

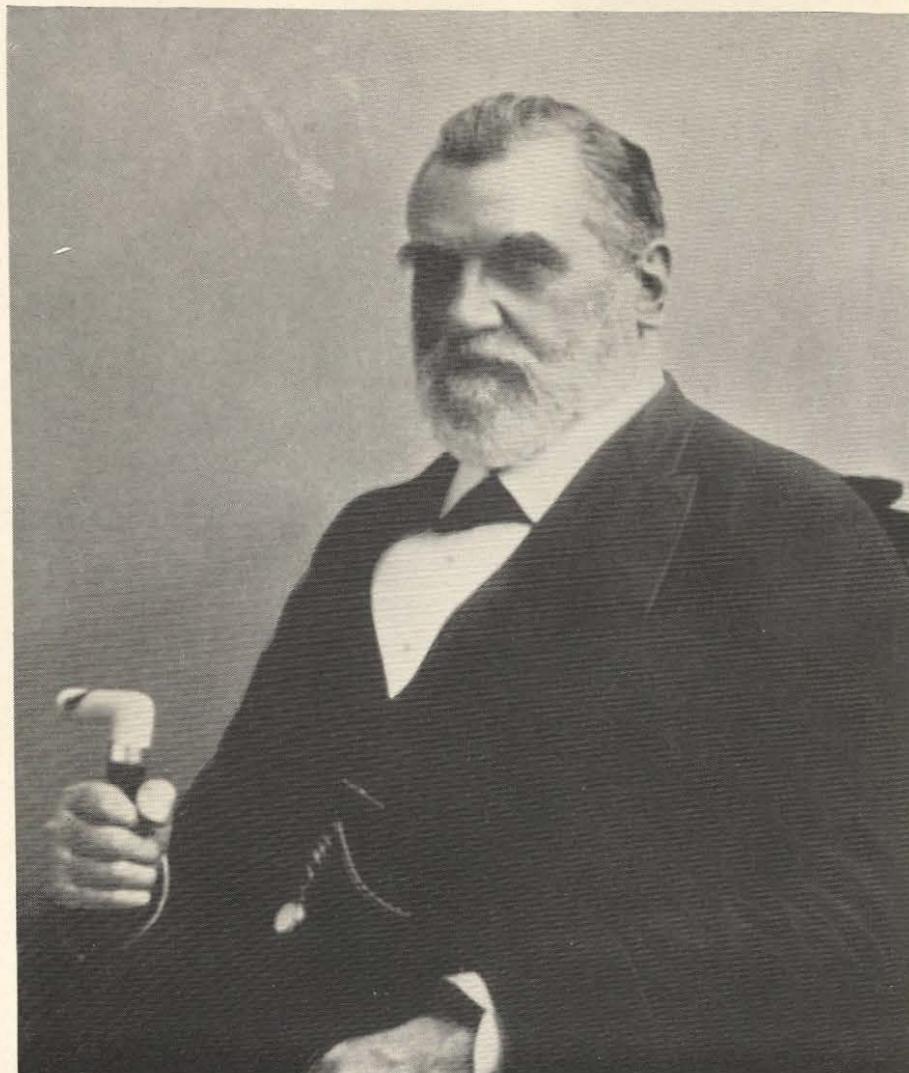
FOUNDING  
OF THE  
LELAND STANFORD JUNIOR  
UNIVERSITY

BY  
GEORGE E. CROTHERS  
CLASS OF 1895

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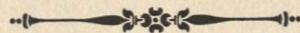
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A. M. ROBERTSON  
SAN FRANCISCO, CALIFORNIA  
MCMXXXII



"An accurate knowledge of the forms of the trusts and the objects of the Stanfords is prerequisite to constructive alumni loyalty. All of us, therefore, are indebted to Judge Crothers, not only for his presentation of these facts, but more deeply for the constructive service rendered by him and his brother in the revisions of the Founding Grant and the University trusts which they suggested and drafted to pave the way for a greater Stanford.

"This article by Judge Crothers is the first published statement revealing the various hazards from which these two alumni saved the University. In this history we are told how everything legally governing Stanford was drafted or amended to protect its titles and render the trusts workable. It explains, too, how Mrs. Stanford was almost persuaded to provide for the elimination of women and how this was prevented in the very last minutes of her administration.

"Fortunately Judge Crother's memory dates to the beginnings of the University, and his explanation of the varied legal difficulties during those years when he represented the alumni in re-laying Stanford's legal and other foundations will be a valuable and authoritative reference in future developments of the University."

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"Judge Crothers, even in his undergraduate days, was close to Mrs. Stanford, who insisted that she saw in him a resemblance to her son, Leland. From then on until her death she regarded him as almost the personification of the alumni, and turned to him for advice and counsel at all times. Because of this relationship and his position as first alumnus member of the Board of Trustees, he has in his possession facts of unlimited value to everyone interested in Stanford."

Quotation from editorials accompanying the "Historical Outline of the Founding of Stanford University" in the "Stanford Illustrated Review," Vol. XXXIII, No. 1.



## Founding of the Leland Stanford Junior University\*

**A**LTHOUGH Stanford University was founded by a grant which was dated November 14, 1885, it was on October 1, 1891, just forty years ago this month, that the doors were formally opened.

The Stanfords retained complete control over the properties conveyed in the Founding Grant, and over the University, including all of the powers eventually to vest in the Trustees upon the death of the survivor of the founders. While the three California ranches constituting the original endowment were expected by Senator Stanford eventually to produce a large and certain income for the University, they were not upon an income-producing basis. He was, consequently, obliged to pay all of the expenses of the construction and maintenance of the University out of his private funds until his death on June 21, 1893. Thereafter the burden was cast upon his widow, Jane Lathrop Stanford, who carried it until her resignation of all powers over the University, its trusts and its properties, on June 1, 1903, shortly after which she was elected a member and president of the Board of Trustees, and continued to function as such until her death at Honolulu on February 28, 1905.

Leland Stanford's purpose was not to create a university upon the model of any existing educational institution. He was familiar with the efficiency of Johns Hopkins University, the Massachusetts Institute of Technology, the Engineering School of Cornell, and certain departments of Harvard, in preparing students for success in their chosen vocations. The presidents of all of these institutions were his personal friends and advisers, but he firmly believed that a new insti-

\* This article upon the Founding of the Leland Stanford Junior University appeared, in part, in the recent Fortieth Anniversary number of the "Stanford Illustrated Review," official organ of the Stanford Alumni Association, Volume XXXIII, No. 1.

Owing to the importance and public interest in this article, and particularly in those portions of it which were not in the original publication, the article as a whole is presented here, as the first and only authoritative history of the founding of the Leland Stanford Junior University, and the first adequate presentation of the unique provisions of the trusts or "charter" of the institution.

## LELAND STANFORD JUNIOR UNIVERSITY

tution, free from any of the outworn traditions of the older colleges and universities, could establish new standards of efficiency in the production of cultured and useful citizens especially prepared for personal success in their chosen vocations. He recognized that the development of the proposed institution would require much time and experimentation, but he was certain of the correctness of his appraisement of the deficiencies of existing educational institutions and of the ultimate success of any institution which would faithfully adhere to his ideal of combined culture, personal efficiency, and public service. He expressed the object, nature, and purposes of the institution in the Founding Grant as follows:

Its nature, that of a university with such seminaries of learning as shall make it of the highest grade, including mechanical institutes, museums, galleries of art, laboratories and conservatories, together with all things necessary for the study of agriculture in all its branches, and for mechanical training, and the studies and exercises directed to the cultivation and enlargement of the mind;

Its object, to qualify its students for personal success, and direct usefulness in life;

And its purposes, to promote the public welfare by exercising an influence in behalf of humanity and civilization, teaching the blessings of liberty regulated by law, and inculcating love and reverence for the great principles of government as derived from the inalienable rights of man to life, liberty and the pursuit of happiness.

In the Founding Grant he further provided that it shall be the duty of the Trustees "to establish and maintain at such University an educational system which will, if followed, fit the graduate for some useful pursuit, and to this end to cause the pupils, as early as may be, to declare the particular calling which in life they may desire to pursue; but such declaration shall not be binding if, in the judgment of the President of the University, the student is not by nature fitted for the pursuit declared."

That American education is still open to Stanford's criticism of more than forty-five years ago is evidenced by the declaration of President Ray Lyman Wilbur in an address delivered in June, 1931, that "the lack of knowledge of the ordinary boy and girl of the vocations and of the professions is appalling. A large number of our youth have found themselves dislocated in an economic sense at the

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very beginning of their life career." Mrs. Stanford became aware that much of this educational inefficiency is the deliberate result of organized opposition to practical vocational training of the young lest they crowd out the old vocational workers.

Much fiction has been written concerning the motives and purposes of the Stanfords in founding the University, but it can truly be said that the lives and public services and benefactions of Leland Stanford and his wife were in a peculiar way the result of their ancestral background and their own experiences. They inherited the sturdy character of an old Colonial ancestry inured to the hardships of pioneering and inspired by the piety and idealism which led their early American ancestors to lay the foundations for their colleges before they had provided for themselves or their families the simplest of luxuries. The education of both Mr. and Mrs. Stanford was limited to that received in small local schools. After this preliminary schooling Stanford received the customary legal training of his day by reading law in an Albany law office, and Mrs. Stanford graduated from a female seminary. Judged from the standpoint of high schools and colleges of today, their education was comparatively meager; but judged by its patriotism, idealism, and seriousness of purpose, it would stand high in any period. It prepared him for the vision of building a great railroad to unite the remote parts of his divided country; and, as a personal friend and supporter of Lincoln and lover of his country, it gave him the strength to save California to the Union, when he, as the California War Governor, turned the trembling balance in favor of the Union, though most of the influential leaders in California belonged to old Southern families and were confident of California's secession.

