words of the sub-section operates only to enable the Court to permit alterations in the provisions made in the trust instrument for the administration of the estate and not to vary beneficial interests. It will also be seen that the legislature has in the latter part of the sub-section particularised four acts which the Court may authorise and which are all of an administrative character. By the use of the words "in particular" the legislature has indicated that these acts are instances of the general variety of acts which the Court may authorise the trustees to do or abstain from doing. The maxim "*noscitur a sociis*" should be applied. Hence the conclusion may be drawn that the sub-section as a whole is confined to empowering the Court to authorise the trustees to do or abstain from doing acts or things of an administrative character only. Therefore the Court of Appeal's interpretation of s. 57 of the Trustee Act, 1925 (Eng.), in this case is in the writer's opinion equally applicable to s. 81 of the Trustee Act, 1925 (N.S.W.). The section does not enable the Court to authorise variations or re-arrangements of beneficial interests. Section 81 (2) was probably inserted to enable the Court to deal with administrative acts which the legislature thought might not be covered by s. 81 (1).

In conclusion, the writer would like briefly to refer to several references in the majority judgment to the power of the Court to direct trustees in relation to powers and schemes[45]. It would seem that the Court may entertain an application under its inherent jurisdiction for the conferment of powers on trustees, not only by the trustees themselves but also by beneficiaries, and may direct the trustees in relation thereto. It would also seem that a compromise[46] may be approved on the application of any interested party and that trustees may be directed to implement it. Section 57 (3) is not enacted in s. 81, but s. 92 (1) of the Trustee Act, 1925 (N.S.W.), provides that an order under the Act concerning any property subject to a trust, may be made on the application of any person interested in the property. No doubt the Court having made an order under s. 81 has inherent jurisdiction to give the trustees directions in relation to the powers conferred.

*G. J. NEEDS, LL.B.* (*University of Sydney, 1952*)

## COMPANIES AND ESTOPPEL: *RAMA CORPORATION LTD.* v. *PROVEN TIN AND GENERAL INVESTMENTS LTD.*

Under the rule in *Royal British Bank* v. *Turquand*[1], any person who knows of the existence, in a company's Articles of Association, of a power to delegate may assume that that power has been appropriately exercised, since he is not put on notice as to the internal management of the company. The importance of the present case lies in Mr. Justice Slade's decision that the requisite "knowledge" of the power cannot be imputed as a result of the further rule that persons dealing with a company have constructive notice of its registered documents.

By the Articles of Association of the defendant company, the directors had power to delegate certain powers "to such members of their body as they think fit". Without having in fact such delegated authority, a director, G. E. Titley, purported to contract on behalf of the defendant company with one Wedderburn, an agent of the plaintiff. The material facts, as Slade, J., found them, were: Wedderburn trusted Titley completely; and he had never heard of the defendant company before March 21, 1949. The whole bargain was concluded, or believed

[45] *Id.* at 99, 100 and 105.
[46] As defined. *id.* at 104-105.
[1] (1856) L.R. 6 E. & B. 327.

to have been concluded, in Wedderburn's office on March 21, 1949, and on that date Wedderburn had no knowledge of the contents of the defendant company's Articles of Association. Moreover, Wedderburn did not rely on anything in those Articles enabling the Board of Directors to delegate their powers to one of their members. Finally, Titley never disclosed anything of the transaction to his board. On these facts the learned Judge held that the company was not bound by the contract and was entitled to repudiate it.

"A person who, at the time of making a contract with a company registered under the Companies Act", he said,[2] "has no knowledge of the company's Articles of Association, cannot rely on those Articles as conferring ostensible or apparent authority on the agent with whom he dealt". He added that the doctrine of constructive notice of a company's registered documents operates against the person who has failed to inquire, but does not operate in his favour, the doctrine being purely negative, and not positive in its operation.

