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any reason in this case, however, why I should remove this arbitrator. He has gone wrong under section 12 of the Act of 1948. I have no doubt that was due to a misunderstanding of his duties under that section. My order simply will be, therefore, that the award is set aside.

Award set aside with costs.

Solicitors: *Vizard, Oldham, Crowder & Cash for Bartlett, Walters & Parry, Loughborough; G. A. Hathway for Flint, Bishop & Barnett, Derby.*

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 Dec. 9, 10, 11.

FREEMAN & LOCKYER (A FIRM) v. BUCKHURST PARK PROPERTIES (MANGAL) LTD. AND ANOTHER.

[Plaint No. S. 215a]

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 Jan. 24.
 Willmer,
 Pearson and
 Diplock L.JJ.

Company—Director—Authority—Power of board of directors to appoint managing director—None appointed—Architects engaged by single director for company business—Whether company liable for fees.
Agency—Authority—Company—Director acting as managing director—Knowledge of board—Acts within ambit of managing director's authority—Power to appoint managing director but none appointed—Liability of company.

K., a property developer, and H. formed the defendant company to purchase and resell a large estate. K., personally, agreed to pay the running expenses and to be reimbursed out of the proceeds of the resale. K. and H. and a nominee of each were appointed directors of the company. The articles of association contained power to appoint a managing director but none was appointed. K. instructed the plaintiffs, a firm of architects, to apply for planning permission to develop the estate and do certain other work in that connection. The plaintiffs executed the work. The plaintiffs claimed their fees, the amount of which was not in dispute, from the defendant company. The county court judge held that, although K. was never appointed managing director, he had acted as such to the knowledge of the board of directors of the defendant company and he gave judgment for the plaintiffs. The defendant company appealed.

On the Court of Appeal's finding that K. had no actual authority to employ the plaintiffs but had ostensible authority as he acted throughout as managing director to the knowledge of the board:—

Held, that K.'s act in engaging the plaintiffs was within the ordinary ambit of the authority of a managing director and the

plaintiffs did not have to inquire whether he was properly appointed; it was sufficient for them that under the articles of association there was in fact power to appoint him as such and accordingly the defendant company were liable for the plaintiffs' fees.

Biggerstaff v. Rowatt's Wharf Ltd. [1896] 2 Ch. 93, C.A. and *British Thomson-Houston Co. v. Federated European Bank Ltd.* [1932] 2 K.B. 176, C.A. applied.

Houghton & Co. v. Nothard, Lowe & Wills [1927] 1 K.B. 246, C.A.; *Kreditbank Cassel G.m.b.H. v. Schenkers* [1927] 1 K.B. 826; 43 T.L.R. 237, C.A. and *Rama Corporation Ltd. v. Proved Tin and General Investments Ltd.* [1952] 2 Q.B. 147; [1952] 1 T.L.R. 709; [1952] 1 All E.R. 554 distinguished.

Per Willmer L.J. *Houghton's case*, *Schenkers' case* and *Rama's case* (supra) are cases of unusual transactions in none of which were the plaintiffs in a position to allege that the person with whom they contracted was acting within the scope of such authority as one in his position would be expected to possess (post, p. 494). Those decisions are no more than illustrations of the well-established principle that a party who seeks to set up an estoppel must show that he in fact relied on the representation (whether it was in words or by conduct) that he alleges (post, p. 494).

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APPEAL from Judge Herbert, sitting at Westminster County Court.

The plaintiffs, Freeman and Lockyer, a firm carrying on business as architects and surveyors, claimed £291 6s. for fees due in respect of work done during 1959 in relation to Buckhurst Park Estate, the property of the defendant company, Buckhurst Park Properties (Mangal) Ltd. The plaintiffs received their instructions from Shiv Kumar Kapoor, the second defendant, a director of the defendant company. There was no dispute as to quantum and the only question was whether the liability was that of the defendant company or of the second defendant, who was never served with the proceedings since his whereabouts were unknown. Judge Herbert gave judgment for the plaintiffs against the defendant company who appealed contending that the liability was that of the second defendant.

In September, 1958, Kapoor contracted to purchase Buckhurst Park Estate for £75,000. Having insufficient funds, he approached Nimarjit Singh Hoon, who was willing to advance approximately £40,000. On October 11, 1958, by a written agreement, the two men agreed to form a private limited company with a nominal capital of £70,000 to be subscribed in equal shares. Kapoor and Hoon and a nominee of each were to be directors of the company and its object was to complete the

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purchase of the property and then resell it. It was agreed that Kapoor personally should defray the running expenses and be reimbursed out of the proceeds of the resale. The articles of association of the company contained power to appoint a managing director but none was appointed. The property was conveyed to the company but the prompt resale which Kapoor had contemplated did not materialise. Kapoor engaged the plaintiffs to apply for planning permission to develop the estate and to do certain other work which the plaintiffs did, and for which they claimed the fees in question.

The facts are more fully set out in the judgment of Willmer L.J.

A. E. Holdsworth for the defendant company. The board of directors had power to appoint one of their directors as managing director or to delegate any of their powers to a committee of one. There is no resolution of the defendant company appointing Kapoor as managing director or delegating the board's powers to him and therefore he had no actual authority to enter into any agreement with the plaintiffs on the company's behalf. There is no evidence to show that Kapoor was acting as managing director to the knowledge of the company, as the county court judge found. On the contrary, the minutes of the board meetings are inconsistent with such a finding and show that authority was required to employ and pay agents, surveyors, etc. Accordingly, Kapoor did not have ostensible authority to engage the plaintiffs and *Biggerstaff v. Rowatt's Wharf Ltd.*¹ has no application to the present facts. Even if Kapoor was acting as managing director to the knowledge of the company, the plaintiffs could still not rely on Kapoor's apparent authority, because they had no knowledge of the defendant company's articles of association and had made no inquiries with regard thereto and so could not rely on any power of delegation contained in the articles: see *Houghton & Co. v. Nothard, Lowe & Wills*²; *Kreditbank Cassel G.m.b.H. v. Schenkers*³ and *Rama Corporation Ltd. v. Proved Tin and General Investments Ltd.*⁴ [Reference was made to Gower's Principles of Modern Company Law, 2nd ed. (1959), p. 128, *British Thomson-Houston Co. v. Federated European Bank Ltd.*⁵ and *Clay Hill Brick & Tile Co. Ltd. v. Rawlings.*⁶]

Frank J. White for the plaintiffs. The following propositions

¹ [1896] 2 Ch. 93, C.A.
² [1927] 1 K.B. 246, C.A.
³ [1927] 1 K.B. 826; 43 T.L.R.
237, C.A.

⁴ [1952] 2 Q.B. 147; [1952] 1
T.L.R. 709; [1952] 1 All E.R. 554.
⁵ [1932] 2 K.B. 176, C.A.
⁶ [1938] 4 All E.R. 100.

would follow if the defendant company's arguments were correct: (1) an office boy has the company's authority to go out and buy a 3d. stamp (because buying stamps is within the ambit of his office) but a director does not; (2) if directors are agreed at a board meeting on a certain act, they are only bound if they have made a resolution to that effect; (3) one cannot rely on dealings with a director in the normal course of the company's business unless one first reads the articles of association of the company and ensures that the director with whom one is dealing could have been appointed to carry on the company's business. Those propositions cannot be correct.

It is submitted, first, that there was actual authority in Kapoor to engage the plaintiffs. Where directors agree at a board meeting on a course of conduct, that is binding in itself. The resolution is merely evidence of what took place; notes of the meeting will serve a similar purpose. Secondly, the fact that Kapoor was never specifically appointed managing director is irrelevant. A director can act as agent for or on behalf of a company. Thirdly, whether the defendant company knew that Kapoor was acting as managing director is a question of fact; all the directors knew or had the means of knowing that planning permission was one of the ways to deal with the property, and that the most satisfactory way to obtain permission was to engage surveyors to make the necessary applications.

