

ciples arise which have occasioned some perplexity at law as well as in equity.

It seems to be well settled in England, that a discharge and assignment under the insolvent law does not, of itself, operate as an abatement of any action at common law which may have been previously instituted by the insolvent; because, although the discharge and assignment do legally divest him of all property claimed by such action, and transfer it to his trustee for the benefit of his creditors; yet the insolvent may well be allowed to proceed with the prosecution of the suit for the benefit of his creditors until the trustee interferes and claims adversely to him, in which case, he will not be allowed to recover that which is in law the property of the trustee, and is claimed as such. *Monke v. Morris*, 1 *Mod.* 93; *Hewit v. Mantell*, 2 *Wils.* 372; *Kretchman v. Beyer*, 1 *T. R.* 463; *Winter v. Kretchman*, 2 *T. R.* 45; *Waugh v. Austen*, 3 *T. R.* 437; *Kitchen v. Bartsch*, 7 *East*, 63. It is also laid down, that the insolvency of the defendant does not, of itself, abate any action at common law. *Hewit v. Mantell*, 2 *Wils.* 374.

By our insolvent law it has been declared, that the trustee of the insolvent's estate may, in his own name or in that of the applicant, sue for, collect and recover all debts, demands and property due or belonging to the applicant and assigned by him to such trustee; and that such trustee may also prosecute to judgment any suit commenced by the applicant before his appointment. 1805, ch. 110, s. 8; 1827, ch. 70, s. 2. (b) These provisions seem to be confined to actions at common law; and also to such cases of that description only in which the plaintiff, * or he who must otherwise have been the plaintiff, has been finally discharged under the insolvent law. There is, however, no legislative enactment prescribing any mode by which a trustee of an insolvent plaintiff may be allowed to come in, and prosecute a suit which the insolvent had previously instituted; or by which a trustee of an insolvent defendant may be allowed to come in and make defence in a pending suit, the recovery in which may be of no consequence to the insolvent; but which may greatly reduce the dividends of his creditors. According to the course of the Courts of common law here, as in England, the trustee of an insolvent plaintiff has always been permitted to come in at any time and claim for the benefit of his creditors, either on motion, or by *scire facias*. The most usual course seems to be to come in on motion; but if the claim of the trustee, as such, be questioned, then the Court will intercept or stay the paying over of the proceeds so as to give

(b) Some further provisions have been since made as to the continuance of suits where a change is made of a permanent trustee of an insolvent debtor of the City and County of Baltimore, pending a suit instituted by or against such trustee, by the Act of 1833, ch. 173.