1885
*Nov. 3.
1886
*Mar. 6.

DAME MARY WYLIE & VIR (DEFENDANTS) ..... } APPELLANTS;

AND

THE CITY OF MONTREAL (PLAINTIFF). RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Assessment and Taxes—Cons. Stats. L. C. ch. 15, *and* 41 *Vic. ch.* 6 *sec.* 26 (*P. Q.*)—*Art.* 712 *Mun. Code, P. Q.—Construction of.*

Action by the city of Montreal to recover the sum of $408, for assessment or taxes for the years 1878, 1879 and 1880 on property in said city occupied by the defendant. The property set out in the plaintiff's declaration was during the time mentioned therein occupied and used as a private boarding and day school for girls, kept and maintained by the defendant, who employed divers teachers, and during that time had therein, on an average, for their education, as pupils, eighty-five girls per annum.

The said institution never received any grant from the plaintiff.

Held, Gwynne J. dissenting, that the said institution was an educational establishment within the meaning of 41 Vic. ch. 6 sec. 26 (P. Q.) and exempt from municipal taxation.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side).

This was an action by the city of Montreal for taxes. The defendants pleaded that the property taxed was used as an educational institution and therefore exempt.

The parties agreed to make the following admissions:

First. That the property set out in the said plaintiff's declaration was, during the time mentioned therein, occupied and used as a private boarding and day school for girls kept and maintained by the said defendant who employed divers teachers, and during that time had therein, on an average, for their education, as pupils, eighty-five girls per annum.

Second. That the said institution for the education of girls never received any grant from the plaintiff.

---

* PRESENT—Sir W. J. Ritchie C.J., and Fournier, Henry, Taschereau and Gwynne JJ.

Third. That if the said institution be not an educational institution under Sect. 26 of 41 Vic. ch 6 judgment should go for the amount demanded and costs; if, on the contrary, it is such educational institution, within the meaning of the said section, the said plaintiff's action should be dismissed with costs.

Rainville J. in the Superior Court, gave judgment for the city, holding that educational institutions, under the statute, are those of a permanent character, founded in the interest, and under the authority, of the public. The Court of Queen's Bench confirmed this judgment, Hon. Justices Monk and Cross dissenting.

Kerr Q.C. for appellants contended that appellants were entitled to exemption from the payment of municipal school taxes under sec. 26 ch. 6 of 41 Vic., P.Q., the same being an addition to sec. 17 ch. 15, Cons. Stats., L. C., and in addition to the other statutes refered to in the judgments hereinafter given cited the following cases:—

Chegaray v. *Jenkins* (1); *Warde* v. *Manchester* (2); *Lefranc* v. *City of New Orleans* (3); *Colchester* v. *Kewney* (4).

Roy Q. C. for respondents contended that there was no legislative provision conferring immunity from municipal taxes upon a property used as a private boarding school, and cited:

Hilliard on Taxation (5); *State* v. *Ross* (6); *City of Indianapolis* v. *Sturdevant* (7).

Sir W. J. RITCHIE C.J.—The appellant claims exemption under the following statutory provisions:—

Consolidated Statutes of Lower Canada (8).

(1) 3 Sand. (N.Y.) 413.
(2) 22 Am. Rep. 504.
(3) 27 La. An. Rep. 188.
(4) L. R. 1 Ex. 368.
(5) Ch. 31 831.
(6) 4 Zabriskie (N.J.) 497.
(7) 24 Ind. Rep. 391.
(8) 23 Vic. ch. 15 section 77 sub-section 2.

1885

DAME MARY WYLIE v. CITY OF MONTREAL.

Ritchie C.J.

All buildings set apart for purposes of education or of religious worship, parsonage houses, and all charitable institutions or hospitals incorporated by act of Parliament, and the ground or land on which such buildings are erected, and also all burial grounds shall be exempt from all rates imposed for the purposes of this Act 9 Vic. ch. 27, sec. 37.

Statutes of Quebec (1).

26. Section 77 of chapter 15 of the Consolidated Statutes of Lower Canada, is amended by adding after sub-sec. 2 the following provision:

"3. Every educational institution receiving no grant from the corporation or municipality in which they are situated, and the land on which they are erected, and its dependencies, shall be exempt from municipal and school taxes, whatever may be the act or charter under which such taxes are imposed, notwithstanding all provisions to the contrary."

There can be no doubt that the appellant's school was an educational institution in the primary grammatical signification of that term, and would, *primâ facie*, be exempted, under the authority of these statutory provisions, from payment of the taxes claimed, unless there is to be found some statutory provision depriving such an educational institution as that of the appellants of the exemption, by limiting the words "educational institution" to a public incorporated educational institution. I am quite willing to admit that the intention to exempt must be expressed in clear unambiguous language; that taxation is the rule and exemption the exception, and therefore to be strictly construed; but in this case the intention to exempt seems to me to be made as clear as plain unequivocal language can very well make it. We have nothing, that I can discover, indicating an intention to limit the exemption to public or incorporated institutions. On the contrary, we find in sec. 77 sub-sec. 2 incorporation made necessary in the case of charitable institutions or hospitals; but not so with reference to all buildings set apart for purposes of education or of religious worship, or to parsonage

(1) 41 Vic. ch. 6 sec. 26 sub-sec. 3, 1878.

houses and all burial grounds. Why should it not with as much force be contended that churches, parsonage houses, and burial grounds, should be incorporated before they are exempt under that section? Surely a school house, seminary or school is an educational institution without reference to incorporation, and may be established by individuals quite as well as by corporations. And again, an incorporated school might be quite as much a private school as this we are now considering. Incorporation gives merely a legal entity; the advancement and interest of education may be quite as much forwarded by private schools of high standing, such as this is admitted to be, under the immediate government of the proprietors as by incorporated schools governed by a board of directors. The mere act of incorporating an existing school, or certain persons to carry it on, does not make it more or less an educational institution, nor more or less a public or private institution, than it was previous to its incorporation. That the legislature fully understood the distinction between private and public, and between incorporated and unincorporated, educational institutions, is to be discovered in numerous acts Thus in 29 Vic. ch. 57 (1865), relating to the corporation of the city of Quebec, in the exemption from taxation we find the limitation clearly expressed:

> The property of any incorporated institution for educational or charitable purposes, occupied and used for educational or charitable purposes, and also all other property by such institutions leased for the aforesaid purposes, or occupied as school houses by the school commissioners of the said city, shall be exempt from taxation, and such houses or properties so occupied are also exempt from tenant's tax.

