

## THE INDOOR MANAGEMENT RULE AND AGENCY PRINCIPLES IN NIGERIAN COMPANY LAW\*

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### Introduction

The “Indoor Management Rule” apparently developed as a means of mitigating the harshness and burdens of the doctrine of constructive notice in relation to outsiders dealing with companies. With the abolition of the doctrine of constructive notice by section 68 of the Companies and Allied Matters Act 1990 the value of the continuous retention of this common law rule appears equivocal. This contribution is a review of the Rule and an examination of its present relevance in view of the provisions of the Companies and Allied Matters Act 1990 which have enacted agency principles in replacement.

### A Statement of the Rule

This rule, also known as the “**Rule in Royal British Bank v. Turquand**” states that outsiders dealing with a company are not bound to ensure that all the internal regulations of the company have in fact been complied with as regards the exercise and delegation of authority: but they are entitled to assume that all acts of internal management have been properly carried out in accordance with the maxim “*omnia praesumuntur rite et solemniter esse acta*” – “all things have been done properly and solemnly which ought to have been done”. In other words, a person dealing with an incorporated company is not expected to peep into the internal affairs of the company or to investigate the *locus standi* of the officers before transacting any business of a normal every-day nature with the company<sup>1</sup>.

The case of *Royal British Bank v. Turquand*<sup>2</sup>, was the case in which the rule was first enunciated and therefore, the *locus classicus* on this point. In that case, the Royal British Bank sued Turquand as the liquidator of the Coalbrook Steam, Coal, and Swansea and London Railway Co., on a bond signed by two directors, whereby the latter company acknowledged itself to be bound to the Royal British Bank in an amount of 2,000. Under the constitution of the company the directors, might borrow on bond such sums as should, from time to time, by a general resolution of the company, be authorized to be borrowed, and the defendant pleaded that there had been no such resolution. The Court held that the defendant was bound. Jervis C.J. gave the rationale for the decision thus:

“We may now take for granted that the dealings with these companies are not like dealings with other partnerships, and that the parties dealing with them are bound to read the statute and the deed of settlement. But they are not bound to do more. And the party here, on reading the deed of settlement, would find not a prohibition from borrowing, but a permission to do so on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorizing that which on the face of the documents appeared to be legitimately done”<sup>3</sup>.

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<sup>1</sup> *International Paints (W.A.) Ltd. v. Akiwowo* (1979 1-3/CCHCJ, 52, 54; *Metalimpex v. A.G. Leventis* (Nig.) Ltd. (1976) 2S.C.91; *Palmer’s Company Law*, 21<sup>st</sup> Edn., 1968, p. 245.

<sup>2</sup> (1856) 6 E. & B. 327.

<sup>3</sup> *Ibid.*, 332; 25 L.J. Q.B. 317; 119 E.R. 886

In *Mahony v. East Holyford Mining Co*<sup>4</sup>, dealing with the ostensible authority of *de facto* directors, Lord Hatherley explained the application of this rule clearly as follows:

“...when there are persons conducting the affairs of the company in a manner which appears to be perfectly consonant with the articles of association then those dealing with them, externally, are not to be affected by any irregularities which may take place in the internal management of the company”<sup>5</sup>

Thus, it was held in that case that a bank dealing with the company was entitled to accept cheques drawn and signed by the directors of the company in the manner authorized by the articles and the bank was not obliged to enquire whether the individuals signing the cheques were validly appointed as directors. This was further applied in the case of *Freeman and Lockyer v. Burkhurst Park Properties (Mangal) Ltd.*<sup>6</sup> Here, the articles of the company contained power to appoint a managing director, but none was appointed. K, one of the directors, though never appointed as such, acted as managing director. He instructed the plaintiffs, a firm of architects, to do certain work for the company, which they did. The Court held that the company was bound to pay the architects' fees even though K, was not formally appointed managing director. The act of engaging architects was within the usual authority of a managing director of a property company and the plaintiffs did not have to inquire whether the person with whom they were dealing was properly appointed, it was sufficient for them that under the articles there was in fact power to appoint him and that the board of directors had allowed him to act as such.