It is conceded that there was no quorum at the relevant board meetings and this might prevent the court from holding that Kapoor did have actual authority. But there are many factors showing that he had ostensible authority, including the fact that Kapoor acted as owner of the property to the knowledge of the company without serious objection. The difference between actual and ostensible authority is purely a question of whether the necessary formalities have been fulfilled, and that should not affect the position vis-à-vis a third party. The plaintiffs can rely on Kapoor's ostensible authority even though they have not read the articles of association. The doctrine in *Houghton's case*⁷ has a very limited application and does not apply to the present case. If the only ground for relying on a person's ostensible authority is to be found in the articles then one must show that one has read them, but where a person is held out as a director in the normal course of business one does not need to rely on the articles. The plaintiffs did not rely on the articles

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⁷ [1927] 1 K.B. 246.

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and therefore are not debarred from relying on ostensible authority because they had not read them. [Reference was made to *Rama Corporation Ltd. v. Proved Tin and General Investments Ltd.*⁸ and *Kreditbank Cassel G.m.b.H. v. Schenkers.*⁹] It is not ordinary business practice to look at the articles of a company, although it is normal banking practice.

Holdsworth replied.

Cur. adv. vult.

January 24. The following judgments were read.

WILLMER L.J. The plaintiffs, who carry on business as architects and surveyors, bring this action to recover fees alleged to be due to them in respect of work done during the autumn of 1959 in relation to Buckhurst Park Estate at Sunninghill, the property of the defendant company. The plaintiffs received their instructions in August, 1959, from the second defendant, Shiv Kumar Kapoor, who was at all material times a director of the defendant company. The plaintiffs admittedly executed the work which they were employed to do, and there is no dispute as to the quantum of the fees earned by them, namely, £291 6s. The question is whether the liability in respect of those fees is that of the defendant company or that of the second defendant, Kapoor. By an amendment Kapoor was added as second defendant, but at all material times up to the date of trial his whereabouts were unknown, and he was never served with the proceedings. The action accordingly proceeded against the defendant company alone. The trial took place before Judge Herbert at Westminster County Court on three days during March and April, 1963, and by a reserved judgment which he delivered on May 2, 1963, he found in favour of the plaintiffs. The defendant company now appeals to this court, contending that the liability is not theirs but that of Kapoor.

It appears that Kapoor was a gentleman who carried on business as a property developer, that is to say, his business was to purchase properties for the purpose of developing them. His practice was, as and when he purchased a property, to form a company for the purpose of dealing with it. He had a number of such companies, all of which were controlled from a house called "Poyle Manor," which was in fact the registered office of one of his companies, namely, Reevaham Ltd. Much of the business

⁸ [1952] 2 Q.B. 147.

⁹ [1927] 1 K.B. 826.

dealt with from Poyle Manor was handled by one, Mackay, who was a director of Reeveham Ltd. and appears to have acted as general factotum for Kapoor.

In September, 1958, Kapoor entered into a contract to purchase Buckhurst Park Estate for a sum of £75,000. Unfortunately for him he had not sufficient cash resources to enable him to complete the purchase. In these circumstances he sought and obtained assistance from Nimarjit Singh Hoon, who was willing to advance a sum of approximately £40,000. On October 11, 1958, the two men entered into a written agreement (a copy of which is before us) whereby they agreed to form a private limited company with a nominal capital of £70,000 which they were to subscribe in equal shares. The directors of the company were to be Kapoor and Hoon and a nominee of each. The object of the company was as soon as practicable to complete the purchase of the Buckhurst Park Estate.

In due course the defendant company was formed, and it was provided by article 12 of the articles of association that the directors were to be Kapoor and Hoon, together with Cohen (described in the memorandum of association as a company director, but in fact a managing clerk employed by Kapoor's solicitors) who was Kapoor's nominee, and Hubbard (a managing clerk employed by Hoon's solicitors) who was Hoon's nominee. Article 14 of the articles of association made provision for alternate directors to act in the place of any director who might be unable to be present at a meeting. By article 19 it was provided that the quorum necessary for the transaction of the business of the directors should be four.

After entering into the agreement with Kapoor, and even before the formation of the company, Hoon went abroad, and thereafter was at all material times out of the country except for a short period from June to August, 1959. In his absence he left his interests to be protected by his nominee, Hubbard. It was clearly never contemplated that Hoon should take any material part in the management of the company. Whatever the legal formalities, the substance of the transaction was a loan by Hoon to Kapoor to enable Kapoor to acquire and resell the Buckhurst Park Estate. Kapoor in fact thought that he had a purchaser in view, and expected to make a quick profit, which it was agreed should be shared equally between him and Hoon. Unfortunately for both of them, the prospective purchaser never materialised.

The property was duly conveyed to the company, and the

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minutes of the first meeting of the board held on December 11, 1958, record that it was resolved that the company's seal should be affixed to the conveyance. It had been agreed between Kapoor and Hoon that, pending resale of the property, the running expenses of maintaining it were to be defrayed by Kapoor personally, and that he was to be reimbursed out of the profit of the resale. This agreement appears to have been accepted by the board, although I cannot find that it was ever the subject of any resolution at a board meeting. A board meeting was held on April 3, 1959, by which time it is clear from the minutes that any prospect of a quick resale of the property had already disappeared. It is to be observed that none of the resolutions purported to be carried at this board meeting could be of any legal effect since only three members of the board were present thereat. The minutes of the meeting, however, are of considerable evidential value as showing what was taking place at the time and what was in the minds of the respective parties. The minutes show (1) that Kapoor (through another of his companies called Gurjveer Ltd.) was in fact paying the expenses of upkeep of Buckhurst Park and thereby discharging his obligation to maintain the property, and (2) that consideration was being given to the obtaining of planning permission for the development of the property. There was in fact a purported resolution authorising payment on account of £100 to agents who had been employed.

In the summer of 1959 Kapoor instructed an architect, one Hayler, to make application for planning permission for certain development in respect of Buckhurst Park Estate. This Hayler proceeded to do, and an application for planning permission was submitted by him dated July 8, 1959. It is noteworthy that this application was expressed to be made on behalf of Kapoor personally as owner. The application was in fact refused by a notice of refusal dated August 10, 1959. In the meantime, however, on August 4 or 5 Kapoor instructed the plaintiffs to act for him because, as he said, he wanted a local firm to act on his behalf. The plaintiffs duly submitted a fresh application for planning permission dated September 1, 1959, which was again expressed to be made on behalf of Kapoor as owner. A little later they also entered an appeal on behalf of Kapoor against the refusal of the original application for planning permission. During the ensuing months the plaintiffs did other work for Kapoor, not only in respect of Buckhurst Park Estate, but also on behalf of several of his other companies. The fees due to them in respect of work

done for the other companies have all been paid, but those relating to work in respect of the Buckhurst Park Estate remain outstanding, and form the subject of the present action. The work done by the plaintiffs in respect of the Buckhurst Park Estate falls under three heads, namely, (a) submitting application of planning permission and preparing appeal against the refusal of the application made by Hayler; (b) preparing plans of each floor of the main house and ancillary buildings; and (c) defining the boundaries of the estate and preparing plans. So far as concerned the work done in respect of the Buckhurst Park Estate, David Peter Freeman of the plaintiff firm gave evidence, which was corroborated by Mackay, that he was instructed by Kapoor on behalf of the defendant company. This evidence was specifically accepted by the judge.

About the time that the plaintiffs were first instructed, Hoon was in this country. But he was not apparently consulted about the matter, and there is no minute of any resolution of the board authorising the employment of the plaintiffs. It appears, however, that at this time relations between Hoon and Kapoor were already somewhat less than friendly. Hoon was complaining that some of the expenses incurred by Kapoor were not properly speaking maintenance expenses. There was also some negotiation between them with regard to a plan whereby one or other of them was to buy the other out. Nothing, however, came of this, and it is not necessary to refer to it further, since it is in no way relevant to the present appeal.

