bill, as to all the matters contained therein, be and the same is hereby dismissed; and that a mandate issue to the said circuit court, to dismiss the same accordingly, without costs.

Bowie *v.* Henderson *et al.*

Statute of limitations.

The third section of the act of congress, of March 30th, 1803, for the relief of insolvent debtors in the District of Columbia, does not create any express or implied exception to the operation of the statute of limitations, by making the insolvent a trustee for his creditors, in respect to his future property, or by making any demand, included in the schedule of his debts, a debt of record.

The including of a demand in the schedule of the insolvent's debts, is sufficient evidence to sustain an issue on a replication of a new promise to the plea of the statute of limitations, if the period of limitation has not elapsed after the date of the schedule.[1]

*515] Appeal from the Circuit Court of the District of Columbia. *This suit was instituted by the appellant against the respondents, on the chancery side of the circuit court of the district of Columbia, for the county of Alexandria, under the local law giving a process in chancery in the nature of a foreign attachment.

The bill charged a debt due on bills of exchange, from the defendant, Henderson, to the complainant; that the debtor was an absentee; that he had funds in the hands of the defendant Auld; and prayed a condemnation of those funds, to answer the complainant's demand. The defendant, Henderson, pleaded the statute of limitations, *non assumpsit infra quinque annos.* To this plea, the complainant filed the following replication:

And the said W. Bowie saith, that he ought not to be precluded from having and maintaining his bill aforesaid, by any thing alleged by the defendant, Henderson, in his plea aforesaid; because he saith, that the said A. Henderson, on the 8th of May 1806, in the county of Alexandria, before N. F., one of the judges of the district of Columbia, did take the benefit of the act for the relief of insolvent debtors within the district of Columbia, and did then and there give a schedule of his estate, and a list of his creditors; and in the said list of his creditors so given in, he, the said Henderson, did state, that the said complainant was a creditor of his, to the amount of $4586.39; which said list of creditors, so given in, he, the said Henderson, did state, was entered of record in the clerk's office of the court of the county of Alexandria, as by reference to the records of the said court
*516] will fully and at large appear, and which said debt *so given in, is the debt for which the complainant has instituted his suit aforesaid.

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[1] Bryan *v.* Willcocks, 3 Cow. 159. Contrà, Christy *v.* Flemington, 10 Penn. St. 129; Brown *v.* Bridges, 2 Miles 424; Georgia Insurance and Trust Co. *v.* Ellicott, Taney's Dec. 130; Ex parte Kingsley, 1 Lowell 216; Ex parte Ray, 2 Ben. 61. This is so, upon principle, because the debtor does not make out his schedule with any view to the payment, but to the discharge of his debts; and besides, the creditors have a right to plead the statute as well as he, and they are not bound by his schedule. Richardson *v.* Thomas, 13 Gray 381; Roscoe *v.* Hale, 7 Id. 274; Stoddard *v.* Doane, Id. 387; Ex parte Kingsley, 1 Lowell 221. So, in the Georgia Insurance and Trust Co. *v.* Ellicott, *ut supra*, Chief Justice Taney says, such admission cannot, upon any just construction, be held to imply that the defendants are willing or intend to pay the debt to its full extent; on the contrary, the very object of the petition, and of the list of debts and other papers that accompany it, is to be discharged, without full payment.

And the said complainant saith, that the moneys and effects which the said complainant seeks, in his bill aforesaid, to subject to the payment of his debt aforesaid, were obtained and acquired by the said defendant, Henderson, long subsequent to his taking the oath of insolvency aforesaid. And the said complainant saith, that as soon as he, the said complainant, obtained any knowledge of the said defendant, Henderson, having obtained the funds aforesaid, and within the period of six months after he obtained a knowledge thereof, he, the said complainant, did institute his aforesaid bill in chancery, to subject the funds to the payment of his said debt, all which, &c. The defendant demurred to this replication, and the court below, on hearing, adjudged the demurrer good.

