When that case, however, occurs in this court, it will be decided; and we now merely remark that, from our examination of most of the cases in the common-law reports, upon the facts of those cases, we have been brought to the conclusion that there is no rule of general application as to when the consignor or consignee should bring the suit at common law, but that it will always be important to consider in whom the right of property, and sometimes in whom the right of possession, was vested at the time of the breach of the contract or neglect of duty which is complained of.

We direct the affirmance of the decree from which this appeal was taken.

Mr. Justice NELSON dissented.

THE UNITED STATES, PLAINTIFFS IN ERROR, *v.* THE CITY BANK OF COLUMBUS.

Where the cashier of a bank wrote to the Secretary of the Treasury, saying that the bearer of the letter was authorized to contract for the transfer of money from New York to New Orleans, and such a transaction was not within the scope of the powers of the cashier, nor authorized by the directors, the bank was not bound to reimburse the money which the Secretary of the Treasury advanced.

THIS case was brought up by writ of error from the Circuit Court of the United States for the southern district of Ohio.

The facts of the case and also the instructions given to the jury upon the trial are all set forth in the opinion of the court.

It was argued by *Mr. Hull* and *Mr. Black* (Attorney General) for the United States, and by *Mr. Stanbery* for the defendant.

The Attorney General contended that it might be true that the cashier had no power to make the appointment, yet the directors had such power, and the cashier's letter may fairly

be considered as a certificate that the appointment had been legally made; because, if the directors had appointed Miner, the cashier would have written just such a letter as he did write. Amongst other illustrations of this principle was the following:

If it were true that the appointment of an agent by a corporation must be evidenced by an entry on the minutes, or by any other writing, then it might plausibly be urged that the cashier or other certifying officer has only the power of certifying to a copy of such record or writing. But there is no such rule of law.

In the Bank of the United States *v.* Dandridge, (12 Wheat., 64,) it was distinctly decided by this court that the acts of a corporation, *though not reduced to writing*, are valid and binding, and may be proved *aliunde*. It is true that this doctrine did not command the assent of Chief Justice Marshall, who, in an able dissenting opinion, maintained the contrary; but it is now well-established law. (See Angell and Ames on Corp., sec. 284; Conro *v.* Port Henry Iron Company, 12 Barbour Sup. Ct. Reps., 53; Burgess *v.* Pue, 2 Gill, 287; Richardson *v.* St. Joseph Iron Company, 5 Blackford, 148; Badger *v.* Bank of Cumberland, 26 Maine, 435; Elysville Manufacturing Co., *v.* Okisko Company, 1 Md. Chy. Dec., 398.)

These authorities conclusively establish that, unless the charter provides otherwise, (as in this case it does not,) the appointment of an agent need not be in writing, or entered upon the minutes, but may be by parol, and provable like other facts.

But if this be so, there is no foundation for the assumption that the cashier can only certify the agency by copying the record of the appointment, for *non constat* that there is any record. And no custom of this bank is shown to the contrary. Even if it had been, it could have no effect, unless the Secretary of the Treasury had notice of it; but, in fact, the cashier testifies that meetings of the board were held *not* entered on the minutes.

We have thus far shown—

1st. That the directors had the power to appoint an agent to make this contract on behalf of the bank.

2d. That the appointment of such agent need not be entered on the minutes, or reduced to writing.

3d. That the cashier is the proper officer to certify the fact of such appointment.

But the act of the cashier, within the scope of his duties, is the act of the bank. (Badger *v.* Cumberland, 26 Maine, 435; Story Agency, sec. 114; Angell and Ames Corp., sec. 300.)

It matters not that the thing certified was not true in fact. A principal is bound by the false and fraudulent representations of his agent in the scope of his authority. (Story Agency, sec. 139; ib., sec. 452.)

The next proposition is, that the bank having, through their cashier, asserted that Mr. Miner was agent, and the Secretary of the Treasury having acted on that information, the bank is now estopped to deny it.

The doctrine of estoppel *in pais* is thus distinctly stated by Lord Denman in Pickard *v.* Sears, (6 Ad. and Ellis, 469; 33 E. C. L. Reps., 117:)

"But the rule of law is clear, that where one, by his words or conduct, wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring, against the latter, a different state of things as existing at the same time."

This doctrine is recognised by all courts of the common law. (See Brown *v.* Wheeler, 17 Conn., 353; Carpenter *v.* Stillwell, 12 Barbour Sup. Ct. Reps., 136.)

This doctrine applies to corporations as fully as to individuals. (Angell and Ames on Corp., sec. 238, p. 232.)

