

creditors, just as much as the real estate was assets under that statute. With regard to the first point, Chitty, J., points out at pp. 615, 616, that an executor sued as executor cannot set up his own *devastavit*, and therefore claim the benefit of the Statute of Limitations, because both at law and in equity an executor is considered to hold still in his own hands assets which he has improperly paid away or wasted. But if the executor is sued as for a *devastavit*, he may in that case plead the Statute of Limitations as a defence, because in that case the plaintiff treats the executor as his own debtor by reason of his tort or wrong doing, and in answer to such a claim the executor may set up the statute. This case would, therefore, seem to show that it is better not to sue an executor for a *devastavit* wherever there is a possibility of his pleading the statute.

CROWN—PREROGATIVE—EXECUTION FOR DEBT—DISTRESS.

*Attorney-General v. Leonard*, 38 Chy. D. 622, is another case (see *ante* p. 431) in which the claim of the Crown to priority of payment over other creditors came up, and it was held by Chitty, J., that the priority of the Crown is not limited to proceedings by extent, but equally attaches in proceedings by distress, although the distress put in by the Crown be subsequent in date to that of the subject, provided the distress put in by the subject has not been completed by actual sale. In a recent case in our own court, *Clarkson v. The Attorney-General*, 15 O. R. 632, we see that Armour, C.J., intimates that this prerogative right of the Crown to priority has, in this province, been abrogated by R. S. O. c. 94. It may be that that statute has that effect, though we doubt very much whether it was the intention of its framers to do more than restrict the Crown's lien upon the lands of its debtors to instruments duly registered; or, in other words, to make the claims of the Crown upon the lands of its debtors subject to the provisions of the Registry Act.

MARRIED WOMAN—RESTRAINT ON ANTICIPATION—PAYMENT OUT OF MONEY IN COURT.

In *Stewart v. Fletcher*, 38 Chy. D. 627, Chitty, J., was called upon to determine what was the proper frame of an order directing the payment out of court of the income of a fund to which a married woman was entitled, but subject to a restraint against anticipation, and he settled the order by directing a clause to be inserted to the following effect: "The said Marian Stewart being restrained from anticipating such dividends during her coverture, they are not to be paid to any attorney, except upon an affidavit or statutory declaration by such attorney that he receives them on behalf, and for the use, of the said Marian Stewart, and not of any other person to whom she has assigned or purported to assign them."

GENERAL POWER OF APPOINTMENT—EXERCISE BY WILL—"CONTRARY INTENTION"—WILLS ACT, 1 VICT. C. 26, S. 27 (R. S. O. C. 109 S. 29).

In *re Marsh, Mason v. Thorne*, 38 Chy. D. 630, it was held by North, J., that when a marriage settlement made in 1840 reserved to the husband a general power of appointment by will, "expressly referring to this power or the subject