

I should without difficulty yield to any assumption of facts, affecting the rights of the state only, in favour 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 favour.

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; (*k*) 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 into the principles upon which the award was founded, and upon consideration of all circumstances to decree as equity and justice might require. (*l*) Upon which the Chancellor declared, that he considered it to be the meaning of the General Assembly to place him in the room of the arbitrators, whose powers were defective, and to enlarge the submission so that complete justice might be done. And therefore he held, that it would not be consistent with his duty to consider the case in the same light as if the contest were between two individuals coming before him for decision according to the principles established by preceding determinations in Chancery; and he proceeded to dispose of the case accordingly as an arbitrator would have done. (*m*)

In that instance the state not only admitted the facts in favour of an individual, but also waived all the strict rules of law and equity of which it might have taken advantage; and liberally directed the case to be submitted to arbitration unembarrassed by any forms or rules whatever. The resolution under consideration involving a claim upon property in the hands of the state, although peculiar and special in its nature, must be regarded as a public law of which the courts are bound to take notice. There are, however, many instances in which the Legislature has, by private acts, interposed, without prejudice to any private rights, to remove difficulties and give facilities in the disposition of property in which the state had no interest; by providing modes of leasing, mortgaging or selling legal or equitable estates of deceased persons for the payment of their debts, or to save the more profitable personalty;

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(*k*) Resolution, 1784, No. 4.—(*l*) Resolution 24th May, 1787.—(*m*) *Garretson v. The Attorney-General*, 18th August, 1790; *Chancery Proceedings*, lib. D. fol. 336.