporation shall be to promote the general interests of medical educa-

By Section 3 of the Act, it was provided that the corporate powers thereby vested should be such only as are essential or useful in the attainment of such objects and such as are usually conferred on similar bodies corporate.

By Section 4 of said Act, the Trustees were given authority to prescribe and regulate the course of studies to be pursued, to fix the rate of tuition, lecture fees and other college expenses; to appoint and remove instructors, etc.; to erect all necessary and suitable buildings, to purchase books and apparatus and to procure the necessary and suitable means of instruction in all the different departments of medicine and surgery, and to make rules for the general management of the affairs of the College.

Section 5 provided for the removal of Trustees and for filling the vacancies among the Trustees, and also provided that the majority of the Trustees for the time being should constitute a quorum to transact business.

Section 6 of said Act provided as follows:

"Section 6. The trustees shall faithfully apply all funds by them collected, in erecting suitable buildings; in supporting the necessary instructors, professors, officers and agents; and procuring books, philosophic and chemical apparatus, and specimens in natural history, mineralogy, geology, and botany, and such other means as may be necessary or useful for teaching thoroughly the different branches of medicine and surgery; Provided, That in case any donation, devise or bequest, shall be made for particular purposes, according with the object of the institution, and the trustees shall accept the same, every such donation, devise or bequest, shall be applied in conformity with the ex-