

C. L. Cham.]

BROOKE V. BANK OF UPPER CANADA.

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ing after such election the directors shall choose out of their number a president and vice-president, who shall hold their offices during the same period.

By section 8, if an election of directors be not made on the day fixed, the corporation shall not be taken or deemed to be dissolved, but such election may be made at a general meeting of the shareholders, to be called for that purpose; and the directors in office when such failure of election takes place, shall remain in office until such election is made.

By section 33 a suspension by the bank of payment on demand in specie, of the notes or bills of the bank payable on demand, shall, if the time of suspension extend to sixty days consecutively, or at intervals within any twelve months, operate as and be a forfeiture of its charter, and of all and every the privileges granted to it by this or any other act.

By section 35, in case the debts of the bank exceed three times the stock paid in, and the deposits made in the bank in specie and government securities for money, or in case the total amount of the bills or notes of the bank intended for general circulation shall at any time exceed the amount by the act directed, the charter and all the privileges of the bank shall be forfeited, and the directors, under whose administration the excess shall happen, shall be liable jointly and severally in their private capacity; but such action or actions shall not exempt the said bank or its lands, tenements, goods or chattels, from being also liable for such excess.

By section 36, in case the property of the bank become insufficient to liquidate the liabilities thereof, the shareholders in their private capacity shall be liable for the deficiency thereof, but to no greater extent than to double the amount of their respective shares.

By section 38, if the bank shall advance or lend to or for the use of any foreign prince, power or state, any money or security for money, "then and from thenceforth the said corporation shall be dissolved, and all the powers, authorities, rights, privileges and advantages granted to it by this or any other act shall cease and determine."

The section which declares that the charter shall be forfeited in case the debts of the bank shall exceed three times the paid up stock and deposits, expressly provides for *the bank*, as well as the directors individually who are culpable, being proceeded against, and the lands and chattels of the bank being also followed.

The total annihilation, therefore, of the corporation is not contemplated by this section, and I see no reason why it must necessarily be annihilated under the other section relating to the suspension of specie payments, where the same kind of language is used as to a forfeiture of the charter.

The language in both of these sections is different from that used in the 38th section, which prohibits the lending to foreign powers. In this last case, "the corporation is thenceforth to be dissolved, and all its powers, &c., are to cease and determine." It does not follow that there must in all cases be a dissolution for all purposes: *Mayor of Colchester v. Brooke*, 7 Q. B. 382; *Woodbridge Union v. Colneis*, 13 Q. B.

285, and I think it would require a process of some kind formally to determine the corporation.

It would not surely be permitted to a defendant who was sued on his promissory note to the bank to plead in bar of the action a forfeiture of the charter by reason of the suspension of specie payments for sixty days, or that the bank debts exceeded three times its paid up stock and deposits, or that the bank was dissolved because it had made a loan to a foreign power.

There are appropriate remedies prescribed for each case, and nothing could be more inconvenient, perplexing and dangerous than to try so important a question upon a merely collateral issue, and I think the cases show that this will not be allowed: *The Queen v. Taylor*, 11 A. & E. 949; *The Attorney-General v. Avon*, 33 Beav. 67; 9 Jur. N. S. 1117; 9 L. T. N. S. 187; *Reg. v. Jones*, 8 L. T. N. S. 503.

When all the members of a corporation are dead, so that there is no one to proceed against, and there is no corporate body in fact or in law remaining, there must be an absolute dissolution without any process, from the actual necessity of the case; but as a general rule nothing short of a determination by some judicial power will, it seems, put an end to the existence of the functions of a corporation.

In my opinion the Bank of Upper Canada is notwithstanding the suspension of specie payments for more than sixty days and notwithstanding the assignment made to trustees, still a corporate body, liable to be sued and to have its property sold or administered for the satisfaction of debts, because it has not formally been dissolved, and because, although not formally dissolved, I am not satisfied it might not still be a corporation for the purpose of being wound up, or sued for the purpose of reaching its property and effects in satisfaction.

The general purport of the act is to enable depositors and other creditors, notwithstanding a forfeiture of the charter, to recover their debts, while the argument for the bank is that such persons have absolutely forfeited their claims, or that their only redress is now against the trustees.

I think this is not so. Then it was argued that at any rate the service upon Mr. Allan, for the reasons before stated, was invalid.

It is clear by section 8 that the directors last elected still remain in office, at any rate until they resign it, and Mr. Allan, it is said, has not resigned; and it is clear by section 7 that the president whom the directors elect is to remain in office as such president *during the same period* as the directors remain in office, so long, at any rate, as they remain in office under the 7th section, which is for the ensuing twelve months from the annual meeting and election of directors on the 25th of June. But I am opinion that on a fair construction of the act the president, who must also be a director, remains in office as such president when a failure to elect directors has taken place, until the new election of directors, and the appointment of a new president has been made.

If this were not so, great difficulty might perhaps be occasioned by the loss of an integral part of the corporation.