

THE INHERENT POWERS OF CORPORATION PRESIDENTS

Certain legal commentators have considered it a fundamental rule of agency that an agent has authority to do only those acts which his principal has expressly, impliedly, or apparently permitted him to perform.¹ These writers have maintained that it is an equally basic principle that a person who deals with one who claims to be an agent must, in order to have an action against the alleged principal, prove that the act done by the person purporting to be the agent was within the limits of his authority.² Since the president of a corporation is the agent of the corporation³ it would be expected that the powers of the president of a corporation would be subject to these rules of agency. It is the purpose of this note to determine: *first*, whether the president of a corporation actually has any more power than that accorded him by virtue of the first of the aforementioned rules; and *second*, whether it is necessary for a person, who is suing a corporation for the acts of its president, to establish the authority of the president.

I

Accompanying the development of Illinois as a business center a considerable number of cases dealing with the instant problems were decided in that state. Illinois has consequently had the opportunity to develop this phase of the law to such a degree that the doctrines it has established have been followed by many of the states. It is therefore proper that we consider the Illinois law as a basis for the ensuing discussion.

The first case in that state which dealt with the problem of the authority of the president of a corporation was one in which the plaintiff alleged the existence of a contract by which the defendant carrier agreed to furnish a large quantity of iron to be carried by the plaintiff at \$6.00 per ton.⁴ The plaintiff sought to introduce in evidence admissions made by the president of the defendant railway company, wherein the president acknowledged the existence of the contract and the authority of the agent who made it. Although an admission is not a business transaction, the court held that the corporation was bound by the acts of its officers in the transaction of its ordinary business and allowed the admissions in evidence, even though there had been no affir-

1. 1 Mechem, *Treatise on the Law of Agency* (2d ed. 1914).

2. *Id.* at sec. 473 et seq.

3. 2 Machen, *A Treatise on Modern Law of Corporations* (1908) sec. 1654.

4. *C. B. & Q. Railway v. Coleman et al.* (1857) 18 Ill. 297, 68 Am. Dec. 544.

mative authorization or subsequent ratification of the acts by the defendant. The court did not explain what it meant by ordinary business transacted through corporate officers. The power which the court attributed to the president in this case has come to be known as *ex officio*, incidental, or inherent power.⁵

Subsequent to this case the Supreme Court of Illinois, while holding that the president of a corporation⁶ had the inherent power to transfer personal property of the corporation consisting of articles of trade, said that "* * * in absence of proof to the contrary, it must be presumed the president had" such authority.⁷ Under this view it would be unnecessary, where what might be regarded as a routine matter was concerned, to establish affirmatively the authority of the president in order to hold the defendant liable.

This presumption of authority has at certain times been said to refer to "acts" performed by the president, at other times to "contracts." Typical of those cases which speak of "acts" was one⁸ in which a printing company recovered judgment against an irrigation company upon a \$35.00 debt incurred under a contract made by its president pursuant to which the plaintiff was to set type for the irrigation company's semi-annual publication. Here again, the contract was so small as probably to be of a routine nature. But a later case, *Lloyd & Co. v. Mathews & Rice*,⁹ spoke of the presumption of authority in the president to make "contracts" in the ordinary course of business and in furtherance of the corporate interests. The court said that the president

is by virtue of his office, recognized as the business head of the company, and any contract pertaining to the corporate affairs, within the general powers of such officers;¹⁰ executed by the president on behalf of his corporation, will, in absence of proof to the contrary, be presumed to have been done by authority of the corporation.

5. The courts use the term "inherent" powers in these cases to mean all those powers which the president would have in the absence of express, implied, or apparent limitations upon that power. Whenever that term is used in this note it will be used in that sense.

6. The court failed to mention the type of business transacted by this corporation.

7. *Moser v. Kreigh* (1868) 49 Ill. 84, 86.

8. *Coyzens & Beaton Typesetting Co. v. Western Ranch & Irrigation Co.* (1904) 112 Ill. App. 309; see also *Bank of Minn. v. Griffin* (1897) 168 Ill. 314, 48 N. E. 154, aff'g 66 Ill. App. 577.