It is not the purpose of the present note to discuss the correctness of the reasoning in *Rama Corporation Ltd.* v. *Proven Tin and General Investments Ltd.*[3], but to consider the possible effects of the decision on commercial transactions. The Court concluded that where a person contracts with a director, purporting to act for his company, the rule in *Royal British Bank* v. *Turquand*[4] operates in his favour. But he cannot also invoke the rule that he, as a member of the community, is fixed with constructive notice of the contents of the registered public documents of the company, so as to enable him to say that the company had represented to him that the director had the authority to make the particular contract. In order to estop the company from denying that the appropriate power had been delegated to a director, the person contracting with the director must have 'knowledge' of the provision in the Articles of Association on which he relies. There is no holding out by the company that its director has the power to contract, unless the other party has acted on the knowledge of the power of delegation in the Articles. "A person cannot set up an ostensible or apparent authority unless he relied on it in making the contract or supposed contract."[5] This is, of course, what Slade, J., meant by saying that the doctrine of constructive notice is a negative, not a positive, doctrine: in his opinion, the basis of the doctrine, at least in its present application, is the need to protect the company, and not outsiders, against the unauthorised acts of the company's agents.

However, even accepting the decision as it stands, its effect is not necessarily as drastic as it may at first appear. It is submitted that a person contracting with a company need not in every case (though this is the safest method) actually inspect the Articles of Association in order to be entitled to rely on the power of delegation there given. 'Knowledge' of that power operating concurrently with the rule in *Royal British Bank* v. *Turquand*[6] enables the person who relies on it to estop the company from denying that its director had in fact the power delegated to him.

The problem is, therefore, what is meant by 'knowledge' of the company's Articles upon which reliance may be placed in order to raise an estoppel against the company. As a practical matter, it would seem highly inconvenient, if not absurd, to insist that the requisite 'knowledge' can be acquired only by actual inspection of the appropriate documents.

To take an analogous case, the Courts have consistently held that 'actual notice' involves a 'knowledge' in the party concerned which may be based on any reasonably explicit information even from an uninterested party[7]. In

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[2] (1952) 2 Q.B. 147, 149.
[3] *Ibid.*
[4] (1856) L.R. 6 E. & B. 327.
[5] (1952) 2 Q.B. at 149.
[6] (1856) L.R. 6 E. & B. 327.
[7] The question has arisen frequently in interpreting "notice" in the equitable defence of "purchaser for value without notice".

dealing with proof of notice of an encumbrance by a trustee, Lord Cairns said in *Lloyd* v. *Banks*[8] that the Court would expect "proof that the mind of the trustee has in some way been brought to an intelligent apprehension of the nature of the encumbrance which has come upon the property, so that a reasonable man, or an ordinary man of business, would act upon the information and would regulate his conduct by it in the execution of the trust". Lord Cairns continued that if it could be shown that the trustee had knowledge of that kind — "knowledge which would operate upon the mind of any rational man, or man of business, and make him act with reference to the knowledge he has so acquired" — then the trustee could be regarded as fixed with actual notice of the encumbrance.

It is submitted that the requisite knowledge of the power to delegate, which in fact does exist in the Articles, is present, if it has been 'communicated' to the person who contracts with the director at the time of that transaction. The source of the information must be such that a reasonable man would regard it as of sufficient authority to enable him to accept it as a responsible statement of the position. If the person dealing with the director has that knowledge and relies on it, then the estoppel will operate in his favour to make the contract binding on the company.

On this view, 'knowledge' of the Articles does not necessarily require actual inspection of them and there is nothing inconsistent with this in Slade, J.'s, judgment. On the facts, Wedderburn had no knowledge of the defendant company's Articles of Association, for in entering into the contract he relied entirely on his personal trust of Titley. If, on the other hand, Wedderburn had known that Titley was a director of the company and had been informed by him of the existence of the power of delegation, there seems no reason why the decision should not have gone the other way, provided Wedderburn had relied on the existence of the power.

But the communication of the information with respect to the Articles, in order to become a knowledge which, viewing the matter objectively, can legally be relied on, must be such that to a reasonable man contracting with the company it appears both authoritative and responsible[10]. To fulfil this condition the knowledge need not necessarily be communicated by an interested party employed by the company, who may be regarded as 'held out' by it, to be able to give that information. If in fact the power does exist in the Articles, 'knowledge' of its existence and reliance on its exercise is sufficient to estop the company from denying that the appropriate delegation had been made.

