each department; and that it does not relate to the law of the 3d of March 1813, for the better organization of the general staff of the army. This appears to have been the construction given to the order by the war department, as none of the staff officers created by that act, with exception of the plaintiff in error, ever made a claim for double rations; and the claim under consideration was disallowed by the accounting officers of the war department.

During the time the adjutant and inspector-general was stationed at the seat of government, comprehending the space for which double rations are claimed, it does not appear, that there was any recognised commanding officer. The staff officers, then stationed at the seat of government, were subject to the authority of the secretary of war, and under his direct and exclusive control.

It is the opinion of the court, that the claim of the plaintiff in error, is not sanctioned by the act of the 16th of March 1802, nor by the regulations and orders of the executive department, issued in pursuance of that law. The judgment of the circuit court is affirmed, with costs.

Judgment affirmed.

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*299] *Mechanics' Bank of Alexandria, Appellants, *v.* Louisa and Anna Maria Seton, Appellees, by their Guardian, etc.

Chancery.—Specific performance.—Parties.—Depositions.—Trustees.—Notice.—Transfer of interest.

Although it seems to be a general rule, that a court of chancery will not decree specific performance of contracts, except for the purchase of lands, or things which relate to the realty and are of a permanent nature, and that where contracts are for chattels, and compensation can be made in damages, the parties must be left to their remedy at law; yet, notwithstanding this distinction between personal contracts for goods, and contracts for lands, there are many cases to be found, where specific performance of contracts relating to personalty, have been enforced in chancery; but courts will weigh with greater nicety, contracts of this description, than such as relate to lands.[1] p. 305.

Although an objection, for want of proper parties, may be taken at the hearing, yet the objection ought not to prevail, upon the final hearing of an appeal; except in very strong cases, and where the court perceives a necessary and indispensable party is wanting. p. 306.

All persons materially interested in the subject of a suit in chancery, ought to be made parties, either plaintiffs or defendants; but this is a rule established for the convenient administration of justice, and is more or less within the discretion of the court; and it should be restricted to parties whose interests are in the issue, and to be affected by the decree; the relief granted, will always be so modified, as not to effect the interests of others.[2] p. 306.

The cross-examination of a witness by the opposite party, is considered as a waiver of exceptions to the regularity of the deposition. p. 307.

By the rules of this court, "in all cases of equity and admiralty jurisdiction, no objection shall be allowed to be taken to the admissibility of any deposition, deed, grant or other exhibit, found

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[1] See Roundtree *v.* McLain, Hempst. 243; Ross *v.* Union Pacific Railway Co., 1 Woolw. 26; Sunbury and Erie Railroad Co. *v.* Cooper, 33 Penn. St. 278; Dungan *v.* Dohnert, 11 W. N. C. 330 n.; Sank *v.* Union Steamship Co. 5 Phila. 499; Philadelphia and Reading Railroad Co. *v.* Stichter, 11 W. N. C. 325; Foll's Appeal, 91 Penn. St. 434; White *v.* Schuyler, 31 How. Pr. 38.

[2] The circuit court cannot make a decree, in the absence of a party whose right must necessarily be affected by it, and the objection may be taken at any time, upon the hearing, or in the appellate court. Coiron *v.* Millaudon, 19 How. 113.

in the record, as evidence; unless objection was taken thereto in the court below; but the same shall otherwise be deemed to have been taken by consent." p. 307.

It is not a correct construction of the 3d and 21st sections of the act of congress, incorporating the Mechanics' Bank of Alexandria, that the stock of the bank shall be deemed to belong to the persons in whose names it stands upon the books of the bank, and that the bank is not bound to recognise the interests of any *cestui que trust*, and may refuse to permit the stock to be transferred, whilst the nominal holder is indebted to the bank. p. 308.

Full notice of a trust, draws after it all the consequences of a full declaration of the trust, as to all persons chargeable with such notice. p. 309.

It is well settled in equity, that all persons coming into possession of trust property, with notice of the trust, shall be considered as trustees; and bound, with respect to that special property, to the execution of the trust. p. 309.

A subsequent board of directors of a bank, is to be considered as knowing all the circumstances communicated, or known, to a previous board. p. 309.

