committee and presented at the same meeting, the subscrip-

tion list attached to the following (printed) form:

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

Then follows the form of subscription for the purchase of a telescope, as above set forth. (Abstract, 150–152.)

At a meeting of the trustees of the university July 6, 1866, on motion of Mr. Scammon, the following was adopted:

"Resolved, that the rooms immediately adjoining the Dearborn tower and communicating therewith, be per-
manently set apart for the use of the Chicago Astronomical Society and the professors of astronomy in the institution; and that the same be given in charge of the said society." (Abstract, 157.)

The subscriptions for the telescope appear to have been paid to J. Y. Scammon as president of the astronomical society, and Mr. Scammon, in addition to his contribution of $30,000 to the university for building the tower, individually paid the salary of the professor of astronomy, with his house rent and the ordinary expenses of running the observatory down to about the time of the great fire of 1871. About $15,000 or $20,000 was thus paid by Mr. Scammon and other gentlemen, in addition to the amounts contributed for the erection of the observatory and purchase of the telescope.

The testimony does not fully disclose when the observatory was completed and in operation, but it would appear to have been about 1865, or early in 1866. Mr. Scammon states, in his testimony, that since its completion the astronomical society have been in continuous possession of the observatory down to the present time, and that no one has ever interfered with such possession. It does not appear that this possession was in any way adverse to the possession of the university, or that there were any outward indications that any persons other than the properly constituted authorities of the university were in possession of the entire premises, including the observatory tower and the building in which is located the meridian circle. $5,000 was contributed by Walter L. Gurnee for the purchase of the meridian circle about the year 1865, and a small piece of ground was set apart by the trustees of the university on which the meridian circle was erected, in the immediate vicinity of the university buildings. The insurance upon the telescope and other fixtures connected with the observatory has always been paid by the astronomical society, and the expenses of that society have been mostly, but not entirely, paid by it, distinct from the university. No formal donation was ever made of the telescope or other appliances of the tower to the university, except as they were the proceeds of subscriptions made as heretofore stated.

On the 15th of February, 1867, the Chicago Astronomical Society, the complainant in this cause, was incor-
porated by an act of the general assembly of Illinois, which is set forth in full at pages 141, 142 and 143 of the abstract. Of the twelve incorporators named in the charter all but one were officers or trustees of the university. Section 3 of this act provides as follows: "All the moneys, property and effects of said society, except the land of the University of Chicago upon which the observatory tower is erected, shall be held and managed by the directors of said society." No conveyance of its property was ever made by the
voluntary association, known as the "Chicago Astronomical Society," to the corporation of the same name.

The officers and directors of the voluntary association, known as the Chicago Astronomical Society, from its organization in 1862, were continued as officers and directors of the corporation formed in 1867 and down to the time of its re-organization after the great fire in 1874. The following is a list of such officers and directors as officially published by the society in 1874: President, J. Y. Scammon; vice-presidents, James H. Woodworth and William H. Wells; secretary, Thomas Hoyne; treasurer, D. J. Ely; directors, J. Y. Scammon, James H. Woodworth, Ezra B. McCagg, Thomas B. Bryan, Thomas Hoyne, D. J. Ely, A. B. Mixer and William H. Wells. J. C. Burroughs, the original founder of the university and its president for seventeen years, has always been a life director of the astronomical society by virtue of a subscription of $500. J. Y. Scammon, T. B. Bryan, W. B. Ogden, C. N. Holden, D. J. Ely, J. K. Pollard, E. B. McCagg, Thomas Hoyne and Henry Farnum were also life directors of the astronomical society down to and including the execution of the mortgage of $150,000 of February 8, 1876. With the exception of William H. Wells, all the gentlemen above named as officers, directors and life directors of the astronomical society have been officers, directors, members of the executive committee, or regents of the university during various periods, most of them covering the entire history of all the mortgages executed by the university, as hereinafter stated. As such officers, directors and members of the executive committee of the university, many of them consented to and joined in the execution of each of the various mortgages by the university to the insurance company hereinafter referred to, and the mortgage of July 6, 1869, for $35,000, was executed by J. Y. Scammon, as vice-president of the university.

From the establishment of the observatory, and beginning with the catalogue of 1865-6, the university published in its annual catalogues the following announcement: "Dearborn observatory forms the astronomical "department of the university." Then followed a general statement of the course of instruction in astronomy, and other details connected therewith. Several thousand of these official catalogues were published by the university annually, and distributed as advertisements throughout the country. Beginning also with the catalogue of 1865-6 and annually thereafter a professor of astronomy was announced in the catalogues as "professor of astronomy and director of Dearborn observatory of Chicago." Beginning with the catalogue of 1867-8 separate lists of astronomical students of the university were published in that and subsequent catalogues.

In 1861 the insurance company purchased twenty-five thousand dollars ($25,000) of the bonds of the university, issued September 8, 1858, and secured by a deed of trust of that date upon the university grounds in controversy. These bonds were paid by the university in 1861, by executing a new note to the insurance company, secured by a deed of trust upon the university grounds for the sum of twenty-five thousand dollars ($25,000), dated September 1, 1861. October 20, 1864, a further loan of fifteen thousand dollars ($15,000) was made by the company to the university, secured by note and deed of trust of the university, of that date, upon the same premises. These loans being unpaid, the amount of the
principal and interest, with further cash advances, was merged in a new loan September 1, 1866, secured by the note and deed of trust of the university of that date for the sum of seventy-five thousand dollars ($75,000) July 6, 1869, a further loan of twenty-five thousand dollars ($25,000) was made by the company to the university, secured by the note and deed of trust of the university, of that date, conveying the same premises. These loans being unpaid, the amount of principal and interest and further cash advances were merged in a new loan February 8, 1876, for the sum of one hundred and fifty thousand dollars ($150,000), secured by the note and deed of trust of the university of that date upon the premises in controversy, and the securities of 1866 and 1869 were retained as collateral. This deed of trust of February 8, 1876, securing the one hundred and fifty thousand dollar loan, is sought to be set aside by the bill in this cause, as a cloud upon the title of the astronomical society.

No actual notice was ever had by the insurance company of the rights claimed by the astronomical society, until long after the execution of the deed of trust of February 8, 1876. It is contended, however, by complainant that the insurance company was chargeable with constructive notice of complainant's rights, by virtue of its possession of the observatory tower, as above set forth, as well as by reason of the actual knowledge of Levi D. Boone, for many years a trustee of the university, and for some purposes the agent of the insurance company in Chicago. The history of Boone's agency is set forth at pages 222 to 234 of the abstract, from which it appears that on May 4, 1859, he was appointed local agent of the company for Chicago and vicinity for the purpose of soliciting life insurance, and was also appointed medical examiner and agent to accept service of process against the company, as required by a statute of Illinois. June 9, 1864, Boone's functions were greatly enlarged by a power of attorney then given him by the company, in which he was authorized to transact much of the business of the company as fully as it itself could do, but no power was conferred to make loans. He acted under this power until after February 8, 1876. The loan of February 8, 1876, for $150,000 was actually negotiated on the part of the university by a sub-committee of the board of trustees, and on the part of the insurance company by Edward H. Seccomb, then superintendent of loans of the company, as appears by the testimony at pages 85 to 87 of the abstract, and pages 284 to 287. A formal application for the loan was also made by Boone as chairman of the executive committee of the university, acting by direction of that committee, as appears by his letter of January 4, 1876, set forth at pages 278 and 279 of the abstract. No notice was ever given by Boone to the insurance company of the rights claimed by the astronomical society, but in connection with the loans of 1864 and 1876 Boone gave to the company opinions of title, certifying that the university had a good title to the premises.

No steps were ever taken by the astronomical society to assert its rights in the premises, until the filing of the bill in this case, September 27, 1881, which was after proceedings had been instituted by the insurance company to foreclose the deed of trust of February 8, 1876. The first intimation which the insurance company ever received of the rights asserted by the astronomical society was by the filing of the bill in this cause.
BRIEF AND ARGUMENT.

I.

THE PROPERTY RIGHTS, IF ANY, OF THE ORIGINAL CHICAGO ASTRONOMICAL SOCIETY WERE NEVER CONVEYED TO THE CORPORATION OF THAT NAME, THE COMPLAINANT IN THIS CAUSE.

