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 the statute of limitations, because *it is a debt of record. But a *519] 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 *been lodged by the appellants with the clerk of this court, within *520] 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-

ment might be made by the court below, notwithstanding the pendency of the appeal in this court.

Motion denied.(*a*)

United States *v.* Six Packages of Goods: Toler, Claimant.

Entry of goods.—Seizure.

Under the 67th section of the collection act of the 2d of March 1799, c. 128, where goods were entered by an agent of the owner on his behalf, and the entry included only a part of the goods which the *packages contained, and the owner subsequently made a further, or post entry of the residue of the goods; and the packages being opened, several days afterwards, and examined by the collector, in the presence of two merchants, and their contents found to agree with the two entries taken together, but to differ materially from the first entry; *held*, that the collector was not precluded from making a seizure of the goods, after the second entry, for a variance between the contents of the packages and the first entry, and that such seizure must be followed by confiscation, unless it should appear, that such difference proceeded from accident and mistake, and not from an intention to defraud the revenue. [*521

Appeal from the Circuit Court of the Southern District of New York. This was a libel of information filed in the court below against certain goods imported from London in the ship Isabella, at the port of New York, as forfeited under the 67th section of the collection act of the 2d of March 1799, c. 128.

March 12th, 1821. The cause was argued by the *Attorney-General* and *Pinkney*, for the United States; and by *D. B. Ogden* and *Wheaton*, for the claimant.

March 14th. Livingston, Justice, delivered the opinion of the court.—This is a libel under the 67th section of the collection law, passed the 2d of March 1799. This section provides, that it shall be lawful for the collector, naval officer, or other officers of the customs, after entry made of any goods, wares or merchandise, on suspicion of fraud, to open and examine, in the presence of two or more reputable merchants, any package or packages thereof, and if, upon examination, they shall be found to agree with *the entries, the officer making such seizure and examination, shall cause the same to be repacked, and delivered to the owner or claimant forthwith; and the expense of such examination shall be paid by the said collector or other officer, and allowed in the settlement of their accounts; but if any of the packages, so examined, shall be found to differ in their contents from the entry, then the goods, wares or merchandise contained in such package or packages, shall be forfeited: provided, that the said forfeiture shall not be incurred, if it shall be made appear to the satisfaction of the collector and naval officer of the district where the same shall happen, if there be a naval officer, and if there be no naval officer, to the satisfaction of the collector, or of the court in which a prosecution for the forfeiture shall be had, that such difference arose from accident or mistake, and not from an intention to defraud the revenue. [*522

These goods being claimed by Hugh K. Toler, of the city of New York, merchant, were condemned by the district court of the United States for the

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(*a*) See new rule of court of the present term, *ante*, Rule 32.