Part One

The Legal History of the University of Michigan; Development of the Autonomous Constitutional Corporation.
1. INTRODUCTION

Dean Stason's article on the Constitutional Status of the University of Michigan is—as stated in the Foreword—the inspiration for this book. This first chapter contains generous excerpts from that article and its appendices which review the early legal history of the University and the constitutional provisions under which it is governed. These excerpts are followed by a brief comment describing the changes brought forth since the Stason article by the new constitution adopted in 1963. The essence of the case of the Regents v. Board of Education of City of Detroit is included in this chapter for its definitive review of the early legal history of the University.

E. Blythe Stason, THE CONSTITUTIONAL STATUS OF THE UNIVERSITY OF MICHIGAN

1 The University of Michigan—An Encyclopedic Survey 116 (1942), University of Michigan Press.

The foundations of the constitutional status of the University of Michigan were laid long prior to the writing of specific provisions into the constitution of the state. The roots of those provisions are to be found in the early history of the Northwest Territory and in the early efforts to establish education as one of the necessary functions of government. . . .

On May 20, 1785, the Congress adopted "an ordinance for ascertaining the mode of disposing of lands in the western country," establishing a system of rectangular land surveys for the new country. The ordinance contained the forward looking provision that
“there shall be reserved the lot No. 16 of every township for the maintenance of public schools within the said township.” The significance of this early provision can scarcely be overestimated. It gives evidence of a recognition by the central government of its obligation and duty to provide at government expense for education within the Northwest Territory—this in a day when public schools were almost an unknown phenomenon, even in the states already established.

Two years later, on July 13, 1787, the Congress adopted the measure, known as the Ordinance of 1787, entitled “An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio,” and on July 23 of the same year a supplementary measure was adopted, entitled “Powers to the Board of Treasury to Contract for the Sale of Western Territory.” These two enactments were a part of the same general plan, and each of them contained important provisions concerning education. The earlier of the two, i.e., the ordinance, contained the often quoted general declaration: “Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged” (Northwest Ordinance, Art. 3).

The supplementary measure of July 23 was more specific. It reiterated the grant of 1785 allocating lot No. 16 in each township “to be given perpetually for the purpose of maintenance of the public schools within the township,” and, more importantly so far as the University is concerned, it added:

[Not more than two complete townships] shall be given perpetually for the purpose of a university, to be laid off by the purchaser or purchasers as near the centre as may be, so that the same shall be of good land, to be applied to the intended object by the legislature of the state.

These three measures, adopted by the Congress of the Confederation and, in effect, made a part of the fundamental law of the Northwest Territory, established a unique and valuable policy with respect to the encouragement and support of both elementary and higher education. Furthermore, it was a policy of remarkable vitality, as is amply attested by the fact that it has ever since been reflected to a greater or less extent in the fundamental law of the part of the Territory carved out in 1837 to form the state of Michigan.

In 1817 the predecessor of the University, the Catholepistemiad, was established by a territorial act (II Terr. Laws, 1817, p. 104), and in 1821, by a new enactment, the University itself was created as a “body politic and corporate” (I Terr. Laws, 1821, p. 879).
In pursuance of the policy established by the ordinances of 1785 and 1787, the Congress on May 20, 1826, passed the following measure:

[The Secretary of the Treasury is hereby authorized] to set apart and reserve from sale out of any of the public lands within the Territory of Michigan to which the Indian title has been extinguished a quantity of land not exceeding two entire townships for the use and support of a university. (4 U.S. Stat. L. 180.)

The grant was early accepted by the state (Laws, 1835-36, p. 149), and the Congress confirmed the selection of lands (5 U.S. Stat. L. 59). The superintendent of public instruction was directed to sell not to exceed five hundred thousand dollars' worth of these lands and to deposit the proceeds to the credit of a University interest fund (Laws, 1837, p. 209). The fund thus established, together with income in the form of fees and miscellaneous gifts, constituted the principal source of financial support of the University of Michigan until 1867. In that year additional financial aid was sought and obtained from the state legislature. The interest fund even today amounts to a considerable sum—about $38,000 per year. . . .