A fatal objection to the relief sought by the bill, and one which lies at the very threshold of the case is, that whatever rights were acquired by the Chicago Astronomical Society in the observatory tower were acquired by the voluntary association of that name, and were never conveyed to the corporation known as the Chicago Astronomical Society, the complainant in this cause. The bill is filed by the corporation known as the Chicago Astronomical Society, which was incorporated by an act of the general assembly of Illinois, approved February 19, 1867. It is not pretended that the rights asserted by the bill were acquired by this corporation after that date. Whatever property rights, therefore, were acquired in connection with the tower and observatory, were acquired by the voluntary association, and were held by its members as tenants in common. There is no averment in the bill, and no proof in the record, that any conveyance was ever made of these property rights to the present corporation, the Chicago Astronomical Society. It follows, therefore, that, even if the equities of the voluntary association, organized in November, 1862, under the name of the Chicago Astronomical Society, were proven as alleged in the bill, and if those rights were not lost by the acquiescence and laches of the members of that association, as hereafter shown, the right of action, if any, to set aside the present mortgage would be in the members of that association, holding its property as tenants in common, and not in the present complainant, the incorporated society of the same name.

The rule upon this point is well stated in Angell and Ames on Corporations, section 167, as follows: "But the mere incorporation of tenants in common, for a particular intent, for example, for manufacturing purposes, to enable them to carry on more conveniently a common business, does not vest in the corporation a title to lands which had been previously used by the tenants for the same purpose. The title must be conveyed by proper deeds from the individuals to the corporation."

In Leffingwell v. Elliott, 8 Pick., 455, where the same question was involved, the court say, page 456:

"The mere incorporation of tenants in common to enable them to carry on more conveniently a common object, does not vest in the corporation a title to the land which had been previously used by the individuals for the same purpose. The title must be conveyed by proper deeds from the individuals to the corporation."

This case was approved and followed in Holland v. Craft, 3 Gray, 162, and in Manahan v. Varunu, 11 Gray, 495.

It follows, therefore, that the complainant in this cause, never having received any transfer or assignment from the members of the voluntary association of the same
name of their property rights, has no possible interest in or title to the reality in controversy upon which its bill can be maintained.

II.

THE ASTRONOMICAL SOCIETY IS A PART OF THE UNIVERSITY ITSELF, AND IS NOT A DISTINCT CORPORATE ENTITY IN THE SENSE IN WHICH IT CAN ASSERT ANY TITLE TO REALTY INDEPENDENT OF THE UNIVERSITY, OR ADVERSE TO THE TITLE OF THE UNIVERSITY AND ITS GRANTEES.

The estate in perpetuity, asserted by the astronomical society, rests upon the theory that that society is a corporate body wholly distinct from the university, and, as such independent corporate entity, capable of acquiring and asserting a title to reality hostile to that of the university and its grantees. That this theory rests upon a total misconception of the history of the astronomical society and its functions and powers is apparent from the foregoing statement of facts. These facts disclose that, so far from being a distinct, independent or hostile organization, the astronomical society, from its very inception, was treated by its founders and promoters as a mere adjunct of the university, bearing toward it no other or different relation than that of one department in the general scheme of education for which the university was founded. The general plan and scope of the enterprise were formulated by the committee appointed at the meeting of citizens in Bryan Hall, in November, 1862, and appear in the form of subscription and accompanying resolutions formulated by that committee, and set forth at pages 299 to 301 of the abstract. The resolutions thus embodied in the form of subscription upon which the donations were made, provide "That the board of trustees of the University of Chicago be requested by this committee to found an observatory, to constitute a part of said university, the property of said observatory being vested as the other property of the university, in the board of trustees, the directors of said university to be chosen by them in accordance with article nine (9) of our plans. A public spirited citizen of Chicago having nobly volunteered to donate to the University of Chicago the amount of money requisite to enable it to erect the tower, provided a sufficient sum can be obtained from the community to secure the purchase of an astronomical telescope, to be placed in an observatory on said tower, we, the undersigned, agree to pay the sums set opposite our names respectively in the subjoined list, according to the above plan, to be paid to the following named gentlemen, constituting the executive committee, or to their order." Then follow the names of the executive committee, as given above. The committee charged with the undertaking thus announced to the public the plan upon which the association should be founded, and that plan plainly contemplated its organization as an integral part of the university, the title to all property to be held by the university in precisely the same manner as its other property. Upon these conditions the donations were made and the work proceeded. Three months later, and as if to give more emphatic and formal declaration of their purpose that the observatory should be a mere adjunct to or department of the university, the promoters of the enterprise applied to the legislature for an amendment to the charter of the university, which was granted by the act of February 13,
1863. This act empowers the university to "establish
an astronomical observatory, to receive donations and
bequests of money and property for the founding and
maintenance of the same; to provide for the manage-
mest of the said observatory, either directly by the
trustees of the said university, or by a board of directors
to be appointed by the trustees of the said university, to
whom the said trustees may delegate the necessary
powers." The plan of organization thus formulated by
the executive committee appointed by the Bryan Hall
meeting, and the amendment to the charter of the uni-
versity are so nearly contemporaneous that they may be
considered as one and the same transaction, and all sub-
scriptions made after the amendment to the charter were,
of course, made with constructive notice of its terms.

June 30, 1863, Mr. Scammon himself, from the ob-
servatory committee of the trustees of the university,
recommended to the annual meeting of the trustees then
held, "the importance of taking immediate measures for the
erection of that part of the university building to which
the tower is to be attached. He also read to the board a
resolution adopted by the observatory committee, request-
ing the board to found an observatory in connection with
the university, and to appoint directors in accordance with
the provision made on that subject in the plans of the
committee; the property of the said observatory to be
vested as other property of the university."

Messrs. Scammon, McCagg and Hoyne were there-
upon appointed a committee to report to the board the
proper course to be pursued. At an adjourned meeting
of the board of trustees held July 14, 1863, Mr. Scam-
mon, from this committee, reported the following resolu-
tions, which were unanimously adopted:

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

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

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

At a meeting of the trustees held in 1865, Mr. Scam-
mon presented a report of the astronomical society,
showing the amount of subscriptions, and resolutions
were passed expressing the thanks of the trustees for the
efforts of Mr. Scammon and the society, "which have
secured the university, in connection with the main
building, a magnificent observing tower, and a telescope
to be placed therein." At the same meeting of the
trustees, Mr. Scammon being present, the executive
committee, through the financial secretary, presented a
report of the assets and liabilities of the university, in
which under assets appears: "Dearborn Observatory, $25,000; telescope, $12,000; meridian circle, $5,000." No protest or objection was made by Mr. Scammon to this enumeration of assets, and, indeed, none could well be made, since it was simply in furtherance of the general scheme for the organization of the astronomical society, as a mere adjunct to, and part of, the university proper.

Each successive step in the history of the society, and in the purchase of the telescope, and construction of the tower, as thus narrated, demonstrates the absolute purpose and intention of all parties to the enterprise, that the tower, telescope, and all appliances of the observatory were to be, and forever remain the absolute property of the university for all purposes, and to be held and disposed of in like manner as its other property. Every meeting held, every donation made, every step taken in the enterprise, from its inception to its consummation, gives additional emphasis to this purpose, a purpose which was never questioned or challenged until long after the execution of the deed of trust of 1876 in controversy. Had it been the studied object of Mr. Scammon, and of his associates through all these years to embody in the strongest terms of which the language is susceptible, their intention to create a mere adjunct of the university, and to absolutely and forever confer upon the university all property rights pertaining thereto, legal ingenuity could scarcely have devised language more appropriate to express that purpose. Not in one act or document alone, but in every recorded transaction from the beginning of the enterprise at Bryan Hall, in November, 1862, to the end, appears the same clear, consistent and unwavering purpose of conferring upon the university the absolute title to and dominion over all property pertaining to the astronomical society.

