aforesaid, delivered said bills to the plaintiffs as collateral security for a pre-existing debt of the said R. Tyner, on which the said Holland was endorser. And the defendant says the moneys in said bills of exchange have not yet been paid by the said Holland, or any one on his behalf. To this plea there was a demurrer.

This plea but reiterates in effect the same defences which have already been disposed of in deciding upon the demurrers before noticed, and it is not perceived how any additional force can be given to them by being grouped together in one plea.

The fact that these parties were accommodation endorsers does not make them co-sureties, bound to contribute equally to the payment of the bills, without a special agreement to that effect; and there is no sufficient averment that any such agreement existed.

The averments in regard to the assignment are also defective, for they nowhere show that Holland had, at any time, sufficient funds in his hands, after complying with the terms of the trust—viz: to save Abner McCarty and others harmless—to pay this bill; and unless such a state of fact existed, there could be nothing in his hands made available for the bills.

If the fact should appear that these parties are bound to each other by a separate and distinct agreement, other than that which appears by the endorsements upon the bills, the plaintiff in error will have his remedy in an action of *indebitatus assumpsit* against the other parties to the bills. But we think the averments in the pleas noticed are wanting in precision, and do not bring the case within the rule of special agreements, which impose a joint obligation.

The demurrers are sustained, and the judgment is affirmed.

SAMUEL PEARCE, PLAINTIFF IN ERROR, *v.* THE MADISON AND INDIANAPOLIS RAILROAD COMPANY AND THE PERU AND INDIANAPOLIS RAILROAD COMPANY.

Where two separate corporations were created to make railroads, they had no right to unite and conduct their business under one management; nor had

they a right to establish a steamboat line, to run in connection with the railroads.

Notes given for the purchase of the steamboat cannot be recovered upon.

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

The case is stated in the opinion of the court.

It was submitted, on printed arguments, by *Mr. O. H. Smith* and *Mr. Fox* for the plaintiff in error, and *Mr. Hendricks* for the defendants.

Mr. Justice CAMPBELL delivered the opinion of the court.

The defendants are separate corporations, existing under the laws of Indiana, and were created to construct distinct lines of railroad that connect at Indianapolis, in that State. The plaintiff is the assignee of five promissory notes, that were executed under conditions set forth in the declaration, and of which he had notice. The two corporations, (defendants,) some time before the date of the notes, were consolidated by agreement, and assumed the name of the Madison, Indianapolis, and Peru Railroad Company, and under that name, and under a common board of management, conducted the business of both lines of road.

While the business of the two corporations was thus directed and managed, the president of the consolidated company gave these notes in its name in payment for a steamboat, which was to be employed on the Ohio river, to run in connection with the railroads. After the execution of the notes, and the acquisition of the boat, this relation between the corporations was dissolved by due course of law, and, at the commencement of the suit, each corporation was managing its own affairs. The plaintiff claims that the two corporations are jointly bound for the payment of the notes, but the Circuit Court sustained a demurrer to the declaration.

The rights, duties, and obligations of the defendants are defined in the acts of the Legislature of Indiana under which they were organized, and reference must be had to these, to

ascertain the validity of their contracts. They empower the defendants respectively to do all that was necessary to construct and put in operation a railroad between the cities which are named in the acts of incorporation. There was no authority of law to consolidate these corporations, and to place both under the same management, or to subject the capital of the one to answer for the liabilities of the other; and so the courts of Indiana have determined. But in addition to that act of illegality, the managers of these corporations established a steamboat line to run in connection with the railroads, and thereby diverted their capital from the objects contemplated by their charters, and exposed it to perils, for which they afforded no sanction. Now, persons dealing with the managers of a corporation must take notice of the limitations imposed upon their authority by the act of incorporation. Their powers are conceded in consideration of the advantage the public is to receive from their discreet and intelligent employment, and the public have an interest that neither the managers nor stockholders of the corporation shall transcend their authority. In McGregor *v.* The Official Manager of the Deal and Dover Railway Co., (16 L. and Eq., 180,) it was considered that a railway company incorporated by act of Parliament was bound to apply all the funds of the company for the purposes directed and provided for by the act, and for no other purpose whatever, and that a contract to do something beyond these was a contract to do an illegal act, the illegality of which, appearing by the provisions of a public act of Parliament, must be taken to be known to the whole world. In Coleman *v.* The Eastern Counties Railway Co., (10 Beav., 1,) Lord Langdale, at the suit of a shareholder, restrained the corporation from using its funds to establish a steam communication between the terminus of the road (Harwich) and the northern ports of Europe. The directors of the company vindicated the appropriation as beneficial to the company, and that similar arrangements were not unusual among railway companies. Lord Langdale said: "Ample powers are given for the purpose of constructing and maintaining the railway, and for doing all those things required for its proper use when made. But I apprehend that it has no-