This federal territorial policy of providing both encouragement and continuing fiscal support for the University was subsequently carried on by the state in a wise and generous way. On the fiscal side, after the interest fund became insufficient to care for the needs of the growing institution, the "mill-tax" laws were passed to provide the necessary funds. The first of these laws, passed in 1867, consisted of an appropriation for the support of the University of a sum equal to one-twentieth of a mill on each dollar of taxable property in the state. Perhaps the most valuable and certainly the unique feature of this measure and its successors was their continuing nature, i.e., instead of being biennial appropriations, they were in reality permanent laws continuing from year to year until changed by subsequent affirmative legislative enactment. They thus approximated the permanence of the federal land endowment for the University. They gave the institution the stability enjoyed by the large privately endowed schools of the East. With some variations the policy of this mill-tax law of 1867 has been continued until the present day, and, although it is a statutory rather than a constitutional device, it has become so thoroughly a part of the accepted legislative practice and of the tradition of the state as virtually to share the permanent status of fundamental law. (See Appendix A, . . . for a list of the mill-tax acts.) It constitutes one of the major reasons for the fact that the University of Michigan has attained a first place among the state universities of the country.
THE CONSTITUTION OF 1835.—When Michigan adopted its first constitution, in 1835, two express provisions were written into the fundamental law concerning higher education. (See Appendix B, . . . for full text of provisions for University and public-school support in the Constitution of 1835.) One of these, section 2 of Article X, was general and followed the style set by the similar declaration in the Ordinance of 1787. It stipulated that "the legislature shall encourage by all suitable means the promotion of intellectual, scientific, and agricultural improvement." The other provision was more specific. In section 5 of Article X was the requirement:

.... the legislature shall take measures for the protection and improvement or other disposition of such lands as have been or may hereafter be reserved or granted by the United States to this state for the support of a university; and the funds accruing from the rents or sale of such lands or from any other source for the purpose aforesaid shall be and remain a permanent fund for the support of said university.

These provisions were written into the constitution in an effort to pursue the policy established by the national government during territorial days. They were good so far as they went; however, they left full power in the legislature to manage the affairs of the University, to regulate the appointment of the Regents, to establish or abolish departments, to regulate the appointment of professors, and to control expenditures from the University funds. In short, they left the internal administration of the University fully subject to the changing desires of the political arena at the state Capitol, then in Detroit.

In spite of early efforts to build the University into a strong institution, success and prosperity were not achieved in the period between 1835 and the revision of the constitution in 1850. The more thoughtful public men of the time felt that one of the reasons for the failure of the University to develop rapidly was the fact that its functioning was dependent upon and subject to the changing policies of the legislature. They felt that under such conditions the University could not attain the degree of stability, permanence, independence, and strength enjoyed by the denominational and endowed colleges of the East. The shortcomings were functional rather than fiscal.

In 1840 a select committee was appointed by the legislature to inquire into the condition of the University. A part of the report of the committee indicates clearly the consensus of contemporary opinion concerning higher education in the state.
"No State institution in America has prospered as well as independent colleges with equal, and often with less, means. Why they have not may be ascribed, in part, to the following causes: They have not been guided by that oneness of purpose and singleness of aim (essential to their prosperity) that others have whose trustees are a permanent body,—men chosen for their supposed fitness for that very office, and who, having become acquainted with their duties, can and are disposed to pursue a steady course, which inspires confidence and insures success, to the extent of their limited means. State institutions, on the contrary, have fallen into the hands of the several legislatures, fluctuating bodies of men, chosen with reference to their supposed qualifications for other duties than cherishing literary institutions. When legislatures have legislated directly for colleges, their measures have been as fluctuating as the changing materials of which the legislatures were composed. When they have acted through a board of trustees, under the show of giving a representation to all, they have appointed men of such dissimilar and discordant characters and views that they never could act in concert; so that, whilst supposed to act for and represent everybody, they, in fact, have not and could not act for anybody.