It is a well settled rule, that a court is not bound to take notice of any interest acquired in the subject-matter of the suit, pending the dispute. p. 310.

*300] *APPEAL from the Circuit Court of the District of Columbia, for the county of Alexandria. The suit was instituted on the chancery side of the circuit court, by the appellees, complainants in that court, against the Mechanics' Bank of Alexandria, to compel them to permit a transfer to be made of $3000 of the capital stock of the bank, standing in the name of Adam Lynn, and held by him as trustee of the complainants.

The bill charged, that the complainants' grandfather, John Wise, to make provision for the support of his children and grandchildren, had made sale, in 1815, of an establishment called the City Tavern, at the price of $14,000; of which $10,000 were paid by the transfer of that amount of United States six per cent. stock, made by the purchasers to the said Adam Lynn, the nephew and agent of the said John Wise, for his use; that the residue, $4000, was paid to the said Adam, in money, to be by him invested in stocks, for the use, and subject to the control, of the said John Wise. That out of this sum, the said Adam purchased from one James Sanderson $3000 of the capital stock of the bank, which was in like manner transferred to him; and that although no trust was in terms declared, in the transfer of either of the said stocks, they were both avowedly purchased and held by the said Adam, in his character of agent and trustee for Wise. That on the 29th of April 1815, the said John executed a deed to the said Adam, by which he conveyed to him the said stocks, described as standing in the said Adam's name, in trust for use of the said John, during his life, as to the dividends, and after his death, then, as to the bank-stock, to the use of the complainants; and that he had since died. That when the purchase of the bank-stock was made, and when it was transferred to the said Adam, it was well known to the president and directors of the bank, that the purchase was made, and the transfer received by him, in his fiduciary character. That the bank-stock was purchased on the 11th of February 1815, from one James Sanderson, at a small advance; and on that day, a payment of $720 was made in part of the purchase-money, and as Sanderson had obtained a discount from the bank, on the pledge of all the stock he held in it, it became necessary to know on what terms the board of directors would permit a transfer. That this application was accordingly made by the said Adam, who distinctly stated that the purchase was to be made for the benefit of the said John Wise, was to be paid for in his funds, and was to be transferred to the said Adam, for his use. He further proposed to the board, as an

accommodation to himself, that he should be allowed to discharge a part of the purchase-money to Sanderson, by assuming on himself a part of
*301] *Sanderson's debt to the bank, and continuing to that extent, the lien the bank then held on the stock to be transferred. That this proposal was rejected, distinctly on the ground, that the board must consider the said John Wise as the owner of the stock. That the said Adam then paid $2400 to the bank, in discharge of the said Sanderson's stock debt; which being done, the transfer was permitted and on the 15th of March 1815, was made to the said Adam, as trustee, though the trust was not declared in the transfer. That it was, however, officially made known, previously to the transfer, and was afterwards frequently a subject of conversation amongst the directors, at the board. That the complainants having expressed to the said Adam, their desire that he would transfer their stock to their guardian, he offered himself ready to do so; but that on application at the bank, permission was refused; on the allegation, that he was a debtor to the bank, and that it held a lien for that debt on all its stock which stood in his name. That the said Adam was proprietor of other stock in the bank, in his own right, to the amount of $18,014, and had a discount on it to the amount of $15,360, which was little more than the sum permitted to be loaned on stock security, by a by-law of the bank—that is to say, four-fifths of the amount of such stock. The bill further charged, that when the said Lynn's debt to the bank was contracted, he was one of the directors; and that by the ninth article of the charter of incorporation, the president and directors were prohibited from receiving discounts or loans on accommodation, beyond $5000. That all the loans to him were of that description; and that so far as they exceeded $5000, being in violation of the charter, could create no lien under it. The bill, after propounding special interrogatories, corresponding with the previous allegations, prayed that the bank might be compelled to open its transfer book, and to permit Lynn to transfer the stock; and for general relief.