#### **Application in Nigeria**

The Indoor Management Rule has been applied in decided cases in Nigeria. In *Metalimpex v. A.G. Leventis and Co. (Nig.) Ltd.*<sup>7</sup>, where most of the earlier authorities were considered by the Supreme Court, the court held applying the rule, that a person dealing with a company is entitled to assume, in the absence of facts putting him on inquiry that there has been due compliance with all matters of internal management and procedure required by the articles, and is not required to inquire into the internal working of the company. In that case, the appellant, Metalimpex, was owed ₦1,347,022.00 by the (West African Steel and Wire Co. Ltd. (WASCO). The Leventis and Co. as guarantor of WASCO endorsed 12 bills of exchange payable to it and accepted by WASCO to cover each of the 12 monthly instalment payments to appellant as agreed. The negotiations relating to the payment scheme were carried out by a director of Leventis and Co. who endorsed the 12 bills of exchange issued to appellant. When the second bill was presented for payment, it was dishonoured. Appellant sued the Leventis and Co. for the amount of the dishonoured bill as indorsers of the bill and as guarantors of a contractual undertaking made to it by WASCO. Leventis and Co. denied liability claiming that the director who signed the guarantee had no authority to commit the company as a guarantor or to indorse the bills. The Supreme Court held that the appellant was entitled to assume that the director of the respondent company had the authority to indorse the bill of exchange in the absence of any suspicious circumstances which could have put the appellant on inquiry.

In *Trenco (Nigeria) Ltd. v. African Real Estate and Investment Co*<sup>8</sup>. the Supreme Court also held, applying this rule, that the defendants were entitled to

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<sup>4</sup> (1875) L.R.H.L. 869.

<sup>5</sup> Ibid. 894. See Ehi Oshio, *Modern Company Law in Nigeria*, Lulupath, Benin City, p.119.

<sup>6</sup> (1964) 2 Q.B. 480, (1964) All E.R. 630.

<sup>7</sup> (1976) 2 S.C.91; (1976) 1. All N.L.R. Pt. 1. 94

<sup>8</sup> (1978) 3 S.C.9, (1978) 1 L.R.N. 146

assume that the Chairman of the plaintiff company had the authority to enter into a binding contract with the defendant company on behalf of the plaintiff company. Also, in *African Development Corporation Ltd. v. Lagos Executive Development Board and United Africa Company of Nigeria*<sup>9</sup> the plaintiff acquired a leasehold of two plots of land from the first defendant, LEDB, which executed a deed of lease in plaintiff's favour. Afterwards, following a request conveyed by the Managing Director of the plaintiff company to surrender the deed and be released from the contract, the Plaintiff's General Manager who was a director of the company, signed the deed of surrender on behalf of the company which was witnessed by an accountant with the company's seal affixed.

Eleven years later Plaintiff brought an action against the first defendant seeking a declaration that the deed of surrender was null and void, claiming that the board of directors had not given the general manager authority to execute the deed of surrender. It was held applying, the earlier authorities, that the defendant Board was entitled to assume that plaintiff company's General Manager who was a director in his own right in the company, had authority to execute the deed of surrender of the lease, and that the plaintiff company was bound accordingly. In *Pool House Group (Nigeria) Ltd. v. African Continental Bank Ltd.*<sup>10</sup> the plaintiff company was a customer of the defendant bank. To secure an overdraft from the bank of 25,000; the plaintiff executed a deed of mortgage comprising leasehold land in favour of the bank. The deed was signed by a director of Lebanese origin, another director and the secretary, and sealed with the company's seal. The company sought a declaration that the purported mortgage was null and void, in that the director of Lebanese origin purporting to act as a director of the company was an alien, and was prohibited under Section 33(4) of the Immigration Act 1963 from being a director of the company. The court held that the plaintiff company had not proved that the director was an alien, and, thus, incompetent to execute the deed on behalf of the company. Accordingly, it held that the defendant bank was entitled to assume that the director was properly appointed and had the authority to execute the mortgage on behalf of the plaintiff company.

However, it would appear that this rule cannot be upheld in all cases involving the authority of company employees. Its application or otherwise would depend on the particular circumstances of each case including the status of the company official. For instance, in *Onuh v. United Nigeria Insurance Co. Ltd.*<sup>11</sup> the court held that the rule was inapplicable and the company was not bound to a third party on the basis of a letter written by a clerk who did not sign even in a representative capacity. The court held that the plaintiff was under a duty to find out what position the person who signed the letter held in the company and that he was not entitled to assume that the clerk was an authorized official. The inevitable conclusion from this is that, when an employee or agent of the company does not occupy a position in the company in which it will be usual for him to have delegated authority to bind the company in the transaction concerned, the company will not be bound, unless he has actual authority or has, in some other way, been held out as having authority to bind it in relation to that transaction.

