ing such a charter the State constitutes the Corporation its agent, for a purely public purpose, and entrusts it with authority, which can only be derived from the State, to confer degrees in scholarship and learning upon those found worthy.

THE WESLEYAN CHARTER.

The legislative intent is indicated in the charter of Wesleyan College, which provides that the act "shall be liberally construed for every beneficial purpose hereby intended." (Vol. 3, Special Laws, 472.) The State has been very careful to treat its colleges precisely alike in the matter of taxation, and it is hardly possible that one rule of construction was intended for Wesleyan and another for Yale and Trinity. But it is unnecessary, in treating the question now before us, to invoke any special rule of construction.

The charter in the broadest terms exempts all the property of the College from taxation. This possibly may cover the buildings occupied as colleges which are non-taxable by virtue of our settled public policy as declared in section 3820; but its main purpose was to exempt all estate and funds invested and held lawfully, i. e., "for the use of the College," including both principal and income.

THE $6,000 LIMITATION.

The only limitation on this absolute exemption is contained in the proviso: "Provided, however, that said Corporation shall never hold in this State real estate, free from taxation, affording an annual income of more than six thousand dollars." The contention of the defendant is that whenever the income from real estate exceeds the sum of six thousand dollars, not only the real estate producing such excess of income, but also all the unproductive real estate the College may hold, becomes at once liable to taxation.

We think this requires us to interpolate into the charter a limitation it does not contain. By the original charter "all the lands and ratable estate belonging to the College, not exceeding the yearly value of five hundred pounds sterling," as well as the estates of the President and professors, were freed from rates, etc. It is not easy to determine the precise meaning of this language, without a detailed examination of the conditions of 1745 in reference to which it was used. This is unnecessary. It is certain that by this provision it was intended to exempt all the property the College was likely to own for an indefinite period, and that the provision served that purpose for nigh a hundred years.

The precise restriction the legislature of 1745 had in mind is now immaterial. It was abandoned in 1834; a new provision in respect to taxation, different in form and substance, was then adopted in reference to a new future. This new provision was intended to be broader than the old, as shown not only by the language used, but the wider field of public usefulness opening to the College, but also by the controlling fact that in view of the full exemption of the College property, i. e., the funds devoted to public use, the College surrendered the existing exemption of the private estates of its President and professors.

A RESTRAINT ON THE MODE OF INVESTMENT.

The act of 1834 plainly exempts all the property of the College from taxation; and the proviso qualifies this exemption only for the purpose of imposing a limited restraint on the mode of investment. It is not an absolute limitation to the holding of real estate, but it is a provision which makes it the interest of the College to itself limit its holdings. It is not presumed that the College will, to any considerable extent, invest its funds in unproductive property, so there is no direct limit to its holding of such land; but the College might well be tempted to put all its funds into productive real estate, and the proviso directly restrains this tendency by limiting its right to hold real estate producing more than six thousand dollars a year, unless it pays taxes on the excess. If the College finds in any year that its revenues from land exceed six thousand dollars, it must choose between its unlimited exemption from taxation and its unlimited right to hold real estate; if it chooses the former it must sell so much of its productive land as will reduce its income within the limit; if it chooses the latter, it must pay taxes on the land instead of selling it. In this way the State sought to exempt all funds of the College from taxation and through the potent operation of self-interest to keep the investment of those funds in real estate within reasonable bounds.

Counsel for the plaintiff urged with great force, in further support of this view, the fact that here the enacting clause is a total exemption, and a proviso can withdraw from the enacting clause nothing that is not fairly within its terms. In speaking of this rule, Story said: "We are led to the general rule of law which has always provided, and became consecrated almost as a maxim in the interpretation of statutes, that when the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly, and takes no case out of the enacting clause which does not fall fairly within its terms. In short, a proviso carves special exceptions only out of the enacting clause, and those who set up any exception must establish it as being within the words as well as within the reason thereof." (United States vs. Dickson, 15 Pet. 141, 165.)

WHAT IS NOT INCOME FROM REAL ESTATE.