If further demonstration of this purpose were necessary, it would be found in the fact that, with the exception of William H. Wells, all the officers and elective directors of the astronomical society and many of its life directors, were likewise officers, directors, members of the executive committee, or regents of the university. Mr. Scammon, the chief promoter of the astronomical society, and its president from the beginning until about the time of the filing of the bill of complaint in this cause, was a member of the board of regents of the university as early as 1860, and has been officially connected with it as regent, trustee or vice-president of the board of trustees continuously from that time to the present. Mr. Hoyne, one of the promoters of the astronomical society, an original subscriber and its vice-president for many years, and who purchased the telescope for the university, became a trustee of the university in 1858, and continued to act as such trustee, and for much of the time as vice-president of the board, and for a portion of the time as president, down to the time of his lamented death in July, 1883. Dr. Burroughs, also one of the founders of the astronomical society, and a life director from its organization to the present time, was also the founder of the university and one of its trustees, and its president for nearly twenty years. The other officers and directors of the astronomical society, with the exception of Mr. Wells, all served for many years in various official capacities in connection with the university, as narrated in the testimony of Dr. Burroughs, at pages 295 to 298 of the abstract.

The fact that the official management of the affairs of
the astronomical society was thus entrusted to the officers of the university is something more than accidental. It serves to demonstrate, if the recorded transactions of the two bodies as above enumerated left further demonstration necessary, the clearly defined policy of all parties from the beginning, that no distinct organization was contemplated, and no distinct property rights were to be acquired, but that the functions of the university were simply enlarged to include an astronomical department, the university itself retaining absolute dominion over all property pertaining to that department, in like manner as it held and controlled all other property. So far, therefore, from being a distinct organization invested with property rights other than those of the university, the astronomical society was, and is, and continues to be, a mere department of the university, a wheel within a wheel, founded, controlled and managed from the first by the officers of the parent organization, and incapable of asserting any title hostile to that of the university or its grantees.

Nor does the fact that by the resolutions of the trustees of the university above recited, the control and management of the observatory were relegated to the directors of the astronomical society, strengthen the claim of an independent and adverse title now asserted by that society, since, underlying this action of the trustees and contemporaneous with it, is the fundamental fact, apparent through all the recorded action of both bodies, that all property rights were vested absolutely in the trustees of the university. By entrusting the management of the tower to the directors of the astronomical society, therefore, the trustees of the university conferred no other or greater right upon that society than might have been conferred by entrusting the management of any other property or appliances of the university to a subordinate board or faculty. If, for example, a medical department had been established in connection with, and as a part of, the university, in like manner as the astronomical department was thus created, and if the trustees had seen fit to delegate to the faculty of such medical department, or to a board of directors entrusted with the management of its affairs, the control of the tangible property pertaining to such department, it would be idle to assert that any independent title was thereby acquired by such faculty or directors. Yet this is precisely what was done by the trustees in remitting to the directors of the astronomical society the control and management of the observatory.

It is important, also, to observe that the directors of the astronomical society, to whom was thus entrusted the management of the observatory, derived their tenure of office from the trustees of the university itself. The plan of organization accompanying the form of subscription adopted by the Bryan Hall committee, after declaring that the property of the observatory should be vested as the other property of the university in a board of trustees, contains the following significant clause: "The directors "of said observatory to be chosen by them (the trustees "of the university), in accordance with article nine (g) of "our plans." Article 9 provides, that the directors of the observatory shall be chosen from contributors of $100 and upwards. The trustees of the university, therefore, under the original scheme for the organization of the astronomical society were empowered to select the directors of the observatory, the sole restriction upon this power being that only contributors of $100 and upwards were eligible to such directorship. The power of the trustees
of the university to thus designate the directors of the observatory was modified at a meeting of the trustees held July 14, 1863, by a resolution of the committee of which Mr. Scammon himself was chairman, which resolution, after again declaring the oft-repeated story that the observatory should constitute a part of the university, provides that the directors of the observatory "shall be nominated by the members of the said association and confirmed by the board of trustees of the university, saving to all persons who have contributed $500 the rights of life director without election." So far, therefore, from entrusting the management of the observatory tower to a distinct or independent body, susceptible of acquiring a title adverse to the university, the trustees committed such management to a body of their own selection and subject to their own control.

That such management by the directors of the astronomical society of property, the title to which was irrevocably vested in the university, could ever ripen into an adverse title, is a proposition as novel in law as in ethics. As well might a tenant assert, by virtue of his tenancy, a title adverse to that of his landlord, or an agent appointed to manage real estate and to receive its rents, assert, by virtue of such agency, a title hostile to that of his principal. That such adverse title was never dreamed of either by the promoters of the astronomical society or by the trustees of the university, is apparent from the history of the society as above set forth. That the assertion of such title was a mere afterthought of the representatives of that society is equally apparent from the fact that they acquiesced and participated in the making of these various mortgages, and took no steps to assert their rights until twenty years after the execution of the first mortgage to the insurance company, and then only when it had become apparent that the company was about to obtain its long deferred rights by a decree of foreclosure and sale of the property.

We therefore submit with confidence, that the astronomical society is, at the most, only a constituent part or department of the university; that all property acquired in connection with, or in furtherance of, the plan of this department, is absolutely vested in the university, and subject to alienation by its trustees; and that, not only has the astronomical society no title to the really in controversy, but it is absolutely incapable of acquiring such title, as against the university and its grantees, for the reasons above set forth.

III.

THE INSURANCE COMPANY OCCUPIES THE POSITION OF A bona fide purchaser for value, without notice of THE PRETENDED EQUITIES OF THE ASTRONOMICAL SOCIETY.

Let it be conceded for the purposes of the argument that the astronomical society was a distinct corporate body, wholly independent of the university, capable of acquiring a title adverse to that of the university and its grantees, and that it did acquire such a title in the property upon which the observatory tower and meridian circle stand, by virtue of the various resolutions and action of the two bodies above set forth, and still complainant must fail of the relief sought in this action, since the insurance company occupies the position of a bona fide purchaser for value, without notice of the sup-
posed rights of the astronomical society. It is an undisputed fact that the one hundred and fifty thousand dollar mortgage of February 8, 1876, which the bill seeks to obliterate, represents an indebtedness which originated in a loan of twenty-five thousand dollars made by the university upon an issue of its bonds in September, 1858, which loan was renewed, extended and enlarged, including unpaid principal and interest and additional advances in 1861, 1864, 1866 and 1869, the whole indebtedness with further advances being finally merged in the present mortgage. A very large portion of the indebtedness secured by this mortgage had thus accrued long before the organization of the astronomical society, and before any of its property rights in the premises could possibly have attached. As to this portion of the indebtedness, the astronomical society, even if otherwise entitled to the relief sought, could only obtain such relief upon payment of the principal and accrued interest, and the bill makes no tender of such payment. As to the residue of the indebtedness secured by the mortgage the insurance company made the loan in good faith, and without notice of the rights claimed by complainant. It is also an undisputed fact in the case, that so far from Boone ever notifying the company of these supposed rights, he repeatedly gave opinions certifying the title to be good in the university. Indeed, it is not pretended on the part of complainant that any actual notice of the title asserted by the bill was ever brought home to the insurance company prior to February 8, 1876, but it is asserted that the company is chargeable with constructive notice of the rights of the astronomical society. This constructive notice, it is contended, arises out of two facts: 1, the agency of Boone. 2, the possession by the astronomical society of the tower. We will discuss them in their order.

1. The Agency of Boone.

Boone's agency, as already stated, began in 1859, when he was appointed local agent in Chicago to solicit life insurance for the company, and was also appointed medical examiner and agent of the company in Chicago to accept service of legal process under the Illinois statute requiring such appointment. He had no other functions or powers until June 9, 1864, when he received from the company a power of attorney, giving him extensive powers as to the foreclosure and satisfaction of mortgages, bringing of actions, compromising the same, and various other and enlarged powers pertaining thereto, but not including the power of loaning money upon mortgages or otherwise. This power was never conferred upon him by the company, and he had no authority to make the loan of $150,000 in controversy to the university. Indeed, he never assumed such authority, and it appears in evidence that this loan was actually consummated by a sub-committee of the executive committee of the university on the one hand, and by Mr. Seccomb, superintendent of loans of the insurance company, upon the other hand. Dr. Boone's only agency in the proposal or acceptance of the loan was as chairman of the executive committee of the university in transmitting the request for the loan by direction of that committee to the insurance company, and recommending its favorable consideration. In so doing, he was, of course, solely the agent of the university.

