ally, instead of the estate, risks the costs. Therefore the defendant has no other defence to him, than he would have had to them all; and it is immaterial to this action what might have been the extent of the beneficial interest moving the creditor who undertakes this proceeding. He asserts the rights that belonged to the creditors generally, and which they have renounced in his favor, and it appears a necessary consequence that a defendant in such a case could have no other defence to the assignee's demand, when it is made for one of the creditors, after the rest have renounced, than he would have had if the assignee still represented them all. That the plaintiff is getting an advantage that the other creditors might have got for themselves, if they had chosen, may be admitted; but they have not chosen; therefore, if advantage it be, it is at least an advantage with the full assent of all those who, under any circumstances, could complain of it. The administration of this bankrupt law is replete with such instances: To go no farther than the case of a purchaser of a bankrupt's debts, he gives perhaps a few dollars for some thousands; but the creditors have assented to it as being for their advantage,—as they have done here; yet it has never been urged in any of the numerous cases of that class, that there is anything immoral in the purchaser getting the full amount, if he can recover it, of the debts due to the bankrupt concern. It is, so to speak, a speculation sanctioned by the law which vests the proceeds in the speculator. I fully assent to the general principle that interest is the measure of actions; all that I say is, that the plaintiff here, as a creditor, as he undoubtedly is, as, indeed, the plea expressly admits him to be, is invested by the statute with the full interest of all the other creditors; and the test of interest applies not only to actions but to exceptions.

With respect to the second part of the case, it is in a nutshell. The Bank had knowledge of the insolvency of its debtor; it took steps founded on that insolvency which itself is alleged in the affidavit made for the writ. It received payment at a time that made the insolvency not only probable, but absolutely certain, as far as their knowledge went; and under the circumstances the money belongs not to the Bank, but to the creditors who have chosen to deal with the case in this way. The case of Sauvageau v. Larivière decided that the creditor making oath that his debtor was going to leave without paying him, does not necessarily imply knowledge at the time that the debtor was insolvent. That was certainly going quite as far as it would be safe to go. In the present case the creditor knew beyond doubt that his debtor was insolvent. The affidavit alleges it, and it is admitted in the plea. It was asked, what was the Bank to do? The debtor was in prison, and came and asked to be liberated. How could it refuse to take the money? The point is not now whether the Bank at that moment could take it, but whether they can now keep it. We are, therefore, of opinion to revise this judgment, and adopting the view taken by the learned Judge on every other point of the case, we correct the only ground on which he held that the action could not be maintained, and we give judgment for plaintiff with costs in both Courts.

Bethune & Bethune for plaintiff.
Lacoste & Globensky for defendants.

JOHNSON, TORRANCE, RAINVILLE, JJ.

[From S. C. Montreal.

GERARD v. LEMIRE dit MARSOLAIS; and GERARD, plaintiff en désaveu v. ST. PIERRE et al., defendants en désaveu.

Attorney—Action for séparation de corps et de biens—Reconciliation—Costs.

TORRANCE, J. The plaintiff had taken out an action *in forma pauperis*, for a separation from bed and board against her husband. On the 15th November, the defendant was foreclosed from pleading, and immediately an inscription for *enquête ex parte* was filed for the 18th November. On the 16th November the defendant gave notice to the attorneys of the plaintiff of a motion to reject the inscription on the ground that the parties were reconciled, and this motion was supported by the affidavit of plaintiff and defendant. The motion was rejected, and a new inscription was made by the plaintiff's attorneys for the 4th January. Thereupon the plaintiff began an action *en désaveu* against her attorneys. This action was maintained by judgment of the Court (Mackay, J.) on the 20th February last. This judgment is now under review. The defendants *en*