house, 6 *T. R.* 366; *Nadin* v. *Battie*, 5 *East*, 147. But, that all property of the applicant, not mentioned in his schedule, shall be subject to execution and attachment, in the same manner his property was prior to his application. 1827, ch. 70, s. 8; (Some other provisions have been since made in relation to insolvent debtors in the City and County of Baltimore, by 1834, ch. 293.)

From which it appears, that the property of a debtor cannot here, as in England, be placed under the insolvent law in any way by the mere act of any of his creditors; that it can only be so disposed of upon the voluntary application of the insolvent debtor himself; and that the transfer, when so made, being less open to question, because of its being voluntary, and in all respects as absolute as an assignment under the bankrupt law of England, the reason why an insolvent here should not be allowed to sue or be made a party to a suit in relation to property, not then held by him as trustee, or in right of another, and so transferred, is much stronger than that which arises from an assignment under the analogous provisions of the English bankrupt law. *Collet* v. *Wollaston*, 3 *Bro. C. C.* 228; *Collins* v. *Shirley*, 4 *Cond. Cha. Rep.* 592. The English bankrupt law is, in general, administered upon the principle, that there will be no surplus of the bankrupt's estate to be returned to him; our insolvent law, in terms, proceeds upon the same principle by expressly declaring, that its benefit is to be granted only to those who, by reason of their misfortunes, are unable wholly to pay their debts. 1805, ch. 110, s. 1. Nevertheless, under some circumstances, an insolvent here, like a bankrupt in England, may be permitted to institute a suit, or be made a party for his own protection, or for the purpose of detecting and preventing the practice of fraud; or where the necessary relief cannot be obtained according to the mode of proceeding prescribed by the insolvent law. *Bowser* v. *Hughes*, 1 *Anst.* 101; *King* v. *Martin*, 2 *Ves. Jun.* 641; *Williams* v. *Kinder*, 4 *Ves.* 387; *Benfield* v. *Solomons*, 9 *Ves.* 83; *Saxton* v. *Davis*, 18 *Ves.* 81; *Whitworth* v. *Davis*, 1 *Ves. & B.* 548; *Lowndes* v. *Taylor*, 1 *Mad. Rep.* 422; *Mackworth* v. *Marshall*, 5 *Cond. Cha. Rep.* 157; *Piercy* v. *Roberts*, 6 *Cond. Cha. Rep.* 469; *Barton* v. *Jayne*, 9 *Cond. Cha. Rep.* 461.

*Hence it may be regarded as a general rule, that in all cases where a debtor has, before the institution of a suit by or against him, been finally discharged under the insolvent law, he cannot be allowed to sue or be made a party to a suit in respect to any property which has been rightfully transferred in pursuance of the insolvent law for the benefit of his creditors; because having parted with all his interest therein, he has thereby divested himself of all capacity to sue or be sued in relation to any such property. But where a debtor has, pending a suit to which he is a party, been finally discharged under the insolvent law, other prin- **537**