

failure of the banks to redeem their notes in specie operated as a forfeiture of their charters.

The act of 1834, ch. 305, sec. 1, recognizes a failure by any bank to pay specie on demand for its notes, &c. as a violation and forfeiture of charter. By the said act, it is enacted, "*that whenever, hereafter, any bank shall refuse or fail, on demand, to pay its notes, issues or obligations, and shall be in a condition to be proceeded against as authorised by the act of Assembly of December session of the year eighteen hundred and eighteen, chapter one hundred and seventy-seven, such bank, or any commissioner or commissioners appointed under said last mentioned act, or any trustee or trustees appointed under any decree of court, or deed of trust for the benefit of the creditors of said bank, or any sheriff or other officer, shall not receive in payment or discharge of any debt due to said bank, any notes, issues or certificates of deposit issued by said bank, or any claim against said bank, unless where the same shall have been held by the debtor at the time of refusing or failure to pay as aforesaid, and being liable to be proceeded against as aforesaid.*"

But a question may well arise, whether independently of the provisions of the act of 1818, chapter seventy-seven, and of 1837, ch. three hundred and fifteen, an issue or payment by a bank of a note of a less denomination than five dollars, is not a violation of its contract. Upon this question there cannot be a doubt. Every bank in this State has expressly stipulated by its charter, that it will not issue any note below the denomination of five dollars. The object of this portion of the contract, was to secure a metallic currency in the State below five dollars. This the banks undertook to do, by agreeing that they would not issue any note below five dollars. If they have violated this part of their contract, either directly by issuing themselves, or by paying out paper intended to circulate as currency, of a denomination below five dollars, they have been guilty of a misuser of their franchises. They have misused their franchises, first in issuing in any form what by their charters was prohibited, and secondly in issuing or paying out as currency, a medium expressly prohibited by penal enactments of the State.

In addition to the prohibitions in their charters, by the act of 1820, ch. 150, section 1, it is enacted, "*that no bank shall issue or pay out any note or bill of any bank, corporation or company, of a less denomination than five dollars.*" This act was in full force when the charters of the different banks in this State were renewed or granted. The banks then contracted, that they would neither issue or pay out any note or bill of their own, or any other corporation or company, below five dollars. It is said by Judges Washington and Story, "*that if a corporation fail to perform its part of the contract, there is an end of the contract. For it their charters may be forfeited. They are not placed beyond the reach of law.*"

The following banks have been incorporated since the year