### **Exceptions to the Indoor Management Rule**

The Indoor Management Rule is subject to some limitations and it does not apply in the following cases<sup>12</sup>.

<sup>9</sup> (1966)(1) A.L.R. Comm. 438; *Biggerstaff v. Rowatt's Wharf Ltd.* (1896) 2 Ch. 93.

<sup>10</sup> (1969) N.M.L.R. 347; (1969), (3) A.L.R. Comm. 369; *Standard Bank of Nigeria Ltd. v. Bolokor Enterprises Ltd.* (1980) F.N.R. 14.

<sup>11</sup> (1974) (3) A.L.R. Comm. 15, *Kreditbank Cassel, GmbH v. Schenkens Ltd.* (1927), 2 K.B. 450; (1927) 1 K.B. 826, CA.; *S. London Greyhound Racecourses v. Wake* (1931) 1 Ch. 496.

<sup>12</sup> *Metalimpex v. A.G. Leventis Co. Nig. Ltd.* (supra)

- (i) Where the person seeking to rely on the rule is himself aware, or has knowledge, of the irregularities;
- (ii) Where the transaction is of such an unusual nature or by reason of some suspicious circumstances, that a person dealing with the officers of a company might reasonably be expected to make inquiries to assure himself that those with whom he is dealing are acting regularly and within the authority of the company;
- (iii) Where the person seeking to rely on it was not aware of the contents of the memorandum and articles of association of the company.
- (iv) Insiders (persons holding responsible positions within the company) cannot rely on the rule because they must be taken to know of the irregularity.
- (v) Where the transaction involves forgery or is a “non-genuine” transaction. We now consider the exceptions *sariatim* with relevant decisions.

**(i) Cases of Actual Knowledge**

A person will not be allowed to rely on the rule where he knows that the internal procedures of the company have not been complied with. The rationale for this is that such a person lacks good faith and should not be allowed to presume in his own favour that things are rightly done when he is aware that they are irregularly done. In *Afolabi v. Polymera Industries (Nigeria) Limited*<sup>13</sup> the plaintiff claimed that he had been appointed a sole agent by the defendant to sell their products. He based his action, for money due as commission and damages for breach of contract, on a letter written by Mr Okusanya, a subordinate employee of the company, purporting to appoint the plaintiff as defendant’s agent. The court found that neither the Managing Director, nor any other director had proposed the terms set out in the letter to plaintiff; that Mr Okusanya was not directed to write such a letter. The court further found that “the plaintiff was maintaining a rather sinister association with some members of the defendant’s staff and was wielding a somewhat unwholesome influence on them and that such led to the issue of the letter looks like fraud”. It was held that no contract existed between the parties. This is because the plaintiff knew of the internal irregularity and therefore lacked good faith.

**(ii) Transactions of Unusual Nature or Suspicious Circumstances**

The rationale for the second exception is that a person will not be allowed to presume in his own favour that things are rightly done if he refuses to make inquiry which ought to have revealed to him that the things were wrongly done. In *A.L. Underwood Ltd. v. Bank of Liverpool and Martins*<sup>14</sup> the sole director and main shareholder in a company paid cheques, drawn in favour of the company, into his own account. It was held that the bank was put upon inquiry and for failure to make the necessary inquiry under these circumstances, the bank was not entitled to rely on the director’s ostensible authority and could not rely on the ‘indoor management rule’ and it was not entitled to presume that the director had the authority to pay the company’s cheques into his own account. Also, in *Kreditbank Cassel GmbH v. Schenkers Ltd*<sup>15</sup>. the articles of a company carrying on business as forwarding agents empowered the directors to determine who should have authority to draw bills of exchange on the company’s behalf. C., the company’s Manchester manager, drew bills on the company’s behalf in favour of K., who took them, believing C. to be authorized to draw them. C. had no such authority, and it was unusual for a branch manager to have such authority. The court held that the company was not liable to the holders on the bills because (a) K. did not know of the power of delegation in the articles and even if K. had known of the power, he was not entitled to assume that a branch manager had

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<sup>13</sup> (1961), (2) A.L.R. Comm, 205.

<sup>14</sup> (1924) 1 K.B. 775.

