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ULTRA VIRES.

A CORPORATION is an artificial person having only such attributes of natural persons as the law of its organization gives it. Such is the substance of the definition. The other adjuncts usually embodied in the definition—that a corporation is composed of individuals united under a common name; that the members succeed each other while the body continues the same; that for certain purposes, it is considered as a natural person; that it exists under a special denomination; that it is vested by the policy of the law with a capacity of acting in several respects as an individual; that it has its existence separate and distinct from the individual or individuals composing it—are but incidents or qualities: Angell & Ames on Corporations 1; 1 Kyd on Corp. 13; Green's Brice's Ultra Vires 1.

The law of corporations, if it is not now, is destined, in the immediate future, to become the most important head of our municipal jurisprudence.

The multiplication of corporations, in our country particularly, is going on with great rapidity, and to an almost indefinite extent, keeping pace with the increasing wealth and material prosperity of the country. The resources which corporations command, and the power which they control, is amazing, not to say alarming.

There is a great difference in this respect between this country and England. What is done in England by combination, other than in the management of municipal concerns, is most generally

done by a combination of individuals, established by mere articles of agreement, while, on the other hand, what is done here by the co-operation of many persons, is, for the most part the result of a consolidation effected under some general law or by an express act or charter of incorporation: Angell & Ames on Corp., Pref. viii. Hence, as remarked by C. J. TILGHMAN, in *Commonwealth* v. *Arrison*, 15 S. & R. 131, "the amount of business touching the rights and liabilities of corporations, which comes before our courts, is much greater than that which comes before the English courts." In applying the old principles of the common law to the disposition of this business, our courts, as well as those of England, are continually introducing such modifications as are adapted to the ever-varying social and political condition. Thus our law of corporations is constantly undergoing change, almost imperceptible at the time, "arising," as is said by ROGERS, J., in *Bushel* v. *Commonwealth Ins. Co.*, 15 S. & R. 176, 177, "from that silent legislation by the people themselves, which is continually going on in a country such as ours, the more wholesome because it is gradual and wisely adapted to the peculiar situation, wants and habits of our citizens."

Thus the doctrine of *ultra vires* is of recent growth. The great number of corporations, the vast interests within their control, the numerous questions daily arising out of their transactions, and the mighty power wielded by them for evil or for good, render this branch of jurisprudence, in our country especially, an object of peculiar interest to the statesman as well as to the jurist.

The phrase *ultra vires*, as used in the discussion of legal subjects, is first found, so far as it has been ascertained, in Lord Kames's Principles of Equity, originally published in 1776. "A deed or covenant," such is his language, "being void at common law, as *ultra vires*, can a court of equity afford any relief? A principle in logics, that *will* without *power* cannot produce any effect, is applicable to matters of law, and is thus expressed, that a deed *ultra vires* is null and void, &c."

The phrase does not appear in Angell & Ames on Corporations until the fifth edition, published in 1855. It is first found in the English reports, as used by Baron BRAMWELL when at the bar, in 11 C. B. 775 (Green's Brice's Ultra Vires, Pref. vi.). Its appearance as a principle in the legal system of England dates, as is said by Mr. Brice, from about the year 1845, being first prominently mentioned in the cases in equity, of *Coleman* v. *Eastern Counties*

Railway Company in 1846, and at law, of *East Anglian Railway Company* v. *Eastern Counties Railway Company*, in 1851 (Green's Brice, Pref. v.). But years before the earliest English case cited by Brice, the American courts, both federal and state, discussed the general doctrine of the powers of trading corporations, and laid down rules in regard thereto in numerous cases (Id., Ibid. in note). Since then the doctrine of *ultra vires* has been gradually assuming more and more importance in the law of corporations, until it seems destined to become, if it is not now, the most prominent head of that branch of legal learning, though it seems not as yet to have crystallized into perfect shape and symmetry.

Questions involving the application of the doctrine of *ultra vires* most commonly arise in respect to the powers of corporations as exercised by the directors or trustees in managing the affairs of a given corporation.

The inquiry generally is, what may the body of directors or trustees do, rather than what the whole company of stockholders at a regular meeting might engage in; and it is as applied in the former instance, rather than in the latter, that the questions of *ultra vires* will be discussed in the following article.