Again, legislatures, wishing to retain all the power of the State in their own hands, as if they alone were competent or disposed to act for the general good, have not been willing to appoint trustees for a length of time sufficient for them to become acquainted with their duties, to become interested in the cause which they were appointed to watch over, and feel the deep responsibility of the trust committed to them. A new board of trustees, like a legislature of new members, not knowing well what to do, generally begins by undoing and disorganizing all that has been done before. At first they dig up the seed a few times, to see that it is going to come up; and, after it appears above the surface, they must pull it up, to see that the roots are sound; and they must pull it up again, to see if there is sufficient root to support so vigorous branches; then lop off the branches, for fear they will exhaust the root; and then pull it up again, to see why it looks so sickly and pining, and finally to see if they can discover what made it die. And, as these several operations are performed by successive hands, no one can be charged with the guilt of destroying the valuable tree. Whilst State institutions have been, through the jealousy of State legislatures, thus sacrificed to the impatience and petulance of a heterogeneous and changeable board of trustees, whose term of office is so short that they have not time to discover their mistakes, retrace their steps, and correct their errors, it is not surprising that State universities have hitherto, almost without exception, failed to accomplish, in proportion to their means, the amount
of good that was expected from them, and much less than colleges in their neighborhood, patronized by the religious public, watched over by a board of trustees of similar qualifications for duty, and holding the office permanently, that they may profit by experience.

The argument by which legislatures have hitherto convinced themselves that it was their duty to legislate universities to death is this: "It is a State institution, and we are the direct representatives of the people, and therefore it is expected of us; it is our right. The people have an interest in this thing, and we must attend to it." As if, because a university belongs to the people, that were reason why it should be dosed to death for fear it would be sick, if left to be nursed, like other institutions, by its immediate guardians. Thus has State after State, in this American Union, endowed universities, and then, by repeated contradictory and over legislation, torn them to pieces with the same facility as they do the statute book, and for the same reason, because they have the right." (2 H. Doc., 1840, p. 470.)

THE CONSTITUTION OF 1850.—Such was the condition of affairs when the constitutional convention of 1850 met. Any reader of the debates of that convention will be impressed with the attitude of the delegates toward higher education. They recognized the need of removing the University from changing political influences and yet keeping it directly responsible and amenable to the people (Debates, pp. 782-85, 804, 846).

As a result of the work of the convention, provisions were therefore written into the Constitution of 1850 (Art. XIII) to establish the University as an independent constitutional corporation under the control of a Board of Regents elected directly by the people. The Board was made a body corporate, to be known by the name and title of "The Regents of the University of Michigan." Then followed the all-important clause: "The Board of Regents shall have the general supervision of the University and the direction and control of all expenditures from the University interest fund." By virtue of these provisions a quasi-independent constitutional corporation was substituted for the prior dependent statutory agency, and a permanent and stable educational plan for the University of Michigan was brought into being. Responsibility directly to the people of the state was substituted for responsibility to the state legislature. (For the full text of University provisions in the amended Constitution of 1850, see Appendix C. . . .)

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THE CONSTITUTION OF 1908.—The provisions of [the Constitution of 1908] were similar to those of the Constitution of 1850 insofar as the University was concerned. Section 5 of Article XI stipulated that "the Board of Regents shall have the general supervision of the University and the direction and control of all expenditures from the University funds." (The full text of University provisions in the Constitution of 1908 is given in Appendix D . . .) The word "interest," which had followed the word "University" in the Constitution of 1850, was omitted, and the word "fund" was changed to "funds," thus placing all University funds—the University interest fund, legislative appropriations, and funds from other sources—under the exclusive control of the Board of Regents.

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By the Constitution of 1908 the State Board of Agriculture [was] vested with the power of government of the Michigan Agricultural College, and the constitutional convention was so well satisfied with the functioning of the University under the provisions of the Constitution of 1850 that a similar constitutional status was conferred upon the college. In Article XI, section 8, the new constitution stipulated that "the Board [State Board of Agriculture] shall have general supervision of the College and the direction and control of all Agricultural College funds"—a clause practically identical with the corresponding University clause.

APPENDIX A*

MILL-TAX ACTS.—The various mill-tax acts of the state of Michigan are as follows:

*Laws, 1869, No. 14, p. 19: $15,000.
*P.A., 1899, No. 102, p. 146: 1/4 of a mill.

*Information on more recent state support for the University is found in Chapter V.
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P.A., 1925, No. 324, p. 476: 6/10 of a mill; total not to exceed $3,700,000.
P.A., 1931, No. 319, p. 545: 6/10 of a mill; total not to exceed $4,928,852.55.
P.A., 1937, No. 147, p. 230: appropriation of a sum equal to 83/100 of a mill but not to exceed $4,673,253.58.

