

OPINION.

ANNAPOLIS, 4th March, 1865.

For DR. C. C. COX,

President of the Senate.

Sir:—In compliance with a request of the Senate to communicate my opinion upon certain questions relative to the Banks of this State, and to those that might be organized under the Act of Congress entitled, “an Act to provide a National Currency, &c.,” 1864, chapter 106, I have the honor, after giving to this important subject all the consideration that the time allowed, to submit the following communication:

1st Inquiry.—“Has or has not the State under the Constitution and existing laws, priority over any and all stockholders, depositors or creditors of any Bank chartered by the State in the event of such Bank failing or going into liquidation.”

This State *as a creditor* has a right to priority of payment, when no lien exists, over all other creditors of a debtor by virtue of the State’s prerogative as sovereign, as will appear by the decisions of our Court of Appeals.

1st. Where the State is one among simple contract creditors whether the debtor be living or dead.—2 H. & McH., 198; 3 H. & McH., 171; 5 Gill, 456; 6 G. & J., 205; and 10 Md., 504.

2d. Where the State has a judgment against a deceased debtor and there are other judgment creditors.—1 H. & J., 417.

3d. Another priority of payment exists in the State by virtue of the Act of 1778, chapter 8, (Code 585.) as a lien upon the debtors property from the time of issuing the State’s writ against the debtor.—1 H. & J., 546.

These preferences and priorities of the State existing in 1853, the Act of the General Assembly, 1853, chapter 441, was passed “to continue the corporate existence of the several Banking Institutions therein,” and having for its 8th section