By 38 Vic. ch. 76 sec. 101 (1875) the city of Three Rivers is authorized to levy on all lands, city lots or parts of lots, excepting churches, bishop's palaces, parsonage houses, charitable and educational establishments

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Ritchie C.J.

as also their dependencies, whether there are buildings erected thereon or not, with all buildings and erections thereon fifty cents in each $100, and not a word about incorporation or limiting the exemption to any particular class of charitable or educational establishments. So in 38 Vic. ch. 76 sec. 125:—

> Every place of public worship, and every burying ground; every public school house and the ground on which the same is built; every public educational establishment and the ground on which the same is built; all buildings, lands and property occupied or possessed by hospitals or other charitable institutions.

Then there is 39 Vic. ch. 79 incorporating the city of Hull:—

> 4. Every public school house and the ground upon which the same is constructed. No. 5. Every educational establishment and the ground upon which the same is constructed.

By 40 Vic. c 29 "The Town Corporation General Clauses Act" which applies to every town corporation or municipality which shall hereafter be established, the following property shall not be taxable:—

> 3. Property belonging to fabriques or religious, charitable or educational institutions, or corporations;
>
> 4. Burial grounds, bishops' palaces, parsonage houses and their dependencies.

The principle of exemption was, no doubt, to encourage education generally, in like manner as religious instruction was encouraged by exempting all buildings set apart for the purposes of religious worship and for the burial of the dead, by whomsoever owned, and without the slightest reference to incorporation. The legislatures have, no doubt, some very good reasons for requiring incorporation only in the case of charitable institutions and hospitals.

The legislation may, very well, be assumed to be based on the idea that certain kinds of property, such as church property, school property, property used for charitable purposes, burial grounds, and the like, are not fit objects for public contributions, inasmuch as

they are supposed to contribute to the general public benefit, and operate in relief of public burdens; and this last is particularly applicable to property devoted to works of education and charity. And the exemptions are, doubtless, granted on consideration of public policy, to be recalled whenever this view of public policy shall have changed.

The American cases from the State of New York, which were much relied on, I have examined, but they do not, in my opinion, assist us, because they appear to have been decided on the peculiar wording of the statute, in the construction of which, the court held that from such peculiar wording the term "incorporated," used in the connexion it was in the statute, showed that the legislature intended to confine the exemption to incorporated institutions. The wording of our statute being entirely different, and no such intention being discoverable from the language used, the cases do not seem to me to apply.

Under these circumstances, I do not think we have any right to confine the exemption to narrower limits than the terms of the statute not only fairly imply, but actually express. Considerations of public policy are, in my opinion, opposed to our doing so, for thereby we may frustrate the object the legislature may have had in view, namely, the encouragement of education. The value of an educational institution such as this is admitted to be, to the city of Montreal in which it is situated, and, in fact, to the Province of Quebec, no one will, I think, venture to deny. To exempt such an institution from local taxation is but a very moderate encouragement to the cause of education, and one to which it is by no means unreasonable to suppose the legislature may have considered it, in the public interests, justly entitled. At any rate, if this is not so, when amending this section had the legislature intended so to limit the application of the term "educa-

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Ritchie C.J.

tional institution" as to prevent the exemption applying to private educational institutions they should have made their intention more apparent. And if we have misinterpreted their intention, the remedy is at hand; the legislature can, by the use of unequivocal and explicit language, make their intention clear.

FOURNIER J.—Cet appel est d'un jugement de la Cour du Banc de la Reine de la province de Québec, confirmant un jugement de la Cour Supérieure du District de Montréal, condamnant l'appelante à payer a l'intimée $440.80, pour taxes municipales, sur une propriété occupée par elle comme école et pensionnat de jeunes filles qui y reçoivent l'instruction.

L'appelante a plaidé qu'elle était en vertu de la 41me Vic., ch. 6, sec. 26, exemptée du paiement des taxes réclamées. Cette section est ainsi conçue:

26. La section 77 du chap. 15 des Statuts Refondus pour le Bas Canada est amendée en y ajoutant, après la sous section 2, la disposition suivante:

3. Toutes maisons d'éducation qui ne reçoivent aucune subvention de la Corporation ou Municipalité où elles sont situées ainsi que les terrains sur lesquels elles sont érigées et leurs dépendances, seront exemptées des cotisations municipales et scolaires, quel que soit l'acte ou charte en vertu duquel ces cotisations sont imposées, et ce nonobstant toutes dispositions à ce contraires.

Il est admis que pendant les années pour lesquelles les taxes sont demandées l'appelante a occupé la propriété mentionnée dans la déclaration comme école et pensionnat privé de jeunes filles, et qu'elle employait plusieurs instituteurs à donner l'éducation à quatre-vingt-cinq jeunes filles, en moyenne, par année.

Il est aussi admis que l'appelante n'a reçu de l'intimée aucune subvention pour le soutien de son école.

La prétention de l'intimée est que l'exemption invoquée ne s'applique pas aux écoles privées, mais seulement aux institutions d'éducation incorporées. La seule

question à décider est de savoir si l'école tenue par l'appelante est une maison d'éducation, (*educational institution*) suivant l'intention de la clause ci-dessus citée.

L'hon. juge qui a décidé en première instance a donné gain de cause à l'intimé en se fondant sur le motif suivant: "Considérant que les expressions dont s'est servi le statut impliquent l'idée que les maisons d'éducation (*educational institutions*) sont des institutions d'un caractère permanent et fondées dans un intérêt public, et sous le contrôle de l'autorité, et non des institutions privées et qu'en conséquence les lieux occupés par la défenderesse ne sont pas exempts de taxes."

