

the following words, "that if the said corporation shall at any time suspend its payments, the assets which said corporation may hold or be in any wise entitled to at the time of such suspension of payment, shall be ratably distributed to and amongst all the *persons* who shall be creditors at such time and to their assigns respectively."

I am of opinion that this 8th section of the Act of 1853, chapter 441, does not deprive the State of these priorities and preferences before mentioned. The Act in some of its provisions is obviously inaccurately drawn and of doubtful import. It does not profess to have any such object as to deprive the State of any of its established rights, but to apply to a ratable distribution of assets among "*persons* who shall be creditors," an expression which would not comprehend the State.

Again, it is a settled legal principle that the State (the sovereign) unless by express words to that effect, would not be included in any of its statutes. This would especially be the construction of a statute which otherwise would deprive the State of its prerogative or any valuable existing right.—1 Md. Rep., 1, *State vs. Wilburn*.

*As a Stockholder* the State would have no right over other stockholders, unless specially secured to it by the Act of Incorporation.

*2nd Inquiry.* "If such priority exists will it be lost, or how will it be affected if the State Banks are converted into associations under the National Currency Act? and will or will not the United States be entitled to the like priority in the Banks organized under that Act, which the State is now entitled to in the State Banks?"

These priorities and preferences of the State over the claims of its citizens arise out of its prerogative as the sovereign and as the Legislature creating these corporations, and depend upon the continuance of these relations. If the State cease to be the sovereign legislating on the subject and holding this prerogative, then will these rights of the State cease and that priority of payment which the State now possesses will be lost; and if the Government of the United States stand in that relation as the sovereign and creator of the corporations, then the laws of the Union must regulate these priorities and preferences, and not the laws of this State. But the claim of the United States to priority in payment, says Judge Story, does not stand on any prerogative, but is exclusively founded upon the provisions of its statutes, and these statutes do give to the United States a preference over all other creditors—1791, ch. 75—1790 ch. 62, sec. 45—1797 ch. 74—1799 ch. 128. These views are supported by the following decisions: 2 G. & J. 365; 6 Peters 134; 12 Peters 134, *Beaston vs. Farmers Bank of Delaware*; 3 Gill, 14, *Howell vs. The State*.