The answer denied that the board of directors had notice of the fiduciary character in which Lynn held the stock claimed by the complainants. It averred, that at the time the answer was put in, there was no stock standing in his name, on the books; the whole of the stock which stood in his name, having been applied to the payment of his debts to the bank, under articles of agreement between him and the cashier. It admitted, that Lynn had received accommodation loans on stock, to an amount exceeding $5000, but asserted, that loans of that description did not fall within the prohibition
*302] of *the charter; but if they did, it could not affect the bank's right, claiming as purchasers, under the contract before mentioned.

The purchase of the stock by Lynn, in his fiduciary character, and the knowledge of that fact by the board of directors, officially and individually, was claimed to be fully proved by the testimony of the said Adam Lynn, a director of the bank, and by that of Robert Young, president, and Daniel McLeod and John Gird, directors. The special agreement under which the respondents claimed the stock, appeared to have been entered into on the 30th day of May 1821, nearly a year after the bill had been filed. By this contract, Lynn agreed at once to transfer all his stock, except that claimed by the complainants; for the transfer of this, he gave a power of attorney,

which by agreement was not to be executed by a transfer, until the decision of the court on the respondents' claim of lien in this suit.

The circuit court, on hearing, decreed a transfer; from which decree, this appeal was entered.

Swann and *Wirt*, for the appellants.—The Mechanics' Bank of Alexandria did not know of the trust; this stock stood in the name of Adam Lynn, and they had no notice of any other ownership in it; no trust was declared upon the books of the bank: and by the provisions of the charter, the persons who appear as stockholders upon the books, are the only stockholders. By the charter, no one who is a debtor to the bank, can transfer stock owned by him, the bank having a prior lien on the same for their debt.

The claim of the plaintiffs below, is resisted on the followings grounds:—

1. Adam Lynn made a special agreement to transfer this stock to the bank.

2. Adam Lynn was a debtor to the bank, and this stock standing in his name, on the books of the bank, without a declaration of the trust, was properly retained as a security for the debt due by him.

3. The subject in controversy in this case, is not proper for the decision of a court of chancery. There cannot be a specific performance decreed by this court, as the stock cannot be designated, or specially described. 1 Madd. Chan. 403; 1 P. Wms. 570.

4. By the charter of the bank, the only evidence of ownership of stock, is the books of the bank. In the case of a corporation existing under a law, the forms prescribed by the law must be complied with. 17 Mass. 1; 2 Bl. Com. 127.

5. In this case, it was considered by the complainants, that *Adam Lynn should be a party to the bill, and a rule was taken on him to [*303 appear; but the court went on to a hearing and decision of the suit, without his having been made a party The court will, therefore, having this fact upon the proceedings *ex officio*, turn the parties out of court. *Duguid* v. *Patterson*, 4 Hen. & Munf. 445.

Jones and *Taylor*, for the appellees.—1. As to the specific lien claimed by the appellants, under a power of attorney, given by Adam Lynn. It was granted after the bill of the complainants was filed, and is, therefore, of no value. The transfer, by the power of attorney, was also a violation of the agreement, under which it was given.

But, if this is not an answer to the claim of specific lien; the transfer of the stock, by power of attorney, was made, with notice of the right of the complainants.

2. If it does not appear, that the debt due by Adam Lynn to the bank, arose after the purchase of this stock; and therefore, no new credit was given upon this stock. The trust was known to the board of directors, when the stock was transferred by Sanderson to Lynn; and from that time, they dealt with the trustee, subject to the trust. A corporation, by the decisions of this court, is like an individual, in transactions of this kind; and the succeeding board of directors were bound by the circumstances which occurred when the trust commenced.

3. The bank were the trustees of the complainants, either by an original contract, or as trustees, resulting from the payment of the purchase-money for the stock, out of their funds. 2 Ves. & Beam. 388; 5 Ves. 43; 1 P. Wms. 112; 1 Ves. 275; 10 Ibid. 360; 1 Ves. jr. 32, 42. As to constructive notice, were cited, 8 Com. Dig. 363, 15th div.; 2d div. 10, 20, 21, 15, 385.

4. This is the case of trust, which is in the *peculium* of a court of chancery; and the number of shares which are claimed, is a sufficient designation of the property. The original shares bought of Sanderson, remained in the name of Adam Lynn, when the bill was filed.