9. (1906) 223 Ill. 477, 79 N. E. 172, 7 L. R. A. (N. S.) 376, 114 Am. St. Rep. 346, aff'g 119 Ill. App. 546.

10. The court was called upon, in this case, to determine what the powers of the president are, but the court assumed the question by answering that he could make any contract which was "within the general powers of such officer."

The court therefore held that the defendant corporation¹¹ was liable to the plaintiff on a guaranty of a \$1,500 promissory note made by the defendant's president. Although the nature of the business transacted by the defendant corporation did not appear in this case, the making of guarantees of this nature is not usually considered routine, but may even be considered to be an *ultra vires* transaction. An examination of the language in the *Lloyd* case discloses that it does not require that the act be an "ordinary" or "usual" transaction, but merely that it pertain to the corporate affairs. While the ordinary meaning of the term "contracts" is narrower than the meaning of the term "acts," the Illinois courts apparently have not intended, by using the former term, to limit the application of the rule to contracts. Rather it would seem that the terms have been used interchangeably. Thus in one case the term "contracts" was used although the case involved the authority of the president to grant a waiver without consideration.¹²

Every case decided in Illinois before 1908, including the leading case of *Lloyd & Co. v. Mathews & Rice*,¹³ could have been decided upon one of the following bases: implied authority arising from a previous course of business, express or implied ratification, estoppel, or unjust enrichment arising from the retention of benefits derived by the company from the transaction.¹⁴ The rules laid down in these cases are therefore broader than the facts of the cases require. However, in *Jones & Dommersnas Co. v. Crary*¹⁵ the only issue involved was the existence of an inherent power in the president to act as he did. The appellant corporation sought to have declared forfeited a license, giving the appellee the right to manufacture and sell saws during the lifetime of the patent held by the appellant. By the terms of the licensing agreement the appellee was to pay quarterly a six percent royalty upon the gross sum collected from the sale of the saws. The forfeiture was demanded because the appellee had failed to make required quarterly reports on the amount of the

11. It does not appear from the case what kind of business the defendant corporation normally transacted.

12. *Jones & Dommersnas Co. v. Crary* (1908) 234 Ill. 26, 84 N. E. 651, aff'g 138 Ill. App. 225.

13. (1908) 223 Ill. 477, 79 N. E. 172, 7 L. R. A. (N. S.) 376, 114 Am. St. Rep. 346, aff'g 119 Ill. App. 546.

14. According to *St. Vincent College v. Hallett* (C. C. A. 7, 1912) 201 Fed. 471, 476 every Illinois case before 1912 could have been decided on other grounds. The *Jones & Dommersnas* case, however, could have been decided on no other ground.

15. (1908) 234 Ill. 26, 84 N. E. 651, aff'g 138 Ill. App. 225.

sales. The defense was that the president of the licensing corporation had without consideration waived the right to require the reports. To this defense the plaintiff answered that its president had no authority to grant the waiver. The court held

The general rule is that a corporation acts through its president, and through him executes its contracts and agreements, and in the absence of proof to the contrary he will be presumed to have authority to represent the corporation.

There is reason to believe that the president acted outside the "ordinary" or "usual" course of the corporate business in *Jones & Dommersnas v. Crary*,¹⁶ for such acts as waivers are not routine acts and therefore are not normally performed by corporation presidents. Nevertheless the corporation was held liable for the president's acts. The court probably reached the conclusion largely because it disliked creating a forfeiture. Although the decision is unsatisfactory in that it gives no indication whether such an act could be regarded as a transaction relating to the ordinary business of the corporation, it does show that the courts will not adhere slavishly to the requirement that the act performed by the president be within the ordinary course of the corporate business.

It is to be recalled that the previously mentioned cases involved the authority of the president to *make* contracts. *Jones & Dommersnas v. Crary*¹⁷ involved the authority of the president to *alter* a valid contract. There was nothing in the language of that case to indicate that the court recognized the distinction between those cases in which the corporation denies the authority of the president to make the contract and those cases in which the corporation merely denies his authority to alter valid contracts. This distinction should be recognized because a person who has a valid contract with a corporation and who is merely attempting to have that contract altered is more likely to rely upon the authority of the president than is one who is trying to make a contract with the company. The former may have a false sense of security because of his previous dealings with the corporation. This reasoning would also support the recognition of a distinction between those cases in which the party is entering into his first negotiation with the corporation and those in which the parties have had previous dealings.