But Stanford's scholastic and legal training did not prepare him adequately for success in his chosen profession. He left Albany and went to Port Washington, Wisconsin, in 1848, when even Chicago was little more than a village. There he brought his bride in 1850. After struggling two years more to get a foothold in the legal profession, he was burned out in 1852. He then decided to go to California while the mining boom was still on, and, not being able to assure her a comfortable living until he made a start in the Far West, he was obliged to submit to the humiliation of sending his wife home to her

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parents, who were in comfortable circumstances. Because her father was ill, she remained several years with him, until his death. This experience had never been forgotten by Stanford. It was so painful to them both that neither of them cared to discuss it. Of their reunion in California Mrs. Stanford said shortly before her death that the happiest days of her life were when they lived in a rude cottage with meager and cheap furnishings and she did all her own housework. To Stanford it seemed like failure, but to her it meant happiness.

Like so many American parents who suffer every privation in mature life to give their children college educations, for the purpose of freeing them from the necessity of going through the painful experiences of their own early lives, so Senator and Mrs. Stanford were hopeful that an educational system might be devised under which the young of future generations would not suffer the distress to which they had been subjected during their young manhood and womanhood. Stanford's views as to the inefficiency of college education were confirmed again and again by his experience with graduates of the leading universities of the country, who applied to him as president of the Central Pacific and Southern Pacific Railway companies for employment. Their training, like his own, was not adequately related to practical life. After their long academic preparation, and after they had advanced in years to a point where they should be ready to undertake the responsibility of raising young families, they were obliged to lay aside the dignity of their age and academic training to learn the rudiments of their proposed calling. Many of them had to commence with the crudest form of manual labor, under physical and social conditions which frequently resulted in loss of enthusiasm and idealism and the general defeat of their high purposes. Stanford was a firm believer in the necessity of alternating or combining academic training and actual experience as manual workers in their chosen fields, for all students whose professions or vocations have to do with industry, trade, or commerce. Moreover, he believed that this experience and practical training should be had during the early years of the student, and not after he has finished in mature years a prolonged academic course of instruction.

But personal success was but one of the purposes of education as visioned by the Stanfords. In all declarations they place personal

character and public service side by side with practical training. Stanford also urged the teaching of harmony and coöperation of capital and labor in the common interest of all. He provided in the Founding Grant that it shall be the duty of the Trustees "to have taught in the University the right and advantages of association and coöperation." In his letter to the Trustees accompanying the Founding Grant he said: "When we consider the endless variety of the wants and the desires of civilized society, we must fully appreciate the value of labor-aiding machinery and the necessity of having this of the best character. Too much attention, therefore, cannot be given to technical and mechanical instruction to the end that from our institution may go out educators in every field of production."

"Out of these suggestions grows the consideration of the great advantages, especially to the laboring man, of coöperation, by which each individual has the benefit of the intellectual and physical forces of his associates. It is by the intelligent application of these principles that there will be found the greatest lever to elevate the mass of humanity, and laws should be formed to protect and develop coöperative associations. Laws with this object in view will furnish to the poor man complete protection against the monopoly of the rich, and such laws properly administered and availed of, will insure to the workers of the country the full fruits of their industry and enterprise."

Not for more than a generation after the University was opened did the fundamental importance and correctness of this principle become generally acknowledged by capital and labor, producer and consumer.

Recognizing that excellence in any institution cannot be maintained without adequate compensation, Stanford inserted a clause in the University trusts requiring the Trustees "to fix the salaries of the president, professors and teachers, and to fix them at such rates as will secure to the University the services of men of the very highest attainments." In this respect Stanford University has always led all Western universities, but its legal and financial difficulties prevented it from leading the whole country. Recognizing that excellent instruction would not produce successful and useful citizens without spiritual development, he further directed them "to prohibit sectarian instruction, but to have taught in the University the immortality of the soul,

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the existence of an all-wise and benevolent Creator, and that obedience to His laws is the highest duty of man."

After making his decision as to the nature of the institution to be founded shortly after Leland, Jr., died, Stanford was next confronted with the question as to the legal form which it should take. Under the constitution of California the life of all corporations was limited to fifty years, after which the Legislature might specify any terms and conditions as to reincorporating or dissolution. No specific law provided for perpetual trusts, though the court decisions had supported perpetual eleemosynary trusts. Stanford, however, deemed it necessary or desirable that he and his wife retain greater control over the proposed institution and over any grant he might make for the founding and endowment than was permissible under existing laws relative to trusts. Accordingly, he is said to have formulated with his own inexperienced hand the so-called Enabling Act, which became a law on his sixty-first birthday, March 9, 1885, just four days before the first anniversary of his son's death. The Act was not, and under the State Constitution could not be made, broad enough to authorize the creation of a legal entity adequate to accomplish Stanford's purposes. The Act merely provided for the founding of the institution by an ordinary deed and trust. It required the property to be located in California and to be given by a founder in his lifetime. It completely failed to, and could not constitutionally, provide for the creation of a legally constituted Board of Trustees, or other workable body constituting a legal entity, capable of receiving and administering gifts and conducting the University. Only educational corporations could do that. Any subsequent grants would create entirely independent trusts and should comply with the general law relative to eleemosynary trusts as laid down in the decisions. Even a trust for scientific research or to advance knowledge is not considered eleemosynary by the California Supreme Court, and no trust provision for either purpose was made until a foundation was laid therefor by amendment of the trusts in the general trust revision of October 3, 1902. In drawing the Enabling Act it did not seem to occur to Stanford that his proposed gift to the Trustees for the endowment of the institution would ever prove to be inadequate, or that others might wish to supplement the endowment, or add to the scope of the institu-



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tion, although he attempted to remedy this in the Founding Grant. The Act did not even provide for or permit Stanford's own bequest of two and a half millions to the Trustees for the endowment of the University which went to the University only with Mrs. Stanford's consent as residuary legatee and subject to her right to make such disposition of it as she saw fit during her lifetime, without accountability by her or her representatives.

Although the reservations and conditions of the trust provided for in the Enabling Act were such as were not permissible under the other general laws then in force, Stanford should have made this Founding Grant of November 11, 1885, conform to the terms of the Act. But he did not do so; nor did Mrs. Stanford make her important grants and her attempted amendments to the trusts executed in the late 'nineties conform to either. For example, the Founding Grant expressly declared that the property conveyed thereby, being the three great ranches, were community property, which, under the California law, at that time "belonged" to and were vested in the husband alone, making Mrs. Stanford not a joint grantor or founder, but merely an assenting spouse. Stanford reserved no powers to himself alone as founder, or to Mrs. Stanford as surviving wife, as provided for in the Act; but all the reservations and conditions were made by and to both of them as purported co-founders, and the one who might succeed the other as purported surviving founder and not as surviving spouse, as provided for in the Act, which made no provision for the reservation of the power of management, etc., or the power to amend the trusts to the survivor of joint founders. The Act authorized the founder to reserve the power of management of the properties and of the University to himself for his life, and then to a surviving wife, but did not permit the reservation of the power to amend the trusts to a founder's surviving wife, or even to a surviving co-founder. Notwithstanding the foregoing, Mrs. Stanford reserved, in all grants by her, and exercised all powers permitted to be reserved to a founder, and made many attempted amendments beyond even the scope of the power so reserved. Not until five years after Senator Stanford's death, when these defects and deficiencies came to light in connection with another task which I undertook for Mrs. Stanford, were steps taken to remedy them. In the meantime the attention of

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Mrs. Stanford was concentrated upon her financial problems and those of the University.

Unconscious of the defects and deficiencies in the Enabling Act and Founding Grant, Senator Stanford went forward with great earnestness and devotion in putting his cherished plan into operation, leaving the virtual refounding of the institution upon a broader and more workable basis to Mrs. Stanford with the aid of future alumni. He selected the great architectural firm of Shepley, Rutan, and Coolidge to design the buildings, and Frederick Law Olmsted to lay out the grounds, and proceeded with speed in preparing the buildings and grounds. So far as the plans of the original architects have been followed, the result is as charming as it is practical. The colonnaded quadrangles have always been a joy to both students and faculty.

In addition to interviewing many of the leading university presidents before founding Stanford, Senator Stanford thereafter sought their advice before appointing Dr. David Starr Jordan as the first president of Stanford University. Jordan was opposed to the traditional rigidly prescribed entrance requirements and courses of study, as impractical and out of harmony with the best in modern scientific knowledge, and tending to shackle the mind with traditional prejudices and unscientific modes of thought in an age calling for men with open and inquiring minds, trained to advance practical knowledge as well as to apply it in their chosen vocations. Dr. Jordan was a great scientist, but above all he was a great national preacher of clean living and high thinking, and had the gift of clothing his ethical messages in such brilliant and easily remembered phrases as to cause them to be telegraphed throughout the country as news.

