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Inherent Authority of a Corporate President in Wyoming

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right with a litigant to require persons to submit to a blood test.[16] The general rule with respect to such evidence is that it is to be regarded as expert testimony which the jury may accept or reject.[17]

In Wyoming no statute exists allowing a court to compel submission to a physical examination, nor has the court decided whether, without statute, it has inherent authority to compel submission to a blood test.

In view of the proven validity of these tests, and the unanimous acceptance of blood tests throughout the medical profession, there is no justification for a "cultural lag" in legal thinking.[18]

It is submitted that statutory enactment should make it mandatory on the court, on motion of a defendant in a paternity case, to order blood grouping tests, and should make the results conclusive where non-parentage is conclusively shown. This field of expert testimony is not subject to dispute among the experts. By compelling recognition of scientific facts, the proposed statutory enactment will insure that the doctrine of *stare decisis* is not given more weight than the laws of heredity.

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INHERENT AUTHORITY OF A CORPORATE PRESIDENT IN WYOMING

Inherent authority has been defined as, "An authority possessed without it being derived from another."[1] The authority of the corporate president is conventionally divided into four classes which are as follows: (1) Express authority; (2) Implied authority; (3) Apparent authority; (4) Inherent authority. Express authority is that which is conferred by the by-laws and resolutions of the board of directors. Implied authority is that which is inferred from the express authority. Apparent authority is that which arises from the conduct of the corporation or that which the corporation allows the officer to assume without objection. Inherent authority is that which arises merely by virtue of his office.[2]

The nature of the corporation's existence readily brings to mind the thought that in order for the corporation to exercise its powers granted by the state it must do so through the use of agents.[3] In this respect a corporation's relation of agency differs from that of an individual's relation

16. Maine Rev. Stat. 1944, Ch. 153, Sec. 34.
17. 20 Am. Jur. 1055.
18. 21 Minn. L. Rev. 671, for a discussion of this backward thinking of the courts.

1. Bouvier's Law Dictionary, (Rawle's 3rd ed., 1914).
2. 2 Fletcher Cyclopedia Corporations 434, (Revised & Permanent ed., 1931).
3. Chicago, Burlington and Quincy Railroad Company v. Coleman, 18 Ill. 298, 68 Am. Dec. 544 (1857); George E. Lloyd & Company, Appt. v. Nelson Edward Matthews et al., 233 Ill. 477, 79 N.E. 172, 7 L.R.A. (N.S.) 376 (1906); 19 C.J.S. 455.

of agency, as a corporation must of necessity act through the medium of an agent.[4]

There are two diameterical lines of authority as to the existence of inherent authority in corporate presidents. The majority view is that the president by virtue of his office alone does not have authority to bind the corporation by his acts or contracts.[5] The president, merely by virtue of his office, does not possess any more authority than any other director to act for the corporation and to bind it in dealings with third persons. This view adheres more or less to the strict principles of agency for a natural person.[6] The minority view, although expressed as a modern tendency,[7] is that, when the president is delegated the general control and supervision over the corporate affairs, it is presumed by virtue of office that he had authority to do such acts as are within the usual and ordinary course of the corporation's business.[8] This rule is not an inflexible judicial presumption as it is subject to many factors before it is finally placed into operation. Consideration must be given to the following factors: the type of corporation, that is, trading or non-trading; the acts usually and customarily done by presidents of similar corporations; and whether the act was done within the usual and ordinary course of business of the particular corporation?[9]

The Supreme Court of Wyoming has not, as yet, adopted either view as to the existence of inherent authority in corporate presidents. Where the issue of the officer's authority has been raised in Wyoming, the court has disposed of it on basis other than that of inherent authority. A survey of the holdings in their chronological order gives a cursory view of Wyoming's position on the question.

In an action of ejectment, the defendant corporation objected to the plaintiff's offer in evidence of an assignment executed by the defendant's president, as it did not show the officer's authority to execute th assignment. The court held that the delivery of the note and mortgage, the subject matter of the assignment, to the assignee had a tendency to show that the officer had authority to execute it.[10] This case indicates that the court is not desirous in granting the corporation an immunity which would necessarily result if the court followed the majority rule.

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4. Mechem Outlines Agency, 33, (3rd ed., 1923).
5. Diederich v. Wisconsin Wood Products, Inc., 247 Wis. 212, 19 N.W. (2d) 268 (1945); Fletcher Cyclopedia Corporations, 440 supra; 13 A.J. 876; 19 C.J.S. 455.
6. See note 4 supra.
7. George E. Lloyd & Company, Appt. v. Nelson Edward Matthews, et al., supra; Omaha Wool and Storage Company v. Chicago Great Western Railroad Company et al., 97 Neb. 50, 149 N.W. 55 (1914); Am. Cas. 1917 A 358; Coe v. American Fruit Growers, 164 Ore. 90, 100 P. (2d) 234 (1940); Fletcher Cyclopedia Corporations 443 supra.
8. Chicago, Burlington and Quincy Railroad Company v. Coleman, supra; George E. Lloyd & Company, Appt. v. Nelson Edward Matthews et al., supra; Omaha Wool and Storage Company v. Chicago Great Western Railroad Company et. al., supra; Fletcher Cyclopedia Corporations 443 supra; 13 A.J. 876.
9. Cases cited note 8 supra.
10. Mathews v. Nefsy, 13 Wyo. 458, 81 Pac. 305 (1905).