In *Weber et al. v. Aluminum Ore Co.*¹⁸ the Supreme Court of

16. *Ibid.*

17. *Ibid.*

18. (1922) 304 Ill. 273, 136 N. E. 685. The court cited only one section of *Corpus Juris* as authority and failed to notice another section of that work which set forth the recognized Illinois law.

Illinois abandoned the point of view laid down in *Jones & Dommersnas v. Crary*. The *Weber* case held that the president¹⁹ of a trust company to which land had been entrusted for sale did not have the power to make and record a plat of the land, declaring that the president had no greater power by virtue of his office than did any director, save that he presided at meetings of the board of directors. According to the great weight of authority²⁰ a member of the board of directors has no power to act by himself. Therefore, if the court in this case intended that the president have only the power of a director, it must necessarily have denied all inherent or *ex officio* power to the president. Later Illinois cases have failed to follow or cite the *Weber* case. In view of the fact that subsequent Illinois decisions hold that a corporation president does not have the power to convey or transfer interests in land because they are extraordinary transactions, the result obtained in this case is not out of line.

Between 1926 and 1932 the *dicta* in the Illinois cases merely required that the act of the president pertain to the corporate affairs and be within the general powers and the by-laws²¹ of the corporation in order that the presumption of the president's authority might be drawn. This doctrine would give the president as much power as the board of directors. The results obtained, however, could have been obtained under the previous Illinois rulings, for in none of the cases decided during this six-year period did the president exercise an extraordinary power.²² The Illinois case subsequently reverted to the rule laid down in *Jones & Dommersnas v. Crary*.²³

It has been frequently stated in *dicta* in Illinois opinions that the presumption of authority in the president is rebuttable. To rebut this presumption it would seem that it would be necessary to show that the president had been forbidden to perform the

19. The court failed to mention whether the president was a director or not. In Illinois the president of a corporation is not required to be a member of the board of directors, nor is he required to preside over the meetings of the board, so one must wonder how the court determined that the president had the power to preside at board meetings. Ill. Smith-Hurd Revised Stat. (1935) ch. 32, sec. 157.43.

20. 2 Machen, *Treatise on Law of Corporations* (1908) sec. 1436.

21. Bloom v. Nathan Vehon Co. (1930) 341 Ill. 200, 173 N. E. 270.

22. Quigley v. W. N. Macqueen & Co. (1926) 321 Ill. 124, 151 N. E. 487; Peoria Life Ins. Co. v. Int. Life & Annuity Co. (1927) 246 Ill. App. 38; Bloom v. Nathan Vehon Co. (1930) 341 Ill. 200, 173 N. E. 270; Green v. Ashland Sixty-third State Bank (1931) 346 Ill. 174, 178 N. E. 468, 471; Corn Belt Bank of Bloomington, Ill. v. Forman (1932) 264 Ill. App. 589; Beatty v. Fed. Fireproof Storage Co. (1932) 268 Ill. App. 198.

23. (1908) 234 Ill. 26, 84 N. E. 651, aff'g 138 Ill. App. 225.

act which is the basis of the cause of action or that the president's powers had been limited by a charter or statute provision, a by-law, the president's contract of employment, a resolution of the board of directors, or a special instruction of the board of directors. A number of decisions, however, emphasize the fact that the by-laws and resolutions of the board of directors "are more or less private property of the corporation"²⁴ and are not binding upon anyone other than members of the company.²⁵ If these decisions were to govern the courts, the result would be that the courts' statements about the existence of a rebuttable presumption of authority as to third persons would be mere verbiage and erroneous, and instead of a rebuttable presumption of authority as to third persons, there would be a conclusive presumption.²⁶ Presumably persons who knew of the limitations on the president's power would be unable to rely upon the presumption, otherwise conclusive, because the basis for the presumption is the court's desire to protect the innocent and the ignorant.

