obtained the benefit of the insolvent law, other persons became thereby interested in the matter in litigation; and the defendant, having died, after he had been thus discharged under the insolvent law, and the suit having been revived by a supplemental bill against his trustee alone, this application by the plaintiff to dismiss his bill presents questions of much importance in practice, and of a nature involving a consideration of some of the positive provisions of the insolvent law, and of the principles arising out of those provisions.

In all cases where a defendant is chargeable with the rents and profits of property; and wherever it may be necessary to ascertain the amount to be awarded to the plaintiff, it is of course to refer the case to the auditor, with directions to state such an account as the nature of the case may require, and such other accounts as either party may desire. But a reference to the auditor in such cases does not, of itself, place the parties in the reciprocal relation to each other of plaintiff and defendant, as on a bill for an account upon a dealing in trade, as in this instance, where, after a decree to account, both parties are considered as actors in relation to such account; and the final decree may be in favour of the one or the other, according as the balance may appear. And, therefore, if the suit should abate after such a decree, by the death of either plaintiff or defendant, the surviving party, or the representatives of the deceased may have it revived by a bill of revivor; because, the defendant, after such a decree, has as direct an interest in the continuance of the suit as the plaintiff, and may ultimately be as essentially benefited by it. (*c*)

But, as in such cases, that reciprocal interest in the suit which the decree to account gives to each of the parties enables either of them to revive and continue it, so the plaintiff cannot, as under other circumstances, be allowed at his pleasure, after such a decree, to dismiss his bill on the payment of costs; but can only get rid of it by a final decree, or by availing himself of the negligence and default of the defendant after he has been called upon to proceed; and therefore, after a decree which thus gives the defendant

(c) Kent v. Kent, Prec. Cha. 197; Stowell v. Cole, 2 Vern. 219, 297; Dones' case, 1 P. Will. 263; Hollingshead's case, 1 P. Will. 744; Anonymous, 3 Atk. 691; Thorn v. Pitt, Sele. Ca. Cha. 54; Dinwiddie v. Bailey, 6 Ves. 141; Williams v. Cooke, 10 Ves. 406; Horwood v. Schmedes, 12 Ves. 311; Bayley v. Edwards, 3 Swan. 703; Bodkin v. Claney, 1 Ball. & B. 217; Smith v. Marks, 2 Rand. 449; Moreton v. Harrison, 1 Bland, 499; 1825, ch. 158.