For reasons before given, we think that students' fees, whether apportioned to room rent or tuition, cannot be treated as income of real estate, and that land occupied and reasonably necessary for the plant of the College is not producing real estate within the meaning of the proviso to the Act of 1834.

The vacant lots added by the assessors are exempt from taxation. The dwelling houses and factories added by the assessors are also exempt, unless some one or more of these must be added to the list returned by the plaintiff in order to reduce its net income from all its other real estate within the prescribed limit.

SPECIAL ITEMS OF PROPERTY.

Certain questions as to a few items of property were submitted without argument; the nature of these questions is not quite clear. It appears that a lot on Canner street was sold to one Robert Brown, a professor in the University by parole, and the money needed to build a dwelling house advanced to him; that he has built and occupied the house and has repaid a portion of the loan, but has paid nothing on the purchase price. This presents a case of property substantially owned and enjoyed by a private person, while the title remains in the College; the lot and house should be added to the plaintiff's list. Its charter does not exempt from taxation property held for private use. It appears also that a number of lots have been leased to private parties on long leases, the tenants agreeing to pay the taxes. So far as the town is concerned, such agreements by the tenants are inoperative; if the revenue from these leases is in excess of the $6,000 derived from the other real estate, the lots should be added to the plaintiff's list. It will be necessary for the Superior Court to proceed to a further hearing for the purpose of ascertaining these facts, unless the parties shall agree.

The record does not show any impropriety on the part of the plaintiff in dealing with its exemption, unless possibly in the case of the Brown house; but in order to exclude any false implication we deem it proper to add that the charter does not authorize the College to hold any property exempt from taxation for any private use, and does not authorize any commercial dealings with its exemptions whether by way of mere speculation in vacant land, of selling land on long leases or nominal rents or otherwise.

This statute was intended to serve a great public use in pursuance of a most beneficial public policy, and the construction to be given such a statute requires that the intent shall not be defeated either by clear evasion or undue restriction.

INSTRUCTION TO SUPERIOR COURT.

The Superior Court is advised to render judgment ordering the Board of Relief to strike from the plaintiff's tax list all the items added by the assessors except the "Brown house," and except such items, if any, of productive real estate as it may find to be necessary to retain in order to bring the net income from all other real estate within the sum of six thousand dollars; and to take further proceedings for the purpose of ascertaining this fact, unless it shall be settled by agreement of the parties.

In this opinion the other judges concurred.

THE YALE PRESIDENCY.

With an Interesting Opinion as to Clerical Control.

[Clarence Deming, '72, in N. Y. Evening Post.]

The authority and scope of clericalism in the Yale constitution and government have assumed, since the resignation of President Dwight, a prominence, both in fact and in discussion, which they never had before. For the first time in some generations "manifest destiny" does not forecast the next President, and among many suggested names there is no one upon which many graduates or, apparently, any considerable part of the Corporation, laical or clerical, agree. In fact, members of the Corporation, so far as their opinions have been expressed, say that the choice will only be made after much hesitation and difficulty. Young Yale and Old Yale, the graduates who want a President who is chiefly a "man of affairs," and the graduates who want an "educational" President, must all be considered, as well as minor graduate groups. So far as local opinion can be observed, it seems now to be drifting slowly towards the conclusion that the next President will be taken either from the old-class type, representing scholarship and theology, or that a somewhat radical departure must be made, and the next head of the University be a successful business man. The business President may, of course, be expected to have a degree of cultivation, the "old-fashioned" President to have a degree of executive ability. But thus far no name has been mentioned of an available man combining both traits in high degree, and the fear has begun to grow that at last the Corporation may feel itself forced to choose from one type or the other, with clericalism as the ultimate and determining factor, in favor of an old-fashioned head of the University. Ministerial control at Yale, both historically and practically, has thus become an active and growing theme of discussion.

