objected to this; and the defendant herself also, and required the other tenant to moderate the extreme brightness of his favorite color, but in vain, and at last proceeded to put on a preparatory coat of a sober hue, and in doing so broke a gas pipe.

The view taken by the court below was that the plaintiff had no substantial cause of action: that he used the trifling pretexts referred to for the purpose of favoring one tenant at the expense of the other: that there is no proof of permission to the ground floor tenant to indulge his extravagant passion for scarlet at the expense of the lady up-stairs: and in fact that substantial justice required that this case should be treated as one in which the plaintiff had no reasonable cause of complaint—and we all sustain that view.

J. E. Robidoux for plaintiff.

Longpré & Co. for defendant.

MACKAY, TORRANCE, DORION, JJ.

DANSEREAU v. ARCHAMBAULT et al.

[From S. C., Montreal.

Service—Husband and Wife séparés de biens.

In a joint and several action against man and wife, separate as to property, service of one copy of the writ and declaration is insufficient.

The defendants, man and wife, separate as to property but living together, were sued jointly and severally, and only one copy of the process was served upon them, under Art. 67 of the C. C. P.

The defendants filed an exception to the form, setting up defective service upon several grounds, but issue was ultimately joined on the pretension of the defendants, that a copy should have been left for each.

TASCHEREAU, J., in the Practice Court, maintained this pretension, and this judgment was subsequently confirmed in Review, MACKAY, J., presiding.

C. H. Stephens for plaintiff.

Archambault & David for defendants.

SUPERIOR COURT.

Montreal, June 28, 1878.

JOHNSON, J.

PLESSIS dit BELAIR v. LAJOIE.

Insolvency—Action to compel Assignee to take up Instance.

Held, that an assignee cannot be compelled to take up the instance in a suit pending against the insolvent.

JOHNSON, J. The plaintiff brought an action in this court against one Pratt and his wife, who appeared and pleaded, and afterwards became insolvent—the present defendant being named assignee to their estate; and the action is to compel him to take up the *instance*. The point is not, as the defendant put it, whether an action can be continued against an insolvent: of course it can, and it becomes a mere risk as to costs—that is all that the cases cited go to show. But can an assignee be compelled to take up the instance? That is the point. I can see nothing in the statute or in the reason of the thing to enable me to say that he can be compelled. It was said that the point had been settled in the other court, but I have not been able to get at that. The 39th section of the Act certainly gives power to the assignee to take *all proceedings for the benefit* of the estate both in suing, and defending suits; but that is not obligatory. Action must be dismissed.

Bonin for plaintiff.

Archambault & Co. for defendant.

BROWN et al. v. ARCHIBALD et al.

Promissory Note—Personal liability of Agents signing Notes.

Where several persons, trustees of an insolvent estate under a deed of composition, which gave them no power to draw or accept bills, signed promissory notes with the words "Trustees to Estate C. D. Edwards" after their signatures, *held*, that they were personally liable.

JOHNSON, J. The action of the plaintiffs here is against the makers of five promissory notes, signed by the defendants in favor of Charles D. Edwards, and endorsed by him to the present holders. The pleas were that Edwards had become insolvent and had made an assignment to Perkins, and afterwards made a deed of composition with his creditors under which the defendants were made trustees of the estate while he himself carried on the business; but being unable to meet the terms of his composition, the official assignee retook the estate; and that the defendants were called upon by Edwards to sign these notes to enable him to get coal that he had bought from the plaintiff, and signed them as trustees, and so limited their liability. The plaintiff answers that the notes were signed with the express understanding of