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Recommended Citation
Ultra Vires Contracts of Corporations in Maryland, 1 Md. L. Rev. 145 (1937)
Available at: http://digitalcommons.law.umaryland.edu/mlr/vol1/iss2/4

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ULTRA VIRES CONTRACTS OF CORPORATIONS IN MARYLAND

The Western Maryland Ry. Co., chartered to construct and operate a railroad, made a contract with the Blue Ridge Hotel Co. by which, in consideration of the enlargement of a summer hotel at a point on the line of the road, it was agreed that if in any one year, the net earnings of the Hotel Co. should not suffice to pay a 5% dividend on its capital stock, and interest on its first mortgage bonds, then the Railroad Co. would pay to the Hotel Co. for its stock and bondholders, such commissions upon its receipts from traffic to and from two stations near the hotel as would be sufficient to make up the deficit. For some years the Railroad Co. made up the deficiency and upon its refusal to make further payments for this purpose, this action was brought on the contract to recover the amount of one year's deficit. The defendant, among other pleas, interposed the defense of ultra vires. A demurrer to this plea was sustained and issue was then joined on the defendant's other pleas. There was a judgment for the plaintiff for a stated amount. The defendant appealed on the ground that a promisor corporation cannot be held on an ultra vires contract on an action by the promisee. The trial court was reversed. It was held that such an ultra vires act was void because the Railroad Co. had no power under its charter to guarantee the payment of interest and dividends by a Hotel Co., and consequently no action would lie against the Railroad Co. on the contract. The performance of the contract by the Hotel Co. was held not to estop the Railroad Co. to set up the defense of ultra vires.¹

Thus is presented the most recent pronouncement of the Court of Appeals of Maryland on the subject of partly executed ultra vires contracts of corporations. Ultra vires contracts—those contracts in contravention of the State-imposed restriction on corporate activity—have long presented a vexing problem, both to the courts and to attorneys. The magnitude of the problem is enhanced by the variegated results reached in the disposition of the cases, and while it is true that the problem will arise in the future

less frequently due to the almost blanket power now granted corporations, it is still a most pertinent problem for corporations doing business under charters granted years ago. The result reached in the principal case is not the first pronouncement on the subject. It had come before the Court of Appeals many times in the previous century. The first case reported in which the subject of _ultra vires_ contracts was discussed and a conclusion reached as to the effects of such contracts was that of _Steam Navigation Co. v. Dandridge_. In that case a contract was entered into between the defendant corporation and the plaintiff, whereby the defendant undertook to break a passage and tow a certain schooner out of the ice-locked harbor of Baltimore City. The plaintiff's boat was lost and he brought an action in assumpsit (special action of trespass on the case) to recover for the goods lost. The defendant company pleaded non-assumpsit and at the conclusion of the case offered a prayer to the effect that the contract to take the boat out of the harbor was an _ultra vires_ contract and hence no recovery could be had thereon. This prayer was rejected and on appeal it was held that the rejection was error. The Court stated: "To the doctrine of estoppel applied to such cases we cannot yield our assent. If the corporation is estopped from denying its power, the estoppel operates with like effect upon those who contract with them, and the result would be that no matter how limited the design and powers of a corporation may appear in its charter, practically it is a corporation without limitation as to its powers. Such a doctrine at this day is dangerous to the community, and is at war with the modern decisions upon the subject." This case shows the then unequivocal position of the Maryland Court, and it is interesting to note the subsequent ramifications of, and appendages to, the principle of law enunciated in this early case.

The next case in which the subject of _ultra vires_ contracts of corporations was raised was _Abbot v. Balto. & Rapp. Steam Packet Co._ This was a case in equity and the petitioner put in a claim for a certain amount contending that it was due him by virtue of an agreement with the

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28 G. & J. 248 (1836).
3Chitty on Pleadings, Ch. 2, p. 144. It is interesting to note that this contract case was taken as authority for refusing to allow recovery for an _ultra vires_ tort in the later case of Weckler v. First National Bank, 42 Md. 581 (1875).
51 Md. Ch. 542 (1850).
corporation then in receivership. The agreement concerned the deepening of a part of the Rappahannock River, upstream from the Virginia terminus, over which the corporation was not authorized to operate. The claim was defended on the ground that it arose out of an *ultra vires* contract and this defense proved successful. In the rejection of the claim the Court used language which was very sweeping in its scope. In effect it said that the contract entered into was beyond the powers of the corporation and corporations are incapable of making contracts which are in contravention of their charters. By its language the Court negatived any effect which might be given to such a contract, and treated the contract as creating no rights and imposing no liabilities.