<sup>15</sup> (1927) 1 K.B. 826. (the bills were also held to be forgeries in this case).

ostensible authority to draw bills on behalf of his company since it was not usual for such a manager to have such authority.. In the recent case of *Rolled Steel Products (Holdings) Ltd. v. British Steel Corporation*<sup>16</sup> the plaintiff company challenged the validity of guarantees given by it to the defendants in respect of indebtedness of another company associated with the plaintiffs. While the transaction had been approved at a board meeting of the plaintiff company, S., one of the directors who voted in favour of it failed to disclose a personal interest in the matter as required by the articles. S.'s non-disclosure made the meeting inquorate, and the Court held that the defendants, must be taken to have known that the resolution could not have been validly passed unless S. had declared his personal interest. Accordingly, they were effectively put on inquiry as to whether or not he had declared the interest. The court held that they were not entitled to assume that S. had declared his personal interest and, in not making the necessary enquiry in the circumstances, they were not acting in good faith and could not rely on the rule.

(iii) ***Lack of Knowledge of the Contents of the Memorandum and Articles***

This third exception appears to be a mere re-statement of the negative operation of the doctrine of constructive notice. The rationale is that where a person dealing with a company is not aware of the existence of a power in the company's articles or memorandum of association, he would not subsequently make use of this unknown power so as to validate the transaction. In *Ajayi v. Lagos City Council*<sup>17</sup> the articles of association allowed powers to be delegated to a director of the company. The plaintiff entered into a contract with a director who had no power to do so. But the plaintiff was not aware of the delegation of powers contained in the articles of association. It was held that the plaintiff who had no knowledge of the articles could not rely on those articles as conferring ostensible or apparent authority on the directors and that the company was not estopped from establishing that there was no authority in the director to enter into the contract or agreement with the plaintiff on behalf of the company. Also, in *Houghton and Co. v. Nothard Lower and Wills Ltd.*<sup>18</sup>, a director of the defendant company purported to commit his company to certain contracts with the plaintiff company although he had no actual authority to do so. Under defendant's articles of association the Board was empowered to delegate its functions to a single director, but the plaintiff had no knowledge of the articles. The Court of Appeal reversed the decision of the lower court and held that the plaintiff could not enforce the contract against the defendant company. According to the court:

“In a case like this where that power of delegation had not been exercised, and where admittedly (the plaintiffs) had no knowledge 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 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 contracted”.<sup>18</sup>

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<sup>16</sup> (1986) Ch. 246.

<sup>17</sup> (1967) (3) A.L.R. Comm. 213.

<sup>18</sup> (1927) 1 K.B. 246, at p. 266 (per Sargent J.)

(iv) **Cases Involving Insiders**

Under this exception, a director or a purported director or someone so closely related to the company as to have been taken to know of the internal irregularity would not be allowed to rely on the rule. In *Howard v. Patent Ivory Manufacturing Co.*<sup>19</sup>, debentures had been issued for an amount which under the articles required authorization by resolution of the general meeting. No such resolution had been passed. All the debenture holders who were directors of the company were not allowed to rely on the rule by the Court since they must be taken to have known that the internal requirements of the company had not been observed and the debentures were invalid. In *Morris v. Kanssen*<sup>20</sup> C. whose appointment as director had ceased, and S., who had never been appointed a director, purported to hold a board meeting and appoint M. a director. Then all three purported to allot shares to M. M. sought to rely on the rule to validate his appointment and the allotment of shares to him. It was held that the rule would not apply since M. purported to act as a director in the transaction. Giving the rationale for this decision, Lord Simonds said:

“It is a rule designed for the protection of those who are entitled to assume, just because they cannot know, that the person with whom they deal has the authority which he claims ... It is the duty of directors, and equally of those who purport to act as directors, to look after the affairs of the company, to see that it acts within its powers and that its transactions are regular and orderly. To admit in their favour a presumption that that is rightly done which they have themselves wrongly done is to encourage ignorance and condone dereliction from duty .....”<sup>21</sup>

(v) **Cases of forgery or non-genuine Transactions**

The authority often quoted for this fifth exception is the case of *Ruben v. Great Fingall Consolidated*<sup>22</sup>, and the rationale for the decision as stated in that case is that the rule is designed to cover mere irregularities in a genuine transaction, not a case of forgery. In that case, appellants in good faith advanced a sum of money to the secretary of the respondent company for his own purposes. They relied for security on a share certificate of the company's register of shareholders as transferees of the shares. The seal had been fixed, without authority, by the secretary who had also forged the signatures of the two directors required to sign by the articles. The House of Lords held that the company was entitled to decline to register the appellants as owners of the shares, and that they could not rely on the rule<sup>23</sup>

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<sup>19</sup> (1883) 38 Ch. D. 156.

