AN INEQUITABLE PREFERENCE IN FAVOR OF SURETY COMPANIES.*—
The case of Central Trust Company v. Bank of Mullens,¹ is the third West Virginia case in which the court by direct decision or dictum has recognized the right of a surety company which underwrites a state depository bond, to be preferred to the general creditors of an insolvent bank.² Indeed this case goes a step further than the previous cases in establishing the right of the surety company by giving the surety company a claim for interest.

*Mr. Wilson Anderson of the Student Board of Editors collected the authorities cited in this note.

¹ 150 S. E. 221 (W. Va. 1929).
² Fidelity & Guaranty Co. v. Central Trust Co., 95 W. Va. 458, 121 S. E. 430 (1923); County Court v. Matthews, 99 W. Va. 483, 129 S. E. 399, 52 A. L. R. 751 (1925). In the last mentioned case the court held that a state may have a prerogative right to a preference but that a county, even though an arm of the state, has no sovereignty and therefore is not entitled to preference on the theory of high prerogative. The following two cases involve essentially the same question. Woodyard v. Sayre, 90 W. Va. 295, 110 S. E. 689, 24 A. L. R. 1497 (1922); Myers v. Miller, 46 W. Va. 595, 31 S. E. 976 (1899). Here the surety on an official bond of a defaulting sheriff claimed the right to be subrogated to the prerogative priority of the state. Both cases held that the state had such prerogative right and that the surety was entitled to be subrogated to that prior right. The Woodyard Case is the leading case on the question of state prerogative in West Virginia and is mainly relied on in the case under discussion.