Next in line (chronologically) is the case of *Albert and wife v. Savings Bank.* There a *cestui que trust* sought to avoid an hypothecation to a bank, by one of its directors, of stock which he held as a trustee, which hypothecation was intended to secure a loan made to him by the bank. As a basis for his suit, the plaintiff argued that the bank had no authority by its charter to loan money to its directors, and, being thus prohibited, it could not hold the stock to the injury of the plaintiff. In upholding the plaintiff's argument, the Court said, "... a corporation has no power to do what it is inhibited by its charter from doing, and if, in violation of it, injury should be done to the property of a third party, it is liable". Since the bank obtained no title to the stock it was required to return it and all dividends accruing thereon from the date of the hypothecation. In the disposition of the case, the Court said by way of dictum: "It is true, Jones (the trustee) might be estopped from denying the legality of the transaction, ..."8

The next case in which the Court dealt with the consequences of an *ultra vires* corporate contract was that of *Maryland Hospital v. Foreman.* There the Maryland Hospital agreed with Foreman, in consideration of a lump payment of $1,200, to support his sister, then a lunatic patient in the institution, for the remainder of her life. The Hospital had no power under its charter to make such a contract. After the girl died and the contract had thus been fully executed, Foreman sued the Hospital to recover the sum he paid, less the necessary expenses incurred in the

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6 2 Md. 159 (1852).
7 Ibid., 173.
8 Ibid., 172.
9 29 Md. 524 (1888).
support of his sister until the time of her death. The Court held that the contract was neither *malum in se* nor *malum prohibitum* so that the parties could not be said to stand in *pari delicto*, and in allowing Foreman to recover said, "...if a party makes a contract with a corporation which is simply beyond the powers of the latter, he may recover back the money paid thereon, whether the contract be executed or executory." It is interesting to compare the result reached in this case with that reached in the later case of *Montrose Building Ass'n v. Page, Receiver,* in which, apparently, a contrary conclusion was reached. In the case following the *Hospital* case the Court of Appeals, without need for doing so, discussed the topic of *ultra vires* contracts. This was *Boyce v. M. E. Church,* in which it was said: "It has been determined by this Court, that a corporation cannot bind itself in excess of its powers." Following this rather brief announcement, the subject again arose in its fullest aspects in the case of *Lazear v. National Union Bank.* There the plaintiff bank discounted several notes negotiated by the firm of Lazear Brothers. One of the notes discounted was drawn by the firm but was negotiated to the bank by a firm of note brokers. It further appeared that a written guaranty had been executed by the individual defendant to the bank, such guaranty guaranteeing all liabilities incurred by the bank in the discounting of the notes. Suit was brought by the bank and, among other defenses, the defendant contended that the note taken from the note brokers was taken by purchase and not by discount, and hence was a transaction beyond the charter powers of the bank. After a judgment for the bank, there was an appeal and the Court found error in the rulings of the lower court. It was held that the contention of the defendant, as to the note taken from the note brokers, was correct, that there was a purchase, and that the bank, being a national bank, could not purchase negotiable paper, but could only discount it. It was held, therefore, that the bank could not acquire any title to the note, and that if any recovery could be obtained by the bank, such recovery could not include the amount of the note taken from the note brokers. There was a dissent on the ground that the purchase of the note was not *ultra vires* but it is interesting to notice that there was no dissent on the effect of

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10 Ibid., 532.
11 143 Md. 631, 123 Atl. 68 (1923).
12 46 Md. 359 (1877).
13 Ibid., 373.
14 52 Md. 78 (1879).
holding the purchase beyond the power of the bank. The case was then re-argued, but there was no change in the decision.

Two years later, the Court again talked of *ultra vires* transactions. The case was that of *Booth v. Robinson*, and in a statement not necessary at all for the disposition of the case, the Court spoke in a manner foreign to what had been regarded as the settled rule in the State. The Court, after holding a transaction to be *intra vires*, pointed out that where parties complaining have received the consideration of the contract, *ultra vires* in character but in other respects just and equitable, there is no principle upon which a court of equity could be induced to interfere upon the mere ground of want of authority in the adverse party.

Such was the state of the Maryland authorities when the next case came before the Court. It is to be noted that in all the cases, where a square decision on the effect of an *ultra vires* contract was necessary, the Court adhered to the view announced in the *Dandridge* case, although there were dicta seemingly *contra*. In the case of *United German Bank v. Katz*, an apparently new theory was acted upon and a result was reached which seems at variance with what had been previously considered a closed question. There the plaintiff bank was incorporated as a Savings Institution under statutory sanction. One of the provisions in the statute was that no corporation not expressly authorized, could by any implication be considered as authorized to conduct banking privileges. Notwithstanding its lack of power, the plaintiff bank discounted a promissory note which the defendant had executed, and upon suit brought to recover the proceeds, the defendant interposed the defense of *ultra vires*. The Court of Appeals reversed the action of the lower court sustaining this plea. The principle was formulated that it would be inequitable to permit one who has received the proceeds and the benefit of the transaction or who knowingly procured them for some one else to repudiate it on the ground that the corporation with which he dealt had no power to make the contract. The Court distinguished this case from *Lazear’s case*, and although there was a dissent and a re-argument, the decision stood.