<sup>20</sup> (1946) A.C. 459.

<sup>21</sup> Ibid. 475-76, 592-93. But see *Hely-Hutchinson v. Brayhead Ltd.* (1968) 1 Q.B. 549 where a director was allowed to rely on the rule where he was acting wholly as an individual (outsider) in a way which, the court said, had nothing to do with his duties and obligations as a director of the company when he entered into the contract with his company. See Sealy, Cases and Materials in Company Law, 3<sup>rd</sup> Edn. (1985) p. 212.

<sup>22</sup> (1906) A.C. 439; *Kreditbank Cassel GmbH v. Schenkers Ltd.* *Supra*.

<sup>23</sup> This appears to have been impliedly overruled by the decision of the same court, House of Lords, in *Lloyd v. Grace Smith & Co.* (1912) A.C. 716 – here a solicitor was held liable for the fraud of his managing clerk who induced a client to transfer property to him and then disposed of the property for his own benefit. The basis of the decision was that the managing clerk had been authorized to transact business on behalf of the firm. See also *Uxbridge Building Society v. Pickard* (1939) 2 K.B. 248, C.A., *South London Greyhound Racecourses v. Wake* (1931) Ch. 496; *Kreditbank Cassel v. Schenkers*, *supra*.

## The Indoor Management Rule and Agency Principles

In relation to a company the Indoor Management rule was developed from the general principles of the law of agency at common. The Principles were refined and adopted to suit the peculiarity of a body corporate as principal unlike a natural person.

For this purpose, the relevant principles can be summarized as follows<sup>24</sup>

A principal is bound by the transactions on his behalf of his agent or servant if the latter acted within either

- (i) the actual scope of the authority conferred upon him by the principal prior to the transaction or by subsequent ratification<sup>25</sup>; or
- (ii) the implied (usual or customary) or apparent (ostensible) scope of his authority<sup>26</sup>.

The application of these principles to registered companies which appears to be a little more complicated, have crystallized into what is known as the Indoor Management Rule. This rule is nothing more than an illustration of the various situations where a company may be held bound to a third party in respect of a transaction on his behalf by an official, agent or servant who acted without authority or with implied, apparent or ostensible authority<sup>27</sup>. For this reason, it is to be observed that in most of the cases in which the rule was invoked, it was used interchangeably with agency principles at common law. A critical look at the following cases would clearly show that they were mainly decided on the principles of agency on the implied, apparent or ostensible authority of the company official, agent or servant in each case despite the reference to the Indoor Management Rule or the Rule in *Royal British Bank v. Turquand – Freeman & Lockyer Ltd. v. Buckhurst Pack Properties (Mangal) Ltd.*<sup>28</sup>, (ostensible authority of a company director), *Biggerstaff v. Rowatt's Wharf Ltd.*<sup>29</sup>(implied and apparent authority of a managing director), *Mahoney v. East Holyford Mining Co.*<sup>30</sup>, (ostensible authority of directors), *Kreditbank Cassell GmbH v. Schenkers, Ltd.*<sup>31</sup>, (implied usual authority of a manager), *Houghton and Co. v. Nothard Lowe & Wills Ltd.*<sup>32</sup>, (ostensible authority of a director), *Dey v. Pullinger Engineering Co*<sup>33</sup>, (implied authority of a Managing Director), *Re County Life Assur. Co.*<sup>34</sup>, (ostensible authority of de facto directors and secretary), *Glax Hillbrick & Tile*

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<sup>24</sup> This is adapted from similar summary in Gower's Principles of Modern Company Law, 6<sup>th</sup> Edition, Sweet & Maxwell, London, 1997, p. 201.

<sup>25</sup> Actual authority may be conferred expressly or impliedly. Authority to perform acts which are reasonably incidental to the proper performance of an agent's, duties will be implied unless expressly excluded and an agent who, on previous occasions, has been allowed to exceed the actual authority originally conferred upon him may thereby have acquired actual authority to continue so to act. Ratification of a contract entered into by an agent in excess of his authority enables the principal to sue the other party if the agent had disclosed that he was acting for an identifiable principal.

<sup>26</sup> This consists of (i) the authority which a person in his position and in the type of business concerned can reasonably be expected to have and (ii) the authority which the particular agent has been held out by the principal as having unless, in either case, the other party knows or ought to have known that the agent was not actually authorized. The liability of the principal in both cases rests on estopped; but in case (ii) the principal cannot be estopped unless the other party knows that the agent is acting as agent whereas in case (i) the other party may believe the agent to be the proprietor of the business and the principal, having allowed him to appear as such, is estopped from denying his power so to act. See *Watteau v. Fenwick* (1893) 2 Q.B. 346.