The consideration of this subject has been suggested by two decisions recently rendered by the Supreme Courts respectively of the states of Pennsylvania and California. In the case from the state of Pennsylvania, the directors of the Pittsburgh and Steubenville Railroad Company, in consideration that the county of Allegheny would take stock in the company and pay for it with county bonds, agreed that the company should pay interest on the stock to the holders of the bonds, in discharge of the interest due on the latter till their maturity. It was held that the company had no power to make such a contract, that it was *ultra vires: Pittsburgh & Steubenville Railroad Co.* v. *Allegheny County*, 79 Penna. St. 210.

The California case is *Low & Frisbie* v. *The California Pacific Railroad Company & The Central Pacific Railroad Company*, not yet reported. In this case, the two railroad companies entered into a leasehold agreement, by which the California Pacific Railroad Company leased its road and appurtenances to the Central Pacific Railroad Company for twenty-nine years from the first day of July 1876, at the annual rent of $550,000, to be paid semi-annually. The lessee company was to keep the road and rolling stock in

repair, and to return the same at the expiration of the lease, in good condition, except in case of extraordinary damage, resulting from floods, tempests, &c., and was to pay all taxes, state, county and municipal, and all legal expenses and damages sustained by third parties in consequence of the operation of the road. The lessee company further stipulated in the lease *to guarantee the payment of* $2,000,000 *of the bonds of the lessor company both principal and interest*, the principal thereof being made payable thirty years from the first day of July 1875, and the interest thereon at the rate of six per cent per annum, being payable semi-annually. The agreement of lease was made on the 9th day of December 1875. The question submitted to the court for determination was whether that part of the leasehold agreement which *guaranteed the payment of the bonds was not ultra vires.* The court held this stipulation to be valid, and not *ultra vires.* Mr. Justice McKINSTRY, however, dissented, in an able opinion, and Mr. Justice CROCKETT did not participate in the decision. It is proper to state, that the power of one railroad company to *lease* its road and appurtenances to another railroad company, was not contested, as the statute of California expressly confers that power.

Of the two decisions referred to, which one is right, and which one is erroneous? They cannot both stand, for they are, in principle, diametrically opposed. If it was *ultra vires* for the Pittsburgh and Steubenville Railroad Company, in consideration that the county of Allegheny would issue its bonds to the company, to agree to pay the six per cent. interest on its stock issued to the county, then *à fortiori*, must it be *ultra vires* for the Central Pacific Railroad Company to stipulate as part consideration of the lease, to guarantee the bonds of the California Pacific Railroad Company, its lessor. It by no means follows, because one railroad company may lease its road to another railroad company, and because such contract of lease, *so far as it is a lease*, may be valid, that there may not be inserted in such contract of lease clauses which will be invalid—*ultra vires*—any more than it is a necessary deduction, that a railroad corporation having the power to contract with a county, for the exchange of stock for county bonds, may insert in such contract any kind of a stipulation, which may prove an inducement to the county to issue its bonds.

In both the Pennsylvania case and the California case, there is an undertaking to pay the debt of another; in the former, absolutely;

in the latter, on a contingency. In the former case, the payment of the six per cent. interest on the stock was intended to be, and, in effect, was, nothing but the payment of the six per cent. interest on the county bonds. Suppose the railroad company, in the Pennsylvania case, had agreed to *guarantee* the payment of the interest on the county bonds, instead of undertaking to pay it absolutely, the case would be precisely identical with the California case. And if a contract to pay directly be *ultra vires*, a contract to guarantee such payment must be equally *ultra vires*, nay, more probably so, for the contract of guaranty implies the relation of principal and surety, and, as a general rule, it is *ultra vires* for a corporation to contract as surety.

A contract to pay absolutely a particular debt, and a contract to guarantee the payment of the same debt by another, are essentially different contracts at common law. A corporation may possess, at common law, the former and not the latter.

The matter of guaranteeing is of an insidious nature. It is more likely to be entered into, without due consideration, by the board of directors of a corporation, than an absolute engagement to pay, and more likely to prove, when entered into, entangling and embarrassing to the corporation. The California case is, therefore, one which calls for a more rigorous application of the doctrine of *ultra vires* than the Pennsylvania case, whereas, in the former a more latitudinarian construction has been adopted than in the latter.

The California statutory power, which authorizes one railroad company to lease its road to another, carries nothing more than the legal concomitants of a lease, such as the payment of rent by the lessee, keeping the property in repair, surrendering at the expiration of the lease, &c. An undertaking to guarantee the bonds or other paper of the lessor, is not a constituent part of a lease. It does not fall within the definition or ordinary meaning of the term.

