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 principles arise which have occasioned some perplexity at law as well as in equity.

It seems to be well settled in England, that a discharge and assignment under the insolvent law does not, of itself, operate as an abatement of any action at common law which may have been previously instituted by the insolvent; because, although the discharge and assignment do legally divest him of all property claimed by such action, and transfer it to his trustee for the benefit of his creditors; yet the insolvent may well be allowed to proceed with the prosecution of the suit for the benefit of his creditors until the trustee interferes and claims adversely to him, in which case, he will not be allowed to recover that which is in law the property of the trustee, and is claimed as such. (*o*) It is also laid down, that the insolvency of the defendant does not, of itself, abate any action at common law. (*p*)

By our insolvent law it has been declared, that the trustee of the insolvent's estate may, in his own name or in that of the applicant, sue for, collect and recover all debts, demands and property due or belonging to the applicant and assigned by him to such trustee; and that such trustee may also prosecute to judgment any suit commenced by the applicant before his appointment. (*q*) These provisions seem to be confined to actions at common law; and also to such cases of that description only in which the plaintiff,

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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.—(*o*) Monke *v.* Morris, 1 Mod. 93; Hewit *v.* Mantell, 2 Wils. 372; Kretchman *v.* Beyer, 1 T. R. 463; Winter *v.* Kretchman, 2 T. R. 45; Waugh *v.* Austen, 3 T. R. 437; Kitchen *v.* Bartsch, 7 East. 63.—(*p*) Hewit *v.* Mantell, 2 Wils. 374.—(*q*) 1805, ch. 110, s. 8; 1827, ch. 70, s. 2.—Some further provisions have been since made as to the continuance of suits where a change is made of a permanent trustee of an insolvent debtor of the city and county of Baltimore, pending a suit instituted by or against such trustee, by the act of 1833, ch. 173.