It is true that after the loan had been accepted by Mr. Seccomb and the insurance company, Dr. Boone acted for both parties in the exchange of papers and delivery of the money then advanced, as he had acted in previous loans between the same parties. But it will hardly be
pretended that such action constituted him the agent of the company for the purpose of making this or the other loans. If, therefore, Boone was not the agent of the insurance company for the purpose of making this particular loan, the company is not chargeable with constructive notice of latent equities because of knowledge of such equities which Boone may have possessed at the time. In other words, to charge the insurance company with notice of the rights of the astronomical society, because of Boone’s knowledge of such rights, it must be shown that such knowledge was acquired by Boone in that particular transaction, and that the scope of his agency was sufficiently broad to include that transaction. Boone’s knowledge, therefore, of the rights claimed by the astronomical society must have been acquired in connection with the execution of the mortgage of February 8, 1876, and his agency of the company must have included within its scope the making of that loan, so that he stood for and represented the company in that transaction, before the company can be charged with such notice, under the well settled doctrine of the courts as to constructive notice. Either of these elements, as to the time of notice acquired by Boone, or as to the scope of his agency being found wanting, the doctrine of constructive notice has no application. The scope of Boone’s agency, as above shown, did not include the making of loans or taking of mortgages, thus eliminating one of the elements necessary to the application of the doctrine of constructive notice. It is also a conceded fact in the case that, whatever notice Boone possessed of the rights of the astronomical society was acquired by him, not as agent of the insurance company, but as a trustee of the university, and acquired many years prior to the mortgage of 1876. The other and equally indispensable condition to the application of the rule of constructive notice is thus wanting. The law upon this branch of the case has been so fully discussed, and the decisions have been so fully cited in our argument in the foreclosure case against the university, submitted with this, that it is unnecessary to repeat that branch of the argument here. The court is requested to consider that portion of the argument in the foreclosure case in connection with, and as a part of, the present argument, upon this branch of the case.

2. The possession by the Astronomical Society of the Tower.

The doctrine of constructive notice by virtue of the alleged possession of the tower by complainant is invoked for the purpose of charging the insurance company with knowledge of complainant’s rights. The contention upon the part of complainant upon this branch of the case rests upon the assumption, which is unsupported by the testimony, that from the organization of the society, to the execution of the mortgage of 1876 it was in the open, notorious and exclusive possession of the property upon which its appliances rest, and that such possession was so open and notorious as to be apparent to the public as a separate possession, distinct from, and hostile to, that of the university. It is true that Mr. Scammon states in his testimony that the astronomical society has been in exclusive possession of the tower without interference, but it nowhere appears that such possession was in any manner adverse to, or different from, the possession of the entire property of the university, or that there was any outward indication, from which a purchaser or gran-
tee under the university could be apprised of sufficient facts to put him upon inquiry.

The doctrine of constructive notice arising from the possession of real estate is so simple and well defined that we need do little more than suggest it to the court, with a few citations of authorities which seem apropos to the case at bar. The doctrine is based upon the supposition that the purchaser of real estate is presumed to exercise reasonable diligence in his purchase, and that if there be any outward indications of another title or possession than that of his vendor, it is his duty to pursue such indications to their source and satisfy himself by reasonable inquiry as to the actual state of the title. The courts proceed upon the theory in this class of cases that if the property which is the subject of the purchase is in the actual, notorious or adverse possession of a person other than the vendor, such possession being so distinct and unequivocal as to plainly apprise the purchaser of its existence, it then becomes his duty to make reasonable inquiries as to the source of such adverse title, and that if he fails to make such inquiries he is guilty of a constructive fraud if he completes the purchase in derogation of the rights of such adverse holder. To bring complainant's case within the application of this rule it must, therefore, be shown that there was at the time of the execution of the mortgage of 1876, or of the prior mortgages merged therein, such a conspicuous, exclusive or adverse possession upon the part of the astronomical society as to be plainly apparent to the insurance company and to make it the duty of the company to inquire into complainant's rights before accepting the mortgage. It is confidently submitted that no single element necessary to constitute such possession has been established in this cause.

The doctrine is stated by Mr. Wade, in his treatise upon the Law of Notice, sections 290, 291, as follows: "Another essential feature of the possession which is set up as notice to a subsequent purchaser is, that it must be exclusive, at least so far as such subsequent purchaser's grantor is concerned. * * * So the possession must be unequivocal and easily distinguished from that of the grantor or any one else. It is not enough where one has purchased adjoining woodland, that he repairs the fences, removes dilapidated buildings, clears off rubbish, and depastures his cattle upon the newly acquired land. These acts are too disconnected in their character to serve as notice of title. It would be improbable that a stranger by looking at the land before purchasing, would gain such a knowledge of these detached acts of ownership, as to put him upon inquiry as to why one who, so far as appeared by the record was a stranger to the title, should be exercising this control over the property."

Lessee of Billington v. Welsh, 5 Binney, 129, is an instructive case directly in point. In this case the doctrine of constructive notice was invoked for the protection of the defendant Welsh, who had bought by parol a corner of a tract of land occupied by one Turner, and had erected buildings upon the land, but without making any survey, or setting up any monuments to designate the boundary between the tracts, the buildings upon that portion reserved by the grantor, and those erected by the purchaser appearing to be substantially the same. The court held that this was not sufficient to charge a purchaser with notice.
TILGHMAN, C. J., says, page 132:

"The undisturbed possession of land has generally been
considered as legal notice, because the fact of possession
being notorious, it is sufficient to put the purchaser on
his guard, and to induce him to inquire into the title of
the possessor. But to entitle the bare possession to
such weight, it ought to be a clear, unequivocal pos-
session. Let us examine what kind of possession has
been proved in the present case. The defendant is the
brother-in-law of Daniel Turner, and lived at the time
of the sheriff's sale and for a considerable time before,
on one corner of Turner's tract. Turner had erected a
forge, grist mill, and saw mill, with all those small
buildings which are connected with works of that kind.
It is well known that in such cases the workmen
frequently occupy houses with small portions of land
annexed to them. And when a person throws his eye
over a forge and mills, and the adjacent buildings and
enclosures, it naturally occurs to him that they all be-
long to the proprietor of the works. The defendant has
been guilty of extraordinary negligence; for not only
has he omitted to survey and mark the bounds of his
claim, but he has given no decided evidence of boundary."

YEATES, J., says, page 135:

"At best the possession of the defendant was of a mixed
nature. His pretensions were not defined by marked
boundaries or an actual survey. If one inclining to pur-
chase, had previously viewed the premises, he would
have seen nothing but what usually occurs where forges,
grist, and saw mills are carried on, out houses and cabins
for the accommodation of colliers and other workmen.
Without such conveniences those manufactories could

"not be carried on. The defendant's holding under such
circumstances could not convey the same information,
"nor put a purchaser upon inquiry in the same manner,
"as an exclusive, unmixed possession, in common cases
"might reasonably seem to give."

The application of this doctrine to the case at bar is
too plain to require extended comment. In this case, as
in that, "If one inclining to purchase had previously
viewed the premises, he would have seen nothing but
what usually occurs." That is to say, he would have
seen ten acres of ground devoted to the uses of the uni-
versity, with appropriate buildings for such purposes, and,
connected with and forming a part of those buildings, an
observatory tower, used for astronomical purposes in con-
nection with the university, as a part of its general sys-
tem of instruction under the powers conferred upon it by
the legislature of the state. He would have seen no
evidences of possession, other than the general possession
by the university of all its property, with different rooms
and portions of the buildings set apart and appropriated to
different educational purposes, all of which were subor-
dinate and germane to the general purpose and scope of
the university, as a center of education and learning. The
possession of the astronomical society, therefore, as is
well said in the language of Mr. Justice YEATES, above
quoted, "could not convey the same information, nor put
a purchaser upon inquiry in the same manner as an ex-
cclusive, unmixed possession in common cases might
reasonably seem to give."