If the power to lease embraces within its scope the right and power to guarantee bonds, then it must also confer the power to buy railroads, or steamboats, as well as every other species of property, and to carry on the business of agriculture or mining, or any other kind of business. All transactions and branches of business may be lugged into an instrument, which may, in other respects, be a *lease*, but they cannot be included in the intrinsic legal essence of a *lease*.

A railroad company, the lessee of the track of another railroad

company, would, like other lessees, be excused from the payment of rent by eviction under paramount title, and by failure and refusal, on the part of the lessor, to keep and perform its covenants, whereby the enjoyment of the use and occupation of the demised railroad, might be rendered impracticable and impossible; while, on the other hand, the railroad lessee, as guarantor of the railroad lessor's bonds in the hands of innocent parties, would be held bound to pay the full principal and interest of the indebtedness guaranteed, though the possession and enjoyment of the leasehold property may have entirely failed. A freshet may sweep away the track, bridges, depots, and rolling stock; an earthquake may destroy them, and change the face of the country so completely, as to obliterate every vestige of the property which is leased, and which stands as security for the bonds. A change of the routes of travel and commerce may greatly depreciate the value of the security; the lessor railroad company may become bankrupt, and the bonds, but for the guaranty, become worthless; yet, in all these contingencies the unfortunate guarantor of the bonds remains firmly bound by its guarantee.

In the case of a lease by one railroad corporation to another railroad corporation, the lessee pays its own debt, when it pays the rent, which it owes as rent and which it has agreed to pay as rent; in the case of a guaranty by the lessee of the bonds of the lessor, should the guarantor be compelled to pay the bonds, principal or interest, or any part thereof, in pursuance of its contract of guaranty, it pays an indebtedness of the lessor company, and, consequently, may compel a reimbursement thereof. In the former case it pays as *principal;* in the latter, as *surety.* The former contract, however unwise it might be, the railroad company has the power to make; and consequently, may agree to pay the rent on the lease, the amount of the rent being simply a question of degree; the latter species of contract, it seems to us, it has not the power to make, there being no express statutory power to that effect, as it is in reality the *loaning of the credit* of the guarantor—the *guaranty of the debt of another.* The contract of guaranty, *ex vi termini,* implies *a loan of the credit* of the guarantor.

"A *guaranty* is a promise to answer for the payment of some debt, or the performance of some duty, *in case of the failure of another person, who, in the first instance is liable to such payment or performance:*" Bouvier *sub voce* and see 3 Kent's Com. 121.

"It is an engagement to be responsible for the debts or duty of a third person, in the event of his failure to meet his engagement:" Story on Contracts, § 852.

"The primary meaning of guaranty is an undertaking to pay the debt of another in case he does not pay it:" 24 Pick. 250, 252.

From the foregoing definitions, it follows, as a necessary corollary, that a guarantor, who has paid the debt of another, may recover the money back from the principal debtor—that is, may sue and recover judgment therefor. The guarantor thus stands as security for the payment of the bonds by the railroad corporation that made them, and the relation of principal and surety arises between the two corporations.

In the Pennsylvania case, the same relation results in fact from the relations subsisting between the county and the railroad company, at least, so far as regards the interest payable on the county bonds; for the railroad corporation was to pay the same amount of interest on its stock issued to the county, as the county agreed to pay on the bonds issued to the railroad company, so that, in case of the county neglecting to pay the interest on the bonds, equity would have subrogated the bondholders in the place of the county and have enabled them to recover the interest on the stock from the railroad corporation in lieu of the interest on the bonds; that is, if the transaction between the county and the railroad company had not been invalid on the ground of infringing the doctrine of *ultra vires*, and therefore if, in the last-mentioned case, the doctrine of *ultra vires* was properly applied to an arrangement covertly involving the relation of principal and surety, *à fortiori*, does it seem that the same doctrine ought to have been enforced in the California case where the same relation of principal and surety unmistakably existed.

The fact that in the California case, the lease must be looked to in order to find the consideration of the guaranty does not help the decision. To every legal guaranty there must be a consideration of some kind; and while a guaranty, without a consideration in some way to sustain it, must for that very reason, be held invalid; the converse of the proposition by no means holds good, that because a guaranty is founded on a consideration, it must therefore be sustained. The consideration of the lease can no more support the guaranty than a consideration of any other kind, such as money, land, merchandise, or any other of the thousand objects of trade

and commerce. The case is precisely the same in this respect, as if the California Pacific Railroad Company, whose bonds were guaranteed, had paid or agreed to pay, to the Central Pacific Railroad Company for its guaranty, the sum of $500,000, or any other sum as a consideration. We thus see how fallacious is the argument that the latter company must be bound by its guaranty, because it had the power by statute, and by common law as well, to take a lease of another railroad, and because, in taking such a lease, a stipulation was inserted in the written instrument that the lessee should guarantee the bonds of the lessor. It seems hardly credible that such an argument could prevail with a learned court of last resort.