Under President Wilbur and Acting President Swain further steps have been taken to accomplish Stanford's purposes, though long before Ray Lyman Wilbur became president of Stanford University and advocated the dropping of the two lower classes, the University of California, under the leadership of Professor Alexis Frederick Lange, and the Stanford Trustees by resolution adopted in the interest of greater efficiency, had approved of the separation of the upper division, or professional and vocational work, from the lower college classes doing work preparatory to the professional and other vocational instruction. It was believed that the first two years of college

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work could be done adequately in local public junior colleges and under home conditions more favorable to students of immature years. But as Stanford University was required, by a provision in its trusts inserted by Mrs. Stanford on October 3, 1902, to keep in touch and harmony with the free public school system, the creation of a system of free public junior colleges was a condition precedent to the putting into effect of the recommendation of President Wilbur. To facilitate the eventual dropping or subordination of the lower-division work from the two California universities, legislation was formulated and advocated by Professor Lange, of the University of California, and myself authorizing the creation of public junior colleges, with the same State aid as was theretofore given for the support of high schools. It has required the delay of nearly a quarter of a century for the establishment of a sufficient number of junior colleges, pursuant to this legislation, to justify Stanford University in even considering taking the lead in carrying out the plan to subordinate or drop the first two years of college work.

Senator Stanford was permitted to see but the first experiment in education at the University directed toward the accomplishment of his educational ideal. On being informed that the great panic of 1893, which placed in receivership every Western railway excepting the Southern Pacific, would break in Wall Street the following morning, Leland Stanford went up early to his bedroom, and after calling down to Mrs. Stanford, "I just want to say I love you," he went to sleep on June 21, never to awake. The troubles which his enfeebled heart could not stand were thrown upon the inexperienced widow.

Stanford's death left the University with very little income. Mrs. Stanford was allowed by the Probate Court ten thousand dollars per month, which was approximately the amount she had been accustomed to expend in the maintenance of her household. She reduced her personal retinue from seventeen to one cook, one maid, and a secretary, the payment of whose salary was deferred almost a year, and her total household expenses to three hundred and fifty dollars per month, or about the equivalent of a professor's salary. When she went East she traveled in her private car free of railroad expense and lived in her car while in New York to save hotel expenses. To keep the University open she sold at a sacrifice her six magnificent strings of choice pearls, and carried with her and tried in vain to sell her other jewels.

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All income and receipts not necessary for her bare necessities were turned over to President Jordan to keep the University open and in operation as best he could. He succeeded in doing so by curtailing new appointments and reducing certain salaries ten per cent., but the total faculty salary roll remained as before Stanford's death. This was rendered possible by the sudden fall in living expenses and smaller increase in students incident to the great panic, and to the fact that the total cost in salaries of the faculty per student was still second only to Columbia University with Harvard a close third.

In a conference with attorneys and bankers Mrs. Stanford was advised by all but her brother, Charles Lathrop, to close the University at least temporarily, but the latter said to her, "Jennie, you are not up against the wall yet. I advise you to keep the University open until you are." She followed his advice, which was in accord with her own strong desire.

The estate was in a precarious financial condition for many reasons. It was indebted to the Pacific Improvement Company for overdrafts amounting to about a million and a half, for money withdrawn by Senator Stanford with the consent of his three associates to construct the University buildings, and there was a stockholder's liability of seven million dollars on account of Stanford's quarter ownership of the company, which was indebted to the extent of twenty-eight million dollars. The finances of the Southern Pacific Company, in common with those of every other Western railroad, were in a critical condition and did not improve greatly for seven years.

It happened by chance that my brother, Thomas Graham Crothers, a graduate of the first class at Stanford in 1892, was an executor of the estate of James G. Fair, which held nearly six million dollars in one bond issue guaranteed by the Southern Pacific Company. Being in close touch with other large San Francisco estates owning railroad bonds, he aided in securing their coöperation in withholding the presentation for payment of their bond coupons until the company indicated that it was ready to honor them together with interest thereon from their due date. This and other expedients prevented the complete loss of the equity of the stockholders in the Southern Pacific Company, while those of all their competitors were sacrificed in receivership, as they would have been unable to find new money to re-finance the road in the face of a threatened suit by the government

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against the Stanford estate and the other owners of the Central and Southern Pacific companies for their respective shares of the government loan made to the Central Pacific. This government loan was secured by a mortgage given pursuant to an Act of Congress of 1862, passed to aid in the construction of the Central and Union Pacific railroads to save California and the Far West to the Union, a reason suggested by the latter's name. The Central Pacific was at the time not believed to have a market value sufficient to pay the bonds when they should fall due. The suit when brought was based upon stockholders' liability for Stanford's proportionate share of corporate debts under a California statute, the government erroneously claiming the right to its benefits without being bound by the express statutory limitation of liability to three years from the creation of the liability. John Garber, the leader of the San Francisco Bar, presented the case of the Stanford estate most ably and successfully in the Circuit Court of Appeals in San Francisco, and Joseph Choate presented it with equal ability and success in the Supreme Court, which decided unanimously against the government.

The government's appeal in its \$15,237,000 suit against the estate of Leland Stanford was submitted to the Supreme Court of the United States on January 29, 1896, and decided in favor of the estate by a unanimous decision on March 2, 1896. The decision of the court by Justice Harlan held that under the terms of the Pacific Railway Acts of 1862 the only security the government contemplated or obtained was the obligation of the company and a mortgage upon the railroad, and that the construction now placed by the government upon the Act under which the loan to the Central Pacific Railway was made was not only contrary to the intent of Congress but would have tended to defeat its purpose. The government loan was eventually paid in full when due.

The winning of the government suit against the Stanford estate permitted the distribution to the University of two and a half million dollars in bonds by an agreement, dated April 29, 1896, between Mrs. Stanford and the Trustees, in liquidation of Stanford's bequest of that amount made to the Trustees for the support of the University. But the income from these bonds, which amounted to one hundred and twenty thousand dollars per year, or exactly the equivalent of the ten thousand dollars per month which the court had been allowing

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Mrs. Stanford as widow during administration, but which stopped upon distribution of the estate, fell far short of meeting the minimum expenses of maintaining the University, whose faculty salary roll, aside from the compensation of assistants, cost of equipment, and general expenses, was one hundred and fifty thousand dollars.

After paying the bequests to the University and Stanford's relatives, and receiving the balance of Stanford's estate on final distribution, Mrs. Stanford had in her own right about two millions in bonds, of which one million bore only four per cent. interest, fragments of unproductive real estate in some fourteen different counties, 28,468.25 shares of the Southern Pacific Railroad (of California), and 284,780.50 shares of the capital stock of the Southern Pacific Company (of Kentucky), the latter being about a one-quarter interest of the entire capital stock issued at the time, a one-quarter interest in the Pacific Improvement Company, 13,218 shares of the capital stock of the Market Street Railway Company, 7,274 shares of the capital stock of the Oakland Water Front Company, and stock of little value in other companies. None of the stock received by her was upon a dividend-paying basis, and it required about all of Mrs. Stanford's income to make up the monthly deficit of the University, with the ever present fear that the assessment of the taxable stocks might force their sale at sacrifice prices.

Neither the winning of the government suit nor the distribution of Stanford's estate relieved Mrs. Stanford and the University from financial difficulties. In July, 1898, Mrs. Stanford wrote: "If I am able to keep the University in the condition it is now, I shall be more than thankful. Fifteen thousand dollars a month is a great expenditure, and exhausts my ingenuity and resources to such an extent that had I not the University so close to my heart I would relieve myself of this enormous burden and take rest and recreation for the next year. But I prefer to see the good work going on in its present condition, and I am not promising myself anything further for the future until the skies are brighter than they are now." Notwithstanding Mrs. Stanford's heroic efforts the University had reached a state of stagnation with a fixed appropriation of one hundred and fifty thousand dollars for faculty salaries every year from the death of Senator Stanford. Increased income or decreased expenditures for taxes was urgent.

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The beginning of my work for the University was the result of a purely business call upon Mrs. Stanford. Shortly before the graduation period in 1898, while these and other matters were worrying Mrs. Stanford, William H. Harrelson, also of the Pioneer Class, and I called on her relative to the proposed removal of the Sigma Nu house and the transfer of the lease to another location. Mrs. Stanford kept us for hours discussing the needs of the University and the fight she was making to support and endow it. Among other things she spoke with feeling of C. P. Huntington's attitude in presuming to name a director of the Southern Pacific or Central Pacific Railroad Company to fill a vacancy theretofore filled by a Stanford representative. She said she had told Huntington that when her Stanford University boys grew up they would settle with him for his treatment of her. His reply was that she would never see the day when one of her boys would ever lift a little finger in her defense. In telling this Mrs. Stanford broke into tears. As we were about to leave, Mrs. Stanford made me promise to make a second call, as she wished to discuss certain problems with me further.

In driving back to the fraternity house to report the result of our interview relative to the lease, I said to Harrelson that Mrs. Stanford only pretended she did not believe what Huntington said, and that she was too shrewd a woman to doubt Huntington's knowledge of human nature. I told Harrelson that we must do something to convince Mrs. Stanford that the students, faculty, and alumni were really back of her and desirous of aiding her in any way possible. I suggested that we work up a mass meeting of students, faculty, and alumni to secure the exemption of University property from taxation, and have it announced in the San Francisco papers as well as those at the University, for the greater effect upon Mrs. Stanford. The mass meeting took place and the little chapel was nearly filled with really interested Stanford people. The movement had started, and though the total collection raised to finance a constitutional amendment campaign was but \$17.55, of which I acted as treasurer, those present made up in earnestness for what they lacked in money.

