

kin, 1 Bl. 503; Ridgely v. Iglehart, 3 Bl. 540; Jones v. Jones, 1 Bl. 443; Green's Estate, 4 Md. Ch. Dec. 356.⁴

In the case of the State v. The Bank of Md. 6 G. & J. 205, this question of the State's priority was much discussed by the Court. The Legislature had directed a deposit of State funds to be made with the Bank, which was accordingly done. The Bank afterwards becoming embarrassed made an assignment to trustees of all its property, real and personal, for the benefit of *all* its creditors equally and rateably. The State insisted that under the deed it was entitled to be paid its whole debt in preference to and to the exclusion of the other creditors. The Court said that "it was too late to deny the right of the State to have its debt first paid out of the property of the debtor remaining in his hands and no lien standing in the way. It does not indeed exist here with all the incidents to the royal prerogative right in England. We have not the writ of protection, nor the extent in chief, or in aid. The priority of the State is a rule only in the distribution of the property of the debtor &c." They determined that the assignment, being made for the equal benefit of all the creditors of the Bank, was a fair and *bona fide* assignment for a valuable consideration and passed the property of the Bank beyond its control, and that such an assignment here (as in England) had the effect of protecting the property in the hands of the trustees against the common law priority of the State, and accordingly that the preference which the State had while the title to the property remained in the Bank was defeated by the deed of trust.

When the debtor has property in lands and tenements the State is protected by the 6th Section of the Act of 1778, ch. 9, Code Art. 81 sec. 148,⁵ from the time of the institution of its suit, and gains a preference over all other creditors who have not previously thereto secured a lien on the debtor's lands by judgment, mortgage or otherwise. And this section includes every debtor to the State without distinction and without regard to the manner in which he became indebted, Davidson v. Clayland, *supra*. The

⁴The doctrine is again affirmed in Orem v. Wrightson, 51 Md. 34, where it is held that the State has a right to be first paid, as a preferred creditor, out of assets in the hands of the administrator of its deceased debtor, except only where some antecedent lien stands in the way, the court adding that it is unnecessary to inquire how this right arose, whether it is a prerogative right derived from the common law, or whether it has been conferred by statute. The case further decides that where the sureties of a deceased debtor have paid his debt to the State, they are equitably entitled to be subrogated to the priority of the State in the distribution of the assets of the deceased debtor as to the debt so paid.

But the State's right to priority is limited to cases where the property of its debtor remains in his hands. Therefore in State v. Williams, 101 Md. 529, it is held that the claim of the State against an insolvent insurance company for loss on the State's property, or for unearned premiums, is not entitled to priority of payment from the receivers of the company, as against the claims of other creditors, when no proceedings were taken by the State to enforce its claim before the appointment of receivers. See note to State v. Rogers, 2 H. & McH. 198, Brantly's Ed.

⁵Code 1911, Art. 81, sec. 145.