The question in this case turned upon the construction of the third section of the act of congress, for the relief of insolvent debtors within the district of Columbia, passed March 3d, 1803, which is in these words: "And be it further enacted, that upon the petitioning debtor's executing a deed or deeds to the said trustee, conveying all his property, real, personal and mixed, and all his claims, rights and credits, agreeably to the oath or affirmation of the said debtor, and on delivering all his said property which he shall have in his possession, together with his books, papers and evidences of debts of every kind, to the said trustee, and the said trustees certifying the same to the said judge in writing, it shall be lawful *for the said [*517
judge to make an order to the marshal, jailer or keeper of the prison, in which said debtor is then confined, commanding that the said debtor shall be thenceforth discharged from his imprisonment; and he shall be immediately discharged, and the said order shall be a sufficient warrant therefor: Provided, that no person who has been guilty of a breach of the laws, and who has been imprisoned for or on account of the same, shall be discharged from imprisonment: And provided likewise, that any property which the debtor may afterwards acquire (except the necessary wearing-apparel and bedding for his family, and his tools, if a mechanic or manufacturer), shall be liable to the payment of his debts, anything herein to the contrary notwithstanding."

March 12th, 1821. This cause was argued by *Swann* and *Jones*, for the appellant, and by *Taylor*, for the respondents. The former insisted, that the above section of the insolvent act created an exception to the general operation of the statute of limitations, in favor of those demands on which the insolvent's person was discharged under that section. They argued that the insolvent, after his discharge, was to be considered, in respect to his future property, as a trustee for his creditors, and that the statute of limitations does not run against a trust: and also, that this debt was to be considered as excepted out of the statute of limitations, because it was made a debt of record, by being included in the list of creditors under the insolvent act.

*Marshall, Ch. J., delivered the opinion of the court, and after [*518
stating the case, proceeded as follows:—It is perfectly clear, that no such exception is contained in the statute of limitations, or in the act of congress concerning insolvent debtors. If it is to be created at all, it must be by implication. It is contended, in the first place, that the insolvent debtor,

after his discharge, is to be considered, in respect to his future property, as a trustee for his creditors; and the statute of limitation does not run against a trust. If he is a trustee for his creditors, is he a trustee for those creditors only, who were such at the time he obtained the benefit of the act? or, is he a trustee for those who afterwards become his creditors? It will not be pretended, that he is exclusively a trustee for the former; and if he be a trustee for the benefit of all his creditors, then this suit should have been brought for the benefit of all, and not for the benefit of a single creditor: The proviso of the section respecting the liability of the future property of the insolvent, has been supposed to aid the argument that he is a trustee; but we are all of a different opinion; the previous part of the section having exempted his person from imprisonment, the object of the proviso was, to make all his future effects liable, and to retain all the remedies against it, in the same manner as if his person had not been discharged. The act, therefore, did not intend to create any new liability, or any new trust.

It is further insisted, that this is to be considered as an exception out of
*519] the statute of limitations, because *it is a debt of record. But a debt of record, in the sense of the common law, is a debt or contract created of record; such as a statute-staple, or statute-merchant, and not one whose previous existence is only admitted of record. The effect of recording this debt was merely an admission of its existence, and not a change of its nature. It would have been sufficient evidence, if five years had not elapsed after recording, to have sustained an issue on a replication of a new promise to the plea of the statute of limitations. But more than five years having elapsed, it could have no application in this case. It is the opinion of the court, that the demurrer to the replication is sustained, and that judgment ought to be given for the defendant.

Decree affirmed.

Spring *et al. v.* South Carolina Insurance Company.

Sale pendente lite.

In an equity cause, the *res* in litigation may be sold by order of the circuit court, and the proceeds invested in stocks, notwithstanding the pendency of an appeal to this court.

March 19th, 1821. *Hunt*, for the respondents, moved to docket and dismiss the appeal in this case, which was a suit in chancery, commenced in the Circuit Court of South Carolina, no transcript of the record having
*520] *been lodged by the appellants with the clerk of this court, within the first six days of the term, according to the rule.

Wheaton, for the appellants, opposed the motion, upon the ground, that no certificate was produced from the clerk of the court below, stating that an appeal had been taken, according to the rule.

The Court denied the motion, but stated that as the object of the respondents was to have the proceeds of the property in litigation, which had been sold by order of the court below, invested in stocks, such invest-