

The complainant first avers that of this sum \$590 was advanced and paid out of his own proper moneys, and, secondly, that the lands were purchased by him as agent of the defendant, and with its concurrence and approval. Upon the former argument I was of opinion, and so said, that the complainant had not succeeded in satisfying me that the charge in question was erroneous, and reasons were given, the sufficiency of which appears to me to be unshaken, why the complainant should not be permitted at all events to strike the whole item from the account. There can be no doubt that the defendant, by its charter, could not have purchased and held these lands, and that, upon a proper proceeding, the Company would have been divested of its title. The presumption is therefore strong, that the use of the corporate funds in the purchase was unauthorized, and the assent of the stockholders thus to employ them, if obtained at all, was not obtained in the regular way, and conferred no power upon the complainant as agent to make the purchase. The lands, in point of fact, have not been conveyed to the corporation, the parcel bought of Worthington having been conveyed to the complainant himself, and that purchased of Mr. Herbert having been conveyed to Mr. Lansdale. The sole question, therefore, upon the bill is, whether the complainant shall be charged with the whole sum of \$2,353 33, or whether from that sum is to be deducted the \$590 which he alleges was paid out of his own moneys? I have read the statement made by Mr. Latrobe before the Auditor, and examined the pass-book of the complainant with the Mechanics' Bank of Baltimore. Mr. Latrobe proves that in February, 1839, the trustees of Joseph Thornburgh's estate loaned the complainant the net sum of \$1,378 07, and by an entry in the book under date the 21st of March, 1839, and by a copy of a check found in the printed record, dated on the same day, the complainant appears to have paid Worthington \$1,300. This check, Mr. Worthington proves at page 76 of the printed record, was given to him for the first payment to be made on the land. In view of these facts, I am of opinion that the complainant did apply a portion at least of the money he borrowed from Thornburgh's