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**Abstract**
The purpose of this article is to review the present position with regard to the rule in Royal British Bank v Turquand (sometimes called the 'indoor management rule') and sections 68A, 68C and 68D of the Companies Code in the light of a number of recent decisions, including one in the New South Wales Court of Appeal and one in the Federal Court of Australia.

**Keywords**
indoor management rule, corporate law, authority to act

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## Comments and Notes

# THE RULE IN ROYAL BRITISH BANK v TURQUAND IN 1989

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## Introduction

The purpose of this article is to review the present position with regard to the rule in *Royal British Bank v Turquand*[1] (sometimes called the 'indoor management rule') and sections 68A, 68C and 68D of the Companies Code[2] in the light of a number of recent decisions, including one in the New South Wales Court of Appeal[3] and one in the Federal Court of Australia.[4]

To set the scene, we are concerned with the situation where a person (an 'outsider') deals with a company and a question arises as to whether the affixing of the company's seal to a document is authorised or whether the individual person or persons who act for the company—chairman of directors, managing director, *de facto* managing director, director, *de facto* director, ex-director, secretary, employee—have been properly appointed and have authority to act. The situation is not one in which a properly appointed and qualified board of directors, with authority under the company's memorandum and articles, has properly determined that the company should enter into the transaction and, where necessary, that the company's seal should be affixed to a document.

There is a number of rules for the protection of the person who deals with the company (the 'outsider') and these include the rule in *Royal British Bank v Turquand*, certain agency principles and certain statutory provisions such as sections 68A, 68C and 68D of the Companies Code. Where the company's seal is affixed to a document, the rule is relevant; where the company's seal is not used, certain agency principles are relevant. In either case, certain statutory provisions are relevant.

1 (1856) 6 E1 & B1 327; 119 ER 886.
2 The corresponding sections in the new Corporations Act 1989 are ss 164, 165 and 166.
3 *Registrar-General v Northside Developments Pty Ltd* (1989) 7 ACLC 52, under appeal to the High Court of Australia.
4 *Australian Capital Television Pty Ltd v Minister for Transport and Communications* (1989) 7 ACLC 510, applying the *Northside Developments* case.

Prior to 1984, the rules were almost entirely common law rules—the rule in *Turquand's* case and the agency principles—plus the predecessor of section 224[5] of the Code. Sections 68A-68D,[6] which were introduced on January 1, 1984, state the previous law, although to some extent in a modified form. Since then there has been a number of cases dealing with the rule in *Turquand's* case and sections 68A, 68C and 68D.

It should be mentioned that where a person acts on behalf of a company without authority the company, i.e. usually the board of directors, may ratify the transaction, in which case the company will be bound by it.

It should also be mentioned that we are not concerned with the capacity of the company to enter into the transaction[7] or with directors exercising their powers for an improper purpose and not bona fide for the benefit of the company as a whole.

## The rule

Until recently it could be said that the rule in *Turquand's* case was to the following effect: Where the persons conducting the affairs of a company do so in a manner which appears to be consistent with its articles of association and other public documents including the memorandum and the list of directors, then those dealing with them are entitled to assume that all has been done regularly, and those persons are not affected by any internal irregularity.[8]

In *Turquand* the equivalent of the memorandum and articles empowered the directors to borrow on bond such sums of money as they should be authorised to borrow by ordinary resolution of the company. No such resolution was passed but the directors borrowed on bond, and the company's seal was affixed to the bond, which was signed by two directors. It was held that the bond was binding on the company as the lenders were entitled to assume that the necessary resolution had been passed.

Various bases for the rule have been suggested.[9] One is that the rule is an application of the principle of estoppel. A second is that the rule is an application of the maxim *omnia praesumuntur rite esse acta*, i.e. all things are presumed to have been done correctly. Another is that those dealing with the company cannot insist upon disclosure of its internal arrangements and cannot satisfy themselves that there has been no irregularity. Again, that the rule is an application of agency principles. A fifth suggestion is that the rule is a special rule of company law.

English judicial decisions and much academic opinion now hold the rule to be simply an illustration of agency principles, and the current

5 Post.

6 Ss 68A-68D are not retrospective: Per Wood J in *Barclays Finance Holdings Ltd v Sturgess* (1985) 3 ACLC 662, at p 668. S 68B was repealed in 1985.

7 The former *ultra vires* rule was abolished as regards outsiders by ss 66B, 66C and 67 of the Code and a company now has full legal capacity.

8 See per McHugh J A (Samuels J A concurring) in the *Northside Developments case*, above n 3 at p 62 and per Gummow J in *Australian Capital Television*, above n 4 at p 533.