My second call on Mrs. Stanford made after the graduation exercises of 1898, pursuant to her request at the first interview, was but one of scores, if not hundreds, which continued to be made at her request down to the date of her departure for Honolulu in February,

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1905, whence she never returned. In one of the early interviews Mrs. Stanford informed me that she could not safely convey the Southern Pacific Company stock to the Trustees unless it were exempt from taxation, as it could not be done without publicity, and that she was advised that the Assessor would be liable upon his bond under a California Supreme Court decision if he did not assess property he knew to be taxable, and that it would take more than the entire income of the University to pay the taxes upon that stock alone. She confided to me that she desired to convey this stock and other securities to the University, and would do so if the University were granted exemption from taxation. She did so shortly after the adoption of the constitutional amendment by the Legislature, upon my assurance that it would be adopted by the people.

In starting the movement for a constitutional amendment to exempt Stanford from taxation, I neither thought that the movement would succeed nor had the slightest idea that I should be asked by Mrs. Stanford to frame the amendment, and should thereafter find myself, contrary to my wishes and the urgency of other work, particularly that involved in the extensive and prolonged litigation over the Fair estate, both heading and financing the movement, and writing its literature, with no official status, or authority, or approval, and practically no other support than that furnished by my brother, Thomas G. Crothers, Francis V. Keesling, who had just graduated from the Law Department, and John F. Sheehan, all of whom devoted a large part of their time for many months during the two campaigns for the amendment. Both Sheehan and Keesling made State-wide trips, traveling in all manner of conveyances and at strange and inconvenient hours as they marshaled alumni, political, and newspaper support.

Pursuant to Mrs. Stanford's request I attempted to frame a constitutional amendment to exempt the property of Stanford University from taxation. I was shocked to find the legal status of the University in the condition which I have already outlined, and considered that, however important exemption from taxation might be, infinitely more important was the laying of entirely new and different legal foundations for the University, and its creation into a legal entity with all necessary powers legally granted to the Trustees, and all hampering restrictions and limitations removed. Nothing short of a constitutional amendment would accomplish or authorize these



ADMINISTRATION BUILDING



LAYING OF THE CORNER STONE OF THE UNIVERSITY

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essential things. I found that neither the Board of Trustees nor the University had a legal name or identity by which it could be designated, and, like any other trust created by deed or will, the Stanford trust could only be designated by reference to the Founding Grant.

When I found that the latter did not follow the terms of the Enabling Act, and the bequest and subsequent grants and amendments did not conform to either the Enabling Act or the Founding Grant, it became of the utmost importance that the Founding Grant should be referred to in the proposed amendment not only for the purpose of identifying the University properties and trusts, but for the purpose of its confirmation as well as the confirmation of any supplementary grant. I accordingly concluded that it was absolutely necessary to broaden the scope of the proposed constitutional amendment, and entirely on my own initiative I drafted three additional clauses. The first of these provided for the ratification of the trusts and estate created by the Founding Grant under and in accordance with the Enabling Act. The second permitted the Trustees to receive property by any form of conveyance, and declared that, unless otherwise provided, the property should be held upon the trusts so ratified. The third clause authorized the Legislature to grant to the Trustees corporate powers and privileges.

These three provisions were necessary to the creation of the Board of Trustees into a legal entity, with necessary powers for the performance of their duties, and were deemed by me of so much greater importance than the exemption of University property from taxation that I subordinated the matter of tax exemption, and merely left it to the Legislature to make such exemption as it saw fit within narrow limitations. The President of the University and a faculty committee called me to the University repeatedly to persuade me to insert a broad clause directly exempting the University property from taxation, but I was confident that this would defeat the entire amendment, because it would deprive one county of one-eighth of its taxable property, and, as Mrs. Stanford claimed the right to change the object, nature, and purposes of the institution, I could not consistently ask that a practically unchangeable exemption in the State Constitution itself should be adopted. Even Mrs. Stanford was given to understand that the amendment was worthless, as not exempting any property from taxation, and held that view until I explained its other purposes

and necessity after it had been adopted by the Legislature. In the Senate it passed by but one spare vote, notwithstanding months of preliminary work, during which Keesling and Sheehan visited every nook and corner in the State, and the three of us spent two and a half months of day and night work on the Legislature. I told only one Trustee, Judge Leib, the purposes of the amendment before it was filed at Sacramento, and he said: "If those are your purposes I think it will accomplish them."

This is not the place to even outline the history of the two long and arduous campaigns, first to secure the approval of the constitutional amendment by the Legislature, and subsequently to secure its ratification by the people, but it is only fair to say that, aside from letters which Judge Leib sent to his clients and friends in Santa Clara County, neither Mrs. Stanford nor the University took any official action, nor was she or any of the other Trustees aware, at least during the first campaign, of any of the other purposes of the amendment than those relating to tax exemption. My brother and I advanced all of the money expended in each campaign, and in the case of the last one did so after being warned by Judge Leib that Mrs. Stanford, before leaving on a protracted trip, had informed him that she would not bear any expense of the campaign, but would leave it to the people of the State to approve or reject the amendment, which was intended to confirm the gift to them. However, after the passage of the amendment and after Mrs. Stanford came to realize its importance, she sent us checks covering certain expenditures which we had brought to the attention of Judge Leib, who reported the facts to her, as she had previously done as to certain expenditures made during the first campaign. These funds were advanced by us without promise or expectation of reimbursement. Both campaigns were primarily and almost exclusively alumni campaigns, and if the existence and present form of the University are dependent upon the constitutional amendment, it is the result of alumni initiative, followed by persistent alumni effort, inspired by Mrs. Stanford's needs as originally expressed to Harrelson and myself.

Of course our time, and that of Keesling, Sheehan, and other alumni, was given without compensation. This conduct of the alumni had a most important bearing upon Mrs. Stanford's attitude toward them and the University for which they were working.

The mere adoption of a constitutional amendment "permitting, approving and confirming" the trusts and estates created by the Founding Grant under and pursuant to the Enabling Act would not in itself transfer the title to the University endowment from Mrs. Stanford to the Board of Trustees, although I had hoped that the courts might take that view in case of Mrs. Stanford's death before she reconveyed the University endowment under the second clause of the constitutional amendment. Fortunately Mrs. Stanford lived, and directed my brother and myself to prepare deeds of reconveyance of such of the property previously conveyed to the University as she had not theretofore withdrawn under the reserved power expressed in each of her previous conveyances.

Pursuant to her instructions we drew three deeds of reconveyance. The first was the deed to the Stanford residence in San Francisco, on a special trust to be used to house a school of history and political science. The other two covered the real estate and personal property, respectively, which Mrs. Stanford desired to reconvey to the Trustees under the second clause of the constitutional amendment. These had the important effect of consolidating properties theretofore conveyed to the Trustees under one general University trust described and ratified in the first clause of the amendment. The consolidation of all of the endowment of the University, with certain specified exceptions, into a single trust fund upon one uniform trust in identical Trustees, with identical provisions as to the number, term of office, quorum, number necessary for affirmative action, etc., of the Trustees, was accomplished by the confirmatory grants of December 9, 1901, the general revision of October 3, 1902, the resignation and grant of June 1, 1903, and the assumption of corporate powers by the Trustees, all drawn by us to conform to, and render effective, the various provisions of the constitutional amendment. In other words, these new conveyances superseded all previous conveyances, and brought the titles to the University under and pursuant to the second sentence of the constitutional amendment, which provided for subsequent conveyances of title to the University.

In all her previous deeds to the University for the augmentation of the endowment, Mrs. Stanford reserved the right to withdraw, sell, or otherwise dispose of the properties conveyed thereby. She exercised this right to withdraw properties for her personal use and dispo-