Two elements must always be looked to in ascertaining whether a contract is binding on a corporation: 1st, is there a legal and sufficient consideration; and 2d, is the contract within the power of the corporation to make; is it *intra vires* or *ultra vires?* as the contract of a corporation which is *intra vires*, may be worthless for the want of a consideration, so a contract having the most ample consideration must be pronounced invalid, if it be *ultra vires*. And as of entire contracts, so of each and every stipulation in a contract, a part of an agreement may be bad as *ultra vires*, while other portions of the agreement may be good as *intra vires*. The bad part may possibly have the effect of destroying the whole instrument; but the good part can never redeem the bad from condemnation, no matter how predominant the good may be.

The bonds issued by a railroad corporation possess no higher legal or moral obligation than any other indebtedness of the corporation; and if it be *intra vires* of another railroad corporation to guarantee the payment of such bonds, must not a like guaranty of any other indebtedness of the former company be *intra vires?*

A guaranty of any kind of indebtedness by a railroad corporation is not within the agency of the directors representing the stockholders. If it be, then two of such corporations might, as merchants sometimes do, mutually enter into engagements by which each shall become the surety of the other for any portion of their respective indebtedness. Suppose each one guarantees the bonds of the other —suppose each endorses the paper of the other—suppose they mutually become accommodation endorsers for each other—suppose that, in consideration of a few hundred dollars, one railroad company guarantees the paper of another like corporation for many millions

of dollars given in payment to the iron rollers, or to the contractors for constructing the road, or to the manufacturers of its cars, or builders of its depots; what then? are all these and the like guarantees to be upheld by the courts? No doubt it would be a great convenience, not to say benefit, to the directors individually in many cases, to have it understood that all such transactions would be sustained as legal; but whether it would subserve the interests of the stockholders as well, admits of grave doubts; and whether it would tend to foster and promote the true business interests of the country, admits of still greater doubts. The law will not permit the great barriers against fraud in the management by trustees or directors of the affairs of others to be broken down. It will not leave a pretext to corporations to commit a species of fraud by allowing the directors to turn the corporation into a broker for a consideration, whether in money or any other supposed benefit, by going outside of their legitimate duties to their own stockholders, and guaranteeing the obligations of another, and it may be, bankrupt corporation.

The California court lays great stress in its opinion on the clause in the California railroad statute, which, after the enumeration of the express powers of railroad corporations, adds: "And generally to possess all the powers and privileges for *the purpose of carrying on the business of the corporation*, that private individuals and natural persons now enjoy." But it seems as if the argument drawn from this clause is well disposed of by Mr. Justice McKinstry in his dissenting opinion in the same case. "This clause," he says, "gives no additional primary powers to the corporation. It follows after the enumeration of certain powers specifically conferred, and is but declaratory of the rule that powers incidental to the express powers conferred may be employed by a corporation. It is a legislative enunciation of the rule *always recognised by the courts*, that the implied or incidental powers which may be exercised by a corporation shall be ascertained by reference to the case of an individual upon whom should be conferred limited powers like those granted to the corporation by its charter. If the clause quoted, means more than this, what does it mean less than a grant to the corporation of every power which may be employed by an individual carrying on a private business for his personal emolument."

