

1837 ceased to operate after the first day of May 1838 and when the Bank had resumed specie payments that it was a virtual or implied suspension of the act of 1820 chap: 150 from its passage until the first of May 1838 and during that time that the Banks might with impunity issue notes or other paper for circulation of a less denomination than five dollars; that after the first of May 1838 the act of 1820 chap: 150 was and still is in full operation and effect and that any bank which issues notes of the above description is subject to the penalties imposed and liable to be proceeded against according to the directions of that act which imposes a pecuniary fine, points out the mode of proceeding and refers it to the courts of law in the usual course of the administration of justice.

As to the second point. It is my opinion that if the said fifth section is still in force, that must be construed and taken in connexion with the act of 1820 chap: 150, and without such construction it could not be enforced; that the Governor has not authority nor is he required by the 6th section to direct the Attorney General to proceed against any bank which has issued notes or other paper for circulation of a less denomination than five dollars since the first of May 1838, but if any bank has issued such notes since that time it is a violation of the act of 1820 chap: 150 and can only be punished or proceeded against according to the provisions of that act.

The 6th section refers to the act of 1818 chap: 177; by this act the refusal by any bank to pay specie for its notes is the only foundation on which a *scire facias* is authorized to be issued - if it were issued for any other cause it would be bad on general demurrer and could not be sustained in a court of law. - The refusal by a bank to pay specie for its notes is *prima facie* evidence of insolvency, altho not conclusive, and for this cause a *scire facias* is authorized, but not for the offence of issuing notes of less denomination than five dollars which may and has been done by the most solvent specie paying banks.

Yours with the most  
 respectful  
 regards  
 Josiah Bayly—