The same doctrine is affirmed in Nechan v. Williams,
48 Pa. St., 238, where part of an unimproved tract of
land was sold under articles of agreement which were
not recorded, the purchase money being paid, possession delivered, and a survey made of that portion sold, but no division fence was built, and nothing was done to separate the portion sold from the residue of the tract. The court held that such sale and possession could not be sustained against a subsequent purchaser at sheriff's sale of the whole tract, upon judgments against the original owner, without notice of the rights of the vendee under the unrecorded purchase. Mr. Justice Strong, delivering the opinion of the court, says, page 240: "It certainly is the law that the possession of land which is equivalent in effect to the notice of the rights in the possessor must be distinct and unequivocal. It must be occupancy, something more than successive and occasional entries on the land. * * * The authorities are equally clear that, to be effective as notice, possession must be distinct and unequivocal. It is even said in some of the cases that it must be actual and of such a nature as would suffice to constitute a daisession or adverse possession." After citing numerous authorities upon this point, the court further says: "This and many other cases show that the possession which affects the purchaser with notice must be clear, open, notorious and unequivocal, and that the possession or act done upon the land, which may lead to an inference of trespass as well as of title, is insufficient."

In Truesdale v. Ford, 37 Ill., 210, the case turned upon the question whether the piling of saw logs, lumber and other material in connection with a saw mill, upon adjacent premises, constituted such an adverse possession as to amount to constructive notice of title, and to put a purchaser of the premises upon inquiry. The court below instructed the jury that such acts, unaccompanied by other acts of ownership, were not such possession as would constitute notice to a bona fide purchaser, unless "such piling of wood or lumber should constitute in the estimation of the jury an open, forcible and exclusive possession of the lot, in the person piling such wood or lumber." This instruction was approved by the Supreme court.

Walker, C. J., delivering the opinion of the court, (page 213) says:

"Notice by possession of the premises, to be sufficient, must be of that open, visible character which from its nature is calculated to apprise the world that the property has been appropriated and is occupied, also who the occupant is or from which the occupant may be readily ascertained, and it must be such a use and occupancy as the property is adapted to; and such possession, if calculated to give notice of the fact, is all that the law requires. Whatever may be the character of the occupancy or improvement it must still be exclusive. If only used or enjoyed in common with others, or with the public in general, it could not be regarded as hostile to other persons claiming title or as being made under claim of title. It must be of such a character as in its nature is calculated to arrest the attention, and put any other person claiming title upon inquiry."

In Smith v. Heirs of Jackson, 76 Ill., 254, the court, while holding that actual possession of land by a tenant is constructive notice of the equities of his landlord, reaffirm the doctrine that such possession must combine the elements of openness, notoriety and exclusiveness. McAllister, J., delivering the opinion of the court, says, page 257: "We understand that, so far as regards the openess, notoriety and exclusiveness of the possession
"to operate as notice of the rights of the occupant, it
must be the same as required to constitute adverse pos-
session. But that it must wear all the characteristics of
an adverse possession in the sense expressed in the au-
thorities just cited cannot be the law."

Another rule or corollary of the doctrine of construc-
tive notice, equally well established by the decisions
of the courts with that already discussed, is the proposi-
tion that, although the possession which is asserted
against a bona fide purchaser combines the three nec-
essary elements of openness, notoriety and exclusiveness,
sufficient to put the purchaser upon inquiry, nevertheless,
if upon making reasonable inquiry he discovers such at-
tendant circumstances as to allay his suspicions and to
lead him to believe that no further inquiry is necessary,
he will be protected in his purchase. This doctrine is
clearly stated in Chadwick v. Clapp, 69 Ill., 119, where
it is held that, although circumstances were brought di-
rectly to the knowledge of the purchaser, sufficient to put
him upon inquiry, he might rebut the presumption of no-
tice by showing that upon making inquiry he discovered
such circumstances as to allay his suspicions. The court
say, page 125:

"Where circumstances are brought directly home to
the knowledge of the purchaser, which would have
been sufficient of themselves to put him on inquiry, and
thus amount to notice, he will be entitled to rebut the
presumption of notice which would otherwise arise, by
showing the existence of other and attendant circum-
stances of a nature to allay his suspicions and lead him
to suppose the inquiry was not necessary. Whatever
presumption of notice might be thought to arise from

"the circumstances in evidence, we would regard it as
having been sufficiently rebutted in the manner above
named."

And in Curtis v. Blair, 26 Miss., 310, the same doc-
trine is recognized, and it is held that, although the facts
communicated to the purchaser were of such a character
as to excite his suspicions and put him upon inquiry, yet
because these facts were so explained and qualified by
other attendant circumstances as to leave no reasonable
cause for doubt in his mind, his title should be affirmed.

Let us apply this doctrine to the case at bar, and, for
the purposes of such application, and for the sake of the
argument, let it be conceded that the possession of the
astronomical society combined the three necessary ele-
ments of openness, notoriety and exclusiveness, which, as
already shown, are indispensable to constitute constructive
notice, and to put a purchaser upon inquiry. What
then would have been the result of such inquiry if Mr.
Seccomb, as the agent of the company, in making the
loan of February 8, 1876, had instituted an investigation
to discover the source of the possession thus maintained
by the astronomical society? Assuming that all known
sources of information had been thrown open to him, he
would have discovered that in November, 1862, the ex-
ecutive committee of the trustees of the university held a
meeting, called for the special object of considering "a
plan for the establishment of an astronomical observa-
tory in connection with the university." He would have
discovered that in the same month of November, 1862,
a meeting of citizens was held in Bryan Hall for the pur-
pose of inaugurating the enterprise, and that Mr. Scam-
mon and nine other gentlemen, most of whom were trus-
the university was empowered "to establish an astronomical observatory, to receive donations and bequests of money and property for the founding and maintenance of the same; to provide for the management of the said observatory, either directly by the trustees of the said university, or by a board of directors, to be appointed by the trustees of the said university, to whom the said trustees may delegate the necessary powers."

He would have found that at the annual meeting of the trustees of the university, June 30, 1863, Mr. Scammon himself, on behalf of the observatory committee, read to the board a resolution adopted by that committee, requesting the board to found an observatory in connection with the university, and to appoint directors in accordance with the provision made on that subject in the plans of the committee, the property of the observatory to be vested as other property of the university. He would have found that Messrs. Scammon, McCagg, and Hoyne, then trustees and officers of the university, were at this meeting appointed as such committee, and that at an adjourned meeting of the trustees held July 14, 1863, Mr. Scammon from this committee reported certain resolutions which were unanimously adopted by the board, including the following: "Resolved, that the observatory of the Astronomical Society of Chicago be established at the university, and that the same shall constitute a part of the said university, but the control and management of the same shall be vested in the directors of the said observatory. * * *

Resolved, that the building or addition to the university to be erected for the observatory shall constitute a part of the property of the university and be subject to the control of the trustees."
He would have found that the trustees of the university, at a meeting held June 30, 1865, passed resolutions expressive of their appreciation of the efforts of Mr. Scammon, "which have secured the university, in connection with the main building, a magnificent observing tower, and a telescope to be placed therein," and at the same meeting the executive committee, through the financial secretary, presented a report of the assets and liabilities of the university, in which under assets appears, "Dearborn observatory $25,000; telescope $22,000; "meridian circle $5,000." He would have found that at the same meeting of the trustees the account of Professor Mixer was presented and approved by the committee, that account containing the subscription list of the astronomical society in the form above set forth. He would have found in the annual catalogues of the university, beginning with the year 1865-6 and continuously thereafter, the statement spread broadcast throughout the country, that the "Dearborn observatory forms the astronomical department of the university," and in the same catalogues he would have read the announcement of a "Professor of Astronomy and Director of Dearborn Observatory of Chicago," with a general statement of the course of instruction of the university in astronomy, and a special list of the students of astronomy in the university. In the tower thus constructed and with the telescope thus provided, he would have found this professor and these students gazing at the stars in strict conformity with the purposes and powers of the university as set forth in the amendment to its charter, and in pursuance of the scheme of instruction announced in the university catalogues.