Throughout the autumn of 1959 the plaintiffs were in constant communication in relation to the work they were doing both with Kapoor personally and with Mackay at the office of Reeveham Ltd. Throughout the whole of this correspondence no mention whatsoever of the defendant company's name is to be found. On the face of it the plaintiffs were purporting to act entirely for Kapoor personally. The appeal from the refusal of planning permission was submitted in his name, and a certificate under section 37 of the Town and Country Planning Act, 1959, was submitted by the plaintiffs certifying that Kapoor was the estate owner in respect of every part of the land to which the appeal related. These circumstances were strongly relied on at the trial as going to show that the plaintiffs throughout were regarding Kapoor as their employer, and that they were looking exclusively to him for payment of their fees. The explanation which Freeman gave in evidence was that he simply identified Kapoor in his own mind with the defendant company. As I have said,

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however, the judge specifically accepted Freeman's evidence that he was instructed by Kapoor on behalf of the defendant company, and Mr. Holdsworth on behalf of the defendant company has not sought to challenge this finding. Having regard to this, the fact that in the correspondence the plaintiffs throughout appeared to regard Kapoor personally as their employer loses its significance. The only question which remains is whether, in view of the fact that Kapoor contracted with the plaintiffs in the defendant company's name, the latter are bound by his act.

The plaintiffs contended (1) that on the true inference from all the facts Kapoor had actual authority to engage the plaintiffs on behalf of the defendant company; alternatively (2) that Kapoor was held out by the defendant company as having ostensible authority, so that the latter is estopped from denying responsibility for his acts. The submissions on behalf of the defendant company are conveniently summarised in paragraphs 2 and 3 of the defence as follows: "2. . . . The said Kapoor was at all material times a director of the defendants, but the defendants deny that he was authorised expressly or impliedly to enter into the alleged or any agreement with the plaintiffs for and on behalf of the defendants. 3. Further, or in the alternative, the said Kapoor at all material times acted without the knowledge and/or the approval of the defendants, and/or outside the scope of his authority as a director of the defendant company." The judge found that Kapoor, although never appointed as managing director, had throughout been acting as such in employing agents and taking other steps to find a purchaser, and that this was well known to the board. In the light of this finding he gave judgment in favour of the plaintiffs, basing himself upon the principles stated by Lopes L.J. in *Biggerstaff v. Rowatt's Wharf Ltd.*¹ I take this to be a finding, not that Kapoor had actual authority to employ the plaintiffs, but that in doing so he was acting within the scope of his ostensible authority.

In this court the plaintiffs have adhered to their contention that Kapoor had actual authority to employ the plaintiffs. But I do not think that this view can be supported. Actual authority might, of course, be either express—for example, if Kapoor were specifically authorised to engage the plaintiffs—or it might be implied—for example, if Kapoor had been appointed to some office which carried with it authority to make such a contract on

¹ [1896] 2 Ch. 93, 104, C.A.

behalf of the defendant company. There is certainly no resolution of the board specifically authorising Kapoor to engage the plaintiffs. The articles of association, however, incorporate regulations 102 and 107 of Table A., Part I. By the former, directors may delegate any of their powers to a committee of one. By the latter, they may appoint one of their body to the office of managing director. But there was never any resolution of the board whereby the directors here purported to exercise either of these powers. Nor can I find any trace of any resolution in writing signed by all the directors such as would be validated by regulation 106 to the same extent as a resolution passed at a board meeting. In all the mass of documents which have been produced I can find no record in writing of Kapoor ever being appointed to any office which would carry with it authority to engage the plaintiffs. In these circumstances I think it is hopeless to contend that Kapoor was ever clothed with actual authority to do what he did.

The real question to be determined is whether the judge was right in finding that Kapoor had ostensible authority to engage the plaintiffs. This is partly a question of fact and partly one of law. So far as the facts are concerned, Mr. Holdsworth on behalf of the defendant company has attacked the judge's finding that Kapoor acted throughout as managing director to the knowledge of the board. He has argued that there is no evidence to support this finding. I find myself unable to accept this submission. In my judgment there was abundant evidence; indeed, when the realities of the case are examined, I think it is the only inference that could properly be drawn.

I hope that I can summarise quite briefly the considerations which impel me to that conclusion. It is, I think, to be remembered that the whole of what I may call the Buckhurst Park Estate venture was essentially Kapoor's affair. It was he who had contracted to buy the property, and it was only because he could not find sufficient capital to pay for it that Hoon's assistance was enlisted and the defendant company was formed. The whole object of the parties and of the defendant company was to resell the property as quickly as possible and to make the best possible profit. This was the evidence of Hoon himself. For this purpose it was clearly in the interest of the defendant company to obtain planning permission to develop the property, and that made it desirable, to say the least, that experts such as the plaintiffs should be engaged to act on behalf of the company. For most of the time with which we are concerned Hoon was out of the

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country and unable to take any part; he left nobody but a solicitor's managing clerk to act on his behalf as his nominee. The inference is that it was always intended that Kapoor should be the person to find the prospective purchaser. That this was indeed the plan is again confirmed by Hoon's own evidence. This, no doubt, explains why it was agreed that pending resale Kapoor should be responsible for the expenses of maintaining the property. This would provide the best possible incentive to him to find a purchaser as quickly as possible. It was Hubbard's evidence that Kapoor had authority for day to day management. This is in accordance with the letter of September 2, 1959, written by Kapoor's solicitors to the solicitors acting for Hoon, in which they said: "We . . . trust that you have now received your client's "confirmation that he has at all times agreed that Mr. Kapoor "should bear the responsibility for management of the property." Hoon's solicitors did not write to confirm that this was so—at least no such letter is included in the bundle of correspondence before us. But the assertion made by Kapoor's solicitors was certainly never challenged. The judge also relied (and I think rightly relied) on the minutes of the board meetings of April 3, 1959, and March 3, 1960. As to the latter, paragraph 5 of the minutes records Hubbard complaining "that Mr. Kapoor had "never given proper or full information to the board of the steps "he had taken in the past to dispose of the property or of any "application he had made for development." This, I think, makes it clear that it must always have been contemplated by the board that Kapoor should not only manage the property, but should also be responsible for disposing of it and for making any planning application necessary for that purpose. That in turn must involve such steps as would ensure the best chances of resale—for instance, employing agents and surveyors to assist in obtaining the necessary planning permission. As to the minutes of the earlier meeting, although no quorum was present, they are of some evidential value as showing what was being done and what was in the minds of the directors at the time. These minutes were indeed relied on by Mr. Holdsworth as showing that express authority was thought to be required to pay the fees of the agents who had been employed. He suggested that this would be inconsistent with Kapoor having authority to engage agents or professional persons such as the plaintiffs without express authorisation. But as against that these minutes do show that as early as April, 1959, outside persons were being engaged with the approval of the board to assist in obtaining planning permission.

It is true that it was Cohen and not Kapoor who raised the subject and reported on what had been done. But it is to be remembered that Cohen was Kapoor's nominee, and I think the inference is that the various agents named had been engaged by Kapoor. Lastly, I would refer to the fact that it was the defendant company's own case (and indeed a subject-matter of complaint on their part) that Kapoor was acting throughout as if he were himself the owner of the property. Thus it was complained that he appeared on television and behaved as if he were the owner. Reliance was also placed on the fact that Kapoor dealt with the plaintiffs themselves as if he were the owner of the property. All this, as it seems to me, goes to support the view that Kapoor was acting throughout as managing director. I think it is not without significance that when, on January 28, 1960, the local authority wrote to the defendant company's solicitors, explaining that the respective applications for planning permission had been submitted on behalf of Kapoor as owner, the solicitors by their reply did no more than point out that Kapoor was not in fact the owner of the property, and never had been. No suggestion was made by them at that time that Kapoor was acting without the authority of the board in causing the respective applications for planning permission to be made. Having regard to all these considerations I can see no good ground for interfering with the judge's finding of fact that Kapoor throughout was, to the knowledge of the board, acting as managing director of the defendant company.

