

no one can receive without subjecting himself to a penalty. If the bank has any such vested right, then as long as its charter lasts, the Legislature is deprived of the power of securing a sound currency to the people of the state. Could it have been understood, in 1817 that such a power was to be surrendered; could it have been so understood by the Legislature, on the bank in 1827, when the charter was extended, when the act of 1820 was in full force, and when it was the settled policy of the state to suppress the circulation of small notes?

The counsel of the bank refers to the 4th section of the act of 1837 chap. 315, which requires the banks to resume specie payments at a particular time, and on certain contingencies; and gives it as his opinion, "that these conditions were complied with" and thus the release from all the penalties incurred made absolute. But the 5th section, of which he takes no notice provides, "that no bank in this state shall from and after the first day of May next issue any bank note, certificate of deposit, or any paper intended to be used as a circulating medium of a less denomination than five dollars." To be released from the penalties incurred by suspension, it was necessary that the banks should not only resume specie payments, but that they should issue no small notes after the first day of May 1838. It was certainly intended by the Legislature, that no bank should issue notes for a less sum than five dollars after that time. When the bill was before the house of Delegates, a motion was made to exempt the Frederick County Bank from that provision, and the amendment was rejected. The importance of the indemnity offered to that bank, by the act of 1837, may be understood by referring to the 27th section of its charter; which provides, that upon a refusal to pay specie for its notes it shall be null and void except for the collection of its debts. It appears to be the opinion of the Attorney General, that the whole act of 1837 was a nullity after the assumption of specie payments.

As that act did not require the banks to accept its conditions, it was foreseen, at the time of its passage, that they might avail themselves of its indemnities, and afterwards escape from its restrictions; but it was certainly not expected that the Frederick County Bank would intrench itself behind one of its provisions, for the purpose of defending itself against the law of 1820. It claims a privilege, which makes the interdiction of the small notes of other Banks useless and which is at variance with the general laws and policy of the state; and it insists upon the increase of this privilege, as a vested right, at the very time when by its own act of suspension, it is divested of all its chartered rights and is null and void except for the collection of its debts.