Cette distinction est-elle bien fondée? Le législateur avait-il réellement l'intention de donner à la disposition ci-dessus citée l'effet d'exclure du bénéfice de l'exemption toutes les écoles privées qui ne sont pas sous le contrôle des lois d'éducation? Au contraire les termes généraux de la disposition "toutes maisons d'éducation" doivent nous faire conclure que dans son intention l'exemption est générale, à moins que l'expression "maison d'éducation" n'ait reçue, avant l'adoption de cette disposition une signification précise et limitative. Si tel était le cas, le législateur n'ayant aucunement défini ou qualifié l'expression dont il se sert, est nécessairement présumé l'avoir employée dans le sens que d'autre statut sur le même sujet ont pu lui donner. Bien que la 41me Vic., ch. 6, soit un statut amendant les lois concernant l'éducation, la sec. 26 amende le ch. 15, sec. 77, en ajoutant une disposition nouvelle, et non pas en modifiant ou changeant quelques-unes de ces dispositions. Cependant cette disposition doit-être interprétée en la lisant comme faisant maintenant partie du statut amendé et l'on doit recourir à ce statut pour voir si l'on y trouvera trace de la distinction faite par

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Fournier J.

la cour de première instance. Des diverses catégories d'exemption de taxe mentionnées dans la clause 77, la deuxième seulement peut nous servir à l'interprétation de celle dont il s'agit, elle est ainsi conçue :

§ 2. All buildings set apart for purposes of education or of religious worship, parsonage houses, and all charitable institutions or hospitals, incorporated by Act of Parliament, and the ground or land upon which such buildings are erected, and also all burial ground, shall be exempt from all rates imposed for the purposes of this Act.

Ces exemptions sont générales pour chacune des catégories mentionnées,—il n'y a aucune expression qui puisse en limiter l'application, si ce n'est que les bâtisses exemptées doivent avoir été destinées, (*set apart,*) à des fins religieuses ou d'éducation. Mais il n'y est nullement question qu'elles devront être soumises au contrôle d'une autorité publique quelconque. La seule restriction à la généralité de l'exemption n'existe qu'à l'égard des hôpitaux et des institutions de charité qui pour bénéficier de l'exemption, doivent être des institutions incorporées. La conclusion à tirer de là c'est que quant aux institutions d'éducation il suffit pour avoir droit à l'exemption que leurs bâtisses soient destinées à l'éducation. La loi n'exige pas qu'elle soient incorporées comme les hôpitaux ou institutions de charité, ni qu'elles soient sous le contrôle d'une autorité quelconque. Plus tard est venue la sec. 26 citée plus haut, ajoutant une autre classe d'exemption ; comme il a déjà été dit plus haut cette exemption est établie en des termes généraux qui n'impliquent aucune restriction. Il me semble qu'on ne devrait pas introduire une distiction du genre de celle qui a été faite, lorsque le législateur lui-même n'a pas jugé à propos d'en faire dans les dispositions ci-dessus citées.

Une école tenue comme l'est celle dont il s'agit, est-elle moins une institution d'éducation que si elle était sous le contrôle de commissaires d'école ? Fait-on autre

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Fournier J.

chose dans l'une et l'autre que d'enseigner. Le contrôle auquel peut être soumis une école en change-t-il la nature. Si deux écoles sont tenues exactement de la même manière, ou l'enseignement est de même valeur, —mais l'une est sous le contrôle des commissaires d'école et l'autre en dehors de ce contrôle, et sous la direction seulement d'un professeur particulier, serait-il raisonnable de dire que la première est une institution d'éducation et que la seconde ne l'est pas? Si la loi a considéré les écoles élémentaires comme des institutions d'éducation, évidemment on ne doit pas restreindre les termes "maison d'éducation" à la désignation des institutions d'enseignement supérieure,—ils ont une signification plus ample et pouvent comprendre les écoles élémentaires. Cette interprétation est admise par la sec. 6 du ch. 15, réglant la distribution du fonds destiné à l'encouragement de l'enseignement supérieur entre les Universités, Collège, Séminaires, Académies, etc., et institutions d'éducation, autre que les écoles élémentaires ordinaires, etc. Pourquoi le législateur a-t-il fait cette exception, si ce n'est parce que sans cette déclaration expresse les écoles élémentaires eussent été comprises dans les termes généraux "institutions d'éducation" qui comprennent toutes les écoles, qu'elles soient privées ou publiques. Je ne trouve pas dans nos lois d'éducation d'expressions suffisantes pour justifier la distinction qui a été faite ; bien au contraire je trouve que les expressions si générales qu'elle emploie repoussent l'idée d'une telle distinction. Je crois en conséquence devoir donner à la sec. 26 tout l'effet que comporte la généralité de ses termes et je crois que l'école de l'appelante doit être considérée comme une maison d'éducation suivant cette disposition.

Je crois que la cause de *Chegaray* v. *Jenkins* (1), n'a aucune application à la présent cause. Sa décision

(1) 3 Sand. (N.Y.) 413.

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Fournier J.

repose sur des statuts différents des nôtres.

Quant à l'abus que l'on pourrait faire de cette exemption de taxes en établissant des écoles plus tôt dans le but de bénéficier de l'exemption que dans celui d'enseigner, il n'en peut être question dans cette cause. Les faits repoussent toute supposition de ce genre. Ce n'est pas un sujet de plainte en cette cause,—mais simplement un argument *ab inconvenienti*. Lorsqu'on se plaindra d'un semblable abus, je crois que les tribunaux n'éprouveront pas de difficulté à faire la distinction entre une école tenue de bonne foi et celle qui ne le serait que comme un prétexte pour éviter le paiement de la taxe.

Pour ces motifs je suis d'avis que l'appel doit être alloué avec dépens.

HENRY J. concurred.

TASCHEREAU J.—The only question in this case is whether the appellant's property in Montreal, occupied, as she claims, as an educational institution, is exempt from municipal taxes. To the respondent's action for such taxes the appellants pleaded that the said immovable property, described in the said plaintiff's declaration, and upon and in respect of which the assessments or taxes sought to be recovered by the present action have been, as the plaintiff alleges, imposed, was, during the whole of the years eighteen hundred and seventy-eight, eighteen hundred and seventy-nine, and eighteen hundred and eighty, and long previous thereto, occupied by the said defendants as an educational institution, with its dependencies, for the education of girls, and that the said educational institution received no grant from the plaintiff within the limits of which it was situated; and that by law the said immovable property on which the said educational institution is erected, and its dependencies, was, at all the times mentioned in the said plaintiff's declaration, exempt from

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Taschereau J.

all municipal and school taxes whatsoever; by reason whereof the said immovable property is exempt from the taxes sought to be recovered in this case, and the said defendants are not bound nor liable, as alleged in the said plaintiff's declaration.