In other cases, however, in which the point was not expressly involved, the court stated that, although the by-laws of a corporation would be sufficient to rebut the presumption of authority in the president,²⁷ it could find no such limitations in the by-laws of these particular defendants. *Brown v. Fire Insurance Company of Chicago*,²⁸ which is the latest Illinois case on this problem, is typical of these cases. The defendant insurance corporation was held not bound by an unauthorized contract made by its president, by which the company was required to purchase its own stock from the plaintiff. Although the court recognized that the power of the president had its limitations in the corporation's "charter, by laws, etc." the court failed to find any evidence of a declaration by the board of directors which would limit his

24. See *Globe Indemnity Co. v. McAvoy Co.* (C. C. A. 7, 1930) 41 F. (2d) 122 which applies the Illinois law.

25. *Green v. Ashland Sixty-third State Bank* (1931) 346 Ill. 174, 178 N. E. 468, 471; *McRoberts v. Minier* (1933) 270 Ill. App. 1, 14; *Trawick v. Peoria & Ft. C. St. Ry. Co.* (1896) 68 Ill. App. 156; *Munn v. Burch* (1860) 25 Ill. 35 (involving an officer other than the president); *Smith v. Smith* (1872) 62 Ill. 493, 497 (involving a vice-president rather than a president); *Ward v. Johnson* (1880) 95 Ill. 215, 248 (no president involved here); *McCormick et al. v. Unity Co.* (1909) 239 Ill. 306, 87 N. E. 924, aff'g 142 Ill. App. 159 (actually involving implied, and not inherent power); *Schorr v. Shayne & Co.* (1917) 208 Ill. App. 328.

26. *Illinois Business Corporation Act Annotated With Forms* (1934) 175.

27. *Bank of Minneapolis v. Griffin* (1897) 168 Ill. 314, 48 N. E. 154; *Corn Belt Bank v. Forman* (1932) 264 Ill. App. 589; and *Brown v. Fire Insurance Co. of Chicago* (1934) 274 Ill. App. 414.

28. (1934) 274 Ill. App. 414.

authority. Other limitations would probably include rules and regulations made by the board of directors, statutes, and the president's contract of employment.

Judging the Illinois situation by this case it would seem that the presumption of authority is rebuttable. All that would be necessary for a corporation to do to protect itself from unauthorized acts of its president, therefore, would be to pass a by-law forbidding him to exercise any or certain powers. The result would be that a person who was suing the corporation for the acts of its president would have to establish the authority of the president, just as he would have to do under the ordinary rules of agency.

Although there are many Illinois cases on the inherent power of corporation presidents it is impossible to discern any trends towards liberalization or constriction in the application of the Illinois rule. Despite the shifting statements of the rule it does not seem that there has been any difference in results. Perhaps this is because the problems presented in the various cases could have been disposed of in the same manner under each variation of the rule. The language in all the cases, except those which were decided between 1926 and 1932,²⁹ recognized that the rebuttable presumption of authority in the president extended only to those transactions which are in the ordinary course of the corporate business.³⁰ But we have seen that the court will not always require that the president's act be within the ordinary course of the corporate business.³¹

Thus it is evident that the terms "ordinary" or "usual course of the corporate business" do not fully express that which the Illinois courts intend. Despite the fact that the president of a corporation is usually allowed to execute or indorse notes,³² such a transaction might not be an "ordinary" or "usual" action for it might be the first time the corporation ever executed or in-

29. *Supra*, notes 21 and 22.

30. Thus it has been held that the president of a corporation may execute notes, *Wells v. Mfrs. & Merch. Life Assoc.* (1919) 213 Ill. App. 549; indorse notes, *Corn Belt Bank v. Forman* (1932) 264 Ill. App. 589; confess a judgment or issue a warrant of attorney, *State Bank of East Moline v. Moline Pressed Steel Co.* (1918) 283 Ill. 581, 119 N. E. 604; contra, *Boston Tailoring House v. Fisher* (1895) 59 Ill. App. 400; sell product made by the corporation, *Beatty v. Fed. Fireproof Storage Co.* (1932) 268 Ill. App. 198; hire necessary help, *Schorr v. Shayne & Co.* (1917) 208 Ill. App. 328; sell the corporation's stock, *Quigley v. Macqueen & Co.* (1926) 321 Ill. 124, 151 N. E. 487; or may offer a reward for the arrest of a defaulting teller, *Bank of Minneapolis v. Griffin* (1897) 168 Ill. 314, 48 N. E. 154.