<sup>27</sup> In *Freeman & Lockyer v. Burkhurst Pack Properties (Mangel) Ltd.*, Lord Diplock rightly observed that these authorities may co-exist and coincide though they may operate exclusively in some circumstances.

<sup>28</sup> *Supra*.

<sup>29</sup> (1896) 2 Ch. 93

<sup>30</sup> (1875) L.R. 7 H.L. 869.

<sup>31</sup> (1926) 2 K.B. 450.

<sup>32</sup> (1927) 1 K.B. 246.

<sup>33</sup> (1920) All E.R. Rep. 591.

<sup>34</sup> (1870) 5 Ch. App. 288.

*Conv. Wawlings*<sup>35</sup> (apparent authority of a managing director), etc. Accordingly, these ought to be critically reconsidered as having raised issues of agency and determined by the principles of agency law despite the reference to the Rule in *Turquand* case<sup>36</sup>.

Similarly, many Nigerian cases were also decided primarily on the basis of agency principles despite reference to the *Turquand* rule<sup>37</sup>. These include *Metalingex v. Leventis & Co. (Nig.) Ltd*<sup>38</sup>, (implied authority of a director), *Trenco (Nig.) Ltd. v. African Real Estate & Investment Co*<sup>39</sup>, (implied authority of the Chairman and director of the company), *Ekweozor v. Building and Civil Construction Co*<sup>40</sup>, (implied authority of a director), *Nigerian Ports Authority v. Construzioni Generali Farsura (COGEFAR) S.P.A. & Anor*<sup>41</sup>, (ostensible authority of a General Manager), *Vanni v. Niger Pak Ltd.*<sup>42</sup>, (ostensible authority of a Personnel/Administrative Manager), *African Development Corporation Ltd. v. L.E.D.B. & Anor*<sup>43</sup> (Implied authority of a Director/General Manager).

These cases obviously dealt with the implied (usual and customary), apparent or ostensible authority of company officials, agents or servants to bind their companies under normal rules of agency as applicable to companies. Similarly, the exceptions to the rule would appear to be based on cases of lack of good faith on the part of the third party seeking to rely on the Rule. Hence, a summary of all the third party requires to successfully rely on the Rule is "good faith"<sup>44</sup>. This could be proved by the third party showing that he had no knowledge of the irregularity or want of capacity or authority on the part of the company official, agent or servant. These principles and exceptions have now been enacted in various ways under the provisions of the companies and Allied Matters Act 1990 to be discussed presently.

### **The Indoor Management Rule under The Companies and Allied Matters Act**

Following the abolition of the doctrine of constructive notice by virtue of section 68 of the Act, section 69 enacts with few exceptions, the presumption of regularity in the internal management of the company in favour of outsiders dealing with the company. Section 70 also enacts the presumption in favour of outsiders in cases involving forgery, subject to some necessary exceptions. It is submitted that these provisions embrace the agency principles as refined by the Rule in *Royal British Bank v. Turquand* already discussed. These sections provide:

"69. Any person having dealings with a company or with someone deriving title under the company shall be entitled to make the following assumptions and the company and those deriving title under it shall be estopped from denying their truth that –

- (a) the company's memorandum and articles have been duly complied with;
- (b) every person described in the particulars filed with the Commission pursuant to section 35 and 292 of this Act as a director, managing director or secretary of the company; or represented by the company, acting through its members in general meeting, board of directors, or managing director, as an officer or agent of the

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<sup>35</sup> (1938) 4 All E.R. 100.

<sup>36</sup> Kiser Barnes, *Cases and Materials In Nigeria Company Law*, OAU Press Ltd., 1992, p. 227 citing Sealy, *Cases and Materials in Company Law*, 3<sup>rd</sup> Edition, 1985.

<sup>37</sup> Kiser Barnes, op. cit. p.227 – 248.

<sup>38</sup> Supra.

<sup>39</sup> Supra. See also *Montaignac v. Shitta* (1890) 15 App. Cap. 357 (P.C.): O. Akanle, "Development in Commercial Business and Trade Law" in the *Challenge of the Nigerian Nation (An Examination of Its Legal Development (1960 – 1985))* edited by T.A. Aguda, 1985, p. 144.

<sup>40</sup> (1980) 7 – 9 CCHCJ. 30.