The parties adopted the following admissions:

First. That the property set out in the said plaintiff's declaration was, during the time mentioned therein, occupied and used as a private boarding and day school for girls, kept and maintained by the said defendant, who employed divers teachers, and during that time had therein, on an average, for their education, as pupils, eighty-five girls per annum.

Second. That the said institution for the education of girls never received any grant from the plaintiff.

Third. That if the said institution be not an educational institution under section 26 of 41 Vic. c. 6, judgment should go for the amount demanded and costs; if, on the contrary, it is such educational institution, within the meaning of the said section, the said plaintiff's action should be dismissed with costs.

This is, then, all that we have to determine.

The section of the act referred to reads as follows:—

Every educational institution receiving no grant from the corporation or municipality in which they are situated, and the land on which they are erected, and its dependencies, shall be exempted from municipal and school taxes, whatever may be the act or charter under which such taxes are imposed, notwithstanding all provisions to the contrary.

As a matter of fact, the property in question, it cannot be denied, is an educational institution and nothing else. But, say the respondents, it is not an educational institution within the meaning of the act. In other words, they contend that though the statute says, "every educational establishment" it does not mean "every educational establishment." On them, it must be conceded, rests the onus to establish that

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Taschereau J.

proposition. Their contention is that this statute applies only to public institutions under the control of the school commissioners, and not to private schools like the one kept by the appellant. After mature consideration, I think it safer not to distinguish when the law does not do so—not to try, as it were, to make the statute say what it does not say—and to hold that the property in question is free from taxation. Under sec. 6 of ch. 15 C. S. L. C. this institution could get a grant from the education funds. The respondents admit that it would then not be taxable. But does the fact that they do not receive any such grant from the public funds render them liable to taxation? I cannot see it. It is just because they are no burthen to the Government, or to the municipal authority, that they should be exempt from these taxes. There are a number of educational institutions in Montreal and other cities—that is colleges, seminaries and convents—which do not fall under said ch. 15 C.S.L.C., and which receive no grant from the government, and yet which pay no municipal taxes. Yet, this must be so under this very clause of this 41 Vic. I do not know of any other statute in the same sense. I asked counsel at the argument if they knew of any other, and they could cite none. For, it must be remembered, sec. 77 of ch. 15 C.S.L.C, and sec. 13 of 32 Vic. ch. 16, apply only to school, and not to municipal, taxes, and sec. 712 of the Municipal Code does not apply to incorporated cities or towns. The fact that such colleges and convents may be incorporated cannot affect the question. This section of the Municipal Code I have just cited exempts from taxation all educational institutions or corporations, showing that, throughout all the rural districts, an educational institution need not necessarily be incorporated to be free from municipal taxes. Has the legislature intended

that what is not taxable in the rural parts of the country should be taxable in Montreal or other incorporated cities? It would require a clear text of law to bring me to such a conclusion.

It has been argued that the consequences of a judgment maintaining the appellants' contention would be to free from taxation a number of small private schools in Montreal. I do not think so. We simply declare that the property here in question is an educational institution within the meaning of the act. I do not say that any petty school in Montreal or elsewhere would come under these terms.

The appeal should be allowed and the plaintiffs' action dismissed with costs in all the courts against them.

GWYNNE J.—The clause relied upon by the appellants as exempting their property from liability to the payment of municipal taxes in the city of Montreal, is found in an act of the legislature of the Province of Quebec, 41 Vic. ch. 6, which is intituled "An act "further to amend the laws respecting public instruc-"tion in this province," and it is enacted in amendment of sec. 77 ch. 15 of the Consolidated Statutes of Lower Canada, which is intituled: "An act respect-"ing provincial aid for superior education and Normal "and Common Schools," and the question before us is whether the property of private persons used as a private school for the education of young ladies, and conducted wholly under the direction, management and control of the private proprietors for their own benefit, as their source of income, is, by the 77th sec. of ch. 15 of the Consolidated Statutes of Lower Canada, as amended by 41 Vic. c. 6, exempted from liability to municipal taxes in the city of Montreal. By the first five sections of this act, which consolidates into one the

1885

DAME MARY WYLIE v. CITY OF MONTREAL.

Gwynne J.

several statutes theretofore passed and then in force for making provision for the support of common schools, and the promotion of elementary education in the rural municipalities and in the cities of Quebec and Montreal, and for the promotion also of superior education and the establishment and support of normal and model schools, a fund called "The Lower Canada superior education investment fund," composed of the proceeds arising from the sale or commutation of the Jesuits estates, was created; and the revenues and interest accruing from such fund, together with a sum of twenty thousand dollars per annum taken from the Consolidated Fund of Canada, and such sum out of the common school fund of Lower Canada as, with the above, might be necessary for the realisation of eighty-eight thousand dollars per annum, were constituted a fund called "The "Lower Canada superior education income fund."

By the 6th section of the act it was enacted that the said income fund, or such part thereof as the Governor in Council should from time to time direct, should be annually apportioned by the superintendent of schools for Lower Canada in such manner, and to and among such "universities," "colleges," "seminaries," "academies," "high or superior schools," "model schools" and "educational institutions other than the ordinary elementary schools," in such sums and proportions, as the Governor in Council should approve.

It was contended strongly by Mr. Kerr, on behalf of the appellants, that their school for young ladies was clearly an "educational institution" within the meaning of that term as used in the above section, and upon this assumption he argued that the same term introduced into the act by 41st Vic. c. 6 should receive a like construction, so as to embrace the appellant's school within the term as it is used in the 77th section as so amended. But that the appellant's school does come

within the term "educational institution" as used in the 6th section, is by no means to be assumed. The better opinion appears to me to be that it does not, whatever may be the construction of the 77th section as amended. The fund is created for the purpose of promoting superior education alone; institutions therefore which impart such education to all or to some of their scholars can only be intended This is indicated by the title at the head of the sections numbering from 6 to 9 of the act, namely: "Aid to superior educational institutions." Now, the term "educational institution" is altogether an unusual and quite inappropriate term to apply to a private person, who conducts a school upon his own property; and that no such person, nor yet the school itself which the private proprietor conducts, is meant, but on the contrary persons united together as religious or secular bodies of a corporate or *quasi* corporate character, is apparent from the 8th and 9th sections. By the eighth it is provided that no grant shall be made "to any institution owning real "estate whose liabilities exceed two-thirds of the value "of such estate." The "institution," therefore, which is entitled to receive a grant must be capable of owning real estate and of incurring debts, and the term must, therefore, have a personal application. The school property where the education is given, and which is used and occupied for educational purposes, cannot come within the term as here used. The personality of the term is further shown in the 9th section, which provides that:—

> Any educational institution desirous of obtaining a grant under this act shall make application to that effect to the superintendent of education, &c., &c.