APPENDIX B

SCHOOL AND UNIVERSITY PROVISIONS IN THE CONSTITUTION OF 1835.—The full text of sections 2 and 5 of Article X of the Constitution of 1835 is as follows:

Perpetual fund for support of schools. 2. The legislature shall encourage, by all suitable means, the promotion of intellectual, scientifical and agricultural improvement. The proceeds of all lands that have been or hereafter may be granted by the United States to this state, for the support of schools, which shall hereafter be sold or disposed of, shall be and remain a perpetual fund; the interest of which, together with the rents of all such unsold lands, shall be inviolably appropriated to the support of schools throughout the state.....

University fund. 5. The legislature shall take measures for the protection, improvement or other disposition of such lands as have been or may hereafter be reserved or granted by the United States to this state for the support of a university; and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be and remain a permanent fund for the support of said university, with such branches as the public convenience may hereafter demand for the promotion of literature, the arts and sciences, and as may be authorized by the terms of such grant; and it shall be the duty of the legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said university.

APPENDIX C

UNIVERSITY PROVISIONS IN THE CONSTITUTION OF 1850.—As amended in 1862, the full text of the provisions of the Constitution of 1850 relating to the University is as follows:
School fund. Sec. 2. The proceeds from the sales of all lands that have been or hereafter may be granted by the United States to the state for educational purposes, and the proceeds of all lands or other property given by individuals or appropriated by the state for like purposes, shall be and remain a perpetual fund, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and annually applied to the specific objects of the original gift, grant, or appropriation.

Regents of university; election. Sec. 6. There shall be elected in the year eighteen hundred and sixty-three, at the time of the election of a justice of the supreme court, eight regents of the university, two of whom shall hold their office for two years, two for four years, two for six years, and two for eight years. They shall enter upon the duties of their office on the first of January next succeeding their election. At every regular election of a justice of the supreme court thereafter there shall be elected two regents whose term of office shall be eight years. When a vacancy shall occur in the office of regent, it shall be filled by appointment of the governor. The regents thus elected shall constitute the board of regents of the University of Michigan.

Same; body corporate. Sec. 7. The regents of the university and their successors in office shall continue to constitute the body corporate, known by the name and title of "The Regents of the University of Michigan."

President of university; supervision by regents. Sec. 8. The regents of the university shall, at their first annual meeting, or as soon thereafter as may be, elect a president of the university, who shall be ex officio a member of their board, with the privilege of speaking but not of voting. He shall preside at the meetings of the regents and be the principal executive officer of the university. The board of regents shall have the general supervision of the university, and the direction and control of all expenditures from the university interest fund.

Agricultural school; appropriation; transfer to university. Sec. 11. The legislature shall encourage the promotion of intellectual scientific and agricultural improvement; and shall, as soon as practicable, provide for the establishment of an agricultural school. The legislature may appropriate the twenty-two sections of salt spring lands now unappropriated, or the money arising from the sale of the same, where such lands have been already sold, and any land which may hereafter be granted or appropriated for such purpose for the support and maintenance of such school, and may make the same a branch of the university, for instruction in agriculture and the natural sciences connected therewith, and place the same under the supervision of the regents of the university.
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APPENDIX D

UNIVERSITY PROVISIONS IN THE CONSTITUTION OF 1908.—The full text of the provisions of the Constitution of 1908 which relate to the University is as follows:

ARTICLE XI

Encouragement of education. Section 1. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Regents of university; election, term, vacancy. Sec. 3. There shall be a board of regents of the university, consisting of eight members, who shall hold the office for eight years. There shall be elected at each regular biennial spring election two members of such board. When a vacancy shall occur in the office of the regent it shall be filled by appointment of the governor.

Same; name. Sec. 4. The regents of the university and their successors in office shall continue to constitute the body corporate known as "The Regents of the University of Michigan."

University; president; supervision. Sec. 5. The regents of the university shall, as often as necessary, elect a president of the university. The president of the university and the superintendent of public instruction shall be ex officio members of the board of regents, with the privilege of speaking but not of voting. The president shall preside at the meetings of the board and be the principal executive officer of the university. The board of regents shall have the general supervision of the university and the direction and control of all expenditures from the university funds.

Educational institutions; maintenance. Sec. 10. The legislature shall maintain the university, the college of mines, the state agricultural college, the state normal college and such state normal schools and other educational institutions as may be established by law.