Mr. Holdsworth recognised that if that finding be accepted his task in challenging the judge's conclusion must be rendered so much the more difficult. Nevertheless, he submitted that in law the defendant company was entitled to succeed. The doctrine of ostensible authority in relation to a limited company necessarily gives rise to difficult legal problems. For a company can act only through its officers, and the powers of its officers are limited by its articles of association. It is well established that all persons dealing with a company are affected with notice of its memorandum and articles of association, which are public documents open to inspection by all; see *Mahony v. East Holyford Mining Co.*² But by the rule in *Royal British Bank v. Turquand*,³ re-affirmed in *Mahony's* case,⁴ it was also established, in the words of Lord Hatherley in the latter case,⁵ "that, when there are persons

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² (1875) L.R. 7 H.L. 869,
H.L. (Ir.).

⁴ L.R. 7 H.L. 869.

⁵ *Ibid.* 894.

³ (1856) 6 E. & B. 327.

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“conducting the affairs of the company in a manner which appears to be perfectly consonant with the articles of association, then those so dealing with them, externally, are not to be affected by any irregularities which may take place in the internal management of the company.” Thus in *Biggerstaff v. Rowatt's Wharf Ltd.*,⁶ where the articles of association conferred power to appoint a managing director, the company was held bound by the act of a person who purported to contract as its managing director though he had never been formally appointed as such. Lopes L.J., in a passage cited by the judge in the present case, said that “... a company is bound by the acts of persons who take upon themselves, with the knowledge of the directors, to act for the company, provided such persons act within the limits of their apparent authority; and that strangers dealing bona fide with such persons, have a right to assume that they have been duly appointed.” In the same case Lindley L.J. said⁸: “The persons dealing with him” (the apparent managing director) “must look to the articles, and see that the managing director might have power to do what he purports to do, and that is enough for a person dealing with him bona fide.” I take Lindley L.J. to mean, not that persons dealing with the supposed managing director must actually look at the articles, but that, being affected with notice of them, they must have regard thereto. Consequently, if in that case the articles of association had conferred no power to appoint a managing director, the plaintiffs could not have been heard to say that the person with whom they contracted had been held out by the company as its managing director.

A similar case was that of *British Thomson-Houston Co. v. Federated European Bank Ltd.*,⁹ where by the articles of association of the defendant company the directors had power to delegate to one or more of their own body such of the powers conferred on the directors as they might consider requisite for carrying on the business of the company, and to determine who should be entitled to sign contracts and documents on the company's behalf. There was nothing to show that the plaintiffs in fact knew of the articles of association of the defendant company; nevertheless the company was held bound by a guarantee given to the plaintiffs by the chairman of the board, one N. Pal, and signed in the following form: “Federated European Bank Ltd. (signed) N.

⁶ [1896] 2 Ch. 93.

⁷ *Ibid.* 104.

⁸ *Ibid.* 102.

⁹ [1932] 2 K.B. 176, C.A.

“Pal.” Again in *Clay Hill Brick & Tile Co. Ltd. v. Rawlings*¹⁰ a company was held bound by the act of its chairman, who acted as managing director though never appointed as such, in receiving cheques from a customer in payment for goods supplied by the company. These, it will be seen, were all cases in which not only did the articles of association confer power on the directors to delegate, but the person purporting to act for the company was acting within the scope of what would normally be expected to be within the authority of one in his position.

It has been submitted on behalf of the defendants, however, that where, as here, the person contracting with someone purporting to act on behalf of a company has in fact no knowledge of its articles of association, and has made no inquiries with regard thereto, he cannot rely on any power of delegation contained therein when there has been no actual delegation. In such a case, it has been argued, the rule in *Turquand's* case¹¹ has no application, and there can be no room for any presumption that the power of delegation has been properly and regularly exercised. In support of this submission reliance is placed on the decision of this court in *Houghton & Co. v. Nothard, Lowe & Wills*,¹² especially on the judgment of Sargant L.J., which was followed in this court in *Kreditbank Cassel G.m.b.H. v. Schenkers*¹³ and also by Slade J. in *Rama Corporation Ltd. v. Proved Tin & General Investments Ltd.*¹⁴ If *Houghton's* case¹⁵ does establish the broad proposition contended for, it would, I agree, be difficult to reconcile it with the authorities to which I have previously referred, especially with the decision of this court in *British Thomson-Houston Co. v. Federated European Bank Ltd.*¹⁶ This was a difficulty which was clearly felt by Slade J. in *Rama's* case.¹⁷ He made no secret of the fact that he thought the decisions of this court were conflicting; he accordingly based his judgment on the decision in *Houghton's* case¹⁸ and refused to follow that of *British Thomson-Houston Co. v. Federated European Bank Ltd.*¹⁹

Though I have no doubt that *Rama's* case²⁰ was rightly decided on its own facts, I cannot agree with the view expressed

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¹⁰ [1938] 4 All E.R. 100.¹¹ 6 E. & B. 377.¹² [1927] 1 K.B. 246, C.A.¹³ [1927] 1 K.B. 826; 43 T.L.R. 237, C.A.¹⁴ [1952] 2 Q.B. 147; [1952] 1 T.L.R. 709; [1952] 1 All E.R. 554.¹⁵ [1927] 1 K.B. 246.¹⁶ [1932] 2 K.B. 176.¹⁷ [1952] 1 All E.R. 554.¹⁸ [1927] 1 K.B. 246.¹⁹ [1932] 2 K.B. 176.²⁰ [1952] 1 All E.R. 554.

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by Slade J. that the previous decisions of this court were conflicting. I do not think that, when properly understood, the cases relied on by the defendants here are in conflict with the decision in the *British Thomson-Houston* case²¹ or with the principles which I have already stated. If I correctly understand them, the cases relied on by the defendants deal with a much narrower point. They were all cases of most unusual transactions, which would not be within what would ordinarily be expected to be the scope of the authority of the officer purporting to act on behalf of the company. Thus in *Houghton's* case²² a director purported to make on behalf of his company an agreement with the plaintiffs whereby the plaintiffs were to sell on commission goods imported by the defendant company, on terms that the plaintiffs should retain the proceeds of sale as security for a debt due from another company. In the *Kreditbank* case²³ a branch manager of a company carrying on business as forwarding agents purported to draw bills of exchange on behalf of his company which he subsequently endorsed on their behalf. In *Rama's* case²⁴ a director of the defendant company purported to make an agreement with a director of the plaintiff company whereby the two companies were to join in subscribing to a fund to be used for financing the sale of goods produced by a third company, the defendant company being responsible for administering the fund and accounting to the plaintiffs. Thus in none of these cases were the plaintiffs in a position to allege that the person with whom they contracted was acting within the scope of such authority as one in his position would be expected to possess. There was accordingly no ground for saying that the officer in question was in fact being held out by the company as having authority to perform the act relied on. The plaintiffs, indeed, had nothing to go on beyond the fact that in each case power to do the acts relied on might, under the articles of association, have been delegated to the person with whom they contracted. But in none of the cases did the plaintiffs have any knowledge of the articles of association.

In the circumstances the three decisions relied on by the defendants are to my mind no more than illustrations of the well-established principle that a party who seeks to set up an estoppel must show that he in fact relied on the representation that he alleges, be it a representation in words or a representation by conduct.

²¹ [1932] 2 K.B. 176.

²² [1927] 1 K.B. 246.

²³ [1927] 1 K.B. 826.

²⁴ [1952] 1 All E.R. 554.

