must be an answer to the action in full. The defendant must say, "I bring forward something which shews that you are not now entitled in equity to go on, but that you never will be.'" So there was judgment for the plaintiff on the demurrer.

These authorities plainly shew the plea is not a good plea in bar, even with the provisions of the English Bankruptcy Act, because a Court of Equity never would grant an unconditional injunction on the facts shewn. Our statute contains no such stringent provisions as to election or petitioning creditors' debt, as are contained in the English acts, and much of the reasoning under those acts is inapplicable here.

It may be urged that this is in effect pleading the pending of another action in abatement. I doubt if any such plea can be pleaded by way of equitable defence; but it is pleaded after issue joined on other pleas, and not in the manner that a plea in abatement is usually pleaded. It seems hardly a proper plea to set up here; for the action to be abated is the one first commenced, and the proceedings, in which the subject matter of the abatement arose, was taken, after this action was at issue.

The case of *Place* v. *Potts et al.*, 8 Ex. 705, seems an express authority that this is not a good plea in bar, and that it would not be proper to plead it as it is now pleaded here. That was an action for freight, and defendants pleaded after the commencement of the action, and in bar to its further maintenance, that, in consequence of certain proceedings in the Admiralty Court in relation to a bottomry bond on the same vessel, they were monished and compelled to bring the full amount of the freight into court, and they had done so. In giving judgment Baron Parke said: "Now, if the effect of payment of freight into that court, by virtue of and in pursuance of a monition is merely to suspend the remedy of the owner of the ship for freight until that court shall have decided the question on the bottomry bond (in which case they would hand over either the whole of the freight or so much of it as would be more than sufficient to satisfy the bond, if it were good, to the party paying it), the plea would *be in suspension of the action only, and consequently bad*, inasmuch as there cannot be such a *plea;* for if the nature of the case is such as to make it right that the cause of action should be suspended, and, consequently, such as to demand the interference of another court, the remedy would be by application to its equitable jurisdiction."

I have looked at all the cases referred to by Mr. Boyd, and as far as I can understand the principles set forth in them, the proper mode of relief, when a party, who has proved a debt in bankruptcy, is proceeding at law, under the English Bankruptcy Acts, as well before as since the statute of 49 Geo. III., is to apply to the Court of Chancery to strike out the proof, or to the Common Law Court to stay proceedings.

I have not as yet arrived at the conclusion that under our Insolvency Act an insolvent has the same right to take those proceedings that a bankrupt had in England, even before the statute of 49 Geo. III, and our statute contains no provisions on the subject at all analogous to those contained in that act and repeated in subsequent statutes.

Many of the arguments and suggestions quoted from the decided cases refer peculiarly to this case, for it was admitted on the argument that the proceedings against the defendant in insolvency had been set aside on the ground, as I understand, that the estate of the defendant had not become subject to compulsory liquidation.

There will be judgment for the plaintiff on the demurrer.

Judgment for plaintiff on demurrer.

PRACTICE COURT.

(*Reported by* Henry O'Brien, Esq., *Barrister-at-Law.*)

Darling v. Sherwood.

County Court appeal—Bond—Sureties.

The 27 Vic. cap. 14, is intended for the benefit of persons suing in the name of others, and its only effect is to extend the words "any party to a cause," in cap. 15, sec. 67 C. S. U. C., to the case of the beneficial plaintiff.

Where on an appeal by the defendant in the court below the bond was executed by two sureties only, *Held*, that on that ground the appeal must be struck out of the paper with costs.

[P. C., M. T., 1866.]

This was an appeal by the defendant in an action brought in a County Court from a judgment of that court, discharging a rule *nisi* for a new trial. After the appeal had been set down for argument, *Robert A. Harrison* obtained a rule *nisi*, calling upon the appellant to shew cause why the appeal should not be set aside and struck out of the paper with costs, upon the ground, that the appellant had not filed in the court below the bond required by the statute

From the affidavits filed, it appeared that the bond had not been executed by the appellant himself, but by two sureties alone. It was stated that the defendant did not reside in the county, but at some distance therefrom, and that, consequently, he had not been able to execute the bond within the four days allowed for filing it.

Moss, shewed cause, and argued that the words of the statute 27 Vic. cap. 15, were wide enough to include every case, as well that of defendant as of plaintiff. That to confine the operation of the statute to the case of beneficial plaintiffs suing in the name of others, was giving such persons an unreasonable advantage, because a greater necessity existed for their joining in the bond, than for real plaintiffs or defendants, because the latter classes were already liable for costs, as parties to the suit.

Harrison supported his rule, referring to *Tozer q. t.* v. *Preston*, 23 U. C. Q B. 310, and *Pentland* v. *Heath*, 24 U. C. Q. B. 464, and argued that the preamble of the statute shewed that its only objects were beneficial plaintiffs, not parties to the record, citing Dwarris on Statutes.

Morrison, J.—In the two cases referred to by Mr. Harrison, the Court of Queen's Bench felt difficulty in giving a satisfactory construction to the effect of the Amending Act, 27 Vic. cap. 14, upon secs. 67 and 63 of the County Court Act, Con. Stat. U. C. cap. 15. The present case is somewhat different from either of the cases cited here; the defendant below is appellant, and the