Proceeds of school land. Sec. 11. The proceeds from the sales of all lands that have been or hereafter may be granted by the United States to the state for educational purposes and the proceeds of all lands or other property given by individuals or appropriated by the state for like purposes shall be and remain a perpetual fund, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and annually applied to the specific objects of the original gift, grant or appropriation.

ARTICLE XIII

Regents of university; power of eminent domain. Sec. 4. The regents of the university of Michigan shall have power to take private property for the use of the university in the manner prescribed by law.
2. CHANGES MADE BY THE CONSTITUTION OF 1963

The constitution adopted in 1963 (for text see pp. 14) reconfirmed the constitutional status of the University of Michigan. The changes which the constitutional convention did make in the provisions for state-supported institutions of higher education demonstrated the convention's high regard for the form of government previously established for the University of Michigan.

The major change made in the Education Article of the constitution was the extension of the constitutional status formerly enjoyed only by the University of Michigan, Michigan State University, and Wayne State University, all created by constitution, to other state-assisted institutions created by statute. The University of Michigan was a creature of statute until the adoption of the Constitution of 1850.

The new constitution uses the same language for each of the state's 'Big Three' universities—the University of Michigan, Michigan State University, and Wayne State University. All other state institutions which may grant bachelor's degrees have been given a substantially equivalent form of government. Their governing boards have the same rights and powers as the boards of the Big Three except that instead of being elected by the people of the state, their members are appointed by the Governor with the consent of the Senate. Practically speaking, popular election of such a large number of officials is not a possible alternative.

The new constitution also creates a new eight-member state board of education. The old four-member board which had controlled four state universities created by legislative acts and formerly known as Normal schools was abolished. Along with other duties, the new board is made "the general planning and coordinating body for all public education, including higher education." (Article 8, Section 3.) The board is also instructed to "advise the legislature as to the financial requirements" of public education. However, the last sentence of the section makes clear that the functions of the new board were not meant to restrict the independence of the autonomous universities. "The power of the boards of institutions of higher education provided in this constitution to supervise their respective institutions and
direct the expenditure of the institutions' funds shall not be limited by this section."

Three other significant, though relatively minor, changes were made in the new constitution which affect the universities. Section 4 of Article 8 requires that formal sessions of the governing boards be open to the public. The same section requires that an annual accounting of all income and expenditures by each educational institution be given to the legislature. Finally, the composition of the governing boards of the major state universities is changed by dropping the Superintendent of Public Instruction from ex officio membership.

MICHIGAN CONSTITUTION (1963) Article VIII. Education.

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Sec. 3. Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.

The state board of education shall appoint a superintendent of public instruction whose term of office shall be determined by the board. He shall be the chairman of the board without the right to vote, and shall be responsible for the execution of its policies. He shall be the principal executive officer of a state department of education which shall have powers and duties provided by law.

The state board of education shall consist of eight members who shall be nominated by party conventions and elected at large for terms of eight years as prescribed by law. The governor shall fill any vacancy by appointment for the unexpired term. The governor shall be ex-officio a member of the state board of education without the right to vote.

The power of the boards of institutions of higher education provided in this constitution to supervise their respective institutions and control and direct the expenditure of the institutions' funds shall not be limited by this section.

Sec. 4. The legislature shall appropriate moneys to maintain the University of Michigan, Michigan State University, Wayne State University, Eastern Michigan University, Michigan College of Science
and Technology, Central Michigan University, Northern Michigan University, Western Michigan University, Ferris Institute, Grand Valley State College, by whatever names such institutions may hereafter be known, and other institutions of higher education established by law. The legislature shall be given an annual accounting of all income and expenditures by each of these educational institutions. Formal sessions of governing boards of such institutions shall be open to the public.

Sec. 5. The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan; the trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University; the governors of Wayne State University and their successors in office shall constitute a body corporate known as the Board of Governors of Wayne State University. Each board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds. Each board shall, as often as necessary, elect a president of the institution under its supervision. He shall be the principal executive officer of the institution, be ex-officio a member of the board without the right to vote and preside at meetings of the board. The board of each institution shall consist of eight members who shall hold office for terms of eight years and who shall be elected as provided by law. The governor shall fill board vacancies by appointment. Each appointee shall hold office until a successor has been nominated and elected as provided by law.