5. The provisions of the charter, relative to evidence of ownership of stock, can only apply, when parties are the holders of stock, in their own right. The practice of the bank to hold stock as mortgagees, shows a different construction of the charter, by the bank itself, from that which is claimed in this case.

6. The rules of the court of chancery are, that all persons who were parties to the transaction, and all who must be before the court, for the purposes of complete justice in the case, must be made parties. It was not deemed necessary to make Adam Lynn a party, as he was willing to do all
*304] that the *court would have required from him; and it was the bank only, who, having the control of the stock, could make the transfer, sought by the complainants.

Thompson, Justice, delivered the opinion of the court.—The appellees, who were the complainants in the court below, filed their bill against the Mechanics' Bank of Alexandria, setting out their right to $3000 of the capital stock of that bank, which was standing in the name of Adam Lynn; but which was avowedly purchased and held by him, as trustee for John Wise, the grandfather of the complainants, and from whom they derived their right and title to the stock in question. That they were desirous of having their stock transferred to their guardian, which the trustee, Adam Lynn, was willing to do, and offered to transfer the same; but that, on application to the bank, permission was refused, on the allegation, that Adam Lynn was a debtor to the bank, and that it held a lien for that debt, on all the stock of the bank which stood in his name. The bill alleges, that when the stock was purchased by Adam Lynn, for John Wise, and transferred to him upon the books of the bank, it was well known to the president and directors, that the purchase was made by, and transferred to, Lynn, in his character of trustee for John Wise, although the trust was not expressed in the transfer. The bill prays, that the bank may be compelled to open its transfer-book, and permit Adam Lynn to transfer the $3000, in stock, to the said Louisa and Anna Maria Seton, or to their guardian, Nathaniel S. Wise.

The bank, by its answer, denies that the board of directors knew, or had any notice, that Adam Lynn held the stock as trustee; but alleges, that all the stock standing upon the books of the bank, in the name of Adam Lynn, was considered by the board of directors as his own stock: and avers, that at the time the answer was put in, there was no stock standing in his name on the books, but that the whole of it had been applied by the bank to the payment of his debts to it; according to articles of agreement between him and the cashier of the bank. The bank also sets up the right, under its

charter, to hold the stock, for the payment of Lynn's debt; but had, under the agreement made with the cashier, as before mentioned, become the purchaser of the stock, for a full and fair consideration; without any knowledge that the complainants had any interest in the same.

The court below, upon the bill, answer, and exhibits and proofs taken in the cause, decreed that the bank should cause its transfer-book to be opened, and permit Adam Lynn to *transfer the stock to Nathaniel S. Wise, guardian of the complainants, to be by him held in trust for their use. From this decree, there is an appeal to this court, and the following points have been made, upon which a reversal of that decree is claimed. 1. That the subject-matter of the bill is not properly cognisable in a court of chancery; but that the remedy is at law, and the party to be compensated in damages. 2. That there is a want of proper parties. 3. That upon the merits, the bank has a right to hold and apply the stock, in payment of Adam Lynn's debt to it. [*305

With respect to the first objection, it has been said, that a court of chancery will not decree a specific performance of contracts; except for the purchase of lands or things that relate to the realty, and are of a permanent nature; and that, where the contracts are for chattels, and compensation can be made in damages, the parties must be left to their remedy at law. But notwithstanding this distinction between personal contracts for goods, and contracts for lands, is to be found laid down in the books, as a general rule; yet there are many cases to be found, where specific performance of contracts, relating to personalty, have been enforced in chancery; and courts will only weigh with greater nicety, contracts of this description, than such as relate to lands.

But the application of this distinction to the present case, is not perceived. If this had been a bill, filed against the bank, to compel a specific performance of any contract entered into with it, for the sale of stock, it might then be urged, that compensation for a breach of the contract, might be made in damages; and that the remedy was properly to be sought in a court of law. But the bill does not set up any contract between the complainants and the bank; nor does it seek a specific performance of any express contract whatever, entered into with the bank. It only asks, that the bank may be compelled to open its transfer-book, and permit Adam Lynn to transfer the stock. By the charter and by-laws of the bank, such transfer could only be made upon the books of the bank; and it was by their consent alone, that this could be done. Although it might be the duty of the bank to permit such transfer, it would be difficult to sustain any action at law, for refusing to open its books, and permit the transfer. Nor have the appellants shown such a claim to the stock, as to authorize the court to turn the appellees round to their remedy at law, against Lynn, admitting they might have it. At all events, the remedy at law is not clear and perfect; and it is not a case for compensation in damages, but for specific performance; which can only be enforced in a court of chancery.