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155 Md. 419 (1881).
1757 Md. 128 (1881).
18Lazear v. Nat. Union Bank, 52 Md. 78 (1879).
Ultra vires contracts were again considered by the Court of Appeals in the case of German Aged People's Home v. Hammerbacker et al.\(^{19}\) The facts in the case are immaterial, as the case was important only for its dictum. After holding the transaction to be neither ultra vires nor against public policy, (the defense of ultra vires having been raised by an individual defendant) the Court said that if it were in error in holding thus, under the decision in the Katz case,\(^{20}\) the defendant would be estopped from setting up such a defense.

The next case, Heironimus v. Sweeney,\(^{21}\) presented a square decision on the effect of an ultra vires transaction. There a savings institution borrowed money from individuals under the guise of acceptance of deposits. There were other depositors, but since they were entitled to vote for the control of the institution, they held the legal status of stockholders. In a contest in equity for priority upon the insolvency of the Institution, the receiver of the same contended that the borrowing of the money was beyond its powers. The Court, though not stating definitely that the transaction was or was not ultra vires in its nature, nevertheless allowed priority to the non-stockholding depositors, as creditors, and, citing with approval the Katz case\(^{22}\) and the Hammerbacker case,\(^{23}\) used this language: "It is inequitable to permit one who had obtained the proceeds and the benefit of the contract, to repudiate it on the ground that the corporation from which he has obtained the benefit had no power to make the contract."\(^{24}\) The Court also cited with approval the language of the Foreman case\(^{25}\) in which it was said: "If a party makes a contract with a corporation which is simply beyond the powers of the latter, he may recover back the money paid thereon whether the contract be executed or executory."\(^{26}\) It is worthy of note that while the application of the principle enunciated by either of these two prior cases is equally productive of the result here reached, yet the Court in applying them both is reaching that result by the utilization of contradictory concepts. It is submitted that the Court

\(^{19}\) 64 Md. 595, 3 Atl. 678 (1886).
\(^{20}\) United German Bank v. Katz, 57 Md. 128 (1881).
\(^{21}\) 83 Md. 146, 34 Atl. 823 (1896).
\(^{22}\) United German Bank v. Katz, 57 Md. 128 (1881).
\(^{23}\) German Aged People's Home v. Hammerbacker, 64 Md. 595, 3 Atl. 678 (1886).
\(^{24}\) Heironimus v. Sweeney, 83 Md. 146, 159, 34 Atl. 823 (1896).
\(^{25}\) Maryland Hospital v. Foreman, 29 Md. 524 (1868).
\(^{26}\) Ibid., 29 Md. 532.
erred in thus culling from and combining the language of these two judicially convenient cases. The *Katz* case\(^\text{27}\) enforced a contract notwithstanding its *ultra vires* nature, while the *Foreman* case\(^\text{28}\) rescinded the contract and allowed recovery because of its *ultra vires* character. In the one case, recovery was allowed because of voidness; in the other, in spite of it.

*Ultra vires* was again urged as a bar to recovery in a suit by a bank on a note in the case of *Black v. Bank of Westminster*.\(^\text{29}\) The Court held that there was no evidence of an *ultra vires* transaction, but in so doing, made the statement: "Being thus an executed contract, even if the transaction were a sale and not a discount, recovery could be had under the *Katz* case, which was held not to be in conflict with *Lazear's case*."\(^\text{30}\)

It was at this point in the chronological order of the decisions on this question, and with a seeming contrariety of precedents to guide the Court, that the principal case was decided. Another case, decided in the same year was that of *Md. Trust Co. v. Mechanics Bank*.\(^\text{31}\) There the petitioning bank sought to have a sum of money paid to it out of the assets of the defunct trust company. The receiver of the trust company, in defending the claim, contended that the sum demanded by the petitioner accrued, if at all, by reason of an illegal contract. The Court in upholding this contention, discussed the distinction between illegal and *ultra vires* contracts. In speaking of *ultra vires* contracts, the Court said, "The discussion will be shortened by putting aside the mere *ultra vires* character of the contract, because a contract *ultra vires* is not necessarily unenforceable—it may be enforced under certain conditions—and, hence, before it can be stricken down on that ground alone, all the conditions under which it may be upheld must be eliminated . . ."\(^\text{32}\)

The latest case in Maryland concerning such dealings was the case of *Montrose Building Ass'n v. Page*.\(^\text{33}\) There the association purchased stock in a bank in excess of the amount subscribed for by the association's free shareholders. The purchase of the stock was effected through the negotiation of loans from the bank issuing the stock and as

\(^{27}\) United German Bank v. Katz, 57 Md. 128 (1881).