<sup>41</sup> (1972) (2) A.L.R. Comm. 199.

<sup>42</sup> (1979) 4 – 6 CCHCJ. 148.

<sup>43</sup> (1966) (1) A.L.R. Comm. 438.

<sup>44</sup> *Rolled Steel Products (Holdings) Ltd. v. British Steel Corporation* (supra); *Afolabi v. Polymera Industries (Nig.) Ltd.* (supra); *Gower*, op. cit. p. 223.

company, has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by a director, managing director, or secretary of a company carrying on business of the type carried on by the company or customarily exercised or performed by an officer or agent of the type concerned;

- (c) the secretary of the company, and every other officer or agent of the company having authority to issue documents or certified copies of documents on behalf of the company has authority to warrant the genuineness of the documents or the accuracy of the copies so issued;
- (d) a document has been duly sealed by the company if it bears what purports to be the seal of the company attested by what purports to be the signatures of two persons who, in accordance with paragraph (b) of this section, can be assumed to be a director and the secretary of the company;

Provided that:-

- (i) a person shall not be entitled to make such assumptions as aforesaid, if he had actual knowledge to the contrary or if, having regard to his position with or relationship to the company, he ought to have known the contrary;
- (ii) a person shall not be entitled to assume that any one or more of the directors of the company have been appointed to act as a committee of the board of directors or that an officer or agent of the company has the company's authority merely because the company's articles provided that authority to act in the matter may be delegated to a committee or to an officer or agent.

70. Where, in accordance with sections 65 to 69 of this Act, a company would be liable to a third party for the acts of any officer or agent, the company shall, except where there is collusion between the officer or agent and the third party, be liable notwithstanding that the officer or agent has acted fraudulently or forged a document purporting to be sealed by or signed on behalf of the company”.

These provisions supplement the agency principles enacted by virtue of sections 65, 66 and 67 of the Act which have already been developed by the courts before this Act.

The protection afforded outsiders by the principles enacted under sections 69 and 70 would appear at first sight, to be peculiar to company law and therefore, could be interpreted as extending the protection of outsiders dealing with a company beyond the ordinary principles of the law of agency at common law. But on a more critical appraisal, the provisions are no more than a legislative approval of the various principles of agency developed and articulated by the courts since the Rule in *Royal British Bank v. Turquand* was first crystallised. Sections 69 and 70 have now enacted the principles and exceptions in that rule, and refined and extended these principles in a manner that leaves no room for doubts. Accordingly, the old case law on the Rule in *Royal British Bank v. Turquand* are applicable subject to necessary modifications under these sections.

By virtue of section 69 (a) an outsider having seen that the company has power under its memorandum and articles of association to enter into a contract with him, may go ahead to enter into this contract and he can assume that the company or its officers and agents have complied with the requirements of these documents. This is the very core of the decision in *Royal British Bank v. Turquand* and the cases to which this decision is applicable.

Section 69(b) enacts the actual, apparent or ostensible, customary and usually authorities of company directors, managing directors, secretaries, officers and agents of the company. Accordingly, by virtue of subsection (b) any person dealing with a director, managing director or secretary of a company whose particulars are filed with the Corporate Affairs Commission under section 35 or 292, is not required to enquire whether or not these officials of the company have been duly appointed, and if it turns

out that they were not duly appointed, the company will nevertheless be bound having held them out as its officials duly appointed and having the usual or customary authority of any office held by them. The same is true of any other officer or agent held out by the company as having been duly appointed with the usual or customary authority. Once these conditions are satisfied, a company cannot plead that any of its directors, managing directors, secretaries, officers or agents was not duly appointed and therefore lacks the authority to bind it in any contract with a third party. This interpretation is supported by some other sections of the Act. Section 260 provides that the acts of a director, manager, or secretary shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. Under Section 250 it is provided that a company shall be bound by the acts of a person whom it holds out as its Director even though such a person has not been duly appointed a director. Also, this may be read together, with section 66 dealing with the implied, apparent or ostensible authority of an officer or agent of the company. Thus, this provision codified the principles in *Pool House Group (Nigeria) Ltd. v. African Continental Bank Ltd.*; *Metallimpex v. A.G. Leventis and Co. (Nig.) Ltd.*, *Trenco (Nigeria) Ltd. v. African Real Estate and Investment Co.*, etc. already discussed. It is also clear from subsection (b) that the company will not be bound if the officials or agents exercise powers and perform duties not customarily exercised or performed by agents of their type or officials of a company carrying on such business, except the company ratifies their action.