He would have found a series of mortgages executed by the university to the insurance company, securing preceding loans in the years 1861, 1864, 1866 and 1869, and the records of the trustees and executive committee of the university would have disclosed that all the officers and elective directors of the astronomical society save one, and ten of its eighteen life directors, were likewise officers, trustees, members of the executive committee and regents of the university, and that some or other of these officers and directors of the astronomical society had, as such officers and trustees of the university, authorized and approved each of the previous mortgages, and that one of them was in fact executed by Mr. Scammon, the founder and chief promoter of the astronomical society, and a vice-president, regent and trustee of the university. He would have found at every step of the development and growth of the astronomical society, from the Bryan Hall meeting in November, 1862, to its final consummation and the mounting of the telescope in the tower in 1865 or 1866, one continued, consistent, undeviating plan running through and underlying every act, resolution, negotiation, vote, announcement and subscription, viz., that all property of the observatory should be forever "vested as other "property of the university in the board of trustees."

Had he cared to pursue his inquiries further to determine how the other property of the university was vested in its board of trustees, he would have learned by the charter of the university, granted by the legislature January 30, 1857, that the trustees were empowered "to buy "and sell and to take and hold real and personal property."

The board may acquire—by gift, grant, devise or purchase—any real or personal property; and "may use, sell, lease, or otherwise dispose of any or all "property belonging to the university, in such manner as "they may deem most conducive to its interests; provided,
"that real estate shall not be sold without the consent of a majority of all the trustees."

Having pursued his investigations to this point, and having thus traced a clear and continuous chain of title in the property pertaining to the observatory, in the university, without break or flaw, and finding the trustees of the university vested with the absolute power to alienate and dispose of this property as they might deem fit, the representative of the insurance company empowered to make the loan might well be excused from further inquiry. Having exhausted all known means of information as to the source of the possession of the astronomical society, and at every stage of such investigation having met with indisputable proof of an absolute title in the university to every vestige of property pertaining to the observatory, coupled with an absolute power of alienation on the part of the trustees, human forethought or prudence would scarcely be expected to continue the investigation.

We therefore submit, upon this branch of the case, that, even if it were true, and it is not true, that the possession of the astronomical society was another and different possession from that of the university, and was so open, notorious and exclusive as to put a purchaser or mortgagee upon inquiry, yet having pursued such inquiry through all known sources of information, and being confronted at every step of the investigation with stronger and still stronger evidences of the absolute title and dominion of the university over the entire property, the insurance company would occupy the position of a bona fide purchaser for value, without notice of the pretended rights of complainant.

THE ASTRONOMICAL SOCIETY IS ESTOPPED BY THE ACTION OF ITS OWN OFFICERS AND DIRECTORS IN CONSENTING TO AND EXECUTING THE VARIOUS MORTGAGES TO THE INSURANCE COMPANY, FROM NOW QUESTIONING THEIR VALIDITY.

To appreciate fully the conclusive nature of this estoppel it is again necessary to remind the court, of the almost absolute identity of the officers and directors of the astronomical society with those of the university. As already shown, eleven of the twelve incorporators of the astronomical society, and all of its officers and regular or elected directors, with the exception of William H. Wells, were identified with the university as officers, trustees, members of the executive committee, or board of regents, through almost the entire history of these various mortgages. In addition to these, ten of the eighteen life directors reported by the astronomical society in its published report for May, 1877, viz.: J. Y. Scammon, T. B. Bryan, W. B. Ogden, C. N. Holden, D. J. Ely, J. K. Pollard, E. B. McCagg, J. C. Burroughs, Thomas Hoyne and Henry Farnum were either officers, trustees, members of the executive committee or regents of the university, during most of the period embracing the execution of these mortgages, including that of February 8, 1876. It is proposed now to consider the execution of each of these mortgages in detail, and to show how far these officers and directors of the astronomical society authorized, and participated in their execution.

The record book of the trustees of the university of the
proceedings of July 2, 1861, authorizing the first mortgage of twenty-five thousand dollars to the Union Mutual Life Insurance Company to take up the first issue of twenty-five thousand dollars of bonds of the university, secured by the trust deed of 1858, does not show what trustees were present. It does appear, however, that Thomas Hoyne was at this meeting appointed one of a committee of three to negotiate a loan of twenty-five thousand dollars with which to take up the bonds of 1858, and that at a subsequent meeting of the trustees held September 11, 1861, this committee reported that they had negotiated a loan of twenty-five thousand dollars of the Union Mutual, and it was thereupon resolved that this loan be accepted, and the president and secretary of the board were instructed to execute the necessary trust deed to complete the negotiation. Of the trustees of the university who were present and participated in these proceedings of September 11, 1861, J. C. Burroughs became a life director of the astronomical society upon its subsequent organization and has continued as such to the present time. W. B. Ogden, then president of the board of trustees, who was instructed to execute the mortgage of 1861, also became a life director of the astronomical society and continued as such until after the execution of the mortgage of 1876.

The mortgage of fifteen thousand dollars of October 20, 1864, was authorized at a meeting held October 11, 1864, by a unanimous vote of the nineteen trustees then present. The nineteen trustees of the university, who thus authorized the loan of 1864, comprised the following officers and directors of the astronomical society: C. N. Holden, James H. Woodworth, D. J. Ely, A. B. Mixer, J. K. Pollard, J. C. Burroughs, and Thomas Hoyne.

The loan of seventy-five thousand dollars, secured by the trust deed of September 1, 1866, was executed with the approval and consent of twenty-three of the trustees of the university. Among these were comprised the following officers and directors of the astronomical society, viz.: J. Y. Scamman, J. H. Woodworth, Thomas Hoyne, J. K. Pollard and J. C. Burroughs.

The twenty-five thousand dollar mortgage of July 6, 1869, was sanctioned by a meeting of the trustees held July 2, 1869. Of the trustees then present and consenting to the execution of the mortgage, the following were officers or directors of the astronomical society, viz.: J. Y. Scammon, J. C. Burroughs, E. B. McCagg and Thomas Hoyne. Mr. Scammon presided at this meeting. This original deed of trust has been offered in evidence, and was actually executed by J. Y. Scammon as vice-president of the university. It is hardly necessary to again remind the court that Mr. Scammon was the principal promoter of the astronomical society, and its president from its organization in 1862 until after the execution of all these mortgages.

The one hundred and fifty thousand dollar mortgage of February 8, 1876, was first authorized by a meeting of the executive committee, January 25, 1876, at which there were seven trustees present, including J. C. Burroughs, a life director and one of the original founders of the astronomical society. This mortgage is accompanied by the written approval and consent of twenty-four of the trustees of the university, comprising the following officers and directors of the astronomical society, viz.: Thomas Hoyne, J. K. Pollard and J. C. Burroughs. W. B. Ogden, a life director of the astronomical society, was then president of the board of trustees of the university, and J. Y.
Scammon, president of the astronomical society, was then a vice-president of the board of trustees. The action of the trustees in executing this mortgage was reported by the executive committee to the semi-annual meeting of the trustees of the university, held January 11, 1877, at which thirteen trustees were present, comprising the following officers and directors of the astronomical society, viz.: Thomas Hoyne, J. C. Burroughs and J. K. Pollard. The record of this meeting shows no formal approval or disapproval of the report of the executive committee as to the execution of the mortgage, but Dr. Burroughs, who was present, testifies positively that this action was then approved by a vote of the trustees, which is omitted from the secretary’s books.

It is thus demonstrated that each of the mortgages in controversy, including the twenty-five thousand dollar mortgage of 1861, the fifteen thousand dollar mortgage of 1864, the seventy-five thousand dollar mortgage of 1866, the twenty-five thousand dollar mortgage of 1869, and the one hundred and fifty thousand dollar mortgage of 1876, was authorized, executed and approved by persons occupying the dual relation of officers of the university and of the astronomical society. While this fact has a significant bearing in establishing the identity of the two organizations, as discussed in the preceding pages, it has still greater significance by way of estoppel against the relief now sought by the complainant in this cause, since it establishes beyond doubt the active participation in, and approval of, these various mortgages by the officers of the astronomical society, who now seek to defeat the obligations, which they themselves have incurred. It is impossible, in the nature of things, to divorce these gentlemen in their capacity as trustees of the university, from their capacity as officers of the astronomical society, since they occupied the double relation at one and the same time, and as representatives of the astronomical society they cannot now be heard to say that they were ignorant of what they were then doing as representatives of the university. The relation which, while acting as trustees of the university, they sustained towards the astronomical society, was not merely that of agent, whereby their principal, the astronomical society, might evade the responsibility for their participation in these various mortgages, but they were the actual officers of the astronomical society, through whom and by whom alone it could act. In so far, therefore, as these gentlemen in their relation of officers of the Astronomical society, are estopped by their participation in the execution of these mortgages, the society itself is likewise estopped, since they stand for and represent the society, which is concluded by their action.