In Lovett *v.* German Reformed Church, (12 Barbour Sup. Ct. Reps., 81,) the court held the corporation estopped by the acts of acting trustees, though not rightfully in office.

In Bank of Genesee *v.* Patchin Bank, (3 Kernan's Reps., N. Y., p. 317,) the same doctrine is recognised.

But a corporation can do acts, or make declarations, in no other way than through its officers and agents. Therefore a corporation will be estopped by the acts or declarations of its officer or agent, acting in the sphere of his authority,

in all cases where an individual would be estopped by his own.

Applying the above rules to this case, we find every ingredient mentioned by Lord Denman as required to make an estoppel.

This bank, through the written certificate of their cashier, he being the officer empowered by the usage of banks to certify its doings, has wilfully caused the Secretary of the Treasury to believe that Miner was authorized by the bank to contract for the transfer of funds. The Secretary was thereby induced to act on that belief, and to place in the hands of said Miner $100,000, to be transferred to New Orleans. The bank is therefore *concluded* from averring that Miner was not at that time its agent.

The case is therefore with the plaintiff upon the law.

Mr. Stanbery, for the defendant in error, contended that it was not within the power of a cashier, in virtue of his office, to make such a contract, or rather to authorize another to make it, and referred to 8 Wheaton, 360; 6 Peters, 59; 12 Eng. Law and Eq. Rep., 389; 1 Selt. N. Y. Rep., 332.

The nature and importance of the contract was such as to require the judgment of the directors. This is altogether beyond the usual business of buying and selling exchange. Neither the charter nor the by-laws gave this power to the cashier.

5. It has been argued that the letter of Moodie purports to be a certificate that Miner was duly authorized by the bank; and as the cashier is the certifying officer of the acts of the board, the bank is estopped from denying the truth of this certificate.

In the first place, this letter contains no certificate of an authority *given by the board;* but if it did, nay, if it purported to copy a resolution of the board, and it should appear there was no such resolution, the bank would not be bound.

The argument on the other side would indirectly make the principal liable in all cases where the agent clothes his unauthorized act with a false representation of authority from the principal.

This subject is well discussed in the Mechanics' Bank *v.* The New York and New Haven R. R. Co., 3 Kernan, 636.

Mr. Justice WAYNE delivered the opinion of the court.

The only question arising on this record is, whether the court erred in so much of the charge to the jury as is set out in the bill of exceptions. Objections were taken in the course of the trial to testimony, but no exceptions were taken to the rulings of the court upon them. The declaration in the case contained two counts—one of them alleging that a contract had been made between the City Bank of Columbus and the United States, by which the bank agreed, on the 1st November, 1856, to transfer one hundred thousand dollars of the public money from New York to New Orleans by the first of January, 1851, free of charge; and the other account for money had and received by the bank for the use of the United States.

The charge given by the court was confined to the first count. The bill of exceptions sets out the following evidence, which was introduced by the United States to show a contract with the bank.

The following letter was written by the cashier of the bank:

CITY BANK OF COLUMBUS,
Columbus, Ohio, 26th October, 1850.

SIR: The bearer, Colonel William Miner, a director of this bank, is authorized, on behalf of this institution, to make proposals for the purchase of United States stocks to the amount of one hundred thousand dollars. He is also authorized, if consistent with the rules of the Treasury Department, to contract, on behalf of this institution, for the transfer of money from the East to the South or West, for the Government.

I have the honor to be, sir, your obedient servant,
THOMAS MOODIE, *Cashier.*

HON. THOMAS CORWIN,
Secretary of the Treasury, Washington City.

This letter was presented by Mr. Miner to Mr. Corwin on the first of November, 1850. On the same day, Mr. Corwin wrote to Mr. Miner the following letter:

TREASURY DEPARTMENT, *November* 1, 1850.

SIR: Your proposition of this date, to transfer $100,000 from New York or Philadelphia to New Orleans, by the 1st January next, free of charge to the Department, is accepted. You will receive herewith a transfer draft on the Assistant Treasurer at New York, in favor of the Assistant Treasurer at New Orleans, for $100,000, with the authority endorsed to make the payment at New York to you.

I am, very respectfully,

THOMAS CORWIN, *Secretary.*

This was followed by an undertaking for the transfer of one hundred thousand dollars for the Government from New York to New Orleans:

WASHINGTON CITY, *November* 1, 1850.

This will certify that I have contracted with the United States Treasury, as the agent of the City Bank of Columbus, to transfer $100,000 from New York to New Orleans, to be deposited in the Treasury at the latter-named city by the first day of January, 1851, free of charge. I have, in pursuance of said contract, this day received a draft in my own hand for one hundred thousand dollars on the United States Treasury at New York city, which is to be accounted for in said contract.

