of settling a doubtful question on the subject, but named the Knox circuit court as the place where the proceedings were to be had, from a belief that the charges alleged against the corporation were properly enquirable into in that court. In this view of the subject the question as to the venue remains unsettled by the act of assembly. In looking into the books we have seen no case where the point is expressly decided. The statutes of Jeofails do not directly embrace informations.—The 9th of Anne chapter 20 sec 7 excepted which only extends to the usurpation of corporate offices. But they may be amended as was the case in the King vs Wilks, 4 Burr 25 27; and Quo Warranto informations being in the nature of civil proceedings most of the principles regulating civil suits are applicable to them The case after verdict may be assimilated to a case in England after judgment by *Nihil Dicit*, where the want of a venue is not error. 7 Bac Abr 43

It is a general rule that where a matter is of a transitory nature the venue is immaterial; and many of the transactions here charged, as the contracting debts, issuing paper &c, may have taken place any where, and if they could be enquired of in any other county, except where the bank is established, might be inquired of in any county in the state. But in this case we are not entirely without a venue. In the margin of the information, we have 'Knox county and circuit,' which may serve, though imperfectly, for a venue through the whole case, although no where referred to in express words — Add to this that the record informs us the court for the trial of this cause was held at Vincennes in the Knox circuit, and then we have from the law and the record certain charges exhibited against the president, directors and company, of the bank of Vincennes, the state bank of Indiana, originally established at Vincennes, in an information filed in the Knox circuit court, and those charges of such a nature as may be supposed to have taken place where the bank was established, and transacted its business; which being connected with the imperfect venue in the margin, if it will not render the venue perfect, will at least shew that the defect is one of the lowest grades of informality.

The time, and other circumstances, in the description of the principal charges appear to be certain to every common intent. There are several charges which are unimportant, and from the manner in which they are laid it might be doubtful whether they could be supposed to be a violation of their charter; but it may be remembered that if any one of the charges which amounts to a violation of the charter, is sufficiently described, it will support the verdict. And we think the first fifth, sixth, and ninth charges are described with all the certainty that could be expected from the nature of the transactions. we shall have occasion hereafter, to examine whether any, or all of those charges are sufficient to authorize the seizure of the franchises

Fifthly. There is no fine assessed to the state.

It has been already shown that the fine in this case is merely nominal Its absence cannot be error. Even in the case of the usurpation of offices, by the act of 1819 the fining the defendant may be considered in the discretion of the court. But were it the omission was improper it is so exclusively for the benefit of the defendants that they cannot assign it for error.

Passing the sixth assignment for future remarks, and the seventh which is the general error, we will now examine the eighth There is no charge contained in the information which in point of law warrants the judgment. That a corporation can forfeit its charter for misusing or abusing its franchises is a doctrine that cannot now be disputed. See 1st Bac Abr. 485, Kydd on Cor. 2 vol p. 474 and the cases there cited. For there is an implied condition annexed to each particular grant, which, if violated forfeits the whole franchises, 2 Bac. Abr. 31

Inasmuch as it is the duty of a corporation to act up to the end or design, for which they were created, 1 Bla Com. 480: so when they pursue such measures as wholly frustrates this design, the reason of their existence ceases, and it is but just that their existence should also be terminated Whether every slight deviation from the intention of the charter should occasion a forfeiture is not the question; but when the grand, leading, conditions and restrictions in the charter have been violated, there can be no question but their franchises are thereby forfeited. Several of the charges, found by the jury, against this corporation, are of this nature, and shew that they have evidently abused their most important privileges, to the manifest injury of others, and of the community in general We will examine a part of those charges.

The eighth fundamental article of the constitution of said corporation, is, that the total amount of debts which said corporation should at any time owe should not exceed double the amount of moneys actually deposited in the bank for safe keeping. And it is expressly found by the jury that they were indebted, on the first day of January 1821 and at divers days and times between that and the filing of the information, in a much larger sum than double the amount of monies actually deposited in the bank for safe-keeping. This was unquestionably a violation of their charter. Although provision is made, in this article, for rendering the directors, under whose administration such an excess of debts should be created, personally liable for the amount of such excess, by action of debt and &c—yet this violation, of this article, is no less chargeable against the corporatoin than if no such provision had been made.

It is also found that they, with intent to defraud &c issued paper to a vast amount, which at the time of issuing they knew they had not the means of redeeming, and which they have not and cannot redeem.

