

other way. To doubt the power of the party in whose name the stock stands, when there is nothing to show that he holds it in a fiduciary character, would seem to be impossible: and, therefore, when questions have arisen as to the legal authority of the trustee to sell and transfer, it must be understood as applying to cases in which the fiduciary character appears, but there is nothing to indicate the nature of the trust or the beneficiaries. It is supposed to be very clear, that no relief can be had against the Savings Bank of Baltimore, except with regard to the surplus in their hands, unless the fact that Samuel Jones was a director of the institution at the time of the loan to him, renders them liable.

The second proviso to the second section of the act of 1818, ch. 93, (the charter,) declares among other things, the corporation shall not be authorized to loan any part of the funds deposited to any director of said corporation.

The loan in this case was to the firm of Talbot Jones & Co., of which, as it appears by the evidence, Samuel Jones, the director, was the only member; and it is insisted that, as the charter prohibits loans to directors, the contract was void, and the bank acquired and could exert no title to the stock pledged as security for the repayment of the money loaned.

If the contract of loan between the bank and Jones were now open and unexecuted, and an attempt were made to enforce its performance, it appears to me the case of *The Pennsylvania, &c. Steam Navigation Co. vs. Dandridge*, 8 G. & J., 284, would be conclusive upon the question. The doctrines announced by the court at pages 318, 319 and 320, render it too clear for controversy, that even the corporation itself, may avail itself of the want of authority to make the contract sought to be enforced against it, though it has received and enjoyed the consideration upon which it was made.

If, then, a suit had been brought by the bank against Jones, or by Jones against the bank, upon this contract, it would, in my judgment, have been competent to either of the defendants, under such circumstances, to deny the validity of the contract, as forbidden by the charter.