WILLIAM MINER.

Miner received the draft, and cashed it in person on the 2d November, 1850; but what he did with it no one knows, or this record does not show. It is certain that it was not repaid in New Orleans according to the contract; and there are no proofs on this record which can raise a presumption that the Bank of Columbus ever received a dollar of it. There is proof that Miner was all that time a director of the bank, and that Moodie, who gave him the letter to the Secretary of the Treasury, was the cashier, and that he signed his name to the letter as cashier; and that the letter had been copied into the letter book of the bank. A by-law of the bank was also put in proof, to show that it might be inferred from it that he had authority, as cashier, to empower Mr. Miner, as a director of

the bank, to enter into such a contract as he had made with the Secretary of the Treasury. The by-law is: "A committee of two shall be appointed every six months to advise with the president and cashier. In their absence, all the ordinary business of the bank may be done by the president and cashier; and if either of them be not present, then by the other alone; but any discount, negotiation, or contract, whether made by the board or committee, is to be done by the consent of all present."

It was also shown that there had not been a meeting of the directors in either July or August, 1850. That there had been a meeting on the 21st September, 1850, and another November 4th, 1850, nine days before the cashier gave his letter to Miner, and three days after the date of Miner's contract, to transfer the money from New York to New Orleans. The minutes of the bank, as kept by the cashier, of the meetings of the directors, do not show any intention upon the part of the directors to enter into a contract for the purpose of buying stock of the United States, or for the transmission of the money of the United States from the East to the South or West, as Moodie expresses it in his letter; or that after the negotiation of Miner, and his receiving the money from the Assistant Treasurer in New York, that the directors or president of the bank had any knowledge of the transaction until after Miner's default to pay the amount at New Orleans. Moodie testifies that he wrote the letter of the 26th of October, 1850, for Miner to negotiate with the Secretary of the Treasury, without the knowledge of the president or any of the directors of the bank, except Miner himself, and that the fact that such a letter had been written was not communicated by him to any of the directors until January after, though he had caused a copy of it to be put in the letter book. All of the directors, at the time of the transaction, have sworn that Moodie had not been authorized by the board or by any of themselves to constitute Miner such agent; that they had no knowledge of Moodie's letter, and that they never sanctioned the same. And there is other testimony in the case, that Moodie, as cashier, had not the power to depute Miner for any such purpose, and that it

would not have been done but by a resolution of the board of directors. Upon this evidence, and some other which it is not material to notice, the court charged the jury. After they had retired, and consulted for some time, they came into court and asked for further instructions, and the court gave them the following charge in reference to the contract set out in the first count of the declaration: "That if they should find that the letter written by Moodie was his own act, and had been given without the knowledge or authority of the board of directors, or any of them individually, except Miner, and that the agency of Miner was not constituted by or known to the board of directors, or the directors individually, or any of them except Miner, but was the act of the cashier alone; and if they should find that Moodie had no power as cashier, except such as belonged to the office of cashier generally, or such as are given by the charter or by the by-law or other law or usage of the said bank, that the defendant was not concluded by that letter, and is not bound by the contract made by Miner, without some subsequent ratification of the same, though the Secretary had, in contracting with Miner, relied upon it as the act of the bank."

To this charge the plaintiff excepted, and, on account of that exception alone, the case has been brought to this court by writ of error. In our opinion, no charge could have been more comprehensive of the merits of the case, more precise in its application to the particulars of the testimony introduced by the plaintiff and the defendant, or more expressive of what the law is upon such a state of facts. It is all that the litigants could have expected, and is liberal to both. It is also in coincidence with the views generally entertained of the powers and duties of the cashiers of banks, by those most familiar with the management and business of banks, and perfectly so with such as have been expressed by this court in previous reported cases. In Fleckner *v.* The Bank of the United States, (8 Wheat., 338, 356, 357,) this court said, the charter authorizes the president and directors to appoint a cashier and other officers of the bank, and gives the president and directors, or a majority of them, full power and authority to make all such rules and reg-