That this is so is, I think, made clear by the judgments in *Houghton's* case²⁵ itself. Thus Bankes L.J., after referring to the rule in *Mahony's* case,²⁶ went on to say that²⁷ “. . . in order to “ establish a case which falls within the rule it is essential that “ the person who claims the benefit of it must prove that he “ relied upon the ostensible authority which he sets up. . . .” Sargant L.J., in a passage much relied on by the defendants in the present case, said²⁸: “ Next as to the power to delegate which “ is contained in the articles of association. In a case like this “ where that power of delegation had not been exercised, and “ where admittedly Mr. Dart and the plaintiff firm had no know- “ ledge of the existence of that power and did not rely on it, I “ cannot for myself see how they can subsequently make use of “ this unknown power so as to validate the transaction. They “ could rely on the fact of delegation, had it been a fact, whether “ known to them or not. They might rely on their knowledge of “ the power of delegation, had they known of it, as part of the “ circumstances entitling them to infer that there had been a “ delegation and to act on that inference, though it were in fact “ a mistaken one. But it is quite another thing to say that the “ plaintiffs are entitled now to rely on the supposed exercise of a “ power which was never in fact exercised and of the existence “ of which they were in ignorance at the date when they con- “ tracted.” It seems to me that the key words in that passage are: “ Mr. Dart and the plaintiff firm had no knowledge of the “ existence of that power *and did not rely on it.*” Later in his judgment Sargant L.J. distinguished *Biggerstaff v. Rowatt's Wharf Ltd.*²⁹ on the ground that in that case³⁰ “ the agent “ whose authority was relied on had been acting to the knowledge “ of the company as a managing director, and the act done was “ one within the ordinary ambit of the powers of a managing “ director in the transaction of the company's affairs.” These words are, I think, of the utmost significance, for they express in the clearest possible way the very distinction which I myself have been seeking to draw between the present case and the cases relied on by the defendants.

The same distinction is implicit in the judgment of Atkin L.J. in the *Kreditbank* case.³¹ As appears from what he said, he founded his decision on the view that it would be wrong, in the

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²⁵ [1927] 1 K.B. 246.²⁶ L.R. 7 H.L. 869.²⁷ [1927] 1 K.B. 246, 260.²⁸ *Ibid.* 266.²⁹ [1896] 2 Ch. 93.³⁰ [1927] 1 K.B. 246, 267.³¹ [1927] 1 K.B. 826, 843.

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absence of evidence, to assume that the manager of a branch business is a person who has ostensible authority to sign bills on behalf of his company. Later,³² he went on to explain what he described as "the true limits" set by the decision in *Houghton's* case³³ (to which he was himself a party) on the doctrine established by *Turquand's* case³⁴ and *Mahony's* case.³⁵ After pointing out that a person dealing with somebody purporting to act on behalf of a company is to be in the same position as if he had read the articles of association, he went on to say that there are cases in which it is not necessary to inquire any further as to whether a power of delegation has in fact been exercised. By way of illustration he said³⁶: "If you are dealing with a director " in a matter in which normally a director would have power to " act for the company you are not obliged to inquire whether or " not the formalities required by the articles have been complied " with before he exercises that power."

There is a useful note appended by the reporter to the report of *British Thomson-Houston Co. v. Federated European Bank Ltd.*³⁷ which, I think, correctly sums up the effect of the authorities. This note, I would add, was expressly approved (and I think rightly approved) by Tucker J. in *Clay Hill Brick and Tile Co. Ltd. v. Rawlings*.³⁸ In it the reporter says³⁹: "If the " articles merely empower the directors to delegate to an officer " authority to do the act, and the officer purports to do the act, " then—(a) if the act is one which would ordinarily be beyond the " powers of such an officer, the plaintiff cannot assume that the " directors have delegated to the officer power to do the act; and " if they have not done so, the plaintiff cannot recover: *Premier " Industrial Bank v. Carlton Manufacturing Co.*⁴⁰ . . . *Houghton " & Co. v. Nothard, Lowe & Wills, Ltd.*⁴¹ . . . But (b) if the act " is one which is ordinarily within the powers of such an officer, " then the company cannot dispute the officer's authority to do " the act, whether the directors have or have not actually invested " him with authority to do it; *Mahony v. East Holyford Mining " Co. Ltd.*⁴²; *Biggerstaff v. Rowatt's Wharf Ltd.*⁴³; *Dey v.*

³² [1927] 1 K.B. 826, 844.

³³ [1927] 1 K.B. 246.

³⁴ 6 E. & B. 377.

³⁵ L.R. 7 H.L. 869.

³⁶ [1927] 1 K.B. 826, 844.

³⁷ [1932] 2 K.B. 176, 183-184.

³⁸ [1938] 4 All E.R. 100, 105.

³⁹ [1932] 2 K.B. 176, 184.

⁴⁰ [1909] 1 K.B. 106; 25 T.L.R. 17.

⁴¹ [1927] 1 K.B. 246.

⁴² L.R. 7 H.L. 869.

⁴³ [1896] 2 Ch. 93, 102, 106.

“*Pullinger Engineering Co.*;⁴⁴ *Kreditbank Cassel v. Schenkers Ltd.*;⁴⁵ and the principal case.”

In the present case the plaintiffs do not have to rely on the articles of association of the defendant company in order to establish their claim. They are thus not caught by the ratio of the decision in *Houghton's* case.⁴⁶ The plaintiffs here rely on the fact that Kapoor, to the knowledge of the defendant company's board, was acting throughout as managing director, and was therefore being held out by the board as such. The act of Kapoor in engaging the plaintiffs was clearly one within the ordinary ambit of the authority of a managing director. The plaintiffs accordingly do not have to inquire whether he was properly appointed. It is sufficient for them that under the articles there was in fact power to appoint him as such.

In my judgment the judge here, having found that Kapoor was throughout acting as managing director to the knowledge of the board of the defendant company, rightly applied the principle enunciated by Lopes L.J. in *Biggerstaff's* case.⁴⁷ I think that he came to the right conclusion, and I would accordingly dismiss the appeal.

PEARSON L.J. I agree. The defendant company was formed with a view to purchasing the Buckhurst Park property and making a quick and profitable resale, which was thought to be in prospect. After the company had been formed and had purchased the property, the intended resale was not achieved. Thereafter, as the judge has found, the whole purpose of the company was to dispose of the property as advantageously as possible. Kapoor was a director of the company and he was, with the knowledge and approval of the other directors, carrying on the business of the company. In the course of carrying on the company's business and professing to act on its behalf, he instructed the plaintiffs to render the services for which they are claiming remuneration in this action. The instructions were to take over the conduct of a planning application and appeal relating to the property, and to survey and prepare a plan of the property, and the plaintiffs did that work. Clearly the instructions were within the natural and ordinary scope of the company's business.

That is a very short, but I think at this stage sufficient,

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⁴⁴ [1921] 1 K.B. 77; 37 T.L.R. 10,
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⁴⁶ [1927] 1 K.B. 246.

⁴⁷ [1896] 2 Ch. 93, 104.

⁴⁵ [1927] 1 K.B. 826.

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summary of the judge's view of the facts of the case. There were difficult questions of fact to which he refers in his judgment, but his findings were to that effect, and there was undoubtedly evidence to support his findings, as Willmer L.J. has shown.

The ground of the judge's decision in favour of the plaintiffs is stated in these two sentences of his judgment: "In my judgment a company is bound by the acts of persons who take upon themselves, with the knowledge of the directors, to act for the company, provided such persons act within the limits of their apparent authority, and strangers dealing bona fide with such persons have a right to assume that they have been duly appointed . . . In my opinion in the present case Kapoor was acting as managing director, certainly as a director acting for the company with the knowledge of his board, and I hold that the company is bound by his action in employing the plaintiffs." He cited *Biggerstaff v. Rowatt's Wharf Ltd.*⁴⁸ (per Lopes L.J.) and *British Thomson-Houston Co. Ltd. v. Federated European Bank Ltd.*⁴⁹ (per Scrutton L.J.).

In my view the decision of the judge was correct. On the facts as found the plaintiffs were entitled to rely on Kapoor's ostensible authority to give them instructions on behalf of the company because there was a holding out of Kapoor by the company as its agent to conduct its business within the ordinary scope of that business. The expressions "ostensible authority" and "holding out" are somewhat vague. The basis of them, when the situation is analysed, is an estoppel by representation. The agent professes to act on behalf of the company, and he thereby impliedly represents and warrants that he has authority from the company to do so: *Firbank's Executors v. Humphreys*.⁵⁰ We are concerned in this case only with the representation, and not with the warranty which in some other case might give to the other contracting party a right of action for damages for breach of warranty. In this case the company has known of and acquiesced in the agent professing to act on its behalf, and thereby impliedly representing that he has the company's authority to do so. The company is considered to have made the representation, or caused it to be made, or at any rate to be responsible for it. Accordingly, as against the other contracting party, who has altered his position in reliance on the representation, the company is estopped from denying the truth of the representation.