This charge, although not in violation of any express provision of their charter, is evidently contrary to the intent and spirit of the grant One of the main objects of the institution was to make a profit by issuing paper, or bank notes, and the plain design of the whole charter and of several provisions in particular, was that they should not issue more paper than they could honestly redeem. Here they are found guilty of knowingly issuing more than they had the means of redeeming, with a fraudulent intention.—The privilege of their charter, and of bank charters generally allows of an issue of paper, greater than could be redeemed if it was all brought forward for redemption at the same point of time, but it must be within the power of those institutions to form a tolerably correct estimate, of the amount of paper, they can redeem in the ordinary course of business How much soever, therefore, the inability of a banking company to redeem all its paper at any particular period, might be excused by the particular circumstances in which it might be placed; yet when it knowingly transcends the bounds of honesty, by an exorbitant issue of paper and thus willfully destroys its ability to meet the just demands against it, it looses all color of excuse and violates the first principles of its existence And there can be no doubt but such a procedure is a breach of the implied conditions on which it received this liberty of issuing paper, and is consequently a forfeiture of such liberty.

Intimately connected with this subject is the charge of making large dividends of profits, while they refused to redeem their notes in specie or any thing else.—If they were at the times of those dividends able to redeem their notes, and refused to do so, it manifests a fraudulent intention; if they were then unable to redeem them, their conduct shows a predetermination to continue so.

The charge of embezzling large sums of money deposited with them for safe-keeping, by the United States, &c. is also a violation of the first principles of their charter, and evidently shews that they cannot be safely trusted with such important privileges.

But it is urged that those charges are only against the president and directors of the corporation, and not against the stock-holders, who compose the great body of the company; and that the franchises should not be seized, to the manifest injury of the whole corporation, by the misconduct of a few. But it must be recollected that where the government of a corporation exists in a select body, as is the case in most corporations, the act of the select body is the act of the corporation See first Kydd on Cor. 308—9 and the case there cited.

Here although the election of directors, and the making of bylaws existed with the share-holders, yet the management of the whole monied concern, which was the principal object of the institution, was evidently under the control of the president and directors; and their acts in relation thereto, were obligatory on the whole body. All the charges we have examined, were within their proper sphere of the president and directors, and the whole corporation is answerable for their misconduct, so far as their franchises are in question. But in these charges the whole corporation, by their corporate name, are charged and found guilty and of course all are included therein.

Ninthly. The court refused to instruct the jury that the evidence was insufficient to authorize a verdict of guilty.

A motion was made for the court to instruct the jury to this effect, and on their refusal to give such instruction a bill of exception was filed in which the whole of the evidence is set forth. We shall only examine so much of this evidence as relates to the charges we have just examined.

It was proven by these witnesses that the corporation was indebted, in more than double the amount of money deposited with them for safe-keeping. Bodinot one of those witnesses, deposes that such was the condition of the bank in April 1821, and for two years previous thereto, and that they had loaned out the money deposited with them by the U. S. Beeman another of those witnesses, deposes, as to the debts of the bank being more than double the amount of their available funds, and that two dividends of profits had been declared since the bank refused to pay specie. And Prince, the other of those three witnesses, deposes that the bank was indebted about three hundred and seventy three thousand dollars, and had, at the same time, but thirty one dollars in specie, and no other available funds; and that, two hundred and eight thousand dollars, of that sum was due for money deposited by the United States

The testimoy of these witnesses clearly establish the several facts of the corporation's being excessively indebted, making improper dividends, and embezzling the money deposited by the United States. The charge of issuing more paper than they had the means of redeeming is also put beyond a doubt; but whether this paper was issued knowingly or not rests intirely on presumption. Had they issued no more paper than they were authorized to issue, and thereby kept their debts within the limits prescribed by their charter, they might still have been unable to redeem all their paper, but in that case the presumption would have been, that at the time they became thus indebted, they had no intention to defraud their creditors. But when we see them transcending those bounds & not only creating debts to a vast amount, but even after they had discovered their inability to redeem their notes, still increasing the demands against them, and lessening their ability to discharge those demands, by making dividends of profits to the stockholders and loaning out all the money deposited with them by the United States &c and all their own funds, except the trifling sum of thirty one dollars, the presumption becomes irresistible, that they knew, at the time many of those debts were created, that they could not discharge them; and that at the time they issued a large portion of their paper, they must have known that they had not the means of redeeming it; and that in the ordinary course of business they never could redeem it. We therefore deem the circumstances sufficiently strong to authorize the jury to find this charge, as laid and conclude that the court acted correctly in refusing the instructions required.

We now return to the sixth assignment which is That that part of the judgment, which authorizes a seizure of the private property of the corporation is repugnant to the constitution

We are not able to discover that our constitution produces any alteration in the proper form of the judgment against such a corporation as this.

There is nothing in this case that falls within the seventh section of the first article of the constitution, 'That no mans property shall be taken for public use, without the consent of his representatives &c.'