\(^{28}\) Maryland Hospital v. Foreman, 29 Md. 524 (1868).

\(^{29}\) 96 Md. 399, 54 Atl. 88 (1903).

\(^{30}\) Ibid., 96 Md. 430.

\(^{31}\) 102 Md. 608, 63 Atl. 70 (1906).

\(^{32}\) Ibid., 102 Md. 615.

\(^{33}\) 143 Md. 631, 123 Atl. 68 (1923).
security for which the association hypothecated certain mortgages. Upon the receivership of the bank, the association presented a petition asking that it be deemed a general creditor of the bank to the extent of the stock held by the association, on the ground that the purchase of the stock was beyond its charter powers. In refusing the association this status, the Court, quoting from Corpus Juris, said, "... The executed dealings of a corporation must be allowed to stand for and against both parties, where the plainest rules of good faith require it." It further stated that "While it is clear that the capital of the building association was diverted from the objects contemplated by its charter and chartered purpose, yet, the transaction in controversy having been completely executed on both sides, the contract will not be disturbed." Here the Court was unquestionably dealing with a completely executed contract, a situation which had arisen in the Foreman case.

It may be remarked in passing that in a number of the other cases dealing with ultra vires contracts the Court has used language in respect to executed contracts which is rather confusing. To use the words of the Court in the Black case, "Being thus an executed contract... recovery could be had..." It is submitted that the Court failed to distinguish properly between executory, partly executed, and completely executed contracts. The appellation "executed" attached to the transaction in the last mentioned case creates the impression that the contract was completely executed, when in reality it was only partly executed, owing to the fact that payment had yet to be made on the note. Apparently the loose terminology used by the Court can be traced to the Katz case where the contract was similarly alluded to as executed, when as a matter of fact that case is open to the same criticism. Thus may be seen the facts and decisions of the principal Maryland cases. Whether or not these decisions are in conflict or reconcilable, whether or not Maryland is included in the majority of courts in the ultimate effect given to such trans-

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34 Ibid., 143 Md. 636; 14-A C. J., Sec. 2106.
35 Ibid., 143 Md. 635.
36 Maryland Hospital v. Foreman, 29 Md. 524 (1868).
38 Ibid., 96 Md. 430.
39 United German Bank v. Katz, 57 Md. 128 (1881). "In considering the contracts called executed contracts, it is necessary always to keep in mind that executed contracts are those which have been fully performed on both sides, although the Courts sometimes erroneously refer to contracts executed on one side only as executed contracts." Fletcher on Corporations, Vol. 3, Ch. 37, Sec. 1659, p. 2831.
actions, and what fundamental rule, if any, is followed in this State, are the questions under consideration in this comment.

Perhaps no phase of corporation law is attended with so many and such widespread inconsistencies as that of partly executed ultra vires contracts. The nature of ultra vires contracts is such that their existence admits of such inconsistencies. For these contracts, as their designation implies, are, broadly stated, contracts contrary to the express or implied restriction imposed by the State in the granting of the corporate charter, and the meaning and effect of such contracts is ultimately determined in accordance with the varied and deep-rooted judicial and legislative policies of the States in their dealings with corporate activity. Before entering into any considerations of policy underlying the results, it would be well to point out that there are three types of ultra vires contracts with which courts have been called upon to deal. There are first such contracts as are wholly executory in their nature. Now it is held with a practical unanimity of opinion that the execution of such contracts may be restrained at the instance of a stockholder of the corporation. Secondly, there are such contracts as are completely executed and it is likewise held, with little dissent, that such transactions, being completely closed, cannot be looked into and rescinded by the Court at the instance of either party to the contract. Where the conflict arises in its greatest aspects are in those cases where one of the parties to the contract has fully performed and the other party has not, and suit is brought by the party performing. Will the Court proceed indirectly to validate the contract by allowing suit thereon and not take into consideration the ultra vires nature of the contract, or will it fail to give it any effect whatsoever? It would appear that in dealing with these situations, there are two considerations of policy actuating the courts: One, narrow and strict, illustrated by the stringent enforcement of restricted corporate activity; the other, broad and equitable, appearing in the mild, and even at times, negative