*2. The second objection, that Adam Lynn ought to have been made a defendant, would seem to grow out of a misapprehension of the object of this bill, and the specific relief sought by it. It ought to be observed here, preliminarily, as matter of practice, that although an objection for want of proper parties may be taken at the hearing; yet the ob- [*306

jection ought not to prevail, upon the final hearing on appeal; except in very strong cases, and when the court perceives that a necessary and indispensable party is wanting. The objection should be taken at an earlier stage in the proceedings, by which great delay and expense would be avoided.

The general rule, as to parties, undoubtedly is, that when a bill is brought for relief, all persons materially interested in the subject of the suit, ought to be made parties, either as plaintiffs or defendants; in order to prevent a multiplicity of suits, and that there may be a complete and final decree between all parties interested. But this is a rule established for the convenient administration of justice, and is subject to many exceptions; and is, more or less, a matter of discretion in the court; and ought to be restricted to parties, whose interest is involved in the issue, and to be affected by the decree. The relief granted, will always be so modified, as not to affect the interest of others. 2 Madd. Ch. 180; 1 Johns. Ch. 350.

Where was the necessity, or even propriety, of making Lynn a party? No relief is sought against him. The bill expressly alleges that he was perfectly willing to make the transfer; but permission was refused by the bank. There is no allegation in the bill, upon which a decree could be made against Lynn; and it is a well-settled rule, that no one need be made a party, against whom, if brought to a hearing, the plaintiff can have no decree. 2 Madd. Ch. 184; P. Wms. 310, note 1. The contest, with respect to the right to the stock, is between the complainants and the bank; and it cannot be necessary to bring Lynn into the suit, in order to determine that question. He claims no right to the stock; and if the bank has established its right to hold it, for the payment of Lynn's debt, the complainants have no pretence for requiring the books of the bank to be opened, and to permit the transfer to be made, as prayed in the bill. The bank cannot compel the complainants to bring Lynn before the court, as a defendant, for the purpose of litigating questions between themselves, with which the complainants have no concern. No objection to the decree can, therefore, be made for want of proper parties.

3. The remaining inquiry is, whether the bank is entitled to hold this stock as security, or apply it in payment of Lynn's *debt; either by virtue of its charter, or under the agreement between him and the cashier? *307]

An objection, however, has been made, preliminarily, to this court's noticing the deposition of Adam Lynn; because, as is alleged, it was taken after the cause was set down for hearing, and without any order of the court for that purpose. Admitting this to have been irregular, no objection appears to have been made in the court below, to the reading of the deposition; and had it been made, it ought not to have prevailed even there; because the defendants cross-examined the witness, which would be considered a waiver of the irregularity. But at all events, the objection cannot be listened to here, according to the express rule of this court (February term 1824), which declares, "that in all cases of equity and admiralty jurisdiction, no objection shall be allowed to be taken to the admissibility of any deposition, deed, grant or other exhibit, found in the record as evidence; unless objection was taken thereto, in the court below, and entered of record; but the same shall otherwise be deemed to have been admitted by consent."

It is deemed unnecessary to enter into an examination of the proofs in the cause, to show that, in point of fact, the stock in question was held by

Lynn, in trust for the complainants; and that this fact was known to the board of directors, when it was transferred to him by James Sanderson. The evidence establishes these points, beyond any reasonable ground of doubt; and the real question is, whether the bank, with full knowledge of the board of directors, that this stock was not the property of Lynn, but held by him in trust for the appellees; can assert a lien upon it for the private debt of Lynn, either under the charter, or the agreement made with Chapin, and the transfer made by him to the bank.

