The property in question, which comprises about 800 acres, and is situate in the River St. Lawrence, at the foot of the Lachine rapids, was given to the respondents over a century ago, for educational purposes. They maintain an establishment on the Island, and nuns who are sick or who require repose are sent thither for health and relaxation. Two thirds of the land is arable and the rest wooded, and it appeared that the produce was consumed either at the establishment on the Island, or at the parent institution in the City of Montreal.

The appellants claimed that the property was possessed solely to derive a revenue therefrom, and did not fall within the exemption. It was further contended, as regards the school taxes, that the exemption is limited to the buildings set apart for purposes of education, and the grounds or land on which such buildings are erected. Here the property was a large farm, and the buildings did not cover more than six acres.

The Court below dismissed the action for the recovery of taxes on the following grounds :—

"Considering that by law, to wit: Article 712 of the Municipal Code, the defendants are not liable to pay to the plaintiffs the sums demanded; that by paragraph 3, of the said Art. 712, property belonging to *fabriques*, or to religious, charitable, or educational institutions or corporations, or occupied by such for the purposes for which they were established, and not possessed solely by them to derive a revenue therefrom, is not taxable;

"Considering that the defendants' property, which has been taxed for the amount now sought to be recovered, belongs to them, and is occupied by them as a charitable and educational corporation for the ends for which they were established, and is not possessed by them solely to derive a revenue therefrom; the plea of the said defendants is maintained, and the plaintiff's action is dismissed, with costs, *distraits*," &c.

In appeal the judgment was confirmed, Dorion, C.J., and Cross, J., dissenting.

D. Macmaster for Appellants.

Lacoste & Globensky for Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, January 25, 1881.

DORION, C. J., MONK, RAMSAY, CROSS, BABY, JJ.

LA BANQUE JACQUES CARTIER (deft. below), Appellant, & BEAUSOLEIL es qual. (plff. below), Respondent.

Insolvent Act of 1875, *Sect.* 68—*Action by creditor —Proof of claim.*

The appeal was from a judgment of the Court of Review at Montreal, July 9, 1879, reversing a judgment of the Superior Court, Jetté, J., Dec. 21, 1878. (For the judgment of the Court of Review see 2 Legal News, p. 253.)

The action was brought under Sect. 68 of the Insolvent Act of 1875, in the name of the assignee to the estate of one Champagne, an insolvent, to recover a sum of $320.

The facts were that a writ of attachment was, on the 27th April, 1877, issued against the estate of Champagne at the instance of the Bank (now appellant), but before the day fixed for the return of the writ Champagne paid the amount ($320), and thereupon the Bank dropped the proceedings in insolvency. Five days after the first writ issued, another writ of attachment was issued against the estate of Champagne, at the instance of Stirling, McCall & Co., other creditors of Champagne, and Beausoleil in due course was appointed assignee.

The assignee having declined to take proceedings to recover back the $320 paid to the Bank as above mentioned, the present suit was instituted by Stirling, McCall & Co., in the name of the assignee, as permitted by Sect. 68 of the Insolvent Act of 1875.

The Superior Court dismissed the action on the following grounds :—

"Considérant que la présente action est intentée contre la défenderesse au nom du demandeur ès-qualité de syndic à la faillite du nommé Rémi Champagne, pour faire remettre et payer par la dite défenderesse une somme de $320, que le demandeur ès-qualité allègue avoir été reçue par la défenderesse dans les trente jours qui ont précédé la faillite du dit Champagne, et lorsqu'il était déjà, à la connaissance de la défenderesse, en état d'insolvabilité complète, ce qui, aux termes de la clause 134 de l'acte de faillite, aurait rendu le dit paiement nul;

"Considérant que bien que la dite action soit intentée au nom du demandeur ès-qualité, il appert néanmoins qu'elle ne l'est que pour le bénéfice et avantage exclusif de John Stirling, John McCall et Joseph Shehyn, faisant affaires