V.

COMPLAINANT IS ESTOPPED BY ITS OWN LACHES FROM THE RELIEF SOUGHT BY THE BILL.

If every averment of the bill were true; if the astronomical society were a distinct corporation, wholly independent of the university, instead of a mere department in the university; if it were capable of acquiring a distinct title in the property of the university, which could be asserted against the university and its grantees; if it did acquire such title by virtue of the proceedings already detailed; and if it were not conclusively estopped by its own participation in the execution of
these mortgages, from now questioning their validity and prior lien; yet its long acquiescence without complaint or objection constitutes of itself an insurmountable bar to the relief now sought. Complainant, in other words, is estopped by its own laches from questioning the validity of these mortgages or their prior lien. At every stage of this long series of mortgages and loans the officers of the astronomical society were fully apprised of, and participated in, what was being done. Whatever other questions may be debatable in this cause, there is and can be no pretense that complainant was not fully apprised of, and that its officers did not participate in, every loan and mortgage from the beginning to the end. Whatever other facts may be doubtful in this record, one central fact remains undisputed, that no notice, complaint, remonstrance, or even suggestion of the rights now claimed by the astronomical society was ever brought to the attention of the insurance company until after the filing of the bill in this cause. The bill was filed September 27, 1881, six months after the insurance company had filed its bill of foreclosure against the university in this court. More than twenty years had elapsed since the making of the first mortgage of twenty-five thousand dollars in 1861; seventeen years had elapsed since the execution of the fifteen thousand dollar mortgage of 1864; fifteen years had passed since the execution of the seventy-five thousand dollar mortgage of 1866; eleven years had elapsed since the execution of the mortgage of twenty-five thousand dollars by Mr. Scammon himself in 1869; nearly six years had passed since the execution of the mortgage for one hundred and fifty thousand dollars in 1876; and yet, incredible as it may appear, during all these years in which complainant had full knowledge of every step pertaining to these mortgages, which were executed by its own officers, no promoter, officer, director or donor of the astronomical society lifted a finger or gave a word of warning to the insurance company. Asserting a hidden equity in the nature of a secret lien, with no outward badges to distinguish their possession from that of the university, the officers of this society through all these years permitted us to advance these large sums of money, and to receive mortgage after mortgage bearing their own signatures, until the aggregate indebtedness, principal and interest, had swollen to two hundred and fifty thousand dollars, and yet made no sign!

To appreciate the full force of the conclusive estoppel thus wrought against complainant by its own laches, the court must again be reminded that the mortgage of one hundred and fifty thousand dollars of February 8, 1876, which is sought to be obliterated by this bill, is not merely a new obligation then incurred, and secured by a lien then for the first time given, but it represents a series of loans originating in 1858, the principal and interest of each successive loan being merged with additional advances in the new one, and only about thirteen thousand dollars representing the actual advance made February 8, 1876. The equities of the insurance company, therefore, originated with the loan of 1858, and each successive step in this long chapter of loans and mortgages but strengthens those equities. And in like manner, and to the same extent, each successive act and participation of the officers of the astronomical society in the execution of these various mortgages, and each successive year of acquiescence and of delay in seeking relief, strengthens the estoppel against them. If ever a title may be said to have ripened by estoppel through the criminal laches of one asserting an
adverse title or equity, it is surely in this case, and, unless the doctrine of estoppel by acquiescence and laches is to be obliterated from the books, and have no further recognition from the bench, complainant is conclusively estopped from the relief now sought. And in the light of the facts already fully discussed, showing the identity of the two organizations, as well as the facts which we have enumerated, shewing the participation of the astronomical society in each of these mortgages, and its delay in seeking relief, it is not too much to assert that this litigation is but a mere adjunct of the principal scheme of repudiation inaugurated by the university, and by which it is sought to annihilate an indebtedness exceeding three hundred thousand dollars, by the convenient medium of a suit in equity. The records of this court abound with so many evidences of similar litigations, that the court can hardly fail to classify this action as but one in the series of suits now pending, all having for their common object the repudiation of an indebtedness whose history, as above narrated, entitles it to peculiar consideration in a court of equity.

V I.

THE SUBSCRIBERS TO THE ASTRONOMICAL SOCIETY AND TOWER ARE NOT ENTITLED TO RELIEF.

While the subscribers to the astronomical society are not parties to the bill, and hence no relief can be granted in their behalf or upon their pretended equities, the bill nevertheless appears to be framed with a view of invoking their supposed rights as a ground for the relief sought. It is averred in the bill that these donations and subscriptions were made by the donors and received by the astronomical society, upon the faith, understanding and condition that the observatory, for the erection of which, and the equipment thereof with proper apparatus the same were made, was to be erected and maintained solely and forever for the advantage of the public, and that the right to the management and use of the said tower known as 'Dearborn Observatory,' and the said real estate should be perpetual in the said society and its successors."

How utterly foreign this averment is to the actual facts will be apparent upon an inspection of the contract of subscription, which was prepared by Dr. Burroughs for the Bryan Hall committee, and which is shown at pages 299 to 301 of the abstract. It is not a violent presumption to suppose that the written contract itself is the best evidence of the intentions of the contracting parties to a transaction which occurred twenty-two (22) years since. That contract may be scanned in vain for any clause, line or letter providing that the observatory should be "erected and maintained solely and forever for the advantage of the public, and that the right to the management and use of the said tower, known as 'Dearborn Observatory,' and the said real estate, should be perpetual in the said society," as averred in the bill. So far from this being the true construction of the contract, it is difficult to conceive of language which could have been more fitly devised for vesting all title and management absolutely in the university, with no restrictions as to the purposes for which the observatory should be maintained. At the risk of wearying the court with repetition, we repeat the resolutions of the Bryan Hall committee, which were embodied in the form of subscription, and which
constituted a part of the contract made with each subscriber: "Resolved, That the board of trustees of the University of Chicago be requested by this committee to found an observatory, to constitute a part of said university, the property of said observatory being vested as the other property of the university, in the board of trustees, the directors of said observatory to be chosen by them in accordance with article nine (9) of our plan. A public spirited citizen of Chicago having nobly volunteered to donate to the University of Chicago the amount of money requisite to enable it to erect the tower, provided a sufficient sum can be obtained from the community to secure the purchase of an astronomical telescope, to be placed in an observatory on said tower, we, the undersigned, agree to pay the sums set opposite our names respectively in the subjoined list, according to the above plan, to be paid to the following named gentlemen, constituting the executive committee, or to their order."

The plan of the enterprise by which the observatory and all appliances were to become the absolute property of the university and to be sold by the trustees at their pleasure, is thus a part of the very contract of subscription. The contract, in other words, is as if it read:

"We the undersigned agree to pay the sums set opposite our names respectively in the subjoined list according to the above plan, viz.: to found an observatory to constitute a part of said university, the property of said observatory being vested as the other property of the university in the board of trustees." And the subscription contract being made with reference to the then existing charter of the university, which was a public law, and the subscribers contracting that the fruits of their subscriptions shall be vested as the other property of the university, in the board of trustees, they adopt and embody in their contract that clause of section three (3) of the charter of the university, which provides, "the board may acquire—by gift, grant, devise, or purchase—any real or personal property, and may use, sell, lease, or otherwise dispose of any and all property belonging to the university in such manner as they may deem most conducive to its interests; provided that real estate shall not be sold without the consent of a majority of the trustees." Thus construed, these subscriptions are merely the acquisition by the trustees of the university of property by gift in accordance with the language thus quoted from the charter, and the proceeds of the gift are subject to the absolute power of alienation conferred by the charter upon the trustees.