⁴⁸ [1896] 2 Ch. 93, 104.

⁴⁹ [1932] 2 K.B. 176, 180.

⁵⁰ (1886) 18 Q.B.D. 54, 62; 3 T.L.R. 49, C.A.

The identification of the persons whose knowledge and acquiescence constitute knowledge and acquiescence by the company depends upon the facts of the particular case. In one case those persons were the shareholders and subscribers of the company's memorandum and articles of association who permitted the de facto directors and de facto secretary to carry on the company's business: *Mahony v. East Holyford Mining Co.*⁵¹ More frequently those persons are the directors: *Biggerstaff's* case.⁵² Other illustrations of the principle involved will be found in *Ernest v. Nicholls*⁵³; *Totterdell v. Fareham Blue Brick & Tile Co. Ltd.*⁵⁴, per Byles J.; *In re County Life Assurance Co.*⁵⁵ An interesting passage, showing that the agent himself may make the representation which binds the company, is to be found in the judgment of Greer L.J. in the *British Thomson-Houston* case⁵⁶ where he said: "In the case before us the " guarantee was signed by a person who was the chairman of the " board of directors. Someone must represent the company for " the purpose of conducting correspondence, it may be a secretary, " or the managing director, or some other officer; and he must " have authority to bind the company by letters written on its " behalf. The person chosen by the defendants for this purpose " was the chairman of the board, and the defendants have repre- " sented by their chairman that the plaintiffs could rely on the " guarantee of the defendants as the act of the defendants and " are responsible for those acts which they have held him out as " having authority to perform."

In *Houghton & Co. v. Nothard, Lowe & Wills Ltd.*⁵⁷ there was put forward an argument to the effect that, if the company's articles contained a provision under which the board of directors might have authorised a single director to make a contract of an unusual character on behalf of the company, the conferring of such authority would be a matter of internal management, and the other contracting party would be entitled to assume without inquiry that such authority had been conferred. There were several answers to that argument. One of them was that the other contracting party did not at the material time know of that provision in the articles, and so could not have acted in reliance on any supposed authorisation under it. In my view that case is

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⁵¹ L.R. 7 H.L. 869, 895, 897, 898.

⁵² [1896] 2 Ch. 96.

⁵³ (1857) 6 H.L.Cas. 401, 421,
H.L.

⁵⁴ (1866) L.R. 1 C.P. 674, 677.

⁵⁵ (1870) 5 Ch.App. 288.

⁵⁶ [1932] 2 K.B. 176, 182.

⁵⁷ [1927] 1 K.B. 246.

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readily distinguishable from the present case. The plaintiffs are not seeking to rely on any provision in the company's articles of association, but on things done by Kapoor within the ordinary scope of the company's business, and with the knowledge and acquiescence of the company through its other directors. It is true that the plaintiffs in this case did not look at the company's articles of association; it would have been surprising if they had done so. The plaintiffs took the very slight risk that the company's articles of association might be such as to make it impossible for Kapoor to be acting *intra vires* on behalf of the company in giving his instructions to the plaintiffs.

*Rama Corporation Ltd. v. Proved Tin and General Investments Ltd.*⁵⁸ was another case of an unusual transaction, and it was decided on the ground that the plaintiffs, having no knowledge of the defendant company's articles of association, could not claim to have acted in reliance on a provision for delegation contained therein. It was expressly recognised in the judgment⁵⁸ that "It is possible to have ostensible or apparent authority apart " from the articles of association, though not where it is inconsistent with or beyond the articles of association." In my view the judgment cannot reasonably be regarded as saying or implying that a person dealing with a director of a company in a normal transaction within the ordinary scope of the company's business is not protected by the director's ostensible authority unless that person obtained and studied the company's articles of association and the incorporated provisions of Table A and made sure that the directors had power to delegate to a single director. Such a requirement would be an absurd example of legal pettifoggery. There is no difficulty in applying the principle of *Rama's* case⁵⁹ to any case where there is an unusual transaction outside the scope of the ordinary business which the single director is (in the sense indicated above) held out by the company as authorised to conduct on its behalf.

In my judgment the interesting arguments presented for the defendants must fail, and the appeal must be dismissed.

DIPLOCK L.J. The county court judge made the following findings of fact: (1) that the plaintiffs intended to contract with Kapoor as agent for the company, and not on his own account; (2) that the board of the company intended that Kapoor should do what he could to obtain the best possible price for the estate;

⁵⁸ [1952] 1 All E.R. 554, 566.

⁵⁹ [1952] 1 All E.R. 554.

(3) that Kapoor, although never appointed as managing director, had throughout been acting as such in employing agents and taking other steps to find a purchaser; (4) that Kapoor was so acting was well known to the board. The only findings which have been challenged on appeal are (3) and (4), but for the reasons given by Willmer L.J. I think that the challenge failed.

The county court judge did not hold (although he might have done) that actual authority had been conferred upon Kapoor by the board to employ agents. He proceeded on the basis of apparent authority, that is, that the defendant company had so acted as to be estopped from denying Kapoor's authority. This rendered it unnecessary for the judge to inquire whether actual authority to employ agents had been conferred upon Kapoor by the board to whom the management of the company's business was confided by the articles of association.

I accept that such actual authority could have been conferred by the board without a formal resolution recorded in the minutes, although this would have rendered them liable to a default fine under section 145 (4) of the Companies Act, 1948. But to confer actual authority would have required not merely the silent acquiescence of the individual members of the board, but the communication by words or conduct of their respective consents to one another and to Kapoor.

The inference that they had done so on April 3, 1959, might, I think, have been drawn from the notes made by Hubbard of what purported to be a meeting of directors of that date (had it been a valid board meeting) but there was no quorum present as required by article 19 of the articles of association. Nothing that happened at that meeting can thus be relied on as conferring an actual authority on Kapoor to employ agents, although it shows that the three directors present knew that Kapoor was acting as if he were in fact so authorised. The oral evidence of Hoon, who was not present, justifies the inference drawn by the judge that he too acquiesced in Kapoor taking steps to find a purchaser on behalf of the company, but not necessarily that he communicated his acquiescence to the other directors or to Kapoor.

The other board meeting relied upon on March 3, 1960, which was properly constituted but held after the expenditure had been incurred, is equivocal. It is consistent with the view that Kapoor had on some previous occasion been authorised by the board to employ agents to dispose of the property and to apply for development permission, but I myself do not feel that there is adequate material to justify the court in reaching the conclusion of fact

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(which the county court judge refrained from making) that actual authority to employ agents had been conferred by the board on Kapoor.

This makes it necessary to inquire into the state of the law as to the ostensible authority of officers and servants to enter into contracts on behalf of corporations. It is a topic on which there are confusing and, it may be, conflicting judgments of the Court of Appeal which are elaborately analysed and discussed by Slade J. in *Rama Corporation Ltd. v. Proved Tin & General Investments Ltd.*⁶⁰ If, when properly understood, the judgments of the Court of Appeal in the previous cases do conflict, this court is entitled to decide which of them it should follow: see *Young v. Bristol Aeroplane Co.*⁶¹ We are concerned in the present case with the authority of an agent to create contractual rights and liabilities between his principal and a third party whom I will call "the contractor." This branch of the law has developed pragmatically rather than logically owing to the early history of the action of assumpsit and the consequent absence of a general *ius quaesitum tertii* in English law. But it is possible (and for the determination of this appeal I think it is desirable) to restate it upon a rational basis.