31. *Supra*, note 15.

32. *Supra*, note 30.

dorsed a note. The courts, however, have given meaning to these terms by the gradual process of judicial inclusion and exclusion. It has been held, for example, that there is no presumption of authority in the president to make an assignment for the benefit of creditors,³³ execute a mortgage,³⁴ purchase the company's own stock for the corporation,³⁵ hire an employee for an unreasonable length of time,³⁶ or promise to pay another officer a salary³⁷ because each of these transactions were not within the "usual" or "ordinary" course of business. The rebuttable presumption of authority in Illinois must extend, therefore, to routine acts in the course of the corporate business. It does not extend to acts which would subject the company to heavy burdens or to a great outlay of money; nor to acts which would bind it for an unreasonable length of time or have the tendency to wind up the corporation. As we have seen in *Jones & Dommersnas v. Crary*³⁸ the courts will not slavishly require that the act fall within the aforementioned class of cases.

II

The Missouri courts have wavered between the liberal Illinois rule and the strict rules of agency. The courts in this state originally followed the Illinois rule and held that there was a rebuttable presumption of authority in the president to represent the corporation in the usual course of business.³⁹ The considerations applicable to the previously discussed Illinois cases are equally applicable to those Missouri cases which adopted the Illinois rule. But in *Truskett v. Commission Co.*⁴⁰ the Missouri courts extended the Illinois rule. In that case there was an oral one-year contract of employment under which plaintiff had worked five months for the defendant corporation. The plaintiff tried to take the contract out of the operation of the Statute of Frauds by introducing in evidence a letter of recommendation written by the president of the defendant corporation two months after the oral contract was made. In holding the defendant liable the court said that, "A corporation can speak and act with refer-

33. *Friedman v. Leshner* (1902) 198 Ill. 21, 64 N. E. 736, 92 Am. St. Rep. 255.

34. *State Nat. Bk. v. Moran* (1896) 68 Ill. App. 25, aff'd 168 Ill. 519, 48 N. E. 82.

35. *Brown v. Fire Ins. Co. of Chicago* (1934) 274 Ill. App. 414.

36. *Washburn v. Hoxide Institute* (1927) 249 Ill. App. 194 where the contract of employment was for ten years at a salary of \$12,000 a year.

37. *Bloom v. Nathan Vehon Co.* (1930) 341 Ill. 200, 173 N. E. 270 where the salary to be paid to the officer was \$15,000 a year.

38. (1908) 234 Ill. 26, 84 N. E. 651, aff'g 138 Ill. App. 225.

39. *Sparks v. Dispatch Transfer Co.* (1891) 104 Mo. 531, 540, 15 S. W. 417, 12 L. R. A. 714, 24 Am. St. Rep. 351.

40. (Mo. App. 1915) 180 S. W. 1048.

ence to its business affairs only through its authorized agents and officers, and when it does so speak or act * * * it is bound as natural persons are bound, by what they do or say." The court did not seem to realize that even though the corporation might necessarily have to speak through its agents it need not speak through every agent, and especially through its president. The court seemed to go beyond the limits of the Illinois rule by extending to the president those powers which are ordinarily extended only to a general manager.⁴¹ Until 1926 the results obtained under the Missouri rulings were essentially the same as those reached in Illinois. Subsequently the Missouri courts returned to the strict rules of agency.⁴² The court held that where a president of an equipment company^{42a} had signed a promissory note for \$1000 in the name of the corporation it was necessary that the plaintiff payee show that the president was clothed with authority to borrow money and execute notes for the defendant corporation.