Furthermore, it must not be forgotten that often the general doctrine of agency by estoppel may operate to obviate the need to rely on *Turquand's Case*[11]. There was no scope for its operation on the facts of *Rama Corporation Ltd.* v. *Proven Tin and General Investments Ltd.*[12], as there was no evidence of any representation by the defendant company that its director had the power which he purported to exercise. But it must be remembered that the doctrine of agency by estoppel cannot operate to bind a company to contracts made by its officers when the company has no power to enter into such contracts. The doctrine of *ultra vires* denies to a company the capacity to enter into such contracts so that they can in no way be said to be binding on it. "No corporate body can be bound by estoppel to do something beyond its powers."[13]

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[8] (1861-68) L.R. 3 Ch. 488, 491.

[9] *Ibid.*

[10] *Lancashire & Yorkshire Railway Co. & London & North-Western Railway Co. & R. Gaessner Ltd.* v. *Macnicoll* (1917) 34 T.L.R. 280, where it was held that an estoppel did not arise as the instant representation, viewed objectively, was not such as would induce a reasonable man to act on it.

[11] (1856) L R 6 E. & B. 327.

[12] (1952) 2 Q.B. 147.

[13] *British Mutual Banking Co.* v. *Charnwold Forest Rail Co.* (1887) 18 Q.B.D. 714, *per* Fry, J., at 719.

Under the general doctrine of estoppel, a company which has represented, or permitted it to be represented[14], that its officer has a certain power, cannot, as against any person contracting in reliance on the representation, deny that the officer had the power. Moreover, there are many instances where a company can be said to have permitted, in the ordinary course of business, the making of such a representation. For example, a company, by its Articles, is able to delegate to a director or other officer the power to make loans. Without having such authority, an officer of the company has consistently acted as if that power had been delegated to him, by lending money on behalf of the company to various persons, and the other officers of the company, while knowing what has been done, have done nothing about the matter. In such a case it is submitted that the company is permitting it to be represented that he has that power and so is bound by the contracts he makes. The difficult question here is, at what stage can it be said that a company 'permits' the representation. It is submitted that there is something analogous to a duty on a company to exercise reasonable care to see that its officers are not consistently misrepresenting to persons dealing with it their powers, e.g., to contract on behalf of the company. If it fails to exercise such care, it permits the representation and is estopped from denying its truth to those who have relied on it in dealing with the company.

An essential of the estoppel is that the company must make or permit the representation. For example, a director of a company tells you that X, an officer of the company, has power Y, and you must deal with him. As a company can only act through its officers, it is submitted that this is a holding out by the company to you that X has that power and the company is bound by a contract which you purport to make with it through X using that power which in fact has not been delegated to him. However, before the Court will decide that there has been a holding out, it must be such that it would to a reasonable man be one sufficiently authoritative to be relied on[15].

But must the representation be that of one or more persons, each in a position of authority to make it? It is submitted that the representation on which you rely need not spring from a source which *by itself* would be conclusive as a holding out to a reasonable man. A person intending to sell heavy machinery to a company enters into its offices and asks the girl at the enquiry counter whom he should see. She asks someone in the office and says "See Y". Y, a director, purports to buy the machinery and the power to do so has not been delegated to him. In this case surely the company has held out Y as having the necessary power. On this view, in a situation where there has been a number of 'little holdings out', *each in itself* not sufficient to be conclusive, nevertheless the cumulative effect may be such that a reasonable man would assume that the necessary delegation has been made.

All things considered, it appears that, even accepting the decision in the *Rama Corporation Case*[16] at its face value, the conditions for the binding of a company which it lays down are not nearly so stringent as they may, at first sight, appear to be; moreover, the doctrine of agency by estoppel will even then remove much of the apparent force of the decision.

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## STANDARD OF PROOF OF ADULTERY
## *WATTS* v. *WATTS*[1]

The High Court, in the recent case of *Watts* v. *Watts*, again dealt with the

[14] *De Tchchatchef* v. *The Salerni Coupling Ltd.* (1932) 1 Ch. D. 330, 342.

[15] *Lancashire & Yorkshire Railway Co. & London & North-Western Railway Co. & R. Gaessner Ltd.* v. *Macnicoll* (1917) 34 T.L.R. 280.

[16] (1952) 2 Q.B. 147

[1] (1953) A.L.R. 485.