

may take the property of any individual and cause it to be applied to the use of the public, on making him a reasonable compensation. But it cannot arbitrarily take property from one citizen and bestow it upon another; because such an act, although not specially prohibited by the Constitution, would be contrary to the fundamental principles of the Government itself. *The Federalist*, No. 44; *Trustees of the University v. Foy*, 2 *Hayw.* 310, 374; *Dash v. Van Kleeck*, 7 *John.* 477. If such a transfer of property could not be openly and directly made, it certainly could not be done covertly or circuitously; and therefore, in any reference of a case to the judiciary, as in this instance, the Legislature could not command a Court of justice to stay, or depart from its regular course of proceeding in a particular case; 1827, ch. 141; or arbitrarily to assume any fact, not admitted by the party, which would give rise to a legal or equitable principle destructive of the interests of creditors, or of the right of property of such party; because it would be, in effect, and indirectly, to transfer such property from one person to another. *Satterlee v. Matthewson*, 2 *Peter*, 380. Even during the Provincial Government, when the General Assembly of the Province was held to be endowed with a sovereign and unlimited power, similar to that claimed by the Parliament of England, such an assumption of facts and consequent transfer of property, was considered as so dangerous and unjust an act as to call forth a solemn protest from one of the most profound lawyers of his time. *Partridge v. Dorsey*, 3 *H. & J.* 307, *note*. Therefore, where the facts have been assumed by the Legislature in the reference of the case to the Chancellor, although he may act upon them, as has been done in some instances, if they should be admitted by the party, or there should be no opposition; yet, without such consent, it might be difficult for him to acquiesce under such an assumption where the rights of a party were materially affected by it. *May v. May*, *Buller N. P.* 112; *Campbell's Case*, 2 *Bland*, 230.

But as the General Assembly must be allowed to have a large discretionary power over public property and money in the treasury; *I should without difficulty yield to any assumption
99 of facts, affecting the rights of the State only, in favor of an individual. And upon the same principles the State may, for itself, waive the benefit of any rules of law or equity which operate in its favor.

As where in a suit instituted in Chancery on a controversy which arose between the intendant and a purchaser of confiscated property, the case was, by a resolution of the General Assembly, directed to be referred to arbitration; *Resolution*, 1784, No. 4; and the arbitrators having made an award in which they stated, that their powers, under the resolution, were not sufficiently extensive to enable them to do complete justice, the case was, by another resolution referred to the Chancellor with directions to enquire