If there are individuals, (as it is contended the stock holders are,) who have a separate property in the bank, and this separate property is of such a nature that it can exist independent of the corporation or after it is dissolved, the judgment has no effect upon it, but the power is intirely to it, notwithstanding the judgment, in the same manner he was before. But if it is contended that such a private property exists, in the individual stockholders, which will be destroyed if the franchises of the corporation are seized, inasmuch as private property is guarranteed by the constitution, that the constitution must also necessarily warrantee the continued existence of the franchises, or otherwise this property will be annihilated: we shall find that this doctrine is not warranted by the constitution. The privilege of holding stock in this bank is inseperably connected with its existence as a corporation and in asmuch as we have seen that the existence of the corporation depends on the implied condition that it will not violate its charter, to this privilege, of holding stock in this bank and depend for its continuance on the same implied condition. The president and directors of the corporation become the agents of the stock holders, and if they violate the conditions on which he enjoys this privilege, his privilege is immediately subject to forfeiture, by this act of his agents. Nor will the regard which the constitution has for private property secure such property from annihilation, by a dissolution of the corporation. So that we see nothing in the constitution to prevent the seizure of those franchises, let the effect upon private property be what it may. And there can be no doubt but that this judgment, so far as it authorizes a seizure of franchise into the hands and custody of the state, warranted by law. When it appears that the liberty has been once granted, and is forfeited by misuser or nonuser, the judgment shall be that it be seized into the Kings hands. Year book of the 15 Edw. 4 cited in 2 Kydd 467; and such appears to be the law at present.—Thus far every thing appears to be regular. But when we proceed to that part of the judgment that authorises a seizure into the hands of the state of all the goods and chattels, rights, credits, and effects, together with all and singular the lands, tenements and hereditaments of the corporation, we are compelled to pause, and minutely examine the grounds on which this part of the judgment has been founded.

(TO BE CONCLUDED NEXT WEEK.)

FRESH GOODS.

WILSON LAGOW,

(IN PALLESTINE, ILLINOIS.)

HAS just received, direct from *Philadelphia*, a general assortment of

Dry-Goods, Hardware, Cutlery, and Queensware,

Comprising an elegant and extensive assortment,

Among which are the following:

Super Blue and Black Cloths,
Middling & low priced do.
Super and common Cassimeres and Cassinets,
Red, White, & Yellow } *FLANNEL,*
Bombazetts assorted,
Toilinett and Mersailles Vesting,
Tamboured, Leno, Plain and Figured,
Book, Jaconet, Cambric and Medium Muslins,
Scotch, and other Ginghams,
Leghorn, Gipsey, and Common Straw } *BONNETS,*
Furniture, Fancy and Rob Roy Prints,
Canton Crapes, assorted,
Flag and Bandana Handkerchiefs,
Silk, Cotton, & Worsted. } *HOSE,*
Fancy and Plain Silk Shawls,
Domestic Plaids and Stripes,
do. Brown and White Sheetings, Shirting, and Long Cloths,
Ladies Morocco and Kid Shoes assorted,
Knives and Forks,
Pen and Pocket knives,
Mill, and Cross Cut Saws,

He has also received from New-Orleans a supply of

GROCERIES,

HAVANNA COFFEE,
GUNPOWDER, IMPERIAL, and YOUNG HYSON } TEAS,
SUGAR, WINE, RUM,

And many other articles too tedious to mention.—All which he is disposed to sell low for *Cash* or *Beeswax*.

4?-6t November 7, 1823.

One Hundred Dolls. Reward.

RANAWAY from the subscribers on Sunday evening, 3d inst. a negro man named

CHARLES,

And a negro woman named

PATSEY.

Charles is about twenty five years of age, 5 feet 9 or 10 inches high, slender made, yellow complexion, had on when he went away a brown or snuff coloured coat, linen pantaloons, fur hat considerably worn and rather small He took with him several articles of clothing not known. Patsey is about 21 or 22 years of age, short, thick set, quite black, coarse features and bad countenences. She had on a white muslin dress and collerette trimmed with black ribbon. Took with her two plain domestic cotton dresses, one striped jaconett muslin dress and other articles of clothing not recollected.

The above reward will be given for their apprehension or fifty for either, with all reasonable charges, if delivered to us at Ætna Furnace, in Hart county, Ky. or in any jail in this state so that we can get them again.

HOLDERMAN & WILKS.

Nov. 13, 1823. 44—3m.

☞The *Western Sun*, Vincennes *Censor* Indianapolis and *Enquirer* Brookville, will please to insert the above once a week for 3 months, and send their accounts to this office for collection.