It is necessary at the outset to distinguish between an "actual" authority of an agent on the one hand, and an "apparent" or "ostensible" authority on the other. Actual authority and apparent authority are quite independent of one another. Generally they co-exist and coincide, but either may exist without the other and their respective scopes may be different. As I shall endeavour to show, it is upon the apparent authority of the agent that the contractor normally relies in the ordinary course of business when entering into contracts.

An "actual" authority is a legal relationship between principal and agent created by a consensual agreement to which they alone are parties. Its scope is to be ascertained by applying ordinary principles of construction of contracts, including any proper implications from the express words used, the usages of the trade, or the course of business between the parties. To this agreement the contractor is a stranger; he may be totally ignorant of the existence of any authority on the part of the agent. Nevertheless, if the agent does enter into a contract pursuant to the

⁶⁰ [1952] 1 All E.R. 554.

⁶¹ [1944] K.B. 718; 60 T.L.R. 536; [1944] 2 All E.R. 293, C.A.

“ actual ” authority, it does create contractual rights and liabilities between the principal and the contractor. It may be that this rule relating to “ undisclosed principals,” which is peculiar to English law, can be rationalised as avoiding circuitry of action, for the principal could in equity compel the agent to lend his name in an action to enforce the contract against the contractor, and would at common law be liable to indemnify the agent in respect of the performance of the obligations assumed by the agent under the contract.

An “ apparent ” or “ ostensible ” authority, on the other hand, is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the “ apparent ” authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself. The representation, when acted upon by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.

In ordinary business dealings the contractor at the time of entering into the contract can in the nature of things hardly ever rely on the “ actual ” authority of the agent. His information as to the authority must be derived either from the principal or from the agent or from both, for they alone know what the agent's actual authority is. All that the contractor can know is what they tell him, which may or may not be true. In the ultimate analysis he relies either upon the representation of the principal, that is, apparent authority, or upon the representation of the agent, that is, warranty of authority.

The representation which creates “ apparent ” authority may take a variety of forms of which the commonest is representation by conduct, that is, by permitting the agent to act in some way in the conduct of the principal's business with other persons. By so doing the principal represents to anyone who becomes aware that the agent is so acting that the agent has authority to enter on behalf of the principal into contracts with other persons of the

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kind which an agent so acting in the conduct of his principal's business has usually "actual" authority to enter into.

In applying the law as I have endeavoured to summarise it to the case where the principal is not a natural person, but a fictitious person, namely, a corporation, two further factors arising from the legal characteristics of a corporation have to be borne in mind. The first is that the capacity of a corporation is limited by its constitution, that is, in the case of a company incorporated under the Companies Act, by its memorandum and articles of association; the second is that a corporation cannot do any act, and that includes making a representation, except through its agent.

Under the doctrine of ultra vires the limitation of the capacity of a corporation by its constitution to do any acts is absolute. This affects the rules as to the "apparent" authority of an agent of a corporation in two ways. First, no representation can operate to estop the corporation from denying the authority of the agent to do on behalf of the corporation an act which the corporation is not permitted by its constitution to do itself. Secondly, since the conferring of actual authority upon an agent is itself an act of the corporation, the capacity to do which is regulated by its constitution, the corporation cannot be estopped from denying that it has conferred upon a particular agent authority to do acts which by its constitution, it is incapable of delegating to that particular agent.

To recognise that these are direct consequences of the doctrine of ultra vires is, I think, preferable to saying that a contractor who enters into a contract with a corporation has constructive notice of its constitution, for the expression "constructive notice" tends to disguise that constructive notice is not a positive, but a negative doctrine, like that of estoppel of which it forms a part. It operates to prevent the contractor from saying that he did not know that the constitution of the corporation rendered a particular act or a particular delegation of authority ultra vires the corporation. It does not entitle him to say that he relied upon some unusual provision in the constitution of the corporation if he did not in fact so rely.

The second characteristic of a corporation, namely, that unlike a natural person it can only make a representation through an agent, has the consequence that in order to create an estoppel between the corporation and the contractor, the representation as to the authority of the agent which creates his "apparent" authority must be made by some person or persons who have

“ actual ” authority from the corporation to make the representation. Such “ actual ” authority may be conferred by the constitution of the corporation itself, as, for example, in the case of a company, upon the board of directors, or it may be conferred by those who under its constitution have the powers of management upon some other person to whom the constitution permits them to delegate authority to make representations of this kind. It follows that where the agent upon whose “ apparent ” authority the contractor relies has no “ actual ” authority from the corporation to enter into a particular kind of contract with the contractor on behalf of the corporation, the contractor cannot rely upon the agent's own representation as to his actual authority. He can rely only upon a representation by a person or persons who have actual authority to manage or conduct that part of the business of the corporation to which the contract relates.

The commonest form of representation by a principal creating an “ apparent ” authority of an agent is by conduct, namely, by permitting the agent to act in the management or conduct of the principal's business. Thus, if in the case of a company the board of directors who have “ actual ” authority under the memorandum and articles of association to manage the company's business permit the agent to act in the management or conduct of the company's business, they thereby represent to all persons dealing with such agent that he has authority to enter on behalf of the corporation into contracts of a kind which an agent authorised to do acts of the kind which he is in fact permitted to do usually enters into in the ordinary course of such business. The making of such a representation is itself an act of management of the company's business. Prima facie it falls within the “ actual ” authority of the board of directors, and unless the memorandum or articles of the company either make such a contract ultra vires the company or prohibit the delegation of such authority to the agent, the company is estopped from denying to anyone who has entered into a contract with the agent in reliance upon such “ apparent ” authority that the agent had authority to contract on behalf of the company.

If the foregoing analysis of the relevant law is correct, it can be summarised by stating four conditions which must be fulfilled to entitle a contractor to enforce against a company a contract entered into on behalf of the company by an agent who had no actual authority to do so. It must be shown :

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- (1) that a representation that the agent had authority to enter on behalf of the company into a contract of the kind sought to be enforced was made to the contractor;
- (2) that such representation was made by a person or persons who had "actual" authority to manage the business of the company either generally or in respect of those matters to which the contract relates;
- (3) that he (the contractor) was induced by such representation to enter into the contract, that is, that he in fact relied upon it; and
- (4) that under its memorandum or articles of association the company was not deprived of the capacity either to enter into a contract of the kind sought to be enforced or to delegate authority to enter into a contract of that kind to the agent.

The confusion which, I venture to think, has sometimes crept into the cases is in my view due to a failure to distinguish between these four separate conditions, and in particular to keep steadfastly in mind (a) that the only "actual" authority which is relevant is that of the persons making the representation relied upon, and (b) that the memorandum and articles of association of the company are always relevant (whether they are in fact known to the contractor or not) to the questions (i) whether condition (2) is fulfilled, and (ii) whether condition (4) is fulfilled, and (but only if they are in fact known to the contractor) may be relevant (iii) as part of the representation on which the contractor relied.

In each of the relevant cases the representation relied upon as creating the "apparent" authority of the agent was by conduct in permitting the agent to act in the management and conduct of part of the business of the company. Except in *Mahony v. East Holyford Mining Co. Ltd.*,⁶² it was the conduct of the board of directors in so permitting the agent to act that was relied upon. As they had, in each case, by the articles of association of the company full "actual" authority to manage its business, they had "actual" authority to make representations in connection with the management of its business, including representations as to who were agents authorised to enter into contracts on the company's behalf. The agent himself had no "actual" authority to enter into the contract because the formalities prescribed by the articles for conferring it upon him had not been complied with.

⁶² L.R. 7 H.L. 869.