The equity of the case must strike every one very forcibly, as being decidedly with the appellees. And unless the claim of the bank can be sustained, by the clear and positive provisions of its charter, the decree of the court below ought to be affirmed. This claim is asserted, under the provisions of the 3d and 21st sections of the act of congress, incorporating the bank. The third section, after providing for the opening the subscription for the stock, and pointing out the manner in which the excess shall be reduced, in case the subscription shall exceed the number of shares allowed to be subscribed, has this proviso: "Provided always, that it is hereby expressly understood, that all the subscriptions, and shares obtained in consequence thereof, shall be deemed and held to be for the sole and exclusive use and benefit of the persons, *copartnerships or bodies politic, subscribing, or in whose behalf the subscriptions, respectively, shall be [*308 declared to be made, at the time of making the same; and all bargains, contracts, promises, agreements and engagements, in any wise contravening this provision, shall be void." The 21st section declares, "that the shares of the capital stock, shall be transferrible at any time, according to such rules as may be established, by the president and directors; but no stock shall be transferred, the holder thereof being indebted to the bank, until such debt be satisfied; except the president and directors shall otherwise order it." These sections, when taken together, have been supposed to require a construction, that the stock shall be deemed to belong to the person, in whose name it stands upon the books of the bank; and that the bank is not bound to recognise the interest of any *cestui que trust;* and may refuse to permit the stock to be transferred, whilst the nominal holder is indebted to the bank.

This construction, however, in the opinion of the court, cannnot be sustained. The third section must clearly be understood as applying to the first subscription for the stock; and was intended to prevent one person subscribing for stock in the name of another, for his own benefit. The construction of the 21st section will depend upon the interpretation to be given to the word *holder*, as there used. This term is not, necessarily, restricted to the nominal holder. It will admit of a broader and more enlarged meaning; and may well be applied to the party, really and beneficially interested in the stock. And there can be no good reason why it should not be so applied, when the bank is fully apprised of all circumstances in relation to the stock, and knows who is the real holder thereof. This provision was intended to put into the hands of the bank, additional security for debts due from stockholders. But when it is known, that the person in whose name the stock stands, has no interest in it, he will acquire no credit upon the strength of such stock; and that such was the understanding of the bank, in this case, is clearly shown by the evidence. For, when the transfer was made to Lynn, he asked to

have the discount continued to him, which Sanderson, from whom he purchased, had upon the stock. But this was refused, on the ground, that the stock did not belong to Lynn, but to Wise. There is no evidence in the cause, to show, that Lynn's debt was contracted with the bank, after the stock was transferred to him; or that he has, in any manner, obtained credit with the bank on account thereof; but the contrary is fairly to be understood from the proofs. Nor does the bank allege the *insolvency *309] of Lynn; or that it has not a full and complete remedy against him, without having recourse to this stock.

To permit the bank, under such circumstances, to avail itself of this stock, to satisfy a debt contracted without any reference to it as security, and with full knowledge that Lynn held it in trust for the complainants, would be repugnant to the most obvious principles of justice and equity. Suppose, the trust had been expressly declared upon the transfer-book of the bank; would there be the least color of sustaining the claim now set up? And yet Lynn would be the legal holder of the stock, in such case, as much as in the one now before the court. Full notice of a trust draws after it all the consequences of an express declaration of the trust, as to all persons chargeable with such notice. It is a well-settled rule in equity, that all persons coming into possession of trust property, with notice of the trust, shall be considered as trustees, and bound, with respect to that special property, to the execution of the trust. 2 Madd. Ch. 125; 1 Sch. & Lef. 262. Notice to an agent is notice to his principal. If it were held otherwise, it would cause great inconvenience; and notice would be avoided in every case, by employing agents. 2 Madd. Ch. 326. Notice to the board of directors, when this stock was transferred to Lynn, that he held it as trustee only, was notice to the bank; and no subsequent change of directors could require a new notice of this fact. So that, if the bank had sustained any injury, by reason of a subsequent board not knowing that Lynn held the stock in trust; it would result from the negligence of its own agents, and could not be visited upon the complainants. But no such injury is pretended. From anything that appears to the contrary, Lynn is fully able to pay his debt to the bank.