ulations for the government of the affairs and conducting the business of said bank, as shall not be contrary to the act of incorporation. It contains no regulations as to the duties of cashiers; with the directors it would rest to fix the duties of cashier or other officers. Whether they have made any regulation upon this subject, does not appear; but the acts of the cashier, done in the ordinary course of the business actually confided to such an officer, may well be deemed *prima facie* evidence that they fell within the scope of his duty. In the case Bank of the United States *v.* Dunn, (6 Peters, 51,) the court would not permit the president and cashier of the bank to bind it by their agreement with the endorser of a promissory note, that he should not be liable on his endorsement. It said it is not the duty of the cashier and president to make such contracts, nor have they power to bind the bank, except in the discharge of their ordinary duties. All discounts are made under the authority of the directors, and it is for them to fix any conditions which they may think proper in loaning money. The court defines the cashier of the bank to be an executive officer, by whom its debts are received and paid, and its securities taken and transferred, and that his acts, to be binding upon a bank, must be done within the ordinary course of his duties. His ordinary duties are to keep all the funds of the bank, its notes, bills, and other choses in action, to be used from time to time for the ordinary and extraordinary exigencies of the bank. He usually receives directly, or through the subordinate officers of the bank, all moneys and notes of the bank, delivers up all discounted notes and other securities when they have been paid, draws checks to withdraw the funds of the bank where they have been deposited, and, as the executive officer of the bank, transacts most of its business.

The term ordinary business, with direct reference to the duties of cashiers of banks, occurs frequently in English cases, and in the reports of the decisions of our State courts, and in no one of them has it been judicially allowed to comprehend a contract made by a cashier, without an express delegation of power from a board of directors to do so, which involves the payment of money, unless it be such as has been loaned in the

usual and customary way. Nor has it ever been decided that a cashier could purchase or sell the property, or create an agency of any kind for a bank which he had not been authorized to make by those to whom has been confided the power to manage its business, both ordinary and extraordinary. The case of Kirk *v.* Bell, (12 English and Common-Law Reports, 389,) and that of Hoyt *v.* Thompson, were very appropriately cited by the counsel of the appellee, in this connection; and we think the safe rule in all instances of acts done by the officers of corporate companies, or by those who have the management of their business, from which contracts are alleged to have been made, is, to test that fact by an inquiry into the corporate ability which has been given to them and to their subordinate officers, or which the directors of the company can confer upon the latter to act for them. Such was the view of this court when it decided, in the case of the Bank of the United States *v.* Dunn, (6 Peters,) that a release given by its president and cashier to the endorser of a promissory note of his liability upon it, did not bind the bank, neither nor both having any authority to make contracts of that kind. The case before us is one in which a cashier acts alone, and in which he testifies that he did so without any consultation with the president or directors of the company, and of which they had no information from him of the transaction until after the failure of Miner to pay the money in New Orleans. The act under which the City Bank of Columbus became a corporation does not, in any part of it, give any power to a cashier to act independently of the directors. No specific power is given to the directors to appoint a cashier. In the general power given to the directors to appoint officers to do the ordinary business of the bank, they have an authority to appoint a cashier, and such an appointment is a limitation of that officer's executive function in doing the business of the bank. It cannot be pretended that the directors, as a whole, or any one of them, except Miner, consented to the cashier's designation of Miner for any such purpose as was concluded between them, to induce the Secretary to believe that Miner was the agent of the bank, either to buy stock of the United States or to enter into

contracts for the transmission of money, free of charge, to those posts where the United States should designate it to be put. Such a power in the Secretary of the Treasury is a necessary one for the transaction of the business of the Government, pervading, as it does, every part of the country. The exercise of it, however, requires great care and caution in the selection of agents for such a purpose, and no authority short of the most certain should be taken to establish the representative character of any one for a private company or corporation to enter into such a contract with the Secretary.

The United States, as plaintiff in this action, has failed to establish the contract which it alleges in its declaration had been made with the City Bank of Columbus, for the transmission of money; and we direct the judgment given in the court below to be affirmed.

THE PEOPLE OF THE STATE OF NEW YORK, EX REL. ASA CUTLER, JOHN UNDERHILL, JUN., AND ARZA UNDERHILL, PLAINTIFFS IN ERROR, *v.* EDGAR C. DIBBLE, COUNTY JUDGE OF GENESEE COUNTY.

A statute of the State of New York, making it unlawful for any persons other than Indians to settle or reside upon any lands belonging to or occupied by any nation or tribe of Indians within that State, and providing for the summary ejectment of such persons, is not in conflict with the Constitution of the United States, or any treaty, or act of Congress, and the proceedings under it did not deprive the persons thus removed of property or rights secured to them by any treaty or act of Congress.

THIS case was brought up from the Supreme Court of the State of New York by a writ of error issued under the 25th section of the judiciary act.

The case is stated in the opinion of the court, and is reported in the New York State courts, in 18 Barb., 412, and 2d vol. of Smith's Reports of the Court of Appeals, 203, being 16 New York Reports.