Every institution, therefore, which is entitled to a grant under the act must be capable of entertaining a desire to obtain it, and of making application for it, that is to

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Gwynne J.

say, must be possessed of personality. The section then provides that "the superintendent shall not recommend any grant to any educational institution whose application is not accompanied by a report, showing," among other things—"the composition of the governing body."

This language points to the institution entitled to receive a grant being of a corporate or quasi-corporate character, having, as such institutions have, a governing body.

"The general course of instruction and the books used."

This is required for the purpose of satisfying the superintendent that the course of instruction comes within what is esteemed superior education.

"The number of persons taught gratuitously or taught and boarded gratuitously."

The requirement is not that the report shall show whether any persons, and if so how many, are taught gratuitously, or taught and boarded gratuitously, but the report must state the number of persons taught gratuitously, &c., &c., seeming thereby to indicate that gratuitous education of some persons is a condition required by the act in order to show that the institution whose application for a grant is to be considered confers some public benefit to justify its receiving aid from public funds. Finally, it appears to me to be a consideration not to be disregarded that as the bodies which are in the 6th section excepted from the term "educational institutions" entitled to receive a grant are themselves institutions of a corporate and public character, the general term from which they are excepted should be regarded as of like character; the expression is "educational institutions other than the ordinary elementary schools."

In view of all of the above considerations I am of opinion that private persons conducting, as do the

appellants, under their own sole direction, management and control, a young ladies' private school for their own sole benefit as a source of income, do not, nor does the school so conducted by them, come within the term "educational institution" as used in the sections of the act numbered from 6 to 9 inclusive; and that, therefore, no argument whatever in support of the appellant's construction of the 77th sec. of the act, as amended by 41 Vic. ch. 6, can be founded upon the assumption that their school is such a one as would qualify and entitle them to receive a grant under these sections. The clauses relating to assessment and rates commence with 73, by which it was enacted that it should be the duty of school commissioners, and of the trustees of dissentient schools in their respective municipalities, to cause to be levied by assessment and rate in each municipality a sum equal to that allowed out of the common school fund for such municipality. This clause has no application to the cities of Montreal or Quebec, special provisions being made for these cities by the sections numbering from 128 to 134, which provided that no rate at all should be levied for school purposes in those cities, but that the aid to be furnished to common schools therein should be by grant from the general city funds; but as these sections have been repealed, and others substituted for them, by 32nd Vic. ch. 16, I shall not further refer to them, nor for the present shall I refer to sec. 77 further than to say that as it relates as it stood prior to the amendment enacted by 41 Vic., only to exemptions from liability to taxes imposed by sec. 73, it had no application to the city of Montreal in which the property of the appellants is situate.

The act 32nd Vic. ch. 16 is intituled: "An act to amend the law respecting education in this Province," and its enactments must needs be considered in connection with those of ch. 15 of the C.S.L.C. whenever

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Gwynne J.

the construction of the latter becomes now under consideration. By the 13th section of this act it was enacted that the school commissioners of the majority in any school municipality should alone have the power of levying taxes on the lands and real estates of corporations and incorporated companies, but that they should annually pay over to the trustees of the minority a proportion of all the taxes levied by them on such corporations or companies in the same ratio as the government grant for the same year should have been divided between them and the said trustees, and that

"No religious, charitable or educational institutions or corporations should be taxed for school purposes on the property occupied by them for the objects for which they were instituted; but on all property held by them, or any of them, for the purpose of deriving an income therefrom, they shall be taxed by the school commissioners of the religious majority or minority to which such corporations or institutions belong, and to the exclusive benefit of such majority or minority, or in conformity with the declarations which they, or each of them, may make to that effect; but, in the event that the religious body to which such corporations or institutions belong is not apparent, and where no such declaration has been made, then such last mentioned properties shall be dealt with in like manner as the properties of other corporations or incorporated companies in virtue of this section.

By the 21st section, the 133rd sec. of ch. 15 of the C. S. L C. and the three first sections of 31 Vic. ch. 22, are repealed. By the 22nd it was enacted that the annual grant to be paid for the support of schools in the cities of Quebec and of Montreal under the 24th, 88th and 89th sections of the 15th chapter of the Consolidated Statutes of Lower Canada should be in the proportion of the populations of the said cities and should be apportioned by the Minister of Public Instruction, or the Superintendent of Education for the time being, between the Roman Catholic and Protestant Boards of School Commissioners according to the relative proportions of the Roman Catholic and Protestant populations

in the said cities according to the then last census, and by the 23rd section it was enacted that the corporations of the cities of Quebec and Montreal should pay for the support of the schools in the said cities a sum equal to three times the amount of the share of the grant coming to the schools of the said city, and that the sum coming to each of the Roman Catholic and Protestant Boards of School Commissioners under provisions for apportionment contained in the act should be paid by the said corporations by two equal semi-annual payments to the secretary-treasurers of the said boards irrespective of the collection of the tax provided for by sec. 24. By this section (24) it was enacted that the corporations of the cities of Quebec and Montreal should levy annually by assessment on real estate in the said cities a tax sufficient to cover the amount payable by them for the support of schools under the above provisions, and that the said tax should be collected and recovered at the time and in the manner provided for the other city taxes on real estate, and the said tax should be known as the "city school tax." Then follows section 25, which enacts that :

Property belonging to religious, charitable or educational institutions and corporations and occupied by the said institutions or corporations for the purpose for which they were respectively established and not held by them solely for the purpose of deriving an income therefrom, shall be exempted from the said "city school tax."

The object and effect of this last section was simply to exempt property in the cities of Quebec and Montreal from the payment of "the city school tax" under the like circumstances, and only under the like circumstances, as like property in the rural school municipalities was exempted from payment of school tax by section 13.