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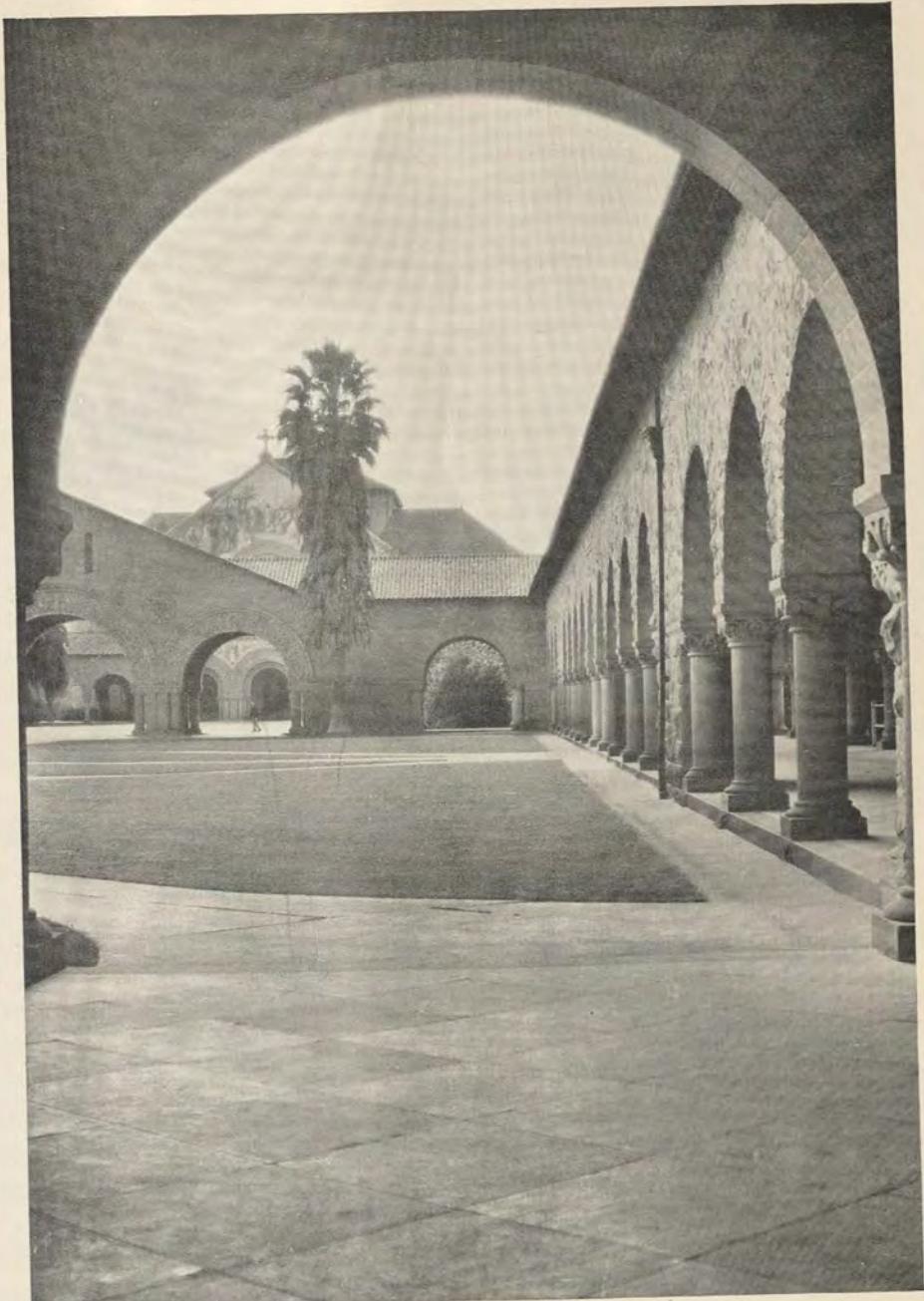
sition. Her only withdrawal of property for her personal use and other disposition under the reserved powers referred to consisted of two millions in bonds and a one-quarter interest in the Pacific Improvement Company.

The following reservation made in her great deed of May 31, 1899, not only authorized her withdrawal of the properties referred to, but raised serious doubt as to whether the deed conveyed any title whatever, particularly in view of Mrs. Stanford's continued right of possession under the terms of the deed itself and those of the Founding Grant. The clause is as follows:

"I do hereby reserve to myself, during my life, all the rights, powers and authority that were reserved by or to said Leland Stanford and myself, or either of us, in, or by means, or by virtue of, said grant made and executed by us to said Lorenzo Sawyer and others as Trustees as aforesaid, on the eleventh day of November, A. D. 1885; and also the further right, power and authority to grant, bargain, sell, convey or lease the real property herein described, and hereby granted to said Trustees, in trust, and to deal with said property as fully, in all respects, during my life as I could do were this indenture, grant, conveyance and transfer not made or executed. And I shall not, nor shall my executors or administrators, or my estate be responsible to, or be required to account to, said Trustees, or to the Board of Trustees, or any person whomsoever, for, or on the account of, the said personal property, or the rents, issues, income or profits thereof, or for or on account of the proceeds arising from any sale or other disposition as aforesaid, of said real or personal property, or from the rents, issues, income or profits of said real or personal property."

Neither the deeds of December 9, 1901, nor any other instruments drawn by us contained the foregoing, or any other reservation whatever. Mrs. Stanford depended entirely upon such powers, if any, as she had under the Founding Grant, as confirmed by the constitutional amendment, with the distinct understanding that her power to amend the trusts might not come within the terms of the confirmatory provision of the amendment as possibly not being "in accordance with" the Enabling Act.

After the questions as to the possible illegality of the Stanford titles and trusts became a matter of general comment as a result of the campaign before the people for the passage of the constitutional



MEMORIAL COURT AND MEMORIAL CHURCH

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amendment, and prior to the execution of the deeds of December 9, 1901, Mrs. Stanford executed a deed covering the entire endowment of the University, without any trust terms or conditions, and delivered the same to an old friend of herself and Senator Stanford, with the understanding that he would convey the property to the Trustees in case her previous conveyances to them should be contested and overthrown. She executed this deed upon the erroneous assumption that it could only take effect if the previous grants to the University Trustees should be found not to be valid. On the contrary, she had expressly reserved the right to sell or convey all but the original ranches to others without accountability, and this new absolute deed, made without our knowledge, merely threw new doubts upon the University titles, though it was given and received in perfectly good faith.

Immediately after executing the three deeds of December 9, 1901, prepared by us, covering such property as Mrs. Stanford desired to reconvey to the Trustees, upon the trusts confirmed by the constitutional amendment, Mrs. Stanford requested me to go over all of the trusts and amendments and recommend any changes thought necessary or desirable. In compliance with that request I framed, with minor exceptions, the amendments of October 3, 1902, which constituted a radical general revision of the trust provisions. Many of Mrs. Stanford's early amendments of doubtful legal or practical value were withdrawn or modified by the clauses of this general revision, as were certain restrictions upon the powers of the Trustees in the Founding Grant.

The number and fundamental importance of the changes required to free the University from the perpetual shackles of previous undesirable restrictions and directions now seem incredible. The first twenty clauses were required in whole or in part by technical legal considerations, some of which were almost essential to the practicable transaction of business by the Trustees. Six clauses were required to correct trust imperfections and undesirable directions and restrictions previously existing relative to the management of the University properties. Nineteen questions of educational policy were covered in twenty-two paragraphs. Nine questions of combined directions as to educational policy and public service and public duty are covered in the last twelve paragraphs of the revision and require the public interest to be placed above that of the University in case of any conflict. Some of these

latter clauses require in substance and effect the elimination from the University of spendthrifts and others lacking in seriousness of purpose and character, or not seeking their own improvement or permitting that of others, and whose education Mrs. Stanford believed would not be to the public interest. It is almost incredible that not one of the many technical, business or educational defects written into the everlasting charter of the University in previous addresses and grants, had ever been pointed out to Mrs. Stanford, or to us, by anyone within or without the University. It was fortunate that Mrs. Stanford's wonderful intuitive knowledge that she had fallen into many errors, lead her to ask me to seek out and report upon any such defects.

This general revision had many aspects. It removed the Founding Grant limitation of the University to the Palo Alto Farm and its prohibition upon the sale of any of the great ranches and other property of the University, which soon became a burden upon the University revenues. It revoked the requirement that the University must forever maintain the great running and trotting stables, both because it was not an eleemosynary purpose and was a great source of expense. It withdrew Mrs. Stanford's previous impracticable and legally questionable provisions concerning the management of the University and its finances, by which the essential powers of the Trustees were to be delegated to officers and committees, and concerning the organization of the Board of Trustees. It removed the obligation, of doubtful validity, to maintain a ten-acre cemetery park around the mausoleum of the Stanfords. It permitted the Trustees to improve any real estate held by them as part of the endowment with capital funds. It provided for the validation of the reduction in the term of office and number of the Trustees and corresponding quorums and number necessary for affirmative action, and withdrew inconsistent and unworkable previous amendments on these subjects. It amended the trusts to conform with the provision of the constitutional amendment giving the Trustees power to receive donations of property by any form of conveyance and wherever located.

The trust revision further provided that "the University must be forever maintained upon a strictly non-partisan and non-sectarian basis," and that "it must never become an instrument in the hands of any political party or any religious sect or organization." It removed a prohibition upon instruction during the summer months, and author-

ized the maintenance of such elementary and other schools upon the Palo Alto Farm as may be found necessary to experimental instruction in the department of education of the University. It removed specific directions requiring the charging of certain small registration fees and fees for admission to the Museum as possibly affecting the eleemosynary character of the trust, and left such matters to the discretion of the Trustees, subject to such power as vested in the Legislature under the constitutional amendment. It modified a previous direction concerning the future use of the Stanford residence site on the Palo Alto Farm with the intent of permitting the Trustees in their discretion to maintain a girl's college thereon. It provided for the organization of the faculty and Trustees, and for just and equitable rules of student discipline and rules governing the appointment and removal of members of the faculty. It required the Trustees to maintain facilities for the physical and spiritual as well as the intellectual life of the students. It added a provision for original research and for the advancement of useful knowledge, purposes not embodied in the Founding Grant, and provided for the maintenance and endowment of a great library to facilitate advanced instruction and research. It declared in this connection that "while its chief object is the instruction of students with a view to producing leaders and educators in every field of science and industry, the University was also designed to advance learning, the arts, and sciences; and to this end the institution should assist, by experimentation and research, in the advancement of useful knowledge and in the dissemination and practical application of the same."

Another practical interpretation of the University trusts relates to the much abused subject of academic freedom.

Before signing the general revision of the trusts of October 3, 1902, Mrs. Stanford, at my request, submitted it to President Leib of the Board of Trustees for his approval. Aside from two interlineations, one relating to the minimum cost of buildings upon the Campus, and the other relating to the undesirability of leaving a "gap" in the necessary education of a student between the free public schools and the University, he added three consecutive paragraphs relative to academic freedom, of which the following is the third, and shows on its face that they were all intended as expressions of personal sentiment and opinion:

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"If the professors of this University believe the above to be the true reason why professors of other universities have nearly altogether abstained from entering upon the public rostrum in the discussion of political and other questions upon which public feeling runs high and upon which the public is itself divided, then I indulge in the hope that they will follow their example."