Sec. 6. Other institutions of higher education established by law having authority to grant baccalaureate degrees shall each be governed by a board of control which shall be a body corporate. The board shall have general supervision of the institution and the control and direction of all expenditures from the institution's funds. It shall, as often as necessary, elect a president of the institution under its supervision. He shall be the principal executive officer of the institution and be ex-officio a member of the board without the right to vote. The board may elect one of its members or may designate the president, to preside at board meetings. Each board of control shall consist of eight members who shall hold office for terms of eight years, not more than two of which shall expire in the same year, and who shall be appointed by the governor by and with the advice and consent of the senate. Vacancies shall be filled in like manner.
3. THE REGENTS OF THE UNIVERSITY OF MICHIGAN v. THE BOARD OF EDUCATION OF THE CITY OF DETROIT

The Supreme Court of Michigan; 4 Mich. 213, 221-29 (1856)

GREEN, J.

* * *

[W]e conclude . . . that the Governor and Judges had power to execute the deed. This power was assumed to have existed, and does not appear to have been questioned, in the case of Scott v. the Detroit Young Men's Society's Lessee. (1 Doug. Mich. R., 119.)

2. Are the plaintiffs the "successors" of the grantees named in the deed?

The consideration of this question requires a somewhat extended examination of the Territorial and State legislation in regard to the University of Michigan. The first Act for the establishment of such an institution, was made and adopted by the Governor and Judges of the Territory, on the 26th of August, 1817, and was entitled, "An Act to establish the Catholepistemiad, or University of Michigan." This law provided for the appointment of a President, and the creation of thirteen didaxia, or Professorships; and the President and didactors, or Professors, were invested with power to regulate all the concerns of the institution, and to enact laws for that purpose; to sue, and to be sued; to acquire, hold, and alien property, real, mixed and personal; to make, use, and alter a seal; to establish Colleges, Academies, Schools, Libraries, Museums, Athenaeums, Botanic gardens, Laboratories, and other useful literary and scientific institutions, consonant to the laws of the United States, and of Michigan; and to appoint officers, instructors, and instructii, in, among and throughout the various counties, cities, towns, townships, and other geographical divisions of Michigan. Their name and style as a corporation, was to be "The Catholepistemiad, or University of Michigan," and the great institution whose affairs were thus confided to the management of this magnificent legal entity, was to bear the same classical name. The didactors, or Professors, were to be appointed and commissioned by the Governor, and were to receive from the public Treasury an annual salary, to be from time to time ascertained by law. The funds for supporting the University were to be derived from taxes and other public sources, and the Treasurer was required to keep a separate account of the University fund. (Shearman's System of Pub. Inst., p. 4.)
The principal features of this Act, which demand notice as connected with the question involved in this case, are its comprehensiveness as indicated by its style, the broad scope of its objects, and that it was to be supported by a public fund; all showing that it was intended to be a great public institution, embracing the whole Territory, and such an one as would not admit of the existence of any other, similar in its character and purposes. Whether any organization was ever had of the Corporation thus provided for, does not very distinctly appear, and the Act itself was repealed by a law adopted April 30, 1821, entitled, "An Act for the establishment of a University." See Code of Laws compiled in 1827, page 448.

By this latter Act certain persons therein named were created a body politic and corporate, by the name, style, and title of the "Trustees of the University of Michigan," and as such they, and their successors to be appointed by the Legislature, were made capable of suing and being sued, holding property, real, personal and mixed, and of buying and selling and otherwise lawfully disposing of property.

They were authorized to establish such Colleges, Academies and schools, depending upon the said University, as they might think proper, and as the friends of the Corporation would permit; and to apply such parts of their estate and funds in such a manner as they might think most conducive to the promotion of literature, and the advancement of useful knowledge within the Territory; and to elect a President of the University, who should be, ex officio, a member of such Corporation. This institution was to be established in the City of Detroit, and to this Corporation was committed the control and management of the township of land which had been granted to Michigan by Congress, for the use of a Seminary of learning, and the three sections granted to the College of Detroit, by the treaty of Fort Meigs, concluded September 29th, 1817, were vested in the said Trustees, subject to the uses, trusts and purposes for which the same were granted. All the property, rights and credits belonging to the Corporation, established by the Act of the 26th of August, 1817, were vested in the new Corporation, subject to the uses, trusts and purposes for which the same property was granted, given, conveyed or promised.