where been stated that a railway company, as such, has power to enter into all sorts of other transactions. Indeed, it has been very properly admitted that railway companies have no right to enter into new trades or businesses not pointed out by the acts. But it has been contended that they have a right to pledge, without limit, the funds of the company for the encouragement of other transactions, however various and extensive, provided that the object of that liability is to increase the traffic upon the railway, and thereby to increase the profit to the shareholders.

"There is, however, no authority for anything of that kind. It has been stated that these things, to a small extent, have been frequently done since the establishment of railways; but unless the acts so done can be proved to be in conformity with the powers given by the special acts of Parliament, under which those acts are done, they furnish no authority whatever. In the East Anglian Railway Company *v.* The Eastern Counties Railway Company, (11 C. B., 803,) the court say the statute incorporating the defendants' company gives no authority respecting the bills in Parliament promoted by the plaintiffs, and we are therefore bound to say that any contract relating to such bills is not justified by the act of Parliament, is not within the scope of the authority of the company as a corporation, and is therefore void."

We have selected these cases to illustrate the principle upon which the decision of this case has been made. It is not a new principle in the jurisprudence of this court. It was declared in the early case of Head *v.* Providence Insurance Company, (2 Cr., 127,) and has been reaffirmed in a number of others that followed it. (Bank of Augusta *v.* Earle, 13 Pet., 519; Perrine *v.* Ches. and Ohio Railroad Company, 9 How., 172.)

It is contended, that because the steamboat was delivered to the defendants, and has been converted to their use, they are responsible. It is enough to say, in reply to this, that the plaintiff was not the owner of the boat, nor does he claim under an assignment of the owner's interest. His suit is instituted on the notes, as an endorsee; and the only question is, had the corporation the capacity to make the contract, in

the fulfilment of which they were executed? The opinion of the court is, that it was a departure from the business of the corporation, and that their officers exceeded their authority. Judgment affirmed.

THE UNITED STATES, APPELLANTS, *v.* CHARLES FOSSATT.

The only cases which will be taken up out of their regular order on the docket are those where the question in dispute will embarrass the operations of the Government while it remains unsettled.

But if the court below, to which a mandate is sent, does not proceed to execute it, or disobeys and mistakes its meaning, the party aggrieved may, by motion for a mandamus, at any time, bring the errors or omissions before this court for correction.

No appeal will lie from any order or decision of the court below which is not a final decree.

The decree of the court below, in the present case, was not a final decree.

The jurisdiction of the board of commissioners for the settlement of private land claims in California, and of the courts of the United States on appeal, extends not only to the adjudication of questions relating to the genuineness and authenticity of the grant, and others of a similar character, but also all questions relating to its location and boundaries; and does not terminate until the issue of a patent conformably to the decree.

It is the duty of the surveyor general to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same.

THIS was an appeal from the District Court of the United States for the northern district of California.

It was the same case which was before this court at the preceding term, and is reported in 20 Howard, 413. The position of the case is explained in the second opinion of the court, as delivered by Mr. Justice Campbell.

Being so down upon the docket as that there was no probability of reaching it in the regular order of business, a motion was made to take it up out of its regular turn. This motion was argued by *Mr. Bayard* and *Mr. Nelson* in favor of it, and by *Mr. Black* against it.

Mr. Black (Attorney General) remarked, that he could not say that the public business of the Government was obstructed in consequence of the pendency of this appeal.