merge and are extinguished. In the case of *Ex parte Holmes*, 5 *Cowen*, 426, which involved the right of voting certain shares of stock in an incorporated company, which stood in the names of persons as trustees for the corporation, it was said by the Court, that the corporation may, from necessity, take their own stock in pledge, or payment, and that they may keep it outstanding in trustees to prevent its merger, and convert it to their security—implying, of course, that a transfer to the corporation itself would operate as a merger; and I presume, unless there is some provision in the charter to the contrary, that a transfer of its own stock directly to a corporation, would have that effect.

But it does not follow, that though the shares transferred to the corporation are merged for the time being, that they may not be subsequently revived. It is believed that but few of the banking institutions, in this State, are not authorized to take their own stock in payment of, or in pledge to secure debts due them; and whatever may be the temporary legal effect of the transfer, it has always been supposed, and the practice has been in conformity with such general understanding, that they were authorized to re-issue the stock whenever they thought fit to do so. It never was the understanding, so far as I am informed, that such transfer of its own stock to a bank, had the effect to lessen its capital. In the case of *Ex parte Holmes*, before referred to, the Court distinctly recognised the right of the company to take its own stock in pledge, or payment for debts due it, a right, they say, resulting from necessity; and it cannot well be doubted, that, having the right thus to take, they had the further right to sell and re-transfer to realize the money due them.

But if it were conceded that the shares of the stock transferred by the complainant to the defendant, in 1834, were so entirely merged as to be incapable of resuscitation, there would be no difficulty in restoring to the complainant the number of shares originally standing in his name, if the justice of the case requires it.

By the Act of 1821, ch. 201, sec. 2, the capital stock of this