The foregoing quotation from the opinion of the learned dissent-

ing justice seems to be a complete answer to the argument of the court based on the clause of the statute referred to. If anything more were needed, it will be sufficient to refer to various passages in Green's Brice's Ultra Vires, where we shall find the same doctrine laid down in almost the very words of this clause of the statute (Green's Brice, p. 66, sect. 1, rule 1; Id. p. 66, note; Id. p. 72, rule 6; Id. pp. 78, 79); yet nobody ever supposed that the common law rule thus laid down, enlarged the express powers of a corporation. If a lessee railroad corporation has the power to guarantee the bonds of the lessor railroad corporation on the ground that it has by statute all the powers of a natural person, why must it not possess equal power to guarantee the bonds, contracts, and commercial paper of every other corporation or person, on the same ground of enjoying *all the powers of a natural person*? The rule is well settled that corporations have only the powers *expressly* granted and those which are *incidental* to such powers. What, then, is to be understood by incidental powers? An incidental power, the authorities say, is one that is *directly* and *immediately* appropriate to the execution of the specific power granted, and not one that has a *slight* or *remote* relation to it (see Green's Brice, p. 28, note; *Hood* v. *N. Y. & N. H. Railroad Co.*, 22 Conn. 1; *Curtis* v. *Leavitt*, 15 N. Y. 157; *Buffet* v. *Troy & Boston Railroad Co.*, 40 N. Y. 176); and a principal power is not to be construed to carry as an *incident* anything *not implied* in the principal, nor *appurtenant to it, and not possessed of a similar character*. *Beatty* v. *Knowles*, 4 Peters 152.

In the California case, the express and specific power is to lease. It can hardly be claimed that it is directly or immediately appropriate to the execution of a power to lease, that the lessee must guarantee the bonds, or commercial paper, or debts of the lessor. The relation which such a guaranty bears to the execution of such a statutory power is of the *slightest* and most *remote* character, in any view of it. In truth, no relation whatever exists, other than mere juxtaposition. Nor is it readily seen how a guaranty of bonds of a lessor by the lessee can be *incident* to, or *implied* in, the execution of the power to lease, or how the one is appurtenant to the other, or possessed of a similar character. The power to lease, and the power to guaranty, are as diverse as two powers can well be. The statute of California confers on railroad corporations the powers of natural persons no further than is necessary "for the purpose of

carrying on the business of the corporation." And surely the business of a leased railroad may be carried on without the lessee guaranteeing the railroad bonds of the lessor. And, if that may be, then such guaranty is not necessary for the purpose contemplated by the statute. If a railroad corporation is to possess all the powers of a natural person in the broadest acceptation of the term, wherein would be the use of legislation seeking to prescribe its powers? There would be breathed into it at the moment of its creation, the capacity to execute all the powers of a natural person.

We will now briefly refer to some of the decisions in which the question of *ultra vires* has been decided. And first, as to the English decisions. It has been held *ultra vires* for a railway company to guarantee to the shareholders of a steam packet company a dividend of five per cent. per annum upon their paid up capital, until the dissolution of the steam packet company (*Coleman* v. *Eastern Counties' Railway Company*, 10 Beavan 1); to engage or pledge its funds, or entangle its affairs upon a speculation that it may obtain parliamentary authority for doing acts which were beyond its powers at the time when they were done (*Logan* v. *The Earl of Courtown*, 10 Beavan 12–27); to apply its funds in promoting a bill in parliament or to incur any expense with view to improve the navigation of the river Dee, on the banks of which the railway company was empowered to erect wharves, &c., and take tolls (*Munt* v. *The Shrewsbury & Chester Railway Company*, 13 Beavan 1); to increase the number of shares as against a single dissentient shareholder, in a certain other railway corporation in which it was lawfully empowered to own a limited number of shares (*Salomons* v. *Laing*, 12 Beavan 339); to enter into a contract even with the assent of all the shareholders, involving the application of any portion of its funds to promote bills in parliament for the extension and improvement of another railway, even though such extension and improvement would benefit the first company (*The East Anglian Railway Co.* v. *The Eastern Counties Railway Co.*, 2 J. Scott 775); the same as in the case last cited (*McGregor* v. *The Official Manager of the Deal & Dover, &c. Railway Company*, 18 Q. B. 618, Exch. Ch.); to repair and improve the harbor of a town and to construct a branch line to such town in consideration of certain privileges of using the streets of the town for the railway track, and some other matters in addition (*The Caledonian & Dumbartonshire Junction Railway Company* v. *The Helensburgh*

Harbor Trustees, 2 Jurist N. S. 695, H. L.); to engage in the trade of coal, or any other business except that of working and maintaining and using the railway, as there is implied in an act of parliament a prohibition or a contract against ever engaging in any other business than that of a railway company (*Attorney-General* v. *Great Northern Railway Co.*, 6 Jur. N. S. 1006).

It will be noticed that the foregoing citations are, with but one exception, cases in which the principle of *ultra vires* has been applied to railroad corporations.

The American cases will be found even more direct and conclusive than the English. So utterly void does one of these decisions hold the guaranty of a corporation to be on the sole ground of lack of power to enter into the guaranty, that it was held that a corporation guarantor, having eventually paid the money in pursuance of the guaranty, could not recover it back from the principal debtor in a suit brought for that purpose (*Madison, &c., Co.* v. *Watertown, &c., Co.*, 7 Wis. 59).

