

Where a claim is filed and allowed in the audit and there are no exceptions, it is duty of trustee to pay it. The creditors may litigate *inter sese*, but the law does not impose this duty upon trustee. *Walsh v. Boyle*, 30 Md. 267.

Where a sale of mortgaged premises is made and reported prior to application of mortgagor in insolvency, no title to mortgaged premises passes to insolvent trustee, and sale is valid. *White v. Malcolm*, 15 Md. 543.

Powers and duties of trustee. His title relates back to time of filing of petition. *Riley v. Carter*, 76 Md. 605; *Gottschalk v. Smith*, 74 Md. 563; *Mackubin v. Boardman*, 54 Md. 390; *Grove v. Reutch*, 26 Md. 378; *Glenn v. Gill*, 2 Md. 18; *Alexander v. Ghiselin*, 5 Gill, 179; *Hall v. McPherson*, 3 Bl. 537.

#### **Jurisdiction.**

Insolvent courts have no jurisdiction to compel executors and administrators of a deceased trustee to account in such court. The insolvent court may, however, proceed against trustee for default or neglect of duty. Although trustee may proceed in other forums to get in assets of estate, such estate must be distributed in insolvent court. The insolvent court is a court of limited jurisdiction, and its acts must be shown to be within its powers. *Purviance v. Glenn*, 8 Md. 206.

An equity court has no jurisdiction to remove or appoint an insolvent trustee, though it will exercise ancillary jurisdiction for prevention of injury, until insolvent court can take hold. *Powles v. Dilley*, 2 Md. Ch. 127; *Powles v. Dilley*, 9 Gill, 239.

#### **Provisional trustee.**

Under act of 1829, ch. 208, sec. 3, the provisional trustee has as full power to sue for and recover property fraudulently conveyed, as the permanent trustee has. *Teackle v. Gibson*, 8 Md. 87.

The bond of permanent trustee not having been approved, the temporary trustee is still in office, and where before the petition in insolvency creditors have attacked conveyances of the insolvent as fraudulent, the latter trustee may be made a defendant, and upon the setting aside of the conveyance the property vests in him. *Haugh v. Maulsby*, 68 Md. 426.

This section and sec. 25 compared as to the persons to whom they are applicable, and as to the necessity for a deed from the debtor to the preliminary trustee. *Clark v. Manko*, 80 Md. 82.

#### **Generally.**

Interest of bankrupt in property which cannot be devised, but can be assigned, passes to trustee; contingent remainder. *Reilly v. Mackenzie*, 151 Md. 221.

The bankrupt act does not repeal insolvent law, but merely suspends it. The former, when enacted, is paramount and exclusive. The effect of the bankrupt act and a discharge in bankruptcy upon a prior discharge in insolvency, both when the bankrupt law has been suspended and when it remains in force. Where a debtor has been discharged in insolvency, his then creditors have no right to prove their claims in a subsequent bankruptcy proceeding. *Lavender v. Gosnell*, 43 Md. 158.

The insolvent's property being vested in the trustee, is no longer within the reach of process. *Insolvent Estate of Leiman*, 32 Md. 240.

Upon the death of the trustee, the insolvent court must appoint another. *Jamison v. Chestnut*, 8 Md. 39.

The failure of an insolvent to file his schedule does not rescind appointment of trustee. A trustee's appointment will not be rescinded because he was counsel for applicant and represented no creditors. *Teackle v. Crosby*, 14 Md. 21.

Counsel for trustee cannot be paid out of estate, unless his services are required in prosecuting or defending interests of creditors. *Nelson v. Pierson*, 8 Md. 300.

A sale should not be set aside—though it may be suspended on terms—upon the insolvent's petition to effect that he had misapprehended the nature of insolvency proceedings, and could get all his creditors to consent to their dismissal. *McHenry v. McVeigh*, 56 Md. 582.

What proof of insolvent trustee's right to sue is required? A general issue plea does not admit the character in which plaintiff sues. *Winchester v. Union Bank*, 2 G. & J. 77.

The same proof of an insolvent trustee's right to sue is required as of the right of an assignee in bankruptcy. *Hall v. Sewell*, 9 Gill, 153.

This section shows that this article has no application to married women. *Relief Bldg. Assn. v. Schmidt*, 55 Md. 100 (decided prior to adoption of sec. 37).

For cases which seem to be now inapplicable to this section because of changes in the law, see *Relief Bldg. Assn. v. Schmidt*, 55 Md. 100; *Lavender v. Gosnell*, 43 Md. 158 (involving the act of 1834, ch. 293, sec. 2); *State v. Culler*, 18 Md. 433; *Glenn v. Korthaus*, 4 G. & J. 391; *Glasgow v. Sands*, 3 G. & J. 102; *Brown v. Brice*, 2 H. & G. 27.

Cited but not construed in *Goodwin v. Selby*, 77 Md. 447; *Becker v. Whitehill*, 55 Md. 574.

As to property not mentioned in the schedule, see sec. 19.

As to interrogatories, see also secs. 4 and 23.