

ment of the corporate debts. In brief, the general depositors in a savings bank stand in the same relation to its assets as stockholders to banks of discount (*Cogswell v. Savings Bank*, 59 N. H. 43, 45), and the standing of special depositors, like the plaintiffs, in the former, corresponds to that of ordinary business depositors in the latter, whose deposits are subject to payment on call.

The doctrine of *ultra vires* is no defence in this case, nor, if it can be held applicable to the facts, is the prohibition of private banking. By taking the plaintiffs' money, converting it to the bank's use, and enjoying its gratuitous benefit, the bank is now equitably and legally estopped to deny its liability to repay the money, whether the taking was with or without authority. *Rich v. Errol*, 51 N. H. 350, 360, 361; *West v. Errol*, 58 N. H. 233, 234; *Cogswell v. Savings Bank*, *supra*; *Conn. River Bank v. Fiske*, 60 N. H. 363, 369, 370; *Norton v. Bank*, 61 N. H. 589, 590, 593; *Railroad v. Railroad*, 66 N. H. 100, 126, 127, 131, 132.

Petition granted.

CLARK, J., did not sit: the others concurred.

Carroll, }
June, 1895. }

HAMLIN v. UNION BRASS CO.

SAME v. SAME.

A superintendent of a corporation elected by the board of directors cannot be removed by a majority of them, acting individually and without notice to the other members.

ASSUMPSIT, to recover the plaintiff's salary as superintendent of the defendant company; in the first action from May 1 to June 1, and in the second action from June 1 to September 1, 1894. Facts found by the court.

At a meeting of the defendants' board of directors in April, 1894, the plaintiff was elected superintendent for one year with a salary of \$1,000, payable on the fifth of each month for the previous month. The board of directors consisted of five members, and the by-laws made it their duty to appoint certain officers of the corporation, including a superintendent. May 19, 1894, a discharge signed by three of the directors was handed the plaintiff. One of the other directors was asked to sign it, but declined. The plaintiff, the remaining director, knew nothing of the discharge until it was handed to him. No notice was

given of any meeting of the directors, and no meeting was held by them. The business was transacted individually by the directors participating in it. The plaintiff was ready to perform the services as superintendent during the time he claims the salary. The court found that the plaintiff was not discharged as superintendent of the defendant company and returned a verdict in his favor in each action, and the defendants excepted.

Samuel D. Felker and Walcott Hamlin (of Massachusetts), for the plaintiff.

Arthur L. Foote and Charles B. Gafney, for the defendants.

WALLACE, J. The plaintiff is entitled to recover the amounts of the verdicts unless he was discharged from the office of superintendent by the directors. The question presented is whether the action of a majority of the directors of a corporation, acting individually in the absence of and without notice to the other members of the board, is legal. The power invested in directors to control and manage the affairs of a corporation "is not joint and several, but joint only." *Buttrick v. Railroad*, 62 N. H. 413, 418. This power is conferred upon them as a board and not as individuals; and in the absence of an express or implied delegation of authority to some one or more of their number, they cannot act individually, but only as a board. When there is no limitation as to the manner in which this power shall be exercised, the proceedings of a majority of the directors within the scope of their authority are legal and valid, "either when there is a consultation of all together, and a concurrence of a majority; or where there is a regular meeting, at which all might be present, and a majority actually meet and act by a major vote." *Despatch Line v. Bellamy Mfg Co.*, 12 N. H. 205, 227. But the stockholders are entitled to the benefit of the judgment and advice of all the directors, as well as their votes, in their action in regard to the affairs of the corporation. And when a portion of the directors, although they may be a majority of the board, undertake individually to take action in regard to the affairs of the corporation in the absence of and without notice to the rest of the directors, they debar the absent directors from participating in the management of the corporation and deprive the stockholders of the advantage of their suggestions, and the proceedings thus taken are illegal. *Despatch Line v. Bellamy Mfg. Co.*, *supra*; *Edgerly v. Emerson*, 23 N. H. 555; *Atlantic Fire Ins. Co. v. Sanders*, 36 N. H. 252, 269; *Buttrick v. Railroad*, *supra*.

The individual and separate action of a portion of the directors, although they were a majority of the board, in attempting

to remove the plaintiff from the office of superintendent, was illegal.

Exceptions overruled.

CLARK, J., did not sit: the others concurred.

Merrimack, }
June, 1895. }

CURRIER v. CONCORD.

Whether the information contained in the statement required by G. L., c. 75, s. 7, of the exact place where damage to a traveler on a highway is received, is such as to enable one, by the exercise of reasonable diligence, to locate the place, is a question of fact for the trial term.

At a hearing before a committee of the city government upon the plaintiff's claim for damages caused several months before by a defective highway, the committee's failure to object to the sufficiency of the notice served upon the city is not a waiver of the city's right to raise that objection.

CASE, for injuries caused by a defective highway. In the statement required by G. L., c. 75, s. 7, which was filed with the city clerk December 28, 1891, the plaintiff states that she was injured December 19, 1891, "while traveling on foot along the sidewalk on the west side of the highway leading from Concord Main street to the village of Penacook, at a point near the entrance to the cemetery, and within the limits of the city of Concord." The question of the sufficiency of the notice was tried by the court, who found, upon evidence not excepted to, that the place of the accident is not stated with such exactness as to enable the city authorities, without further information, to locate it. About May 1, 1892, a hearing was had upon her claim before the committee of the city government on claims. From what she said at that time the committee understood where the exact place of the accident was. She was told that she would hear from the committee, and relied on that assurance. It did not appear that she was informed of the result of the hearing, or that the sufficiency of the notice was questioned by the committee in her hearing.

John P. Bartlett and William A. J. Giles, for the plaintiff.

Harry G. Sargent, for the defendants.