These paragraphs, however sound, being merely expressions of opinion and personal wishes, should probably not have been incorporated in the trusts as set forth in the decree in the special proceeding, and when the Trustees again seek advice as to the interpretation of the trusts from the court of equity, they might ask that these clauses be so declared lest they be misconstrued by laymen.

The general revision of the trusts closes with the nine clauses emphasizing the original purpose of the Stanfords to make the University an instrument for the advancement of the public welfare. One of them provides that "The Founding Grant provides that the Trustees shall establish and maintain at the University an educational system which will, if followed, fit the graduate for some useful pursuit, and to this end, cause the pupils, as early as may be, to declare the particular calling which they may desire to pursue. The purpose of this requirement is not only to assure the practical character of the instruction, and to prevent such instruction as will not tend directly 'to qualify students for personal success and direct usefulness in life,' but to protect the University from the cost of instructing and from the baneful influence of a class, bound to infest the institution as the country grows older, who wish to acquire a University degree or fashionable educational veneer for the mere ornamentation of idle and purposeless lives."

Among the nine clauses with which this revision closes are also several provisions in the interest of worthy students of limited means in conformity with the more informally declared purposes of Senator and Mrs. Stanford in previous letters and addresses. Among these is the following:

"The University has been endowed with a view of offering instruction free, or nearly free, that it may resist the tendency to the stratification of society, by keeping open an avenue whereby the deserving and exceptional may rise through their own efforts from the lowest to the highest stations in life. A spirit of equality must accordingly be

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maintained within the University. To this end it shall be the duty of the University authorities to prohibit excessive expenditures and other excesses on the part of students, and the formation or growth of any organization, custom or social function that tends to the development of exclusive or undemocratic castes within the University, and to exclude from the institution any one whose conduct is inconsistent with the spirit of the foundation."

Inasmuch as the income of the University has not kept pace with the growth in the number of students, the increase of general expenses, the necessary construction of buildings, and the corresponding increase in the number and salaries of instructors, it has become necessary for the Trustees to greatly increase the tuition fees, but, to comply as nearly as the funds permitted with the directions of the Stanfords concerning nominal tuition fees, the Trustees have provided for loan funds and scholarship funds, of which about one-sixth of the most deserving students take advantage. A much larger endowment and income for this purpose is most desirable.

In the interest of students of limited means the further amendment governing the University was inserted at the same time requiring that "it should be kept, as far as practicable, in harmony with the public educational system, and that, in the matter of entrance requirements as well as in every other relation of the University with the general public, the University authorities should take into consideration the welfare of those who do not attend the University as well as those who do, and adopt the policy which, in their judgment, is in accord with the spirit of the foundation, as *above* defined." (This should read "below," as it refers to the last paragraphs of the address which were originally at the opening of the address, but were put at the end because Mrs. Stanford, who considered them the best expression of the Founders' purposes, wished them to be her last binding word concerning the Founders' wishes.) The amendment continues: "Without necessarily lowering the standard of regular admission to the University, concessions may be made in admission upon partial or special standing, or otherwise, in favor of students coming from high schools which cannot afford to maintain a separate course of study for the benefit of the small minority of high school students who go to universities, but offer a reasonable number of practical studies for the preparation of their students for an immediate entry into the

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active walks of life. So long as the public maintains an efficient high school system, the education given by the University to a student should commence where that given to him by the high school ends; and there should be no gap in his necessary education between where the high school ends and the University begins and which omitted part of his education could only be supplied by private schools—the latter not being generally accessible to the students of limited means. The University authorities are, however, the sole judges of the qualifications of applicants for admission to any department of the institution." The intent of the clause is indicated by the explanatory words which were inserted upon the suggestion of Judge Leib. Probably notwithstanding the last sentence of the clause, it requires the University to keep in touch with the public high schools or other publicly supported schools of higher learning, such as junior colleges, as are adequate in number and location for the reasonably convenient accommodation of students desiring to prepare for entrance to Stanford University.

The "spirit of the foundation" alluded to in the preceding paragraph was expressed in these inspiring valedictory clauses expressive of the purposes and ideals of the founders of the Leland Stanford Junior University:

"The moving spirit of the Founders in the foundation and endowment of the Leland Stanford Junior University was love of humanity and a desire to render the greatest possible service to mankind. The University was accordingly designed for the betterment of mankind morally, spiritually, intellectually, physically and materially. The public at large, and not alone the comparatively few students who can attend the University, are the chief and ultimate beneficiaries of the foundation. While the instruction offered must be such as will qualify the students for personal success and direct usefulness in life, they should understand that it is offered in the hope and trust that they will become thereby of greater service to the public.

"As stated in the letter to the Trustees, accompanying the Founding Grant, 'the object is not alone to give the student a technical education, fitting him for a successful business life, but it is also to instill into his mind an appreciation of the blessings of this Government, a reverence for its institutions, and a love of God and humanity, to the end that he may go forth and by precept and example spread the great

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truths by the light of which his fellowmen will be elevated and taught how to obtain happiness in this world, and in the life eternal."

Although few people ever enjoyed their work as much as Mrs. Stanford enjoyed hers as surviving founder, shortly before or after January 1, 1903, she expressed the opinion to me that it was to the best interest of the University for her to resign all her powers as surviving founder, including her power to amend the trusts. She had come to realize that she had about finished the laying of the physical and spiritual foundations of the University, and that the time had come for what she characterized as radical action in building the important departments up to the standard of the very best in America and drawing graduate students and throwing emphasis upon advanced instruction and the elimination of students and others not seriously seeking self-improvement, and not likely to stand for integrity and service in the community. She felt from her own experience that it was not appropriate for a woman to stand alone as the sole trustee of a University about to enter upon new and controversial policies, and whose building program was nearing completion, thereby permitting it to enter upon such a rapid development as it had never yet experienced. Moreover, as she wished to initiate the Trustees into their work in her lifetime, and to make their responsibility and power complete, she planned and later took a prolonged trip abroad. She further confided to me that she feared that with advancing age she might be led to make unwise changes. I told her that in the absence of an amendment to the Enabling Act providing for the immediate succession of the Trustees, their powers would not commence until her death, even if she did resign.

Mrs. Stanford's proposed resignation presented the technical problem of meeting the necessity for the legal determination of the validity of Mrs. Stanford's amendments, without jeopardizing the University titles, and of judicially establishing the titles to the University endowment without a contest. This was accomplished by devising and drafting a special proceeding different from any theretofore existing, in which the competence of Senator Stanford and of Mrs. Stanford at the times of all grants and amendments, and their freedom from duress, fraud, and all other disabilities, and the validity and legal effect of all University trusts, as well as the titles to the University endowment, could be judicially determined in a single suit brought

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against Mrs. Stanford and all the world, without the necessity of the Trustees being called upon to risk the validity of the University titles by being obliged to take a stand in an ordinary suit as to the validity of any or all of the scores of clauses in the Stanford trusts. As already indicated, we believed that, barring possible contests, based upon the competence and freedom of action of the Stanfords, we had absolutely secured the title to the University endowment by our previous measures, regardless of what view the courts might take as to whether any or all of Mrs. Stanford's amendments came within the confirmatory clause of the constitutional amendment, or whether the courts should hold that the clause in the Founding Grant reserving to Mrs. Stanford the power of amendment was itself confirmed as being created "under and in accordance with" the Enabling Act. Most urgent of all was the question as to whether she had exceeded her reserved power to amend the trusts, in reducing the number of Trustees from twenty-four to fifteen, and the quorum from fifteen to eight, and the number necessary to affirmative action from thirteen to eight. It is obvious that the Trustees could not safely transact any business until these questions were determined.

There was also the question whether the effect of the confirmatory clause of the constitutional amendment related only (1) to amendments made prior to its passage by the Legislature in March, 1899, or (2) related only to those made prior to its final adoption by the people on November 6, 1900, or (3) whether the constitutional amendment confirmed the reservation of the power to amend the trusts and permitted and approved any amendments not in themselves unlawful, whether made before or after its final ratification. If the first should be the decision, the Trustees would have little or no power over the University under the almost unlimited powers of the President of the University under an amendment of June 1, 1897. If the second view should be taken, all of the prior amendments withdrawn or modified by the general revision of October 3, 1902, would still be in effect, excepting possibly in so far as they conflicted with the law. We hoped (and my brother succeeded in so doing by the special proceeding) to establish the third or broadest of the three constructions of the confirmatory clause, under which all important amendments conforming with general law were held to be valid. The confirmatory clause of the constitutional amendment applied to the titles as well as the trusts



ARCHWAY THROUGH ARCADES

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set forth in the original Founding Grant and any supplementary grants, and was open to similar constructions as to the titles in supplementary grants of various dates, but the deeds of reconveyance of December 9, 1901, rendered that unimportant.

Early in 1903 I volunteered to draft the necessary acts and caused them to be passed by the Legislature. Mrs. Stanford designated and requested my brother to represent the individual Trustees as such and the Board of Trustees in bringing the suit under the proposed special proceedings, and, pursuant to letters from her to each of the absent Trustees, my brother received through the mail uniformly worded written authority to represent each of them as individual Trustees and to represent the Board of Trustees in bringing the proceeding and in any other matter affecting the University trusts. Subsequently, and upon the date of her resignation as surviving founder, June 1, 1903, she reported her action to the Board of Trustees, and at her request a resolution was adopted by the Board authorizing my brother to bring said proceeding and to represent the Board and the individual Trustees as such in that and any other matter.

