

general creditors, it seems to have been a matter of course to direct all creditors to be paid out of the confiscated or escheated property of their debtor. Yet as the state could not be sued or in any way coerced to make any such application of property, taken or fallen into its hands; (*n*) it was declared, that in case any person should die seised of any lands intestate, without heirs and indebted, and not leave personal estate sufficient to pay his debts, any of his creditors might file a petition in Chancery suggesting such facts, and praying that such real estate might be sold for the payment of the debts of the deceased; and the Attorney-General upon notice should appear and defend. Upon which the Chancellor being fully satisfied of the truth of such facts might order a sale of the real estate, &c.; which if not sufficient to pay all the debts, the money arising from the sale should be equally distributed among all the creditors in proportion to their debts *without any preference*; and upon any certificate of survey being made and returned in consequence of an escheat warrant, any creditor of the deceased might enter a *caveat* to the same, &c. (*o*) After the passing of some private acts to remove difficulties in cases of this kind; (*p*) it was, by another general act declared, that in case any person seised or possessed of land, or having an equitable interest therein should die without leaving any known heir or devisee, and without leaving a sufficient personal estate for the payment of his debts contracted within this state, or with any of the citizens thereof, the Chancellor upon the application of any such creditor might order the real estate to be sold, &c. (*q*.)

These legislative enactments, on a careful consideration of them, it will be perceived, do, in effect, declare, that a creditor may, where there are no heirs or devisees, proceed against the state itself to obtain satisfaction from the realty of his deceased debtor in the hands of the state. And this privilege has been granted to creditors by the first of these laws, so far as it may not have been virtually repealed by the last of them, upon the terms, if there should not be enough to pay all, that the proceeds of sale should be distributed in due proportion, *without any preference*; and that none

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(*n*) Jones v. Goodchild, 3 P. Will. 33; Bedford v. Coke, 2 Ves. 116; Burgess v. Wheate, 1 Eden, 203; Middleton v. Spicer, 1 Bro. C. C. 202; Megit v. Johnson, 1 Doug. 542; Robert Fuller's case, 14 May, 1680; Land Record, lib. C. B. 45; John Webster's case, 27 November, 1680; Land Records, lib. C. B. 60, 102.—(*o*) 1785, ch. 78, s. 1.—(*p*) 1789, ch. 33; 1792, ch. 44.—(*q*) 1794, ch. 60, s. 3, 6.