RAMSAY, J. The affidavit in this case sets out no fact beyond the departure of defendant, and his failure to pay what he owes. It has now been so often laid down that this is not sufficient that the jurisprudence must be considered settled on the point. How a departure is to become "with intent to defraud" otherwise than by the non payment of the debtor's liability, it is not easy to understand, but the law would cease to be interesting if it had not its little mysteries. I take it, however, that the recent rulings have completely annihilated "the seafaring man" doctrine.

The judgment is as follows :—

"The Court, etc.

"Considering that the affidavit of the respondent in this cause contains no sufficient statement of the reasons of the deponent's belief that the appellant was about to leave immediately the Province of ———, to wit, the heretofore Province of ———, with intent to defraud his creditors in general, or the said respondent in particular ;

"And considering therefore, that there was no sufficient ground stated in the said affidavit as required by law to justify the issue of a *capias ad respondendum* in this cause ;

"And considering that there is error," &c.

Judgment reversed.

Carter, Church & Chapleau, for appellant.

D. Macmaster, for respondent.

COURT OF REVIEW.

MONTREAL, April 29, 1881.

JOHNSON, RAINVILLE, PAPINEAU, J J.

CORSE et vir v. DRUMMOND es qual., and DRUMMOND, opposant.

Succession—Ascendant—Beneficiary heir.

The judgment of the Superior Court in this case, reported in 3 Legal News, p. 341, was unanimously confirmed.

Piché & Moffatt, for opposant.

Ritchie & Ritchie, for plaintiffs contesting.

SET-OFF BY STOCKHOLDER IN INSOLVENT BANK.

PENNSYLVANIA SUPREME COURT, MARCH 14, 1881.

MACUNGIE SAVINGS BANK v. BASTAIN.

A stockholder in an insolvent bank, who is also a depositor, cannot set off the amount of his deposit against the amount due for unpaid assessments on the stock subscription.

Action to recover the amount of unpaid assessments upon a subscription for stock in the plaintiff bank.

The bank was incorporated in 1867, when defendant subscribed for one hundred shares of its stock. The par value of each share was $20, but defendant only paid $5 per share. In 1878 the bank made an assignment for creditors. The assets were not sufficient to pay the debts and an assessment of $15 per share was made on the stockholders. In this action defendant set up that he had deposited in the bank $4,425 which he claimed to set off against his liability on his stock subscription. The court below held that he was entitled to the set-off. To review such decision plaintiff took a writ of error.

STERRETT, J. The capital stock of a corporation, whether fully paid or partly outstanding in the hands of subscribers thereto, is undoubtedly a trust fund for the benefit of its creditors. *Germantown Railway Co.* v. *Fitler*, 16 P. F. Smith, 131 ; *Woods* v. *Dummer*, 3 Mason, 308 ; *Mann* v. *Pentz*, 3 Comst. 422. While such unpaid subscriptions pass, as assets, to the assignee under a voluntary assignment for the benefit of creditors, and the directors of the insolvent corporation may be required to make such calls on subscribers to the stock as may be necessary to enable him to collect the same, they still retain the impress of trust funds and must go into the hands of the assignee intact, for the purpose of distribution among those for whose benefit they were intended. In this respect they differ from ordinary choses in action belonging to the assignor at the date of assignment. Against the latter, legitimate claims of set-off may exist, and what remains after deducting the same is all that can properly be considered a part of the trust fund.

The demand against defendant in this case is not grounded on business transactions between him and the bank since its organization. It originated in the very creation of the bank, of which he was one of the corporators. As a condition precedent to the granting of letters of incorporation, they were required by the sixth section of the charter "to raise and form a capital of not less than five nor more than fifty thousand dollars, in shares of twenty