40 Ballantine on Corporations, Ch. VII, p. 234.
41 Ibid., 235.
enforcement. Under this generalization, it follows that the jurisdictions adhering to the policy of strict enforcement, carry it into effect through the invalidation of all forms of corporate activity in contravention of State-granted charter powers. Such invalidation, under this policy, does not include the notion of illegality, although it has been stated that the whole undertaking is illegal.\textsuperscript{44} Invalidation is taken to mean the non-enforceability of the contract, either by the corporation or by the party with whom it deals, whether occupying the position of plaintiff or defendant while urging the \textit{ultra vires} nature of the transaction.\textsuperscript{45} The courts taking this position justify it on one or more of several grounds. One basis, rather sparingly used, is that of constructive notice—one dealing with a corporation is bound to take notice of the extent of the limitations on its powers.\textsuperscript{46} Another basis is that the interest of stockholders of corporations demands that corporate funds be utilized for purposes appropriate or incident to the exercise of legitimate corporate power.\textsuperscript{47} Still another ground is that the interest of the public must be subserved, it being considered against public policy to allow a corporation chartered for a specific purpose or purposes, to transcend the powers conferred upon it by law.\textsuperscript{47A} A last reason sometimes advanced, and one embodying the major logic of the strict view, is that the corporation, being a creature of the State, has only those powers conferred upon it by the Legislature, and consequently, having no power to enter into \textit{ultra vires} contracts, cannot be bound by them.\textsuperscript{48}


\textsuperscript{45} "... the fact that the contract has been executed by one of the parties, and the other has thus received the consideration for his or its promise, cannot give the contract any validity; ... such performance by one of the parties, and receipt of the consideration by the other, does not estop the latter from setting up that the contract is ultra vires, ..." Fletcher on Corporations, Vol. 3, Sec. 1539, pp. 2600, 2601.


\textsuperscript{47A} See Brune, Maryland Corporation Law, 39, Sec. 33, where Mr. Brune suggests a distinction between public service corporations, including banks and railroads, on the one hand, and ordinary business corporations on the other. He suggests that in the case of the former corporations the interest of the State is paramount and that private estoppel should not suffice to defeat the application of the doctrine of ultra vires.

\textsuperscript{48} Straus & Brother v. Eagle Ins. Co. of Cincinnati, 5 Ohio St. 60 (1855); Head v. Providence Ins. Co., 2 Cranch 127, 2 L. Ed. 229 (1804); United States Bank v. Dandrige, 12 Wheat. 64, 6 L. Ed. 552 (1827).
In the division of authority the courts following this strict view constitute quite a substantial minority. The highest Court of England, the Supreme Court of the United States, and the highest courts of several of the States, apparently have aligned themselves with this doctrine. It is to be noted, however, that adherence to the strict view does not usually preclude recovery on a quantum meruit basis, for the reasonable value of performance rendered under an ultra vires contract.

On the other hand, the jurisdictions which follow the broader estoppel view reach their conclusions, not through the actual validation of such contracts, but on the broad equitable principle that one who has received the benefits of the transaction, cannot be heard to disaffirm his capacity to contract when the interposition of such a stand would cause injustice to the other party. This pseudo-validation enures to the advantage of both parties to the contract. The courts which act under the settled policies base their result on the ground, first that the public is adequately protected in that the State may forfeit the charter of the offending corporation at any time. Secondly it is argued that ultra vires, not being a meritorious defense, should never operate to work injustice and hardship. In these jurisdictions suit is allowed on the contract in order to counterbalance the potential hardship arising from the negation of any rights accruing under the contract. The foundation of this rule is justice, and if it is to be paramount, effect can only be given it through the apparent validation of the contract. This view may be considered to be the prevailing view in this country.

There is yet the old common law rule which gives full force and effect to such contracts, not on the ground of

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51 Fletcher on Corporations, Vol. 3, p. 2601, n. 84. Although it is open to question whether Ohio, which Fletcher places with these states, can be included as adhering to this view in the face of a recently enacted Corporation Act. Cf. (1930) 4 Cinn. L. Rev. 419.
54 Stevens on Corporations, Ch. 8, p. 277; Fletcher on Corporations, Vol. 3, Ch. 37, p. 2610, n. 21; Ballantine on corporations, Ch. VII, Sec. 74, p. 259.
justice or equity, but on the ground that since the State has measured the powers of the corporation and has defined the bounds within which it can legitimately operate, any unauthorized extension by the corporation of the power conferred is a matter solely between the corporation and the State. The rule is interesting in that it was originally in effect in England, and is the rule today in an almost negligible number of States.

