

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct.]

New Brunswick.]

EX PARTE J. D. LEWIN.

St. John Assessment Act of 1882—Assessment of capital and joint stock of bank—Whether real and personal property belonging to may be assessed?

By "The St. John Assessment Act of 1882," sec. 25, all rates and taxes on the city are to be raised by an equal rate upon the real estate therein, and on the personal estate and income of the inhabitants and of persons declared to be inhabitants for the purpose of taxation, and upon the capital stock, income or other thing of joint stock companies or corporations, and shall be levied as follows: viz., by a poll tax of one dollar on all the male inhabitants of twenty-one years of age, and the residue upon the rateable property, real and personal, and rateable income and joint stock according to its true and real value provided that joint stock shall not be rated above the par value thereof."

By section 28, joint stock companies and corporations are to be assessed in like manner as individuals and the president or manager of such joint stock company, etc., is to be deemed to be the owner of the real and personal estate, capital stock and assets of such company, and shall be dealt accordingly.

By the Act incorporating the Bank of New Brunswick its capital or stock was fixed at one million dollars. In 1882, the appellant, President of the Bank, was assessed under the 28th section of the Assessment Act on real estate valued at \$42,200 and personal estate of \$1,057,800, making together \$1,100,000. The value of the capital stock of the Bank was at par.

Held (reversing the judgment of the Court below), that all the property real, and personal, of the New Brunswick Bank formed its assets and should be assessed as capital stock, and only at the par value thereof.

Appeal allowed with costs.

Weldon, Q.C., for appellants.

Dr. Tuck, Q.C., and *Millidge* for respondents.

Prince Edward Island.]

THE QUEEN V. BANK OF NOVA SCOTIA.

Priority of the Crown as simple contract creditor—Acceptance of dividends by Crown not waiver.

The Bank of Prince Edward Island became insolvent and a winding up order was made on the nineteenth of June 1882. At the time of its insolvency the bank was indebted to Her Majesty in the sum of \$93,494.20, being part of the public moneys of Canada which had been deposited by several departments of the Government to the credit of the Receiver General.

The first claim filed by the Minister of Finance at the request of the respondents, liquidators of the Bank of Prince Edward Island, did not specially notify the liquidators that her Majesty would insist upon the privilege of being paid in full. Two dividends of 15 per cent. each were afterwards paid and on the 28th of February, 1884, there was a balance due of \$65,426.95. On that day the respondents were notified that her Majesty intended to insist upon her prerogative right to be paid in full.

At the time the liquidators had in their hands a sum sufficient to pay in full her Majesty's claim.

The following objection to her Majesty's claim was allowed by the Supreme Court of Prince Edward Island, viz.: That her Majesty the Queen, represented by the Minister of Finance and the Receiver General, has no prerogative or other right to receive from the liquidators of the Bank of Prince Edward Island the whole amount due to her Majesty, as claimed by the proof thereof, and has only a right to receive dividends as an ordinary creditor of the above banking company.

On appeal to the Supreme Court of Canada.

Held (reversing the judgment of the Court below), that the right of the Crown claiming as a simple contract creditor to priority over other creditors of equal degree cannot be disputed.

That this prerogative privilege belongs to the Crown as representing the Dominion of Canada when claiming as a creditor of a provincial corporation in a provincial Court.

That the Crown can enforce this prerogative