That clerical control of the Yale Corporation dates back to the founding of the College, and was natural, perhaps inevitable, during the early period of the New England hierarchy, are familiar facts. The original act of the Colonial Legislature, passed in October, 1701, provided for a body of trustees, not more than eleven nor less than seven in number, to "be ministers of the Gospel inhabiting within this colony and above the age of forty years." In 1723 came an act, for the most part explanatory, but reducing the requisite age to thirty years, and making the rector of the College a trustee also—indicating that even in that remote day the modern trouble existed of finding within the bounds of Connecticut clergymen qualified to govern the College. In 1745 was passed what the annual University catalogue describes as a "thoroughly revised charter," which, with a few familiar amendments, is the existing charter, and confirmed by the State Constitution of 1818. The question often raised is whether this charter was an amendment of the legislative act of 1701—so that on points where it is indefinite or silent the old "clerical" act stands—or whether it is de novo a sweeping, comprehensive, and superseding charter.

The question is almost purely one of legal construction and precedent. Eighteen years ago it was examined by Simeon E. Baldwin, then and now a Professor in the Yale Law School, at present one of the five judges of the Connecticut Supreme Court, of wide fame as a jurist, probably as well qualified to speak on the general subject as any lawyer in the country, and whose conclusions on the special subject may be regarded as all but final. Those conclusions, in his own printed words, are as follows:

"We find the Corporation of Yale College, therefore, to be made up under existing laws of nineteen persons: the President and eighteen Fellows. Of these eighteen two are constituted ex-officio, the Governor, and Lieutenant-Governor; six must have received degrees from the College and are elected for terms of six years by their fellow-graduates; and ten hold office during good behavior and elect their own successors. All the eighteen can vote at the election of a president. . . . No qualifications as respects eligibility to the presidency are, so far as I can see, imposed by the existing laws, nor any for the position of fellow, except as to the six elected by the graduates of the University, who must themselves be graduates of the departments.

"The original trustees were necessarily ministers of the Gospel by the express terms of the acts of 1701 and 1723; though they were not required to be of the Congregational faith. Any Protestant minister could have been elected by the board, and Rector Cutler evidently did not deem his own intention to take orders in the Church of England as incompatible with his right to remain in office.

"But after 1745 there were no longer any trustees. At the request of those then holding that position the office was abolished and replaced by that of Fellow of a Corporation clothed with different powers and limitations. The religious qualification attached only to the trustees, and when they disappeared, that, in my opinion, disappeared with them. The same, of course, would be true, also, as respects the President."

It will be noticed that Judge Baldwin does not give a Yale President voting power in the election of a successor, for the apparent reason, stated later, that he (the President) "is a member of the Corporation as President, but he is not a Fellow at all." In further amplifying the general subject, Judge Baldwin expresses doubt whether the College constitution even required that the original rector should be a minister; shows that clerical control was questioned during the eighteenth century by high authority, both on legal grounds and grounds of expediency; and adds that the only sense in which Yale has an ecclesiastical constitution is by implication from the aims of its founders and the precedents and traditions of nearly two centuries. To summarize the whole matter, on Judge Baldwin's authority, outside of precedent and tradition, there is no clerical control of Yale University based on law either statutory or organic; the Corporation may contain ten ministers living inside or outside of Connecticut, of any sect whatever or no sect, or it may contain no ministers at all; and the President, who cannot vote in choosing a successor, may be clerical or lay and a member of any religious denomination or none. To the great majority of Yale graduates who have accepted in varying forms and degrees the idea of clerical rule of the University based on mandatory law, the foregoing facts will seem novel and strange.

Under permissive law, however, clerical rule of the early College and later University has been a fact for two centuries, lacking three years. From 1700 down to July 10, 1872, apart from the ex-officio State members of the Corporation, no name except that of a clergyman appears on the list, and since the latter date there have always been eleven clergymen and eight laymen—the latter having no voice in the election of a clerical member. Of the Presidents of Yale, all have been Congregational ministers at the time of election except two, and the strength of the ecclesiastical tradition is shown by the fact that the two—President Day and Woolsey—though licensed to preach soon after leaving College, were ordained ministers at the request of the Corporation before assuming their presidential duties.

As to the outworking in practice of the clerical system in modern times there is a wide variance of opinion. One large group of graduates, including many members of the University Faculties, defend clerical control vigorously. They say that it leaves questions of policy to the departmental