By Section 9, it is provided that this law or any part thereof may be repealed or modified by the Legislative power, provided that such power of repeal should not extend to divert to any other purpose than those expressed in the grant thereof to the Corporation, any property granted to them. To this Corporation was the land in question conveyed by the Governor and Judges "to the use of the University of Michigan."
No institution corresponding to the idea of a University, as contemplated by the Acts above mentioned, having been organized, the State Legislature in 1837 passed an Act entitled, “An Act to provide for the organization and government of the University of Michigan.” (Laws of 1837, p. 102.) This Act provided that there should be established in this State an institution under the name and style of “The University of Michigan,” that the objects of the University should be to provide the inhabitants of the State with the means of acquiring a thorough knowledge of the various branches of literature, science and the arts; and that its government should be vested in a Board of Regents, who, with their successors in office, were to constitute a body corporate, with the name and title of the Regents of the University of Michigan. This act, without material modification, was incorporated into and re-enacted in the Revised Statutes of 1838 (p. 234, etc.), and also in the Revised Statutes of 1846 (p. 216, etc.). Under its provisions “The University of Michigan” was established and went into operation; and the same institution, under the supervision and management of the present Board of Regents, continues to exist, and is successfully accomplishing the great objects of its creation. The new Constitution, after providing for the election of Regents and the University, declares that the Regents thus elected shall constitute the Board of Regents for the University of Michigan, and that they, and their successors in office, shall constitute the body corporate, known by the name and title of “The Regents of the University of Michigan,” and as such they have committed to them “the general supervision of the University, and the direction and control of all expenditures from the University Interest Fund.”

That fund embraces the interest upon all moneys arising from the sale or disposition of the lands which have been granted by Congress for the support of a University, College or Seminary of learning in the Territory or State of Michigan, or acquired from any other source for the like purpose.

That the Corporation having charge of the University, since the organization of the Board of Regents, under the law of 1837, is a public Corporation, created for public purposes alone, cannot be doubted.

The institution was erected and has been supported by a public fund, and the Corporators have no private interest whatever, connected with their corporate character. (Trustees, etc., vs. Winston, 5 Stew. & Port., 17; Dartmouth Coll. vs. Woodward, 4 Wheat. R., 629, 660, et seq.) But it is insisted, that “the Trustees of the University of Michigan,” to whom the land in question was granted, was a private Corporation, and that their charter constituted a contract between the Legislature and the Corporators, which the Legislature could not
abrogate without the consent of the Corporation. To this it may be replied, that the Act of 1821, creating that Corporation, expressly reserves to the Legislature the power to repeal or modify it. This is a part of the contract itself, if the Act is to be regarded as a contract, and this, as well as every other provision of the charters received the assent of the Corporators when they accepted it. If not strictly a public Corporation, it partook largely of that character. The Trustees were to continue in place during the pleasure of the Legislature only, and all the vacancies were to be supplied by the Legislature. It did not, therefore, possess within itself the power of perpetuating its existence. It might at any time have been dissolved by the removal of the several Trustees, and the omission by the Legislature to appoint their successors. A large amount of public property was devoted to the support of the institution; but the Trustees were also made capable of holding property, real, personal and mixed: and of buying and selling, or otherwise lawfully disposing of property. Assuming, therefore, that they were a private Corporation in a legal sense, it became necessary to inquire whether their charter was repealed or modified by the Act of 1837, and if so, what was the effect of such repeal or modification, in reference to the property in controversy in this suit. In order to determine this question, we must first consider whether the Legislature of 1837 intended to create another and distinct institution from that contemplated by the Act of 1821, or to organize and put in operation the same. An examination of all the legislation relating to a University in Michigan, leaves no doubt upon this question. In every Act it is styled the “University of Michigan,” and its objects are the same in all, though expressed in different language. Each of them appropriated all the public property at the disposal of the Legislature, which had been donated or set apart for the support of such an institution, to its support. Its name imports the existence of but one, and it seems clear that the Legislature had in view the establishment of but one. The Act of 1837, which created a Board of Regents for the government of the University, by its own force removed the then existing Trustees, and substituted in their place other Trustees by the name of “The Regents of the University,” as their successors in office.

It is true, that the Act of 1837 makes no express reference to that of 1821, but it legislates upon the same subject, and the quotation of the words, “University of Michigan,” in its title, is not without some significance, if it were otherwise doubtful, as indicating what institution was intended to be organized in pursuance of its provisions.

