

the liquidators to enforce against this company the double liability of \$13,500 in respect of these shares.

The application is resisted on several grounds, but it is only necessary for the purposes of the present application to consider those relating to (1) the power of this insurance company to acquire an absolute title to bank shares, and to (2) the liability of the company in respect of the shares assigned to them as a security for the loan to the Central Bank.

The Act under which this insurance company is incorporated (42 Vict., c. 73 D.) authorizes it to invest its funds, *inter alia*, in only one of the recognized modes of dealing with bank shares, viz., as mortgagee or pledgee, the words being "on the security of bank stock," and the charter provides that such loans are to be made "on such terms and conditions, and in such manner and at such times, and for such sums, and in such sums of repayment, whether of principal or interest or principal and interest together, and at such interest and return as the Board of Directors may from time to time determine and direct."

It has been clearly established by a long series of decisions that not only are the capacities and powers of trading and other corporations limited in degree, but so are also the purposes and ends for which such corporations are authorized to employ such capacities and powers. The charter incorporating a company creates a contract between the company and its shareholders, and any act of the directors or company not within its express or implied powers would be a breach of such contract, and therefore *ultra vires*.

The charter granted to this company defines and limits its powers and its purposes in such a way as to compel a consideration of what may be formulated as a canon of corporation law: that the measure of the company's liability under a contract respecting these shares must be co-extensive with its power to acquire them.

The doctrine thus tersely stated has been recognized as having a more universal application in the case of *Pickering v. Stephenson*, L. R. 14 Eq., 322, where, though the special powers and purposes of a corporation had to be construed according to a foreign law, the Court held that it was not only a canon of English municipal law, but a great and broad principle of universal law, which must be taken in absence

of proof to the contrary, to be a part of every system of jurisprudence, that the governing body of a corporation organized as a trading partnership cannot in general use the funds of its community for any purpose other than those purposes for which they were contributed, or authorized to be used.

Were there no decisions to illustrate the application of this canon of corporation law, its cogency might command deference to its fiat. But the light of authority seems so clear that no reasonable doubt can exist as to its applicability to the case before me.

In *Coleman v. Eastern Counties R. Co.*, 10 Beav., 1, Lord LANGDALE, M.R., held that the powers given by an Act of Parliament to a corporation cannot be construed to extend further than is expressly stated in the Act. And in *Salomons v. Lang*, 12 Beav., 339, s.c. 14, Jurist 279, the same learned judge held that directors could not lawfully apply the moneys of their company in the purchase of shares in another company unless authorized to do so by Act of Parliament, nor could they apply such moneys for any other purpose whatsoever than those directed and authorized by Parliament; and that if any directors should seek to involve their company or shareholders in liabilities not so authorized, it would be the duty of the court to enjoin them by injunction.

In *Dobinson v. Hawks*, 16 Sim., 407, a trading company, in order to obtain a loan from a benefit building society, became shareholders in the society, and gave a mortgage in the ordinary form. It was contended that the company was not entitled to redeem the mortgage, without regard to the liability which they had incurred as such shareholders, but the court held that the subscribing for such shares was illegal, and that the trading company could not be made subject to the liabilities of shareholders.

The case of *Joint Stock Discount Company v. Brown*, L.R., 3 Eq., 139, and 8 Eq., 381, seems to further illustrate the doctrine I have referred to. The company was incorporated for the purpose, among other things, of "making advances and procuring loans on and investing in securities." The directors applied some of the company's funds for the purchase of shares in a banking company, but both Lord HATHERLY and Sir W. M. JAMES held that such a purchase was not an "investment in securities" authorized by its articles, and was therefore *ultra vires*.