In an action for breach of contract, the issue was raised by the plaintiff that since the president of the defendant corporation could issue checks against the corporate bank account that such evidence raised the presumption that he had authority to make the contract in question. The contract was one for the purchase of the plaintiff's bonds. The court disposed of this contention by holding that although this presumption rule was supported by numerous cases that the act or contract giving raise to the presumption was subject to the limitation of being done in the usual and ordinary course of business, and that in the instant case the purachase of bonds by the defendant corporation, which was engaged in the operation of a lumber business was not within the usual and ordinary course of business.[11] This case is significant as the court did recognize the existence of the presumption rule, and indicated that the court was not adverse to its application in a proper case.

In an action for an injunction restraining the defendant corporation from shutting off the water to the plaintiff's land, the issue was raised by the defendant as to the existence of authority of the assistant secretary to make admissions which would bind the corporation. The court held that the name by which a particular officer was designated was not necessarily determinative of his authority, and in this case the assistant secretary was the only outside agent of the corporation, and that by the by-laws was actually granted the authority of a general manager. Therefore, the court concluded that he had authority to make admissions as to the pay ment of prior assessments on land – purchased by the plaintiff, and the corporation was consequently estopped to deny such payments.[12] At first blush the proposition set out by the court, that "the name by which an officer is designated is not necessarily determinative of his authority," would seem to be in conflict with the prior decisions. However, in view of the facts and circumstances of this particular case the proposition was one which was necessary to reach the desired and proper result, and it shows a tendency on the part of the court to avoid any corporate immunity arising from the acts of its agents done within the usual and ordinary course of business.

In an action on promissory notes executed for corporate indebtedness by the defendant's president, the defendant raised the defense of lack of authority. The court held in view of the facts and circumstances of the case, which were that the president had done such acts for the past twenty years without any objections on the part of the directors and shareholders, that this long continued acquiscence on the part of the directors and shareholders was equivalent to antecedent authority.[13] This case, although based on apparent authority, also shows the tendency of the court to bind the corporation for acts and contracts of its agents when done in the usual and ordinary course of business.

11. Wyoming Construction & Development Co. v. Buffalo Lumber Co. 25 Wyo. 158, 166 Pac. 391 (1917).
12. Seaman v. Bighorn Canal Ass'n., 29 Wyo. 391, 213 Pac. 938 (1923).

Wyoming does have a statutory provision, as do many other states, providing, that the management of the stock, property and concerns of the corporation shall be vested in at least three directors.[14] Texas, for example, has such a statute and the courts of that state have construed it to mean that the president can have no inherent authority in the management of the corporation's business.[15] Although there has been no holding on the point, the above Wyoming cases seem to indicate that the Wyoming court does not feel obligated to give such controlling effect to this statute. It may be noted that the Wyoming statute expressly provides for the office of president.[16]

Because of the enormous growth of corporations in size and operations throughout the vast fields of enterprise, it is necessary that some rule with respect to the authority of the corporate president be adopted. The presumption rule is not subject to the criticism that evolves from the majority rule. It is readily forseen that persons trading with the corporations do not before they act check all the intra-corporate sources of authority to determine whether or not the officer has the authority to culminate the act. The corporation by use of letterheads and designation of the office of president creates a presumption that the president has the authority to do acts in the ordinary and usual course of business. It should not be allowed the immunity which is incompatable with the rights of individuals in a similar enterprise.[17] The use of the presumption rule would not increase the liability of the corporation beyond that which it should assume as a matter of business expediency, for in order to make the rule applicable the act must be one which is in the usual and ordinary course of the corporation's business. The use of this rule would also give the party dealing with the corporate officer viz., the president, a basis of reliance on the contract or act. The legislature of Pennsylvania has taken a forward step in this matter by enacting a statute which provides that any note, mortgage, contract, etc., when signed by the president and some other corporate officer, shall be held to have been properly executed for and in behalf of the corporation.[18]

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13. Arp & Hammond Hardware Co. v. Hammond Packing Co., 33 Wyo. 77, 236 Pac. 1033 (1925).
14. Wyo. Comp. Stat. 1945 sec. 44-109.
15. Prairie Lea Production Co. v. Lincoln Tank Co. et. al., 294 S.W. 270 (Tex. Civ. App. 1927).
16. Wyo. Comp. Stat. 1945 sec. 44-116.
17. Chicago, Burlington and Quincy Railroad Company v. Coleman, supra.
18. Purdon's Pa. Stat. (Compact ed. 1936) Tit. 15, sec. 2852-305. "The by-laws of a business corporation shall operate merely as regulations among the shareholders of the corporation, and shall not affect contracts or other dealings with other persons, unless such persons have actual knowledge of such by-laws. Any form of execution provided in the by-laws to the contrary notwithstanding, any note, mortagage, evidence of indebtedness, contract or other instrument of writing, or any assignment or endorsement thereof, executed or entered into between any corporation and any other person, co-partnership, association or corporation, when signed by the preident or vice president and secretary or assistant secretary or treasurer or assistant treasurer of such corporation, shall be held to have been properly executed for and in behalf of the corporation."