seem to indicate that the making of negotiable promissory notes or other negotiable instruments by a non-commercial corporation, not specially authorised by its charter, or by the by-laws it was entitled to make in virtue of its charter powers, would be *ultra vires;* but to this rule an exception was allowed where the making of such instruments was incident to the nature of the business the corporation was authorised to transact. Thus in the case of *The General Estates Co., Exparte the City Bank*, L. R. 3 Chan. Appeal cases, p. 762, bonds had been issued by the General Estates Co., limited, being in fact a Building Society. They contained a promise to pay to the order of one J. C. Hodges who sold them to one Herman, to whom Hodges transferred them as well by endorsement as by deed, the latter being acknowledged and registered by the Company, so that they became payable to the order of Herman. He pledged and endorsed them for value to the City Bank, which institution, on the General Estates Co. being insolvent, claimed to prove for the amount of the bonds against their insolvent estate. This was resisted by the official liquidator, on whose behalf it was contended that the instruments were bonds, not promissory notes, that the General Estates Co. had no power to issue negotiable instruments, more especially promissory notes, and that Herman being the payee and a debtor of the Company, if the proof were allowed it should be subject to the claim of the Company against Herman.

The Court held the instruments to be negociable and to be proveable by the City Bank against the General Estates Company, without being subject to the equities of the claim of the Company against Herman.

Sir W. Page Wood in his remarks says:— Corporate bodies may issue promissory notes and bills of exchange when the nature and character of their business warrants it. And further on: "The better opinion seems to me to be that this is a promissory note, but if it be not so, the authorities go to this, that where there is a distinct promise held out by a company informing all the world that they will pay to the order of the person named, it is not competent for that company afterwards to set up equities of their own, and say that because the person who makes the order is indebted to them they will not pay."

Brice in his Treatise of *Ultra Vires*, edition of 1877, at p. 297, approves of this decision, and at p. 830 where he treats of a distinction he makes between the primary and secondary capacities of corporations, he says, whatever is outside or not allowed by the primary capacities will be *ultra vires* in the strict and true sense. Whatever is outside or not allowed by the secondary capacities will be *ultra vires* in the other sense.

No corporation can go outside its strict enterprise or scope. But all corporations, in prosecuting this, employ certain means. They must have agents, money, offices, and the like.

It is quite clear that certain means may not be employed by certain corporations, *e.g.*, negotiable instruments by railway companies. But is it not the true view that such employment would be *ultra vires* in the secondary sense only? Every corporation can be authorised to issue negotiable instruments, but it is only railway corporations that can make railways.

So with other means. Take borrowing. A mining corporation cannot without express power, but it can give itself such power. Is this any more than the statement that though acts outside the aims of such corporations are *ultra vires* in a strict sense, yet the employment of such a means or implement as borrowing is only *ultra vires* in the secondary sense, invalid by the dissent, and restrainable upon suit by any single corporator, but perfectly valid when all agree?

He then proceeds to give his views to the effect that where there has been "substantial" part performance, such a course of conduct by the corporation, and such action by the other side as to show that both parties intended the due carrying out of the transaction, then it is too late for the corporation to object to the invalidity of the matter, and if it does so it will be exactly in the same position as if it refused to carry out any other binding contract.

He admits that it might be different if an individual stockholder brought a suit to restrain the company from acting in a transaction so *ultra vires* even in a secondary sense.

It is to be regretted that the author has not succeeded in exposing his meaning with greater clearness, bnt it must be admitted that the subject is difficult, and I do not doubt that his doctrine is sound. It would at least seem so to