There is reason to believe that the proprietor under his charter, claimed the same prerogative on this subject, as was exercised by the king in England; and if there were not before, debts due to the king, in the province, there were at the time of the government being seized into the hands of the crown.

By the act of 1638, Ch. 2, it was provided that the mere and proper debts of the lord proprietary should be first satisfied, and a similar act was passed in 1650, Ch. 28, which remained in force till the revolution; although it appears that in 1699, when the government was in the hands of king William, the house of delegates rejected a saving, proposed in the act for limitation of suits, of lord Baltimore's bonds, &c. alledging that it was not thought fit further to indulge his lordship, than other his majesty's good subjects of the province.

In the act of 1642, Ch. 15, touching causes testamentary, the order of payment of debts was prescribed; 1, funoral charges; 2, landlords rents; 3, debts of the lord proprietary, contracted *bona fide*, not fines, &c. It was provided by the constitution and form of government, (Sect. 58,) that all penalties and forfeitures heretofore going to the king or proprietary, should go to the state. Whether the prerogative or privilege with respect to debts, was thus derived, or was taken as an incident to the assumption of government, under the authority of the people, as expressed in the preamble to the declaration of rights, it may not be very material to enquire, but the preference of the state in the payment of debts, is considered as being fully established. This preference of all debts, unless on record, was determined in the general court at October term, 1793, in the case of Forrest and Stoddard, against Ridley's administratrix, and was stated therein to be by common law; of course it would not be necessary that this chapter of the great charter, should be incorporated for that purpose. But it appears proper that it should be so in conjunction with Ch. 8, as a restraint on taking the lands left by the debtor, where there was personal estate sufficient, although the practice may be thought otherwise sufficiently established.

The last part of this statute, as to the saving to the wife and children their reasonable parts, will require to be considered.

The case of Griffith and Hall, decided in the general court at May term, 1798, will probably shew that this statute, as confirming or shewing what was the common law, as to the reasonable part of the wife, is proper to be incorporated with our laws.

Blackstone in treating of this subject, (2 Vol. 493,) has the following remarks: "Whatever may have been the custom of later years in many parts of the kingdom, or however it was introduced in derogation of the old common law, the ancient method continued in use in the province of York, the principality of Wales, and the city of London; till very modern times, when in order to favour the power of bequeathing, and to reduce the whole kingdom to the same standard, three statutes have been provided, 4 and 5 W. and M. Ch. 2, explained by 2 and 3 Anne, Ch. 5, for the province of York; 7 and 8 W. 3, Ch. 38, for Wales; and 11 Geo. 1, Ch. 18, for London; whereby it is enacted, that persons within those districts, and liable to those customs, may (if they think proper,) dispose of *all* their personal estates by will, and the claims of the widom, children and other relations to the contrary, are totally barred. Thus is the old common law now utterly abolished throughout all the kingdom of England, and a man may devise the whole of his chattels as freely as he formerly could his third part or moiety."

The opinion of the general court in the above case, was that our acts of assembly of 1704, 1715 and 1729, were a recognition of the right of the wife to one third of the personal estate; and that they were the best evidence of what was the common law in the opinion of the legislature.