The case of the *Union Bank of Georgetown* v. *Laird*, 2 Wheat. 390, has been supposed to have a strong bearing upon the one now before the court. But the circumstances of the two cases are very dissimilar. In the former, Patton was the real, as well as the nominal holder of the stock, when he contracted his debt with the bank, and when his acceptance fell due, and the lien of the bank, no doubt, attached upon the stock; and this was previous to the assignment of it to Laird; and the question there was, whether the bank had done anything which ought to be considered a waiver of the lien. But in the present case, Lynn never was the real owner of the stock, and the bank well understood that he held it as trustee, and no lien for Lynn's debt ever attached upon it. The appellants cannot, therefore, under any provisions in their charter, apply this stock to their own use, for the debt of *Lynn, to the prejudice of the rights of the known [*310 *cestuis que trust.*

Nor is there any ground upon which the claim of the bank can be sustained, under the agreement made between Lynn and Chapin, the cashier, and the transfer thereof, made by the latter to the bank. If the bank, as

has already been shown, was chargeable with the knowledge that Lynn was a mere trustee, it could acquire no title from him, discharged of the trust; and if necessary, might itself be compelled to execute the trust. Nor has the bank any title to this stock, under the transfer made by Chapin. This was done, without any legal authority, being several months after Lynn had revoked the power of attorney, under which the transfer was pretended to be made; and with full knowledge that Lynn was not the owner of the stock.

But another and complete answer to the whole of this arrangement between Chapin and Lynn, is, that it was made long after the bill in this case was filed; and it is a well-settled rule, that the court is not bound to take notice of any interest acquired in the subject-matter of the suit, pending the dispute. The decree of the court below, must accordingly be affirmed, with costs.

Decree affirmed.

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*Robert Barry, Plaintiff in error, *v.* Thomas Foyles. [*311

Variance.—Declarations of partners.—Pleading.

The defendant in error had sued out an attachment, under the law of Maryland, against Robert Barry, and had filed an account against James D. Barry, said to have been assumed by Robert Barry, the plaintiff in error; Robert Barry appeared, gave special bail, and discharged the attachment; the plaintiff below, then filed a declaration in *indebitatus assumpsit* "for money had and received," and "for goods sold and delivered," to which Robert Barry pleaded the general issue; the parties went to trial, and a verdict and judgment were rendered for the defendant in error.

The court attaches no importance to the variance between the account filed when the attachment issued, and the declaration filed after the attachment was dissolved by the entry of bail and the appearance of the defendant; the defendant having pleaded to the declaration, the cause stood as if the suit had been brought in the usual manner, and no reference can be had to the proceedings on the attachment. p. 315.

Where the general agent of parties carrying on business in a tan-yard, instead of a journal of hides received for the parties from day to day, gave, at considerable intervals, certificates of the total amount of hides received from the last preceding settlement, up to the periods when the certificates bore date; such certificates are equally binding, as certificates detailing the separate transactions of each day; and may be read in evidence to charge the parties, whose agent the person giving the certificates was. p. 316.

The principle is, that a contract made by copartners is several as well as joint, and the *assumpsit* is made by all and by each; it is obligatory on all, and on each of the partners. If, therefore, the defendant fails to avail himself of the variance in abatement, when the form of his plea obliges him to give the plaintiff a proper action; the policy of the law does not permit him to avail himself of it, at the time of trial. p. 317.

The declaration in an action against one partner only, never gives notice of a claim being on a partnership transaction; the proceeding is always as if the party sued was the sole contracting party; and if the declaration were to show a partnership contract, the judgment against the single partner could not be sustained. p. 317.

Where the suit was brought upon a partnership transaction, against one of the partners and the declaration stated a contract with the partner who was sued, and gave no notice that it was made by him with another person, evidence of a joint *assumpsit* may be given, to support such a declaration;[1] the want of notice has never been considered as justifying an exception to such evidence at the trial. p. 317.

Error to the Circuit Court of the District of Columbia, for the county of Washington. In the circuit court, the defendant in error issued an

[1] Moore *v.* Bank of the Metropolis, 13 Pet. 311; Gay *v.* Cary, 9 Cow. 44; Collins *v.* Smith, 78 Penn. St. 423.