The exemption there is found in a section relating to the levying of school tax on lands and real estate of corporations and incorporated companies. The religious,

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Gwynne J.

charitable or educational institutions, or corporations whose property, occupied by them for the purpose for which they were instituted, is exempt from taxation under the section, are the same institutions whose property, held by them for the purpose of deriving income therefrom, is not exempted, but shall be taxed by the school commissioners of the religious body to which such corporations or institutions belong, and to the exclusive benefit of such religious body. The section then provides that "in the event that the religious body to which such corporations or institutions belong is not apparent," then such properties—that is the properties of such corporations or institutions from which they derive income—shall be dealt with as the property of other corporations or incorporated companies. The term "educational institutions and corporations," as used in this section, plainly refers to the owners of the property which is exempted, and it must, in my opinion, be construed as being limited to corporations. It is wholly inapplicable to the case of a private person using his property for the purpose of conducting a private school thereon for his own profit. We do not speak of the proprietor of a private school as being "instituted" for that purpose. He cannot be the "educational institution" referred to in the section. So neither can the school which is kept by him on his own property—for the property exempted by the section is the property of the "educational institutions." The term can be applied solely to the owners of the property exempted, and not to the property itself which is occupied as a school Then again these words "educational institutions or corporations," used as they are in connection with "religious institutions or corporations," and with "charitable institutions or corporations," plainly, I think, show that what was intended

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Gwynne J.

by the term was an aggregation of persons belonging either to the Roman Catholic or Protestant religions united together as a body for the purpose of religion, or of charity, or of education, which aggregation of persons so united together are spoken of as institutions or corporations instituted for one of the above purposes, that is to say, as corporations, and the same construction must be put upon the term wherever it occurs in the ch. 15 of the Consolidated Statutes as amended by 32 Vic. ch. 16. Now, as to the operation of section 77 as it stood prior to the passing of 41 Vic. ch. 6, and I think it better that we should refer to the French copy of the act upon a question of this nature :—

Tous les bâtiments consacrés à l'education ou au culte religieux presbytères, et toutes institutions charitables ou hôpitaux incorporés par acte du parlement et le terrain ou emplacement sur lequel ils sont érigés ainsi que les cimetières seront exempts de la cotisation imposée pour les fins de cet acte.

The word "dedicated," as it seems to me, would be a more exact translation into English of the word "*consacrés*" as here used than "set apart." "*Consacrés à l'education ou au culte religieux.*" These words, so corrected convey to my mind the idea that a destination to a use in which the public, or a considerable portion thereof, were directly interested, as they would be in the case of a building dedicated to religious worship, was intended rather than the use, temporary it might be, by a private person of his own private property to teaching school therein for his own profit; so likewise the other terms used in the same sentence to designate the other descriptions of property intended to be exempted being all of a public nature, seem to me to point in the same direction. "*Presbytères*" represents a building, which being for the sole occupation, as dwelling houses, of ministers of religion engaged in conducting religious worship, and to be enjoyed as part of their stipend, may be said to be so annexed

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Gwynne J.

buildings dedicated to public worship as to partake of their public nature, so "*toutes institutions charitables ou hôpitaux imcorporés, ainsi que les cimitières*," are all of a public nature, so that in construing the words "*les bâtiments consacrés à l'education*" in this connection, the maxim *noscitur a sociis* seems to apply. Moreover, as the act is one relating to public grants in aid of superior education and normal and common schools, the natural construction of the words is to regard them as applying to buildings dedicated to the education to aid which the act is passed, and as exempting from liability to a public tax, levied in aid of such education, property which is dedicated to the purpose in aid of which the tax is levied; and the result, in my opinion, is that private property such as that of the appellant's, occupied as a school by private persons engaged in and pursuing the profession of teaching school for their own benefit and profit, as their source of income, was not exempt from liability to rates levied in aid of the public schools either in the rural municipalities or in the city of Montreal.

Then as to exemption from liability to municipal taxation, the municipal code, which applies only to the territory of the province of Quebec not included in cities and towns incorporated by special statutes, exempts only the following property:—

1. Property belonging to Her Majesty or held in trust for her use, and property owned or occupied by municipal corporations.

2. Property owned by or occupied for the use of the federal or the provincial governments.

3. Property belonging to fabriques or to religious, charitable or educational institutions or corporations, or occupied by such fabriques, institutions or corporations for which they were established, and not possessed solely by them to derive a revenue therefrom.

4. Burial grounds, bishops' palaces, parsonage houses, and their dependencies.

5. All property belonging to railway companies, &c.

The property in the third of the above paragraphs, which is the only one to which we have occasion to refer, is wholly framed upon the model of and, with the exception of the addition of the word "fabriques," taken almost verbatim from, the 25th section of 32 Vic. ch 16, which defines the property which alone is exempted from the rate by the 24th section of that act directed to be levied by the corporation of the city of Montreal and called the "city school tax;" and the words "educational institutions," as used in the above paragraph in the Municipal Code Act, which is itself but a consolidation of the previous acts having relation to the same subject, must receive, as indeed from their context they require, a like construction as they would receive in 32 Vic. ch. 16, from which, for the purpose of consolidation into the Municipal Code, they are taken, and as so used in the Code they clearly apply to the owners of the property which is to be exempt, and not to the property itself; moreover, in my opinion, they, by the context in which they appear, apply to an aggregation or association of persons, religious or secular, united together in a corporate capacity to carry out certain purposes of religion or charity or education, for which they were established or founded or united together as an association, and cannot be construed as including a private person, or private persons like the appellants, conducting a private school in order to derive an income therefrom as their means of supporting themselves, and the conclusion is that a person conducting such a school in a rural municipality is not, nor is his property used by him as such school, exempted from taxation by the Municipal Code, and if such property is exempt from taxation, either for school

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Gwynne J.

or municipal rates, in any rural municipality, it must be by force alone of 41st Vic. ch. 6, and if in any city or town, it must be either by the express terms of the act incorporating such city or town, or in some act amending the same, or by force of 41 Vic. ch. 6.

