

is bound to take notice, which comes into a court of justice as a plaintiff, if required, even upon the general issue only being pleaded, to shew the authority under which it has assumed to act as a corporation. (z) When called on as a defendant its corporate capacity is thus admitted, and it appears by attorney, and responds under its seal, or in the manner specially prescribed to it. (a) But there is no legislative enactment which directs in what mode a corporation of any kind may be compelled to answer in case it should neglect or refuse to do so.

It is admitted on all hands, that in a suit against a corporation none of its members can be taken or personally punished, except, perhaps as a last resort, on account of any contumacy in their corporate capacity. The only mode of proceeding, either to enforce an answer or obedience to a decree is by a *distringas* and sequestration of the property of the body politic. (b) The state itself is regarded in many respects as a mere body politic; (c) and in the various instances where it becomes necessary to have it made a party to the litigation, it is represented by its Attorney-General; in which cases, the course of the court merely allows, that he should be attended with a copy of the bill; but he cannot be forced to answer in any manner whatever; (d) and therefore, if the bill cannot be taken *pro confesso* against the state, (e) the further progress of the case must await his good pleasure.

Every corporation is and must be composed of, and conducted by natural persons; yet the distinction between the natural and artificial capacities and liabilities of its members has been drawn in such a manner as to create the most serious inconvenience. A body politic, it has been quaintly said, has no soul; and therefore cannot be called on to answer under the obligation of an oath by which a natural person may be bound. (f) To avoid this difficulty the Court of Chancery has had recourse to a singular shift; which it is admitted rests on very questionable principles; it allows the secretary, book-keeper, or some one or more of the chief members of the body politic to be made co-defendants for the express purpose of obtaining an answer on oath; which answer, contrary

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(z) 4 Com. Dig. 487; McMechen v. The Mayor of Baltimore, 2 H. & J. 41; Agnew v. The Bank of Gettysburg, 2 H. & G. 479.—(a) 1804, ch. 73, s. 6.—(b) Bac. Abr. tit. Corporations, E. 2; Lynch v. The Mechanics' Bank, 13 Johns. 127.—(c) 1785, ch. 36.—(d) Willis Eq. Plea. 7.—(e) 2 Mad. Pr. Chan. 335; 1 Fowl. Exch. Pra. 401; Nabob of the Carnatic v. The East India Company, 1 Ves., jun., 371; S. C. 1 Hoven. Supp. 149.—(f) The case of Sutton's Hospital, 10 Co. 33.