

debt, and the 4th section of which directs the Commissioner of Loans to sell the bank stock of the State and to pay the proceeds over to the Treasurer, who is directed by the same section to apply them in aid of the special deposit, to the payment of the interest upon the public debt for the years 1840 and 1841.

And whereas, the 5th section of this act provides, that the Messrs. Baring and Co. of London, be constituted the agent of this State for the payment of the interest on the public debt, which is payable in London, with an allowance of 1 per cent. commission for the service; and also makes it the duty of the Commissioner of Loans semi-annually, in April and October of each year, to draw upon the Treasurer for the amount of such interest, and all charges and duty, and to transmit the same to Messrs. Baring for *disbursement*, in payment of said interest, and that the Treasurer pay to the order of the Commissioner of Loans, the amount of such, his drafts, *out of the funds placed under his controul for that purpose*.

And whereas, it thus appears, that it is made the duty of the Commissioner of Loans by the 5th section of the act of 1839, ch. 33, to draw semi-annually upon the Treasurer for the amount of interest due and payable in London; and also the duty of the Treasurer to pay such drafts *out of the funds placed under his control for that purpose*; the inquiry then occurs—what funds were placed under his control for that purpose? The act of 1839 places the surplus revenue, and the proceeds of the sales of the bank stock, which the Commissioner of Loans is ordered by the same act to sell.

And whereas, the Commissioner of Loans was unable, and did not sell the bank stock, the only fund therefore out of which the drafts he might draw upon the Treasurer could be paid was the surplus revenue. For it must be remembered that the Treasurer had no authority to act in the matter except such as was conferred upon him by the act of 1839, and that, that act only placed at his control for the purposes mentioned, the surplus revenue and the proceeds of the sales of the bank stock, the latter not being sold, he of course had no fund placed under his control for the purpose except the surplus revenue.

And whereas, no part of the direct tax was placed under his control for that purpose, but on the contrary was expressly directed by resolution No. 3, of extra session 1841, to be paid by him to the banks in payment of the money borrowed, to enable the State to pay the interest for 1841.

And whereas, these facts make it clear beyond all dispute that the Treasurer has no right to apply the taxes to any other purpose than that of paying the debt due to the banks; and that after that debt is paid, the tax law of extra session 1841, contemplates that *all* the public creditors are to be paid in full and alike; and makes no exception in favor of any particular creditors; and the Treasurer being but a mere ministerial agent has no authority to make contracts or engagements, except when he is specially authorised