Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Le Séminaire de Québec v. *La Corporation de Limoilou from the Court of Queen's Bench for Lower Canada, Province of Quebec; delivered 24th February* 1899.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR HENRY STRONG.

[*Delivered by Sir Henry Strong.*]

This is an Appeal from a judgment of the Court of Queen's Bench of the Province of Quebec in an action brought by the Respondents to recover $161.82 the amount of municipal taxes assessed upon part of a property belonging to the Appellants known as the "Farm of Maizerets" situate in the municipality of Limoilou. The Appellants set up as a defence that the property in question is exempted from taxation under the provisions of the Municipal Code of the Province of Quebec.

The cause was originally heard in the Superior Court before Mr. Justice Andrews who dismissed the action.

On appeal to the Court of Queen's Bench this judgment was reversed and a judgment was pronounced in favour of the Respondent for the amount claimed and interest.

From this latter judgment the present Appeal to Her Majesty has been taken.

The Appellants are a Corporation according to the laws of the Province of Quebec, established

in the city of Quebec and having for its object the education of youth.

The Respondents are a Municipal Corporation within whose territorial limits the property in respect of which the taxes in dispute are claimed is situated. This property of Maizerets which originally comprised only a part of the farm now known by that name was acquired by the Seminary in the year 1717, and was for many years used exclusively for farming purposes. The Appellants subsequently and at different times acquired other parcels of land adjoining this farm which together with the original farm now constitute the lands in question. Since 1777 a small portion of this property has been used as a country resort for the pupils and ecclesiastics of the Seminary. The portion so used is that now comprised between the Montmorency and Charlevois Railway and the river, as shown upon a plan in evidence. The ecclesiastics and pupils of the Seminary have been accustomed to spend their days of vacation in the summer at Maizerets, and in the winter holidays the ecclesiastics sometimes go there to spend the afternoon. On these holiday occasions the pupils engage in various kinds of amusements provided for them, namely, ball playing, swinging and canoeing, and in summer enjoy rest and fresh air in the shade of the trees. The Seminary has no school or house of education at this farm nor any within the municipality of Limoilou. The residue of the property is worked for farming purposes and the proceeds of the farm are consumed in the principal establishment of the Appellants in the city of Quebec. This latter is the only portion of the property which has been taxed; the part between the railway and the river used by the Seminary pupils for sports and recreation having been treated by the Respondents as exempted from taxation. That part of

the land upon which the taxes in question have been imposed is and always has been used and worked by the Appellants as a farm which produces a revenue of $350 a year. The cost of maintaining the whole establishment including the recreation ground exceeds this sum, but taking the farm by itself it is productive of a net profit to the amount stated.

Article 712 of the Municipal Code of Quebec is as follows :

" The following property is not taxable : (3) " Property belonging to fabriques, or to " religious charitable or educational institu- " tions or corporations or occupied by such " fabriques institutions or corporations for " the ends for which they were established, " and not possessed solely by them to derive " a revenue therefrom. (6) All educational " institutions receiving no grant from the " Corporation or Municipality in which they " are situated ; and the land on which they " are erected and its dependencies."

It is not contended that the property in question is a "dependency" of the Seminary within Sub-section 6, but it is insisted that the whole of Maizerets is exempt from taxation as property not possessed by the Seminary solely for the purpose of deriving a revenue therefrom.

Mr. Justice Andrews before whom the cause was heard in the Superior Court seems to have been of opinion that all property belonging to educational institutions, irrespective of the uses to which it might be put, was absolutely excepted from taxation by the first part of Sub-section three. The learned Judge however did not proceed exclusively upon this view, which has not been taken by any of the Courts or Judges in Canada before whom the present question has arisen for decision, and has not

indeed been insisted upon either in the Court of Queen's Bench or at their Lordships' Bar.

The ground upon which Mr. Justice Andrews seems principally to have relied, and that taken by some of the Canadian Courts in other cases, and now insisted upon by the Appellants, is not one involving any such question of statutory construction, but relates solely to the application of Sub-section 3 of Section 712 of the Municipal Code to the facts in proof. Can it be said upon the evidence in this Record that the Seminary did not possess the farm of Maizerets solely for the purpose of deriving a revenue therefrom?

In previous cases in Canada in which this question has arisen diverging opinions have been expressed.

In 1881 in the case of the *Corporation of Verdun* v. *Les Sœurs de Notre Dame* (Dorion's App. Cas. p. 163), the Court of Appeal of the Province of Quebec held, under facts similar to those of the present case, that the lands were exempt. The late Chief Justice of that Court Sir Antoine Dorion however dissented, and in a forcible judgment stated as his reasons for differing the same arguments as those which have prevailed in the present case. In the *Corporation of St. Roch* v. *The Seminary of Quebec* (the present Appellants) (10 Q. L. R. p. 335) the same Court followed its previous decision in the case of Verdun. In 1884 the question arose in an appeal before the Supreme Court of Canada (*Les Commissaires de St. Gabriel* v. *Les Sœurs de la Congrégation* 12 S. C. R. p. 45) and that Court adopting the opinion of Chief Justice Dorion in the Verdun case held the lands in question not exempt from taxation.

If the farm lands of Maizerets upon which it is now sought to impose the taxation in

question had been detached altogether from the part of the property lying between the railway and the river, it seems to their Lordships that it would be impossible for the Appellants to contend that they were not possessed solely for purposes of revenue, and that none the less could they in that case be said to be possessed for the purposes of revenue because the ecclesiastics and pupils of the Seminary were in the habit after the crops had been harvested of walking for purposes of exercise over the fields composing the farm. Then if in the supposed case there would be no exemption, their Lordships are at a loss to see any reason why a difference should be made as regards that actually before them upon the facts in evidence in this Appeal. The working of this farm by the Appellants cannot be for any other purpose than that of acquiring a revenue therefrom, and it is shown that they do in fact derive a clear profit from its cultivation; though the absence of this last condition could not make any difference in the disposition which their Lordships think it proper to make of this Appeal.

Their Lordships will humbly advise Her Majesty to dismiss the Appeal and to affirm the Judgment of the Court of Queen's Bench for Lower Canada.

The Appellants must pay the Respondents' costs.