In *British Thomson-Houston Co. v. Federated European Bank Ltd.*,⁶³ where a guarantee was executed by a single director, it was contended that a provision in the articles, requiring a guarantee to be executed by two directors, deprived the company of capacity to delegate to a single director authority to execute a guarantee on behalf of the company, that is, that condition (4) above was not fulfilled; but it was held that other provisions in the articles empowered the board to delegate the power of executing guarantees to one of their number, and this defence accordingly failed. In *Mahony's case*⁶⁴ no board of directors or secretary had in fact been appointed, and it was the conduct of those who, under the constitution of the company, were entitled to appoint them which was relied upon as a representation that certain persons were directors and secretary. Since they had "actual" authority to appoint these officers, they had "actual" authority to make representations as to who the officers were. In both these cases the constitution of the company, whether it had been seen by the contractor or not, was relevant in order to determine whether the persons whose representations by conduct were relied upon as creating the "apparent" authority of the agent had "actual" authority to make the representations on behalf of the company. In *Mahony's case*,⁶⁴ if the persons in question were not persons who would normally be supposed to have such authority by someone who did not in fact know the constitution of the company, it may well be that the contractor would not succeed in proving condition (3), namely, that he relied upon the representations made by those persons, unless he proved that he did in fact know the constitution of the company. This, I think, accounts for the passages in the speeches of Lord Chelmsford and Lord Hatherley⁶⁵ which are cited by Slade J. in *Rama Corporation Ltd. v. Proved Tin & General Investments Ltd.*⁶⁶

The cases where the contractor's claim failed, namely, *Houghton & Co. v. Nothard, Lowe & Wills*,⁶⁷ *Kreditbank Cassell G.m.b.H. v. Schenkers Ltd.*⁶⁸ and the *Rama Corporation case*,⁶⁹ were all cases where the contract sought to be enforced was not one which a person occupying the position in relation to the company's business which the contractor knew that the agent occupied would normally be authorised to enter into on behalf of the company. The conduct of the board of directors in permitting the agent to

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⁶³ [1932] 2 K.B. 176.⁶⁴ L.R. 7 H.L. 869.⁶⁵ Ibid. 889, 898.⁶⁶ [1952] 1 All E.R. 554, 564, 565.⁶⁷ [1927] 1 K.B. 246.⁶⁸ [1927] 1 K.B. 826.⁶⁹ [1952] 1 All E.R. 554.

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occupy that position, upon which the contractor relied, thus did not of itself amount to a representation that the agent had authority to enter into the contract sought to be enforced, that is, condition (1) was not fulfilled. The contractor, however, in each of these three cases sought to rely upon a provision of the articles giving to the board power to delegate wide authority to the agent as entitling him to treat the conduct of the board as a representation that the agent had had delegated to him wider powers than those usually exercised by persons occupying the position in relation to the company's business which the agent was in fact permitted by the board to occupy. Since this would involve proving that the representation on which he in fact relied as inducing him to enter into the contract comprised the articles of association of the company as well as the conduct of the board, it would be necessary for him to establish first that he knew the contents of the articles (that is, that condition (3) was fulfilled in respect of any representation contained in the articles) and secondly that the conduct of the board in the light of that knowledge would be understood by a reasonable man as a representation that the agent had authority to enter into the contract sought to be enforced, that is that condition (1) was fulfilled. The need to establish both these things was pointed out by Sargant L.J. in *Houghton's* case⁷⁰ in a judgment which was concurred in by Atkin L.J.⁷¹; but his observations, as I read them, are directed only to a case where the contract sought to be enforced is not a contract of a kind which a person occupying the position which the agent was permitted by the board to occupy would normally be authorised to enter into on behalf of the company.

I find some confirmation for this view of Sargant L.J.'s judgment in the dictum of Atkin L.J. in the *Kreditbank Cassel* case,⁷² another case of an "abnormal" contract. He says: "If you are dealing with a director in a matter in which normally a director would have power to act for the company you are not obliged to inquire whether or not the formalities required by the articles have been complied with before he exercises that power." I therefore disagree with the conclusion which Slade J. draws in the *Rama Corporation* case⁷³ as to the law laid down in *Houghton's* case⁷⁴ and the *Kreditbank Cassel* case⁷⁵; but if I am wrong as to this, I think that *Houghton's* case,⁷⁶ as construed

⁷⁰ [1927] 1 K.B. 246, 266, 267.

⁷¹ *Ibid.* 262.

⁷² [1927] 1 K.B. 826, 844.

⁷³ [1952] 1 All E.R. 554.

⁷⁴ [1927] 1 K.B. 246.

⁷⁵ [1927] 1 K.B. 826.

⁷⁶ [1927] 1 K.B. 246.

by Slade J., is contrary to the decisions of the Court of Appeal in *Biggerstaff v. Rowatt's Wharf Ltd.*⁷⁷ and the *British Thomson-Houston* case,⁷⁸ and I prefer and would follow the latter.

In the *Biggerstaff* case⁷⁹ the agent (who had never been appointed managing director) had been permitted by the board to manage the affairs of the company, that is, to perform the functions of a managing director, although it does not appear whether the board knew that he described himself to the contractor as such. In the *British Thomson-Houston* case⁸⁰ the agent was the chairman of the board who was permitted by them to manage the affairs of the company. In each case the contract was a normal contract, that is of a kind which a director managing the affairs of the company (whether described as a "managing director" or not) would be authorised to enter into on behalf of the company. In each case it was held that by permitting a person holding the office of director to manage the affairs of the company, the board had represented that he had authority to enter into the "normal" contract sought to be enforced. The only relevance of the articles, in my view, was to show that the delegation of powers of management to the agent which the board had by their conduct represented that they had made was not one which was prohibited by the articles, that is, that condition (4) was fulfilled.

In the present case the findings of fact by the county court judge are sufficient to satisfy the four conditions, and thus to establish that Kapoor had "apparent" authority to enter into contracts on behalf of the company for their services in connection with the sale of the company's property, including the obtaining of development permission with respect to its use. The judge found that the board knew that Kapoor had throughout been acting as managing director in employing agents and taking other steps to find a purchaser. They permitted him to do so, and by such conduct represented that he had authority to enter into contracts of a kind which a managing director or an executive director responsible for finding a purchaser would in the normal course be authorised to enter into on behalf of the company. Condition (1) was thus fulfilled. The articles of association conferred full powers of management on the board. Condition (2) was thus fulfilled. The plaintiffs, finding Kapoor acting in relation to the company's property as he was authorised by the

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⁷⁷ [1896] 2 Ch. 93.⁷⁹ [1896] 2 Ch. 93.⁷⁸ [1932] 2 K.B. 176.⁸⁰ [1932] 2 K.B. 176.

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board to act, were induced to believe that he was authorised by the company to enter into contracts on behalf of the company for their services in connection with the sale of the company's property, including the obtaining of development permission with respect to its use. Condition (3) was thus fulfilled. The articles of association, which contained powers for the board to delegate any of the functions of management to a managing director or to a single director, did not deprive the company of capacity to delegate authority to Kapoor, a director, to enter into contracts of that kind on behalf of the company. Condition (4) was thus fulfilled.

I think the judgment was right, and would dismiss the appeal.

*Appeal dismissed with costs.
Leave to appeal refused.*

Solicitors: *Wainwright & Co.; Doyle, Devonshire & Co. for Wilson & Berry, Bracknell.*

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Town Planning—Caravan site—Conditions of licence—Existing use rights—Application for site licence—Permission subject to conditions specifically limiting number of caravans on site—Whether derogating from existing rights—Whether conditions valid—Meaning of “caravan site”—Dismissal by Minister of appeal against conditions—Effect of order quashing Minister's decision—Town and Country Planning Act, 1959 (7 & 8 Eliz. 2, c. 53), s. 31 (6)—Caravan Sites and Control of Development Act, 1960 (8 & 9 Eliz. 2, c. 62), ss. 1 (4), 17 (2).

Statute—Construction—Confiscation—Act not to be construed as taking away private rights without compensation—Planning permission—Condition imposed in derogation of existing rights.

The applicant was the owner of a field of a total area of 4·7 acres, which was divided into two sections by a temporary wire fence running from east to west. Since 1957 he had stationed six caravans on the northern section, which consisted of ·78 acre, so that by 1960 he had acquired existing use rights for the stationing of residential caravans on the northern section. Some holiday caravans had occasionally been stationed on the southern section.