We have spoken above of subscribers and donors to the astronomical society, because these terms are used in the bill of complaint; but in fact there is not, and has never been, so far as the record discloses, a single subscription or donation made to the astronomical society for the purpose of purchasing the telescope or constructing the tower. The contract of subscription, as above shown, is a contract to and with the trustees of the university, who are requested to found the observatory with the proceeds of the subscriptions, and to hold and manage the title thereto. Even Mr. Scammon's munificent donation of thirty thousand dollars to construct the tower was not a donation to the astronomical society, but directly to the university. Over Mr. Scammon's own signature, as chairman of the Bryan Hall committee, it is stated in this formal subscription that "A public spirited citizen of Chicago having nobly volunteered to donate to the uni-
versity of Chicago the amount of money requisite to en-
able it to erect the tower, provided a sufficient sum can be
obtained from the community to secure the purchase of
an astronomical telescope to be placed in an observatory
on said tower," etc. The thirty thousand dollars donated
by Mr. Scammon for the erection of the tower, so far
from being a donation to the astronomical society, was
thus explicitly made as a gift to the university itself,
and the contracts of subscription containing this decla-
ration over Mr. Scammon's signature were sent out to the
public, and subscriptions to the telescope were obtained
upon the faith of them, and there is not a shred or scrap
of testimony in this record which shows that any other
contract was ever entered into, fixing the terms of Mr.
Scammon's thirty thousand dollar gift, than that above
stated. Nor is this all. We have Mr. Scammon's affir-
native testimony in the record, verifying the truth of
the above statement as to the terms of his donation. At
page 145 of the abstract, he offers as a part of his testi-
mony from the records of the astronomical society, a re-
port of the committee touching the relations existing
between the university and the society, and states: "From
my independent recollection I know the facts there-
in stated are true." These extracts include a report
from a committee of which Mr. Scammon was chairman,
submitted to the directors of the astronomical society at a
meeting January 30, 1878. This report signed by Mr.
Scammon states: "A meeting was subsequently held in
Bryan Hall at which it was agreed to raise a subscrip-
tion for the purchase of an astronomical telescope, and
the plan was adopted which is stated in the ac-
ccompanying extracts from the records of the uni-
versity. Subscriptions were made under this heading,
and the Astronomical Society of Chicago was formed."

The plan thus adopted and the form of heading for
the subscriptions thus referred to he gives at pages 152
and 153 of the abstract, and they are the identical
plan and form of subscription from which we have
already quoted as above, including the statement over
Mr. Scammon's signature as chairman of the Bryan Hall
committee, that a public spirited citizen of Chicago had vol-
unteered to donate "to the University of Chicago the
amount of money requisite to enable it to erect a tower,
"etc." Mr. Scammon thus affirms in his testimony in
1884, what he announced to the public as chairman of the
Bryan Hall committee by the form of subscription adopted
by that committee in 1862, that his donation for the
erection of the tower was a donation to the University
of Chicago, and to no one else. Every dollar, therefore,
of the money, with which was constructed the tower
which is now sought to be reclaimed by the astronomical
society in this suit, was a direct, absolute and uncondi-
tioned gift by Mr. Scammon to the university. His dona-
tion, like all other donations and subscriptions thus
made, was made to the university, the gift was irrevocable,
and it cannot now be recalled.

That the proceeds of Mr. Scammon's munificence are
likely to be swallowed up to satisfy the enormous indeb-
kedness now due from the university cannot change the
result, or reinvest himself or the society which he repre-
sents with any title to, or easement in, property which he
and his associates were so careful to place absolutely in
the trustees of the university, and forever beyond their
own control. Honorable obligations for money received
must be paid by eleemosnary as by other corporations,
even if the benefactions of individual donors are absorbed
for this purpose.
The history of Mr. Scammon's munificent donations to this and other public objects in Chicago has never been told—perhaps can never be fully told. It is the history of Chicago itself, and of the many public and charitable organizations with which his name is forever connected. It is saying much to say that no man has done more for the promotion of charitable, educational and religious organizations in Chicago than Mr. Scammon, but it is not saying too much to those who are familiar with the story of his benefactions. But when all this is said, the central fact remains that Mr. Scammon and his associates donated, by an absolute and irrevocable gift, their subscriptions for the tower and observatory to the university itself. And as if not content with this, by repeated resolutions, reports and other formal evidences of their intention, they divested themselves of all dominion over the proceeds of their subscriptions, and in the most emphatic terms of which the language is susceptible so completely invested the university with absolute control over the property that they cannot now be heard to complain. The contract which they made twenty-two years ago cannot now be changed because the result has not justified their expectations.

We therefore submit with confidence that the bill of complaint should be dismissed for want of equity.

*SWEET, HASSELL & GROSSCUP,*

*Solitors for the Defendant,*

*The Union Mutual Life Insurance Company.*

*Leonard Sweet,*

*James L. High,*

*Of Counsel.*

*Chicago, November 12, 1884.*
United States Circuit Court.

In Chancery.

Union Mutual Life Insurance Company

v.

University of Chicago et al.

Amended and Supplemental Bill.

Master’s Report.

To the Honorable, the Judges of said Court:

I, Henry W. Bishop, master in chancery, to whom, by an order of court entered in this cause, the same was referred for the purposes in said order expressed, hereby report that in pursuance of said order I have been attended from time to time, as hereinafter appears, by Messrs. Leonard Swett and James L. High, solicitors for the complainant, by Mr. M. W. Fuller and Mr. George Driggs, solicitors for the defendants, and by the witnesses introduced upon the part of the complainant and the defendants respectively, whose testimony was duly taken and is herewith reported.

By stipulation of the parties the order referring this cause to me has been changed so as to limit my findings to questions of fact only, and this report is made upon the
basis of such arrangement, and does not include any finding upon questions of law.

Upon an examination of all of the testimony taken upon this reference together with the exhibits which have been offered in connection with the same, and otherwise, I find and report as matters of fact that the material allegations of complainant’s bill, and amended bill, are sustained by the proofs.

That for the purpose of taking up bonds to the amount of twenty-five thousand dollars ($25,000), which had before, to wit: in the year 1858, been issued by the defendant, the University of Chicago, and secured upon the property in question, said defendant borrowed from the complainant, September 1st, A. D. 1861, the sum of twenty-five thousand dollars ($25,000), for the time and upon the terms shown in the testimony, which sum, in pursuance of said contract of loan was paid to it, and by it applied to the purposes of said university, and that in pursuance of a resolution of the board of trustees of the university the president and secretary of said board were instructed, authorized and directed to execute a mortgage or trust deed upon the premises in controversy, with bonds and coupons for the completion of said loan, which was done.

That on October 20, A. D. 1864, in pursuance of a like authority, the further sum of fifteen thousand dollars ($15,000) was loaned by the complainant to the defendant, the University of Chicago, upon the terms mentioned in the testimony and amended bill of complaint, and a mortgage and note and coupon notes were made to secure the payment of the same, which mortgage, note and coupon notes were executed and secured upon the premises in question.

That in August, A. D. 1866, all of said loans, together with the interest which had accumulated upon them above the payments made, and further sums which had been advanced, amounting to the sum of seventy-five thousand dollars ($75,000), not having been paid, a resolution was passed by the executive committee of the board of trustees, upon August 6, 1866, authorizing a loan from complainant of a sum not exceeding seventy-five thousand dollars ($75,000), and authorizing and directing the execution of a note to said complainant for said sum, and a mortgage or trust deed upon the premises in question, which loan was made and said notes and trust deed were respectively executed and delivered and secured upon the premises in question.

That in the month of July, A. D. 1869, a resolution was passed by said board authorizing the negotiation of a loan from said complainant of a sum not exceeding twenty-five thousand dollars ($25,000), and the execution and delivery of the necessary notes and mortgage or trust deed upon said property to secure the payment of said loan, and that in pursuance of said resolution said defendant borrowed of said complainant the further sum of twenty-five thousand dollars ($25,000), the payment of which was secured by deed of trust upon said property.

That on the eighth day of February, A. D. 1876, all of said loans not having been paid, a settlement and accounting was had between the parties, when it was found that the moneys advanced by the complainant to it, the said University of Chicago, as hereinbefore recited, together with other moneys then advanced and interest, amounted to the sum of one hundred and fifty thousand dollars ($150,000), and it was agreed between the parties that in settlement of said aggregate indebtedness a new