The fact that the location of the University was fixed by the law of 1821 at Detroit, and that by subsequent legislation it was
changed to Ann Arbor, affords no ground of argument against this conclusion. This, and the other changes which were made in the details of its organization, were modifications of the former law of such a character as the Act itself authorized. No injustice is thereby done to the original Corporators, or their successors, for, as we have already seen, they continued in place only during the pleasure of the Legislature, and were severally subject to removal at any time; and upon such removal, any rights or interests which they might have claimed in connection with the Corporation must have terminated. The Corporation was created for the purpose of administering a great public trust, and the present plaintiffs are but Trustees for the same great purpose, and are as truly the lawful successors of the original Corporation as if they had been appointed by the Legislature under the Act of 1821.

The lands in controversy are not diverted from the use declared by the grant, but are still devoted to the same identical purpose. They were conveyed for the use, etc., of "The University of Michigan," and from that use they have not been, and cannot be diverted. The grant must be presumed to have been made with a full knowledge of the power reserved to the Legislature, either to modify or repeal the charter by which the Trustees of the University existed, and it was made in such a manner as to secure the application of the property to the object for which it was granted, without particular regard to the person or persons who should execute the trust.

On the argument of this cause, the counsel for the defendants read a very able and elaborate report from a Committee of the Regents to the board, in March, 1838, in pursuance of a resolution adopted in November, 1837, requiring such Committee "to take into consideration the legal rights of the Trustees of the University of Michigan, and how far it is practicable to alter, by Legislative enactment, the organization of that board, so as to constitute the Board of Regents of the University of Michigan the Trustees of the University of Michigan. After discussing the various questions supposed to be involved, this report brings to our notice an important fact. After showing a non-user of their franchises for a long period, and deducing certain conclusions therefrom, it states that, "so satisfied are the Trustees of the old board of the absolute dissolution of the Corporation, that, by a Committee of their body, they have placed upon the journal of the Board of Regents, and the books of the Treasurer of that board, their surrender of the proceeds of the land mentioned in the eighth section of their charter; and also yielded up the control and occupancy of the real estate in the City of Detroit. This shows that the Trustees practically gave the same construction to the Act of 1837 which we have given to it. They regarded their own powers
as ended, and the Regents of the University as their successors, and as such, entitled to the possession and control of all the effects remaining in their hands for the use of the University. They did not doubt that the institution which was to be organized under the last mentioned Act, was the same which was contemplated by the Act which gave them a corporate existence; and they seem to have acquiesced, without hesitation, in that legislation which modified their charter, and provided for the appointment of their successors; and it is not improbable that this view of the legislation referred to was finally adopted by those who were immediately concerned in the question involved; for we did not learn that any active measures were ever taken in pursuance of the recommendations of the Committee, in order to place the Regents in the full and rightful possession of the corporate property.

But it is claimed on behalf of the defendants, that if the old Corporation has been dissolved by a repeal or modification of its charter, pursuant to the provisions of the ninth section, the lands reverted to the grantors, and were vested in the Mayor, etc., of the City of Detroit, by the supplementary Act of Congress of the 29th of August, 1842. If the views which we have already expressed be correct, and the plaintiffs are the lawful successors of the grantees, they are the persons indicated in the grant as Trustees of the property, and there can be no reversion until the cestui que trust, or beneficial object of the grant, shall cease to exist in contemplation of law.

Another point was made by the counsel for the defendants, which we do not now deem it necessary to discuss at length. It is assumed that the Legislative Council of the late Territory of Michigan had no power to create such a Corporation, and that the grant to the Trustees, etc., was void. The decision of this question in the case of the Bank of Michigan vs. Williams, 5 Wend. R., 478, and 7 Ib., 539, has been affirmed by this Court, and must be regarded as settled. (Detroit Young Men's Society's Lessee vs. Scott, 1 Doug. Mich. R., 119; Swan vs. Williams, 2 Mich. R., 427.)

It must be certified to the Circuit Court for the County of Wayne, as the opinion of this Court, that the plaintiffs are entitled to recover the premises in controversy in this suit.

Present and concurring, COPELAND, PRATT, BACON, WING, JOHNSON and MARTIN, J. J.

DOUGLASS, J., dissented.