In acts incorporating cities and towns already incorporated, there does not appear to have been adopted any uniform clause expressing in identical terms in every act the property intended to be exempted, and yet it is, I think, inconceivable that by the difference in the language used in some of these the legislature intended to exempt property of a private person used by him for his own private profit, if used for giving private tuition therein, or as a private school as a source of income, either from contribution to the fund provided for the maintenance of common schools in which the general public are interested, or from municipal taxes, which enhance the value of the premises by the uses of which he obtains his income, and, no doubt, also his profits, in which the public have no interest whatever. If such an intention had been entertained it would have been unequivocally expressed.

In the 29 Vic. ch. 57 (A.D. 1865) which is an act consolidating into one act all acts and ordinances relating to the corporation of the city of Quebec, the exemption from taxation is provided for by the 25th section, in the following terms :—

> The property of any incorporated institution for educational or charitable purposes, occupied and used for educational or charitable purposes, and also all other property by such institution leased for the aforesaid purposes, or occupied as school houses by the school commissioners of the said city, shall be exempt from taxation, and such houses or properties so occupied are also exempt from tenants' tax.

In the act incorporating the town of Longueuil, 37 Vic. ch. 49, it is expressed in language identical with that used in the Municipal Code Act. In 37 Vic. ch.

51, which is an act to revise and consolidate the charter of the city of Montreal and the several acts amending the same, there is no clause of exemption of any property, but in 38 Vic. ch. 73 (1875) which was passed in amendment of 37 Vic. ch. 51 there is, and it is as follows:—

Sec. 3. Les églises, presbytères et palais épiscopaux sont exempts de toutes taxes, les établissements occupés pour des fins de charité sont exempts de taxes municipales ordinaires et annuelles.

In this act the intention of the legislature seems to have been that as to the tax called the "city school tax" exemption was provided by 32 Vic. ch. 16, and that as to municipal taxes there should be no exemption other than those specified in the above clause of 38 Vic. ch. 73.

In 38th Vic. ch. 76 (1875), incorporating the city of Three Rivers, the exemption clause is thus expressed:

Tout bien consacré au culte public ainsi que tout cimetière.

Toute maison d'école publique et le terrain sur lequel elle est construite.

Toute maison ou tout établissement public d'éducation ainsi que le terrain sur lequel il est construit.

Tous bâtiments, terrains et propriétés occupés ou possédés par des hôpitaux ou autres établissements de charité.

In the act 39 Vic. chap. 79, incorporating the city of Hull, the exemption is thus expressed;

4. Toute maison d'école publique et le terrain sur lequel elle est construite.

5. Tout établissement ou maison d'éducation ainsi que le terrain sur lequel il est construit.

6. Tous bâtiments, terrains et propriétés occupés ou possédés par des hôpitaux ou autres établissements de charité ou d'éducation, et non possédés pour y faire des profits.

It was argued that the above clause No. 5, *tout établissement au maison d'éducation*, &c., shows an intention to exempt every school house of whatever nature, including private schools conducted for private gain as a source of income to the private owner, but no such construction is, in my judgment, at all necessary, and if

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Gwynne J.

not necessary the clause should not be so construed. The natural construction, in my opinion, is that in the absence of an express intention to the contrary the properties intended to be exempted are those referred to in the acts relating to public instruction, that is to ch. 15 of C. S. L. C. and the acts in amendment thereof, as 32nd Vic. ch. 16.

The previous clause exempted only the common and elementary schools and the land on which they are built. This left "universities," "colleges," &c, &c., the property of religious communities and incorporated institutions, unprovided for. It is reasonable to construe clause 5 as introduced to cover those, and we are not, in my opinion, justified in construing it to include property of private persons, to exempt which no intention whatever otherwise appears anywhere. To correct in the future the want of uniformity in the clause relating to exemptions in acts of incorporation, provision was made in an act passed in 40 Vic. ch. 29, and intituled: "The Towns' Corporations general clauses Act."

By the 1st section of this act it was enacted that the provisions of the act should apply to every town, corporation or municipality which should thereafter be established by the legislature, and that they should constitute part of the special act relative to such town so as to form with it one and the same act, unless they be expressly modified or excepted; and by sec. 2 it was enacted that for any provisions of the act not to be incorporated in the special act, the special act must expressly declare that such provisions, specifying them by their numbers, should not form part thereof, and that the act should be interpreted accordingly; and the general exemption clause was enacted as follows in sec. 525:—

The following property shall not be taxable:—

1. Property belonging to Her Majesty or held in trust for her use, and property owned or occupied by the corporation of the municipality.

2. Property owned or occupied by the federal or the provincial governments.

3. Property belonging to fabriques or religious, charitable or educational institutions or corporations.

4. Burial grounds, bishops' palaces, parsonage houses and their dependencies.

5. All property belonging to railway companies receiving a grant from the provincial government, for the whole time during which such grant is accorded.

Thus adopting the precise exemptions, and almost in identical language, as those named in the Municipal Code Act. Then by sec. 441 it is enacted that the act might apply to city corporations which should in future be incorporated, and in such case the word town shall be replaced by the word city every time that the meaning of the act thus applied should require it. Provision was thus made for uniformity in so far as to place the rural municipalities and all corporations or municipalities of cities or towns to be created in the future upon the same footing as to exemptions, namely, these enumerated in this act, and these only; thus manifestly, as it appears to me, excluding the idea of any intention that any property of any private persons engaged as the appellants are in keeping school thereon for their own profit, and as their means of deriving income therefrom, should be exempted. But though provision was thus made for uniformity as regards city or town corporations or municipalities to be created in the future, the want of uniformity caused by the difference in the several exemption clauses in the acts or charters relating to cities and towns already incorporated still remained The provisions of 32 Vic. ch. 16 as to common schools in the cities of Montreal and Quebec were expressly incorporated into the act of incorporation of the city of Hull,

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Gwynne J.

