

## JOURNAL OF MERCANTILE LAW.

## COMMENTARY ON THE BANK ACT OF 1890. (1)

## SECT. 3.—LIABILITY OF DIRECTORS FOR MISMANAGEMENT.

If Bank directors do not manage the affairs and business of the Bank according to the directions of the charter and in good faith, they will be liable to make good all losses which their misconduct may inflict upon either shareholders or creditors, or both. But for excusable mistakes concerning the law, and for many errors strictly of discretion, they are not liable. Though in cases in which their action has been so grossly ill-advised as to warrant the imputation of fraud, or to show a want of the knowledge absolutely necessary for the performance of their duties, so great that they were not justified in assuming the office, they may be held responsible (2). They are required simply to show a reasonable capacity for the position they accept; to use in it their best discretion and industry; to show the scrupulous *bona fide* and conscientiousness in every matter, however minute, which is exacted rigorously from all trustees of the property of others; and to obey accurately the requisitions of the charter, or of the general banking law under whose provisions they come.

IMPROPER DECLARATIONS OF DIVIDENDS.—For example, if directors declare a dividend at a time when the Bank is so far embarrassed that such a needless disbursement of money must be regarded as an act of either fraud or folly, and which could have been advocated by no man who was not either dishonest or grossly incapable, they may be held liable for the consequent loss to the corporation (3). The act is not to be excused, for it must be either fraudulent or the result of such excessive unfitness as to become the legal equivalent of fraud.

It will be a breach of charter provisions to declare a dividend or bonus out of the capital stock of the Bank instead of out of

(1) Copyrighted.

(2) *Godbold v. Branch Bank*, 11 Ala. 191; *Smith v. Prattville Manfg. Co.*, 29 Id. n. s. 503.

(3) *Gunkle's Appeal*, 48 Penn. St. 13.