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 the trustee time to sue out a *scire facias* for the purpose of having the matter in controversy regularly determined. (*r*)

The insolvent law has no distinct provision whatever in relation to any kind of suit in equity to which an insolvent may be a party, and which may be depending at the time of his final discharge. But, although in equity as at law, a party to a then depending suit may, by his having obtained the benefit of the insolvent law, be thereby deprived of all right to the property in litigation held or claimed in his own right, and not as trustee or in right of another, and have been so, apparently, entirely divested of his capacity to sue or be sued in relation to it; yet here, as at law, such a discharge does not, as in the case of death, operate as an abatement of the suit. Upon the ground, as it would seem, that a discharge under the insolvent law operates only as a transfer of the insolvent's interest for the benefit of his creditors; but does not, as in case of death, effect a total prostration and extinction of all his rights. Hence, although an insolvent discharge cannot be said to be strictly an abatement of the suit, yet, that circumstance renders it as defective as if it had abated by death; which defect, when made known to the court, must be remedied before the suit can proceed. The proper mode of reinstating a suit in equity, in such cases, is by a supplemental bill in the nature of a bill of revivor. So that, in general, upon the final discharge under the insolvent law of a plaintiff or defendant being suggested upon the record, the case may be ordered to stand over, with notice to the

(*r*) Hewit *v.* Mantell, 2 Wils. 372.