In the meantime I had formulated and caused to be passed the act which was approved March 13, 1903—the nineteenth anniversary of the death of Leland Stanford, Jr.—providing for the immediate succession of the Trustees upon Mrs. Stanford's resignation, and the act of February 10, 1903, authorizing the special proceeding. My brother had spent several months in preparing the 511-page petition in the special proceeding, setting forth the competence and freedom from all disabilities of the Founders, and analyzing all documents and alleging all facts necessary to be alleged and proved to establish "the existence and terms of, and for the determination of the validity and legal effect of grants or other instruments creating, changing or affecting trusts and estates for the founding, endowment and maintenance of the Leland Stanford Junior University." He had also outlined in advance the 172-page decree, which is, in effect, the charter of the University, and supersedes all prior grants and amendments and other instruments affecting the University titles and trusts.

At the time that the special proceeding came up for hearing, Mrs. Stanford appeared in court bringing with her the Founding Grant and each of the subsequent grants and amendments of the trusts, and testified fully as to the founding of the University and the

due execution of each and all of the grants and the amendments of the trusts. She testified that all of the acts performed by her and Senator Stanford relative to the founding and endowing of the University were their voluntary acts, and that they were both competent and free from undue influence at the time, and she thereupon informed the court that she wished the Founding Grant and the subsequent grants and amendments confirmed, including her resignation and surrender of powers, and wished it determined that the title of the properties and the power of management and control of the University and its properties was then, and was to continue, in the Trustees and the Board of Trustees. At the same time further evidence was introduced proving the competence of Senator and Mrs. Stanford at all times during the founding and establishing of the University, and particularly Mrs. Stanford's competence and freedom from undue influence at all times.

Neither space nor the nature of this Outline of the Legal History of Stanford's founding will permit a discussion of the technical nature, scope and effect of the Decree and various other measures taken in regular sequence to place the Stanford titles out of danger and render the trusts workable, and give the Trustees the powers essential to the proper management of the finances and the supervision of the University.

We framed Mrs. Stanford's resignation in the form of a combined resignation and grant of the entire endowment and educational plant at the time under her control as surviving founder, or surviving wife of the founder. No reservation of power was expressed in any of the previous deeds of December 9, 1901, and certain minor transfers of personal property theretofore framed by us, including a donation of the Stanford jewels to constitute the "Jewel Fund" to assure the adequate accumulation of books for the library, but in every case they were made upon the assumption, or at least upon the hope, that Mrs. Stanford was still entitled to exercise all of the powers reserved in the Founding Grant, including the power of amendment. For that and other reasons we concluded that Mrs. Stanford's resignation should be drafted not merely as a surrender and resignation of all powers vesting in her, including the power of amendment, but also as a grant to the Trustees and to their successors forever, for the benefit of the University, of all of the right, title, and interest in or to any

and all property she then held as surviving founder by operation of law or otherwise. No comment is necessary upon the unselfish devotion to the University and faith in the wisdom and fidelity of the Trustees which prompted this self-effacement of Mrs. Stanford, when her interest in, and intelligent understanding of, the needs of the institution were at their peak.

Shortly before the resignation of Mrs. Stanford various people claiming to be interested in more rigid discipline at the University or opposing the maintenance of the University as a co-educational institution brought disparaging reports to her of the number of men and women students alleged to have been seen promenading the walks and drives upon the Campus in the late evening hours. Knowing that I did not share her fears and that I doubted the correctness of the reports, Mrs. Stanford wrote two separately bound addresses to the Trustees for delivery upon the occasion of her resignation as surviving founder. One of these was shown to me in advance. It contained no reference to the subject of co-education, and I had received no intimation from her that she would bring up the subject of co-education upon the presentation of her resignation.

At her request I sat beside her at the table in the bay window of her library in her home in San Francisco, while the Trustees sat in rows at the other side of the table. She arose and read the address which she had submitted to me, and then, to my surprise, took up the other address which dealt with many matters of detail and many personalities at the University, and ended with the statement that she had caused Senator Stanford to provide for the admission of and equal advantages for women at the University, that she had theretofore limited the number to five hundred, and now expressed the hope that if the Trustees should ever conclude that co-education was a failure they should abolish it. Knowing that the Trustees had no such power unless she should amend the trusts before she presented her resignation, which lay before her and which she was about to take up and read, I stated that I believed that there was a misunderstanding, and requested a five-minute recess, during which time I explained to Mrs. Stanford that, if she really desired the Trustees to have the power to eliminate women students from the University, it would be necessary for her to execute an amendment to that effect before presenting her resignation. At the same time I expressed doubt as to the wisdom of

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making such a radical change in the charter of the University, in view of the fact that it had been given extraordinary privileges under and pursuant to the constitutional amendment without the public being aware of the fact that she possessed the power to make such a radical change in the character of the University. She thereupon said that she would allow the trusts to stand as they were in that regard, and took up her resignation and read it to the Trustees. I felt that even if co-education should prove to be a failure there was nothing in the charter that prohibited the maintenance of a separate college for five hundred women, the only problem being the matter of expense "to afford equal facilities and give equal advantages in the University to both sexes." But I also felt that her fears were not well founded, as the relationship between men and women at the University during my college generation seemed to me to be little short of ideal. I had in mind, but did not mention the fact, that it might be held in the proposed judicial proceeding, or in a possible contest, that the confirmatory clause of the constitutional amendment might not be construed to validate her power to make such an amendment.

After Mrs. Stanford's resignation of her powers as surviving founder, she consulted my brother and myself concerning desired changes in her will. Under its terms she bequeathed three million dollars to her relatives, and the rest and residue to the University, but inasmuch as her estate consisted of about three millions in bonds and cash and a one-quarter interest in the Pacific Improvement Company, which she valued at about six million dollars, we advised her that, under the law then existing, she could not give by will more than one-third of her estate to education or other eleemosynary purposes, whereas she apparently desired to leave approximately two-thirds of the value of her estate to the University. She said she did not wish to give the Pacific Improvement Company stock to the University during her lifetime, as she hoped to sell it and had other plans for the disposition of some of the proceeds, but she did wish to have it in such form that in case it were not sold it would go to the University. She consulted Judge Leib as to whom she should appoint as trustee to hold the stock in trust for her during her lifetime, with her right to receive both income and liquidating dividends, with a provision for transfer of her stock to the Trustees upon her death. Judge Leib advised her that if she desired someone to carry out her wishes regard-

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less of consequences she should appoint me as such trustee. When this was suggested to me by Mrs. Stanford, I advised that more than one trustee be appointed, and suggested that Judge Leib and Mr. Lathrop be appointed co-trustees. Fearing that Judge Leib would not outlive her, as his health was not good at the time, and not desiring any publicity concerning the trust in case of his death, Mrs. Stanford insisted on my acting as sole trustee with her brother, Charles G. Lathrop, as my alternate in case of my death or disability.

Although I held Mrs. Stanford's power of attorney from shortly after her resignation until the date of her death, as trustee of the Pacific Improvement Company Trust I directed the company to send Mrs. Stanford's one-quarter of all dividends directly to Mr. Lathrop at the business office of Stanford University, and his receipt was obtained for all of such payments. At the time of Mrs. Stanford's death I was at Tucson, Arizona, on my way to Mexico on business, and immediately returned and tendered the Pacific Improvement Company stock to the Trustees, with a request that they accept the same subject to the claim of Mrs. Stanford's estate for about one hundred thousand dollars in dividends declared and due, but not yet paid. The Trustees expressed an unwillingness to accept the stock subject to any conditions, and, although they passed a resolution expressing approval of my attitude, I expressly waived my request that they protect me from liability to Mrs. Stanford's estate or others by reason of my immediate delivery of the stock without awaiting the ascertainment or determination of their rights. This trust enabled the University to receive several million dollars which it could not have received under the terms of Mrs. Stanford's will. Based upon the relative value of the Pacific Improvement Company stock and that part of Mrs. Stanford's estate which was administered under her will, the extent of my waiver of trustee's fees and my brother's waiver of attorney's fees represented a saving to the University of more than one hundred and twenty-five thousand dollars. The California law provides, relative to such a trust, that "the trustee is entitled to the same compensation as an executor." The attorney for the trustee is allowed the same compensation as the attorney for an executor.

The dividends on the Pacific Improvement Company stock paid to Mrs. Stanford and the University from September, 1902, to November 1, 1906, amounted to \$3,527,780.24. During the exist-

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ence of the Pacific Improvement Company Trust, the dividends paid to Mrs. Stanford were \$775,000.00. The dividends paid to the University from the date of Mrs. Stanford's death to November 1, 1906, were \$1,262,500.00. I have not the record of subsequent dividends or other returns from the stock. In a letter from A. D. Shepard, manager of the Pacific Improvement Company, to General Hubbard, owner of a half-interest therein, dated August 6, 1908, he valued the remaining assets of the Pacific Improvement Company at \$17,617,961.23. On this basis the University's interest at that date would have still been worth \$4,404,490.30.

After the report by me of the Pacific Improvement Company trust to the Trustees and their acceptance of the same, the Board of Trustees, on March 29, 1905, adopted the following resolution:

"Upon motion of Trustee Reid, seconded by Trustee Lathrop, Trustee Crothers was instructed to appear for the Trustees and the Board of Trustees in the matter of the Estate of Mrs. Stanford."

Thomas G. Crothers, one of the executors of the estate of Mrs. Stanford, designated S. F. Leib, one of the old friends of the Stanfords, as one of the attorneys for the executors and the estate.