III

In Kansas the courts have followed the Illinois rule and have held that there is a rebuttable presumption of authority in the president to perform those acts which are within the usual course of the corporate business.⁴³ But the Kansas courts, unlike those of Illinois, have held that the president of a non-banking corporation cannot indorse or guarantee promissory notes on the ground that such transactions are not within the ordinary course of business.⁴⁴

IV

In Arkansas and Oklahoma the courts, unlike the Illinois courts, hold that the president has no more power than any other director.⁴⁵ By statute in these states the president must be a director.⁴⁶ But a director acting by himself has no power.⁴⁷ Arkansas has adopted this view on the basis of the agency re-

41. Grange, *Corporation Law for Officers and Directors* (1935) 463.

42. *First Nat'l Bk. of Elyria v. Equipment Co.* (1926) 221 Mo. App. 733, 285 S. W. 779.

42a. This company probably dealt in automobile equipment.

43. *Sentney v. Central Cattle Loan Co.* (1925) 119 Kan. 545, 240 Pac. 856.

44. *Ibid.*

45. *Dent v. People's Bank of Imboden* (1915) 118 Ark. 157, 175 S. W. 1154, 1 A. L. R. 688; *City Electric Street Ry. Co. v. First Nat. Exch. Bk.* (1896) 62 Ark. 33, 34 S. W. 89, 31 L. R. A. 535, 54 Am. St. Rep. 282; and *Oklahoma City Gen. Hospital v. Weathers* (Okl. 1930) 294 Pac. 98.

46. *Crawford & Moses Stats.* (1927 Supp.) sec. 1700w1; *Okl. Stats.* (1931) ch. 46, art. 4, sec. 9762.

47. *Merchants' & Farmers' Bank v. Harris Lumber Co.* (1912) 103 Ark. 283, 146 S. W. 508, *Ann. Cas.* 1914B 713; and *Oklahoma Fire Ins. Co. v. Barber Asphalt Pav. Co.* (1912) 34 Okl. 149, 125 Pac. 734.

quirement that one dealing with an agent is bound to ascertain the nature and extent of his authority and must not trust to the mere presumption of authority, nor to any mere assumption thereof by the agent.⁴⁸ There are *dicta*, however, in the decisions of each state, that it is within the inherent power of a bank president to conduct its pressing litigation.⁴⁹

V

The cases which uphold the strict rules of agency proceed on the theory that the third person who deals with an agent is in a better position to protect himself than is the principal. It is felt that because the third person deals of his own volition with the agent, he cannot complain that he was deceived as to the authority of the agent in the absence of an investigation of the agent's authority. This theory has been considered equally applicable to corporation presidents. From a practical point of view, however, it would appear that third persons who deal with corporation presidents are not in a better position to protect themselves than are the corporations. There would seem to be a widespread popular understanding, perhaps even among lawyers, that the president of a corporation has broad power in the absence of notice to the contrary. The very term "president" suggests broad power. In many corporations the president is also the general manager and it is unlikely that the public is aware of the distinction in powers between the two officers. Most people would be surprised to know that in Arkansas and Oklahoma the president has no *ex officio* power. We have seen that in those cases in which the third party already has a valid contract with the corporation or has had previous dealings with the company he is often lulled into a false sense of security. It is because of these misconceptions of the public that some courts have sought to alleviate what was thought to be a harsh result of the ordinary rules of agency.

In Illinois, Missouri, and Kansas the courts have not protected the public from its misconceptions to any great extent. It is still possible for a corporation to defeat the rights of third persons by passing a by-law prohibiting its president from exercising any or certain rights. It results from the above that third persons, who sue the corporation for the acts of its president, must establish the authority of the president, as they would have to do under the ordinary rules of agency.

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48. *City Electric Street Ry. Co. v. First Nat. Exch. Bk.* (1896) 62 Ark. 33, 34 S. W. 89, 31 L. R. A. 535, 54 Am. St. Rep. 282.

49. *National Bank v. Earl* (1895) 2 Okl. 617, 39 Pac. 391; *Dent v. People's Bk. of Imboden* (1915) 118 Ark. 157, 175 S. W. 1154, 1 A. L. R. 688.