38 Vic. ch. 79 sec. 82, and possibly into the acts incorporating other cities and towns. By 38 Vic. ch. 76, the corporation of the city of Three Rivers were constituted the "School Commissioners of the city of Three Rivers," in which corporate name, and not in that of the city corporation, they were to act when acting as school commissioners; but as regards municipal taxes, which were regulated by the acts of incorporation of cities and towns, there was no uniformity. Now the removal of this want of uniformity was as necessary as regarded cities and towns already incorporated as those to be incorporated under the provisions of 40 Vic. ch. 29; and this seems to me to afford the key to the construction of the 26th sec. of 41 Vic. ch. 6, which was, in my opinion, enacted by way of amendment of sec. 77 of ch. 15 of C. S. L. C. for the purpose, by this short addition imported into the section, of providing that the matter of the amendment thus introduced should be read as part of that act notwithstanding any provision there might be open to a contrary construction in any act or charter of incorporation of any city or town (this being the mode of creating such municipalities) whether such act or charter was passed previously to the passing of ch. 15 C. S. L. C., or in the interval between the passing of that act and of 41 Vic. c. 6; thus by a short method placing the enactments relating to exemption from taxation both as to school and municipal taxes in cities and towns already incorporated upon the same footing as was provided with regard to the future by 40 Vic. ch. 29, and with regard to rural municipalities by ch. 15 as amended by 32 Vic. ch. 16, and by the Municipal Code Act.

The 2nd sub-section of sec. 77 of ch. 15 C. S. L. C., as amended, reads as follows:

Tous les bâtiments consacrés à l'éducation ou au culte religieux, presbytères, et toutes institutions charitables, ou hôpitaux incor-

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Gwynne J.

porés par acte du parlement, et le terrain ou emplacement sur lequel ils sont érigés, ainsi que les cimetières, seront exempts de la cotisation imposée pour les fins de cet acte. Toutes maisons d'éducation qui ne recoivent aucune subvention de la corporation ou municipalité où elles sont situées, ainsi que les terrains sur lesquels elles sont érigées, et leur dépendances, seront exemptes des cotisations municipales et scolaires, quelque soit l'acte ou charte en vertu duquel ces cotisations sont imposées, et ce nonobstant toutes dispositions à ce contraires.

The words *toutes maisons d'éducation qui ne reçoivent aucune subvention de la corporation*, &c., &c., are, in my opinion, not well translated "every educational institution," as they are in the English version, for in every other part of the act in which that term occurs it applies to persons the owners of property *consacrés à l'éducation*, and not to the property itself so dedicated.

What is intended by the words *qui ne reçoivent aucune subvention de la corporation ou municipalité ou elles sont situées* it is difficult to understand; no explanation has been given nor any satisfactory one suggested. The words, according to their ordinary import, convey the idea of a qualification of, or exception from, the generality of the previous words, *toutes maisons d'éducation*, as that it is not actually *toutes maisons d'éducation* which is intended, but only such as do not receive a subvention from the corporations in which they are situate; but this construction would seem to convey an intention, by implication, that only those who do not receive a subvention from the corporation in which they are should be exempt from taxation, and that those who do receive such subvention should not be. The only *maisons d'éducation* which can be said to receive a subvention from the corporation in which they are situate are the common schools in those cities whose acts of incorporation and the acts affecting the corporations are similar to those of the cities of Montreal, Quebec and Hull, whereby the aid given

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Gwynne J.

to common schools is declared to be by grant out of the general funds of the respective corporations, irrespective wholly of the levy of any tax for the purpose, such grant being subsequently reimbursed to the corporation making it by the levy, together with the ordinary municipal taxes, in each year of what in 32 Vic. ch. 16 is called the "city school tax." If these common schools, which may be said to receive *subvention* from the corporations in which they are situate, are to be construed as the *maisons d'éducation* to be contrasted with those who do not receive any subvention, then the words, *qui ne reçoivent aucune subvention*," &c., &c., might well mean the universities colleges, seminaries, &c., &c, mentioned in the other sections of the act ch. 15; but why refer to them in this manner? For, by so doing, according to ordinary construction, the intention by implication would arise that the common schools should not be exempt, which could not have been the intention.

It was argued that the words were intended to cover private schools like that of the appellant's, for they do not receive aid from the corporations in which they are situate; but this view cannot be adopted, for—

1. No act of incorporation of any municipality, nor any act, authorizes the application of the moneys of the corporation in aid of private persons keeping a private school; and it would be senseless to treat persons who therefore could not receive any such aid to be intended under this form of expression.

2. Applying the words to them or to their schools would still leave unremoved the difficulty of subjecting to taxation by implication these public schools in cities which may, for the reasons aforesaid, be said to receive subvention from the corporations in which they are situate; and—

3. Such a construction would be utterly subversive

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Gwynne J.

of the intent of preserving uniformity in the case of acts of incorporation of cities and towns hereafter to be incorporated appearing in 40 Vic. ch. 29, which excludes all idea that the schools of private persons should be exempt.

Whatever may have been the object of introducing these words, they seem, at any rate, I think, to indicate that the "*maisons d'éducation*" intended were those situated in city or town corporations or municipalities; these words "corporations or municipality" are the precise words used in 40 Vic. ch. 29 to signify a town or city corporation.

By the 1st section it is enacted that the provisions of the act shall apply to "every town, corporation or municipality," and by sec. 441 "every city, corporation or municipality."

These words "*seront exempts de cotisation municipales et scolaires*," &c., &c., confirm me in this view. Those words impart, to my mind, that the *maisons d'éducation* intended to be exempted were these which, by reason of certain provisions to the contrary contained in some act or charter, were, or were deemed to be, not exempted. Now, the only provisions of this nature were contained in some of the acts of incorporation of cities or towns, or in some acts in amendment of such acts of incorporation, which provisions being removed, as in the view which I take of the amendment they are, a uniformity is established between exemptions as to municipal and school taxes in the rural municipalities and in incorporated cities and towns, and the provisions of 40 Vic. ch. 29.

Reading then sub-sec. 2 of sec. 77 of ch. 15, as amended, as one section, it should be construed as applying only to *maisons d'éducation* where education is given by the institutions and corporations mentioned in the act, and as exempting both from municipal and school

1886

DAME MARY WYLIE v. CITY OF MONTREAL.

Gwynne J.

taxes all public schools and all universities, colleges, seminaries, &c, &c., for the purpose of aiding which the act was passed, and whether such *maisons d'éducation* were situated in cities or towns or the rural districts, and this, notwithstanding the provisions to the contrary which do in fact appear in some of the acts incorporating cities and towns.

The appeal, therefore, in my opinion, should be dismissed with costs.

Appeal allowed with costs.

Solicitors for appellants: *Kerr, Carter & Goldstein.*

Solicitor for respondents: *Roüer Roy.*