But the question of primary importance and interest to the reader is the position of Maryland in so controversial a situation. In some of the Maryland cases discussed above, the Court of Appeals used language comparable to that of courts in jurisdictions adhering to the strict view, and in the decisions reached and the positive manner in which the results were attained, one would have no hesitancy in placing Maryland in this category. Yet in other cases there is language employed and results reached which seem definitely at variance with this view; the so-called "equitable" doctrine which, from the early cases, seemed to have no place in the policy of this State, attains a stature commensurate with that acquired by the strict view (as a result of the Court's seeming adherence to such view in the earlier cases). It is for this reason that the text writers and attorneys so often experience difficulty in ascertaining the true rule in effect in Maryland. It has been stated that in Maryland there are some decisions in support of the estoppel view, but that the latest decision of the Court, the Western Maryland case, "is in favor of the Federal rule." The opinion has also been expressed that "it is not possible to express concisely the law of this State, because its decisions do not follow consistently either of the two rules that have been discussed."

The same

55 British So. Africa Co. v. De Beers, (1910) 1 Ch. 354.
56 Harris v. Independence Gas Co., 76 Kan. 750, 92 Pac. 1123 (1907); City Coal & Ice Co. v. Union Trust Co. of Maryland, 140 Va. 600, 125 S. E. 697 (1924); Zinc Carbonate Co. v. Shullsburg First Nat'l. Bank, 103 Wis. 125, 79 N. W. 229 (1889). It is open to question whether this view has not also been followed in the case of Becker v. Kelsey, 157 Atl. 177, (N. J. 1931).
58 France, Principles of Corporation Law, (1914) Sec. 76, p. 136. Mr. Brune best states the true nature of the problem when he says, "In approaching the Maryland decisions the first point to be understood is that the language of the various opinions is confusing and irreconcilable, and the key to the problem lies in an analysis of the decisions themselves rather than in the statement made by the court." Brune, Maryland Corporation Law (1933), Ch. IV, p. 38. While the present writers agree with Mr. Brune that the key to the problem lies in analysis of the decisions rather than the language yet they are more inclined to feel that the language itself is reconcilable.
author further states, "This case (Western Maryland case), which cites with approval the principal Supreme Court decisions, apparently settles the Maryland law in conformity with the strict rule, namely, that an ultra vires contract, being illegal, can never at any time or place or after any degree of performance, be the basis of a recovery thereon." It is true that considered apart from the results reached, the language of the cases is most confusing and at times seemingly irreconcilable. Yet it is felt that the confusion exists only in the quotation by the Court of Appeals of language employed by various courts in their disposition of similar cases, and the adoption by the Court of such apparently contradictory principles. There can be shown by a close analysis of the Maryland decisions, with reference to the facts presented, the conclusion reached, and the language necessary to reach the result upon such facts, an adherence to, rather than a departure from, a static, fundamental principle.

That Maryland is consistent rather than contradictory in the pursuance of its basic doctrine may best be shown by a discussion of Lazear's case and the Katz case which have frequently been considered at variance, although distinguished by the Court. In the latter case suit was brought on a note discounted by the plaintiff bank which had no power to do so. The party defendant was an accommodation endorser and it must be presumed that he did not actually benefit from the transaction. In the former case suit was brought by the plaintiff bank on a written guaranty executed by the defendant promising to reimburse the bank for liabilities incurred through the discounting of commercial paper negotiated by a certain firm. Several notes, the basis of the suit, were introduced in evidence, one of them having been executed by the firm and negotiated to the bank through the medium of a firm of note brokers. The defendant requested an instruction to the effect that recovery on the guaranty was restricted to the amount of those notes taken by the bank on the faith of the guaranty, and further, that the note taken from the note brokers was a purchase and not a discount of the same, and hence ultra vires the plaintiff bank and no recovery possible thereon. The rejection of these two prayers was held to be error. It is submitted that these two cases are not in conflict. If

60 France, Principles of Corporation Law, Sec. 76, p. 143, n. 1.
61 Lazear v. Nat. Union Bank, 52 Md. 78 (1879).
63 Ibid., 142.
an inference could be raised that the defendant in the *Katz* case\(^6\) received the proceeds of the note then there is no conflict for the reason that the benefit moved directly to him from the bank, while in *Lazear’s* case,\(^5\) no benefit moved directly from the bank to the defendant guarantor, and having received no benefit, there is no basis for estopping him from pleading *ultra vires*. Estoppel more often than not connotes the idea of benefit, and to estop one who has received no benefit at all seems to stretch the rule to a somewhat impractical, if not unjust, end. The Court in the *Katz* case,\(^6\) in distinguishing the cases, emphasizes the notion of direct benefit as vital to the application of an estoppel. If the presumption is correct that the defendant in the latter case did not receive the proceeds of the note, there is yet no conflict, since in the latter case, the defendant, being an endorser on the note, was in privity with the bank in respect to the very contract in suit; in the former case, there was privity of contract only on the extraneous guaranty, and none on the note, the proceeds of which never accrued to the benefit of the defendant and he was not a party to the *ultra vires* transaction. Further, in the latter case, the bank took the note on the faith of the defendant’s endorsement, while in the former case, it is not known for a fact that the note was taken by the bank on the strength of the guaranty executed by the defendant. In declaring it error on the part of the lower court to have rejected the instruction asked for by the defendant as to the reliance by the bank on the guaranty, the Court impliedly stated that even if the transaction were not a purchase, but a discount, the element of reliance would still have to be shown in order to warrant recovery. The dissent in the *Katz* case\(^7\) dealt with the effect of absence of power in the bank in the former case to take the note and argued that a corresponding result should obtain in the latter case. It is submitted that the dissent is in error since it fails to take into consideration either the question of direct benefit moving from the bank to the party seeking to avoid the transaction\(^8\) or the actual participation by the party defendant in the *ultra vires* transaction.