Subsection c extends to the presumption of the genuineness and accuracy of the documents issued by the Secretary, other officer or agent of the company who has authority to issue or certify such documents. Thus, where he has authority to issue or certify, the third party is entitled to assume that such document is genuine and even if the document is later discovered to be fake or a forgery on the part of the official, agent or servant, the company is bound.

Subsection (d) deals with sealing and attesting of documents where applicable by a company secretary and director. Accordingly, where a seal purporting to be the common seal of the company, has been affixed to a deed, attested by the signatures of persons purporting to execute it on behalf of the company in accordance with all statutory requirements relating to the affixing of common seal of the company on such document, the transaction binds the company and it is not open to it to contend that the persons who attested and executed the deed were not duly appointed or that their signatures and the seal of the company were not genuine. This refines and enacts the ratio in such cases as *Containers (Nig.) Ltd. v. Niglasco Ltd.*<sup>45</sup>, *National Investment and Properties Co. Ltd. v. The Thompson Organization Ltd.*<sup>48</sup>, *African Development Corporation Ltd. v. Lagos Executive Development Board*<sup>47</sup> amongst others.

Subsections c and (d) may be read together with section 70 which incorporates by reference sections 65-69, and provides that a company would be liable to a third party for the acts of any officer or agent notwithstanding that the officer or agent has acted fraudulently or forged a document purporting to be sealed by or signed on behalf of the company. This is a restatement of the existing principle that the act of an agent within the scope of his actual or apparent authority does not cease to bind his principal merely because the agent was acting fraudulently and in furtherance of his own interest<sup>48</sup>. The section therefore overrules the decision in *Ruben v. Great Fingall Consolidated* in respect of forged documents<sup>49a</sup>. The only exception to this is where

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<sup>45</sup> (1979) 4 – 6 CCHCJ. 290.

<sup>48</sup> (1969), All N.L.R. 138.

<sup>47</sup> Supra.

<sup>48</sup> See Ekweozor v. Building & Civil Construction Co. (supra) adopting *Bowstead on Agency*, 14<sup>th</sup> Edn. P. 244 and 230, article 77 thereof; *Hanbro v. Burnard* (1904) 2 K.B. 10.

<sup>49a</sup> See *Lloyd v. Grace Smith & Co.* (supra)

there is a collusion between the officer or agent and the third party, in which case, the company would escape liability because the third party lacks good faith<sup>49</sup>.

The proviso to section 69 however, contains the limitations to the presumption of regularity. A person with actual knowledge or who ought to know of the irregularity, having regard to his relationship to the company, (e.g. a director of the company), is precluded from making any of the assumptions. Thus, the principles in cases like *Afolabi v. Polymera Industries (Nigeria) Ltd.*, *Rolled Steel Products (Holdings) Ltd. v. British Steel Corporation* and other related cases already discussed, have been legislatively approved. Secondly, where a company's articles provide for delegation of authority to a committee or an officer or agent, a third party is not entitled to assume that such authority has been delegated. He must find out to ensure actual delegation<sup>50</sup>. It is clear from this provision that the mere knowledge by the third party that the Board of Directors might have delegated does not estop the company from denying that it has done so. This guards against gross negligence on the part of outsiders dealing with a company.

### **Conclusion**

The foregoing critical examination demonstrates clearly that the Indoor Management Rule consists of agency principles developed, refined and applied to the peculiar situation of a registered company as an artificial entity. That the Rule in *Turquand's* case is encapsulated in agency principles could be seen from various cases citing the principles interchangeably while dealing with the rule. These principles have now been enacted in various ways under the Companies and Allied Matters Act 1990. Accordingly, the provisions of the Act enacting the Rule are not really new. With this development, coupled with the abolition of the doctrine of constructive notice, it is submitted that the relevance of the Rule in *Turquand's* case as a point of reference and, as a separate doctrine of company law would, at best, be minimal or of mere historical significance in Nigeria. It is now more appropriate to apply these statutory provisions and rely on them rather than the old *Turquand* rule. Where however, there is need for clarification of the import of these provisions, recourse may be had to the general principles of the common law of agency.

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<sup>49</sup> *Armagas Ltd. v. Mundogas S.A.* (1986) A.C. 717 H.L.

<sup>50</sup> This appears to have impliedly rejected the decision of the English Court of Appeal in *Houghton & Co. v. Nothard Lowe & Ltd.* (1927) 1 K.B. 246, 266.