Another decision in the same state with the case just cited holds that a railroad corporation cannot, even for the bona fide purpose of raising funds to accomplish the object for which it was created, engage in a distinct branch of business not expressly authorized by its charter: *Waldo* v. *Chicago, St. P. & F. Railroad Co.*, 14 Wis. 575.

In the United States, though it has been held otherwise in England, corporations in general cannot purchase, or hold, or deal in the stocks of other corporations, unless *expressly* authorized to do so: *Zabriskie* v. *C. C. & C. Railroad Co.*, 23 How. 381; *Mutual Savings Bank* v. *Meridian Agency Co.*, 24 Conn. 159; *Hodges* v. *Screw Co.*, 1 R. I. 322; *White* v. *Syracuse & Utica Railroad Co.*, 14 Barb. 559; *Berry* v. *Yates*, 24 Id. 199; *Conn. Mutual Life Ins. Co.* v. *C. C. & C Railroad Co.*, 41 Id. 9; *Talmadge* v. *Pell*, 7 N. Y. 348; *New York Exchange Co.* v. *De Wolf*, 5 Bos. 593; *Mayor* v. *Balt. & Ohio Railroad Co.*, 21 Md. 50; *Central Railroad Co.* v. *Collins*, 40 Ga. 582; *Sumner* v. *Marcy*, 3 Woodb. & Min. 105.

It is *ultra vires* for a corporation to assume the debt of another and issue a note in payment thereof (*State Bank* v. *U. S. Pottery Co.*, 34 Verm. 144); or to make or endorse accommodation paper (*Smead* v. *Indianapolis Railroad Co.*, 11 Ind. 104); or, to engage as *surety* for another in a business in which it has no interest (*Bank*

of Genesee v *Patchin Bank*, 3 Kern 309: *Central Bank* v. *Empire Stone Dressing Co.*, 26 Barb. 23; *Bridgeport Bank* v. *Same*, 30 Barb. 421; *Farmers' Bank* v. *Same*, 5 Bosw. 275; *Morford* v. *Farmers' Bank*, 26 Barb. 568).

So also it is *ultra vires* for one railroad company to unite with another like company, and both conduct their business under one management (*Pierce* v. *Madison & Ind. Railroad Co.*, 21 How. 441); or to run a line of steamboats in connection with its road (case last above cited, and *Hoagland* v. *The Hannibal & St. Jo. Railroad Co.*, 39 Mo. 451; *Vandall* v. *S. S. F. Dock Co.*, 40 Cal. 88, per CROCKETT, J.); or to mortgage its franchise and other property (*Richardson et als.* v. *Sibley*, 11 Allen 65); or, to engage in banking (*The People* v. *River Raisin & Lake Erie Railroad Co.*, 8 Cooley 390).

The case of *Railroad Co.* v. *Howard*, 7 Wall. 392, does not militate against the foregoing decisions. This case decides that a railroad company may lawfully guarantee the payment of city and county bonds which had been issued to it pursuant to statute, and of which it was thus the absolute owner. Mr. J. CLIFFORD gives the reason for this in a few words in his opinion (p. 412), thus, "Undoubtedly they (railroad companies) may receive such bonds under the laws of the state, and if they may receive them, they may transfer them to others; they may, if they deem it expedient, guarantee their payment as the means of augmenting their credit in the market and saving the corporation from the necessity of issuing their own bonds to accomplish the same purpose." The difference between this case and the California case is the same as between guaranteeing the value of one's own property and that of some third person. A learned court of last resort ought to be able to discriminate between cases so widely different as in the California case from that of *Railroad* v. *Howard*, just cited. A railroad corporation, like any other, may as incident to its business, receive notes and bills; and what it can receive it can transfer on such terms as it deems proper (*McIntire* v. *Preston*, 5 Gilm. 48; *Lucas* v. *Pitney*, 3 Dutch. 221; *Hardy* v. *Merriweather*, 14 Ind. 203; *Frye* v. *Tucker*, 24 Ills. 180; *Buckley* v. *Briggs*, 30 Mo. 452).

It must be borne in mind that directors of a corporation are in the nature of agents for the body of stockholders as represented by the corporation. They do not act merely for themselves: Angell & Ames on Corp. 305–6; Green's Brice's Ultra Vires, ch. iv. sect.