they took the payment in good faith, and even reduced their demand somewhat. That Stirling & McCall afterwards put this man's estate into bankruptcy, and knew, as well as the defendants and all the other creditors, that this payment had been made, and yet never complained of it. Then comes, at the end of this plea, a sort of protest, that Stirling & McCall have no right to proceed as they are doing in this case, in the name of the assignee, and that the defendant denies everything that is alleged, with the exception of what has been admitted. It appears quite clear that the defendant has thus admitted that Stirling & McCall were creditors, and took the initiatory proceedings against this insolvent estate. There is no preliminary plea asking that the Judge's order be set aside as irregular. There is nothing but this general protestation that the defendants acted in good faith, and that Stirling & McCall have no right to proceed in this way.

Here, then, is an order of a Judge made under the authority of a statute, and with *connaissance de cause*, that this assignee may sue, and if he can, may recover all the money illegally kept by the defendants, and which they got from the bankrupt at a time when the payment was prohibited; and yet it is contended, while this order still subsists and is unquestioned, that he is not to get judgment, because the money is to go to the creditor who is invested by law with the right to cause the action to be brought in this way. The judgment now before us appears to admit every part of the plaintiff's case, except the precise extent of Stirling & McCall's interest, which the learned Judge held to be a *sine qua non;* and the action was dismissed on the single ground that the demand of the assignee could only be maintainable to the extent of the debt, whatever it may be, that was due to them by the bankrupt's estate. In other words, this particular recourse, given by the statute under the peculiar system of the bankrupt laws, was regarded as identical with the *actio revocatoria* of an ordinary creditor whose interest is to be measured by the extent of his debt. The majority of the Court takes a different view of the operation of the 68th section. It reads as follows:—Sec. 68. "If at any time any creditor of the insolvent desires to cause any proceeding to be taken which in his opinion would be for the benefit of the estate, and the assignee, under the authority of the creditors or of the inspectors, refuses or neglects to take such proceeding after being duly required so to do, such creditor shall have the right to obtain an order of the Judge authorizing him to take such proceeding in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the Judge may prescribe; and thereupon any benefit derived from such proceeding shall belong exclusively to the creditor instituting the same for his benefit, and that of any other creditor who may have joined him in causing the institution of such proceeding. But if, before such order is granted, the assignee shall signify to the Judge his readiness to institute such proceeding for the benefit of the creditors, the order shall be made prescribing the time within which he shall do so, and in that case the advantage derived from such proceeding shall appertain to the estate." In our opinion, the interest of the creditor here is one that is vested in him by the statute, and his right is to be exercised in the manner prescribed by it.

The immorality of the plaintiff's position was insisted on; and it was said he was getting what was not his. Well, with respect to the immorality of the thing, I must say I am not aware that bankruptcy considered either by itself as a commercial disease, or with reference to the treatment prescribed for it by the law, has ever possessed any very seductive allurements for the moralist; but I quite agree that the immorality that may in any case affect or vitiate a contract, is a thing to be looked at. The plaintiff's position in the present case does not appear to me tainted with a legal immorality that could affect his rights. What is there immoral in the Legislature saying to the creditors of a bankrupt: "You may renounce, if you see fit to do so, your collective right to defeat the prohibited transactions of the bankrupt; and you may give that right to any one of your number who chooses to take the risk of bringing an action?" Now, that is precisely what the law has done in the 68th section; and a creditor who chooses to accept that position and that risk is exactly in the position that all the creditors would have occupied, if they had chosen to bring the action for themselves, in the name of the assignee, except that he individu-