In anticipation of a possible contest of both the will and the trust, it was informally agreed, upon the suggestion of Judge Leib, as one of the attorneys for the executors, that in case of a contest I should conduct it. We hastened the settlement of the estate to avoid liability of the estate for interest upon bequests, amounting to three millions of dollars, to enable the University to secure a small residuary distribution to the Trustees, and to enable the University to benefit from the technical implications arising from a "rest and residue" clause in the decree of final distribution which would render a contest of any gift of Mrs. Stanford's futile, as the property involved therein would go to the University under the decree in case the gift were defeated.

One of the first and most important problems presented to the Organization Committee of the Board of Trustees was the reconciliation of the University trusts with the best practice of American universities, relative to the appointment and removal of professors and instructors at the University. The plan worked out granted to the President of the University the sole power to initiate appointments to the faculty so long as he made no removals without the consent of the Board of Trustees.

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While Stanford University has always been singularly free from any interference by the Trustees in the orderly selection and removal of members of the faculty, its trust provisions have undergone several important changes. The Founding Grant provides, in subdivisions 9, 10, and 11 of Article Four, that the Trustees shall have power, and it shall be their duty:

"9. To appoint a President of the University, who shall not be one of their number, and to remove him at will.

"10. To employ professors and teachers at the University.

"11. To fix the salaries of the President, professors and teachers, and to fix them at such rates as will secure to the University the services of men of the very highest attainments."

On the other hand it provided that it shall be the duty of the Trustees to give to the President of the University the power to remove professors and teachers at will. These provisions virtually reversed the practice based upon the wisdom of experience elsewhere in such cases. Universal experience has demonstrated that trustees should scrupulously refrain from taking the initiative in making either appointments or removals of members of a university faculty, and no president could remove many trustee appointees and retain his position. These provisions were superseded by Mrs. Stanford's amendment of June 1, 1897, in which she explicitly directed "that the selection and removal of the professors and teachers, and all questions relating thereto, shall be determined by the President and by him alone." This went too far in the other direction and virtually provided for a presidential dictatorship.

A few years after making the amendment to the trusts just quoted, giving the President virtually dictatorial powers, Mrs. Stanford was persuaded that in practice it would be unwise and inconsistent with the spirit of freedom which should exist in the modern university, and I framed the amendment of October 3, 1902, in which she withdrew all directions theretofore made by her inconsistent with the above-quoted subdivisions 9, 10, and 11 of Article Four of the Founding Grant. At the same time she added the following:

"The Board of Trustees shall adopt such a plan for the nomination and appointment of professors and teachers, and the determination of their salaries, as experience of this and similar institutions may prove to be desirable."

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evidence, together with any answer and evidence offered by the accused, and the recommendations of the Advisory Board, shall be attached to the recommendation of the President of the University, and the action of the Board of Trustees shall be based solely upon the recommendation of the President of the University and the record attached thereto, there being no further hearing before the Board of Trustees or any member thereof, unless the Board in its discretion shall elect to receive other evidence in aid of its decision, and any such recommendation and information affecting the honor or character of a member of the teaching staff shall be presented to and acted upon by the Board of Trustees separately from anything which may involve his competency or fitness in any other respect. The members of the Board shall not in any case or in any event listen to or receive any statement concerning such matter except in open meeting."

To the foregoing resolution President Jordan unhesitatingly gave his written assent. It gave him all the powers any university president could wish for and assured him the backing of the Trustees as to all proper removals. I never heard of a case where a professor to be removed ever appealed to the Board of Trustees and informal appeals to individual Trustees were not permissible.

Aside from the amendment of the trusts quoted above requiring the Board of Trustees to adopt rules governing the nomination and appointment of professors and teachers at the University, and the amendment previously quoted requiring the Board of Trustees to adopt by-laws governing the powers and duties of its officers and committees, the General Revision also required the board "to make general laws providing for the goverment of the University, and to provide for just and equitable rules of discipline."

Accordingly, at the request of Mrs. Stanford upon her resignation as surviving founder, the Board of Trustees created the Organization Committee as a permanent standing committee to work out, and from time to time recommend changes in, the organization of the University and the Board of Trustees. From its inception the committee has been a most important agency of the board in harmonizing and coördinating the work of the various branches of the University and that of the officers and the other committees of the board. On many subjects the views of the members of the Organization Committee, as well as those of the board, have differed and from time to time changed. For example, Trustee Davis and I, as the Sub-Committee

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of the Organization Committee, outlined a plan governing the organization of the financial management along theoretical lines, which was not acceptable on certain points to the majority of our associates, and the following extract from the minutes of the board of February 22, 1905, alludes to the adoption of a different plan submitted by another special sub-committee appointed for that purpose. This action was taken shortly before Mrs. Stanford's death, and at that time, in addition to being secretary of the board, I was also assistant treasurer and business manager, without honorarium:

The report heretofore presented by Trustee Sloss upon the organization of the financial management of the University was taken up. Trustee Crothers, on behalf of Trustee Davis and himself, constituting the sub-committee which drafted the former reports of the Organization Committee, stated that he had assented to the report in an incomplete condition, but presented the following objections to the report in its present form:

That the requirement that future treasurers should be elected from the members of the board needlessly restricted the selection of a person to fill that office, also rendering the simultaneous selection of an outside person as a trustee and as treasurer practically impossible against opposition on the part of the friends of a candidate on the board.

That the provision under which the board will place the securities in the possession of a single trustee upon the death of the present treasurer, is not customary in such cases and exposes the securities to the danger of loss or destruction through the possible dishonesty, temporary insanity or duress of the single custodian, and

That the report is inconsistent with the terms of the by-laws respecting the powers and duties of certain officers and committees, without being in form to, or attempting to amend such by-laws in the manner provided.

Upon motion of Trustee Eells, seconded by Trustee Hopkins, the report presented by Trustee Sloss was adopted.

The minutes of the meeting of the board of March 29, 1905, show the following upon the same subject:

Upon motion of Trustee Reid, seconded by Trustee Gray, the portions of the report of Mr. Sloss, adopted at the last meeting relative to the selection of the treasurer and the custody of the funds, were referred back to the Organization Committee to investigate and report thereon.

The next important step taken by Stanford University since the death of the founders was the assumption of the burden of maintaining a medical school.

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On August 1, 1906, I was appointed chairman of a committee of the Trustees of Stanford University, created to consider the desirability of the proposal of the authorities of Cooper Medical College to turn the institution over to the Trustees of Stanford University, to be operated as a University Department. About two years' time was given to a study of the problem before final action was taken by the Board of Trustees. The final decision of the trustees to assume the enormous burden of maintaining a medical school, and the consequent curtailment of desirable expenditures in other directions, has had and will have, such an important bearing on the future of the University as to justify an outline of the reason which impelled them to believe that the maintenance of a high grade medical school in the West by Stanford University was a duty which, under the trusts, the University owed to the public.

As chairman of the committee to report upon the proposal of the Cooper Medical College, I made a study of medical education in San Francisco and elsewhere throughout the country. I found that only two medical schools of the country required graduation from college or its equivalent for admission—those of Johns Hopkins and Harvard Universities, and that only two others, the Universities of Chicago and California, required the equivalent of two years of college work as conditions for entrance. In the report of President Harper, of Chicago University, for the year 1902-04, he congratulates the University upon the raising of the standards of entrance requirements of the Rush Medical College for the first year medical work to include a course of at least two full years of the regular college curriculum. In that report he said: "This important step was taken with grave apprehension on the part of some of the friends of Rush Medical College. It was evident that a great risk was incurred in adopting a policy which was not supported by any institution within a thousand miles. Rush Medical College, including its first two years, as conducted in the University of Chicago, now stands as one of four institutions in the United States which require more than a high school training for admission."

During the years 1904 to 1908 a few other medical schools gradually worked entrance requirements up toward the standard set by the University of Chicago and the University of California, with the ideals of Johns Hopkins and Harvard as their final goal; but at the time that the Stanford trustees were called upon to determine whether or not

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they should undertake the herculean task of maintaining a medical school there was not a single medical school in the Western or Southern half of the United States having adequate standards of admission and scholarship on the one hand, and endowment and educational equipment on the other. It was the almost universal view of educators that medical schools should be self-supporting, whereas under the new conditions of advanced scientific knowledge in medicine, it is now an accepted doctrine that medical schools are the most expensive, and, therefore, the least capable of maintaining themselves on anything like a self-supporting basis. I had correspondence with President Wheeler, of the University of California, who expressed his dislike of Stanford entering the field of medicine, and as my apprehensions concerning the cost of the department were even greater than his fear of Stanford's rivalry, I offered to recommend that Cooper Medical College affiliate with the University of California if the regents of the University of California would undertake to maintain a first rate medical school and to accept the principle of supporting it in part from their general funds by making an initial appropriation of as little as \$25,000.00 per year. As the regents had refused theretofore to undertake the support of its medical school out of general funds, President Wheeler could not give any assurances that general funds would be used for the maintenance of a medical school in the future. I was obliged most reluctantly to recommend that Stanford University take over Cooper Medical College and assume the crushing burden of maintaining a medical school. Stanford had scarcely completed taking over Cooper Medical College properties and selected Dr. Ray Lyman Wilbur as dean, when the regents of the University of California commenced to make appropriations far beyond the minimum amount suggested by me toward the maintenance of the medical department of the University of California. I then suggested that we recede from our position, if that could be done with the consent of the Cooper people, and yield to the University of California the maintenance of medical education in this region, but Stanford had gone so far that my associates did not feel it could in honor and dignity recede from its position.