\(^6\) United German Bank v. Katz, 57 Md. 128 (1881).
\(^5\) Lazear v. Nat. Union Bank, 52 Md. 78 (1879).
\(^6\) United German Bank v. Katz, 57 Md. 128 (1881).
\(^7\) Ibid., 149.
\(^8\) Ibid., 144. The same dissenting Judge appears to have fallen further into error when he states, "... it was plainly decided in that case, (Lazear’s case) that want of power in the bank to purchase the note, was a bar to recovery, and absolved them (Lazear Brothers—the makers of the note) from all liability to the bank therefor." Since Lazear Broth-
It would seem that the rule to be deduced from the consideration of these two cases is: *Ultra Vires* contracts are void, and no effect will be given to them save where a benefit moves *directly* to the party seeking to set up the *ultra vires* nature of the transaction or where he was a participant to it and knowingly procured the benefit for some one else, in either of which cases the recipient or procurer is estopped to deny its validity. But in order to show that Maryland has consistently adhered to a single doctrine in dealing with the subject of *ultra vires* contracts, it is expedient to show that the rule thus derived from a consideration of the distinction between these two cases is equally explanatory of the conclusions arrived at in all the cases.

So, in the measurement of the conclusion reached, by the rule submitted, it is found that in the first case the result is expressive of the rule. There was no direct benefit moving to the defendant corporation and accordingly it was not estopped to set up the defense of *ultra vires*. Nor is difficulty to be found in aligning the second case under the rule for in that case, although the petitioning party had completed his performance of the contract, yet the opening of the river beyond the point to which the Steamship Company was empowered by its charter to operate, was such a benefit as by its nature could not be taken advantage of, and accordingly the rule requiring a direct benefit was not satisfied. The conclusion reached in the next case can also be explained in terms of the rule for there the plaintiff had received no benefit whatever and was not estopped to avoid the *ultra vires* act of the bank. It is also interesting to note that in this case the Court, by way of dictum, stated that the trustee "might be estopped from denying the legality of the transaction. . . ." Thus, two apparently contradictory statements can be supported and justified by the application of this single rule. The result in the next case cannot be explained by the utilization of the rule, but this is now of no importance.

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71 Albert and wife v. Savings Bank, et al., 2 Md. 159 (1852).
72 Ibid., 172.
73 Maryland Hospital v. Foreman, 29 Md. 524 (1888).
for it is unquestionably overruled by later cases on the subject of completely executed contracts.\textsuperscript{74} Nor does the dictum in the next case\textsuperscript{75} disprove the rule. The \textit{Lazear} case\textsuperscript{76} has already been discussed, and the following case,\textsuperscript{77} by dictum, is further expressive of the rule. After holding the contract in question to be \textit{intra vires}, the Court went on to say that if it \textit{were not}, the party complaining could have no redress since he had received the consideration of the contract. That the rule as stated was the true principle followed is further shown by the language "There is no principle upon which a court of equity could be induced to interfere upon the mere ground of the want of authority in the adverse party."\textsuperscript{78} The \textit{Katz} case,\textsuperscript{79} having been sufficiently discussed, needs no further elaboration. In \textit{German Aged People's Home v. Hammerbacker}\textsuperscript{80} there was a direct benefit received by the defendant's intestate. Although it was held that there was no contravention of policy in the contract sued upon, the Court expressly stated that if it were in error in so holding, under the decisions in the previous cases the defendant would be estopped from setting up the defense of \textit{ultra vires}. Benefit likewise accrued to the defendant in the following case\textsuperscript{81} and it was accordingly held that this factor alone was sufficient to negative any defense based on the \textit{ultra vires} character of the transaction. After holding a certain transaction \textit{not} to be \textit{ultra vires} in the next case,\textsuperscript{82} the Court stated that if it were not, there was sufficient authority to warrant recovery on the basis of an estoppel. In the principal case,\textsuperscript{83} although some have thought otherwise,\textsuperscript{84} there is no departure from the precedents established by the previous cases. For there no direct benefit moved from the plaintiff to the defendant corporation. If any benefit did accrue it was indirect, and moved from persons other than privies to the contract sued on. The Court, in quoting extensively from the Federal

