

It was an established rule of the common law that where the king's right and that of a private subject met at one and the same time the king's should be preferred, Co. Litt. 30 b.¹ Accordingly, as to the first part of this statute, Lord Coke says in 2 Inst. 32, that the king by his prerogative shall be preferred in satisfaction of his debt by the executors before any other. He goes on to say that if the executor had sufficient to pay the king's debt, the heir or any purchaser of his land should not be charged; which agrees with what is said in 2 Inst. 14, that under the 8th chapter of Magna Charta and by the process since the Statute 33 Hen. 8, c. 39, (by the provisions of which such debt might be recovered from the executors or administrators), if it appeared to the Sheriff that the goods of the debtor were sufficient for the king's debt he ought not to extend the lands. This Statute is considered by Kilty as enforcing the same rule here.

State's priority.—The Proprietary seems to have claimed the same preference under his charter. And the preference of the State in payment of its debts is fully established. In *Murray v. Ridley's administratrix*, 3 H. & McH. 171, this preference was said to be by the common law. But in the case of the Proprietary, to all whose rights the State succeeded, it had several times been recognized by Statute.

Thus the Act of 1638, ch. 2 provided that the mere and proper debts of the Lord Proprietary should first be paid. By the Act of 1642, ch. 15, touching causes testamentary, the order of payment of debts is prescribed to be, 1°, funeral charges, 2°, landlords rents, 3°, debts of the **14** Lord Proprietary contracted *bona fide*, not fines &c. *These Acts however expired by limitation. Then came the Act of 1650, ch. 28, which gave to the Proprietary a similar preference. This Act however was repealed in 1692 and was not in force at the Revolution, 6 G. & J. 222. But the Act of 1729 ch. 24, which was supplementary to the Act of 1715 ch. 39, for the administration of justice in testamentary affairs, in its 15th Section provided that such debts as are due to the king's majesty, his heirs or successors, or to the Lord Proprietary, his heirs or successors, are entitled to a preference of all debts, when due for the *proper use and benefit* of the king or Proprietary only and not otherwise. The first of these Acts was repealed by the Act of 1798, ch. 101. The latter seems to have been repealed by the Act of 1785, ch. 80. For under its provisions the Proprietary's or king's debts had a preference of all others, and in 3 H. & McH. 171 a judgment obtained against the testator in his life-time was held to be entitled to a preference over a specialty passed to the State.

The Act of 1778, ch. 9, the 6th Section of which is re-enacted in the Code, Art. 81, sec. 148,² was passed for the speedy recovery of the public debts. It provided against any delay in bringing the suits of the State to judgment, against any plea of the debtor except the general issue, unless verified by affidavit, and against any demurrer for not pursuing the usual form of declaration, and by its 6th Section all lands and tenements belonging to any public debtor after the commencement of suit against him shall be liable to execution in whosoever hands or possession they may be found.

¹Attorney General v. Leonard, 38 Ch. D. 622.

²Code 1911, Art. 81, sec. 145.