\textsuperscript{74} Hagerstown Mfg. Co. v. Keedy, 91 Md. 430, 46 Atl. 965 (1900); Montrose Bldg. Ass'n. v. Page, 143 Md. 631, 123 Atl. 68 (1923).
\textsuperscript{75} Boice v. M. E. Church, 46 Md. 359 (1877).
\textsuperscript{76} Lazear v. Nat. Union Bank, 52 Md. 78 (1879).
\textsuperscript{77} Booth v. Robinson, 55 Md. 419 (1881).
\textsuperscript{78} Ibid., 435.
\textsuperscript{79} United German Bank v. Katz, 57 Md. 128 (1881).
\textsuperscript{80} German Aged People's Home v. Hammerbacker, 64 Md. 595, 3 Atl. 678 (1886).
\textsuperscript{81} Heironimus v. Sweeney, 83 Md. 146, 34 Atl. 823 (1896).
\textsuperscript{82} Black v. Bank of Westminster, 96 Md. 399, 54 Atl. 88 (1903).
\textsuperscript{84} France, Principles of Corporation Law (1914) p. 135; Brune, Maryland Corporation Law (1933) Ch. IV, p. 38.
decisions, cannot be said to have adopted the Federal rule
in all its ramifications. It would appear that the whole ef-
fect of such excerpts is but to further illustrate the first
part of the rule submitted—that an ultra vires contract is
void. Being thus void, with no benefit mov-ing directly to
the corporation pleading the ultra vires nature of the trans-
action, it was not estopped. This seems the logical inter-
pretation to be placed upon the following language: “The
Hotel Co. has paid nothing, and parted with nothing under
this contract, and is therefore, under all the authorities
without any right of action.”\textsuperscript{88} This interpreta-
tion is strengthened by the fact that the Court expressly stated
that an estoppel would arise in the proper case.\textsuperscript{86}

To show a consistent adherence to the rule submitted,
it is only necessary to mention briefly two remaining cases.
In \textit{Md. Trust Co. v. Mechanics Bank}\textsuperscript{87} the Court, speak-
ing of the distinction between ultra vires contracts and illegal
contracts, stated, “a contract simply ultra vires is not neces-
sarily unenforceable—it may be enforced under certain con-
ditions...”\textsuperscript{88} And in a later case,\textsuperscript{89} the Court, in refusing
to set aside a completely executed contract, which was ultra
vires, stated, “The executed dealings of a corporation must
be allowed to stand for and against both parties, where the
plainest rules of good faith require it.”\textsuperscript{90}

Thus, in the Maryland cases, instead of conflict, there is
a striking uniformity of precedents, a century-old adher-
ence to a determinable rule which paradoxically combines
the basic features of both the strict and the liberal views;
and effects a unique but practical end. For it adopts the
strict view in that it declares such contracts void, yet it
temps this rule in allowing suit on the contract against
the partly directly benefitted. It does not leave the party
performing to an uncertain remedy in quasi-contract, as
does the Federal rule, but, in permitting suit on the con-
tract, grants him all the procedural and substantive ad-

\textsuperscript{89} Ibid., 102 Md. 333. “Parties may be estopped in some cases from dis-
puting the validity of a corporate contract when it has been \textit{fully} per-
formed on one side and when nothing short of enforcement will do justice.”
\textsuperscript{87} Md. Trust Co. v. Mechanics Bank, 102 Md. 608, 63 Atl. 70 (1906).
\textsuperscript{88} Ibid., 615. Although this comment is not concerned with ultra vires
contracts of municipal corporations, it is worthy of note that in \textit{Konig
v. M. & C. C. of Baltimore}, 128 Md. 465, 97 Atl. 837 (1916), an ultra vires
contract of Baltimore City withstood an attack by a taxpayer, when such
contract was fully executed on one side, and the City was apparently
ready to complete its performance.
\textsuperscript{90} Montrose Bldg. Ass'n v. Page, 143 Md. 631, 123 Atl. 68 (1923).
\textsuperscript{89} Ibid., 635.
vantages accruing thereto. It guarantees a degree of justice seldom, if ever, approached in the application of the harsh and strict Federal rule. It makes for certainty where otherwise only uncertainty would exist.\textsuperscript{91}