9 See per Kirby P in *Northside Developments*, above n 4 at pp 56 and 57.

English view was expressed by Diplock L J in *Freeman & Lockyer (A Firm) v Buckhurst Park Properties (Mangal) Ltd.*[10]

However, whatever the English view is, some Australian judges have said that in Australia the rule is a special rule of company law.[11] In Australia, where a company has executed a document under seal the company is bound by the affixing of its seal to the document if the company under its memorandum or articles might have had power to enter into the transaction and if, where required, the seal is affixed in the presence of and countersigned by persons who either by virtue of their offices or positions or the company permitting them to act in those offices or positions might have had authority to be present and countersign the document.[12] It is not necessary that the party dealing with the company should have relied on the memorandum or articles or any act of the company. The rule is a development of the rule that, in the absence of fraud on the corporation, mistake, duress or legislative intention, a statutory or chartered corporation was bound by the affixing of its seal to a document if the transaction was within the powers of the corporation.[13]

The rule is not limited to the case in which the dealings with the company are contractual in character. Further, there remains scope outside s 68A for the development of the rule.[14]

The rule was applied in *Australian Capital Television Pty Ltd v Minister for Transport and Communications,*[15] where in 1988 the company's seal was affixed to a certificate which the Broadcasting Act 1942 (Cth) as amended required to be submitted to the Minister, the articles had not been complied with in that the certificate had not been signed by a director and countersigned by another director or the secretary, there was nothing on the face of the instrument to suggest irregular execution and it was held that the Minister could assume that the certificate was duly sealed.

The rule was also applied in *Registrar-General v Northside Developments Pty Ltd*[16] where, in 1979, without the authority of the other directors, a company's seal was affixed to a mortgage by a director and his son who was not but who purported to be the secretary of the company, so that the articles were not complied with, and the company was held to be bound.

At the back of the rule is a question of policy as to who should run the risk of loss from unauthorised acts purporting to be done on behalf of companies. The rule demonstrates that, *prima facie*, losses are to be borne by companies and not by outsiders, and courts should not be astute to weaken the effect of the rule.[17]

10 [1964] 2 QB 480, at pp 505-506. Also, per McHugh J A (Samuels J A concurring) in *Northside Developments*, above n 3 at p 63, Kirby P in *Northside Developments* at p 57 and Gummow J in *Australian Capital Television*, above n 4 at p 533. See further post.

11 Per McHugh J A (Samuels J A concurring) in *Northside Developments* at p 63; Kirby P in *Northside Developments* at p 58.

12 Per McHugh J A and Samuels J A in *Northside Developments* at p 70.

13 Per McHugh J A and Samuels J A in *Northside Developments* at p 64.

14 *Australian Capital Television Pty Ltd v Minister for Transport and Communications* (1989) 7 ACLC 510 (Fed Court of Australia).

15 (1989) 7 ACLC 510 (Fed Court of Australia).

16 (1989) 7 ACLC 52 (NSW Court of Appeal).

17 Per McHugh J A and Samuels J A in *Northside Developments*, above n 3 at p 73.

It should be noted that the abolition by s 68C of the general law doctrine of constructive notice of the public documents of a company which have been lodged with the Commission means that the protection of outsiders by the rule is no longer restricted by the doctrine.

There are exceptions to the rule. An outsider is precluded from relying on it if he knows of an irregularity, or if he is put on enquiry as to whether the seal is affixed with authority or whether the persons purporting to countersign the sealing have authority to do so. Thus, in *Howard v Patent Ivory Manufacturing Co*,[18] where the directors, on behalf of the company, borrowed money from themselves and issued debentures under the company's seal, knowing that the requisite resolution in general meeting had not been passed, the company was not bound. As was pointed out in *Northside Developments*,[19] before an outsider is put on enquiry there must be some factor or combination of circumstances which indicates or indicate that all is not what it purports to be, eg an officer pays funds of the company into his own account, as in *A L Underwood Ltd v Bank of Liverpool*[20] or the directors apply the company's property in satisfaction of or as security for their own debts, as in *E B M Co Ltd v Dominion Bank*.[21]

In *Northside Developments*,[22] the mortgagee was not put on enquiry merely because the director who signed was managing director of an associated company which would benefit from the mortgage. On the other hand, in *Custom Credit*[23] the plaintiff lessor was on enquiry—before accepting the lease in 1983 its officer knew that one director of the company had not approved the execution of the lease and that his solicitor was questioning its validity—and, having failed to make any further enquiry as to the validity of the execution, the plaintiff could not rely on the rule.

It has been said[24] that it is uncertain whether there is another exception to the rule, namely that the rule does not apply to a forgery, and, if there is such an exception, its extent is uncertain. In view of s 68D, there is little scope for the operation of such an exception. In any event, as *Northside Developments*[25] shows, if the seal of the company is attested by a person who holds a relevant office or is permitted by the company to hold the relevant office, the so-called 'forgery exception' does not apply to the genuine but unauthorised signature of such a person.

## The doctrine of ostensible or apparent authority in the law of agency

When an outsider does not rely on the seal of the company but on the representation of some person as agent of the company, the common law doctrine of ostensible or apparent authority applies. Before examining

18 (1888) 38 ChD 156.
19 Per McHugh J A and Samuels J A in *Northside Developments* at p 73.
20 [1924] 1 KB 775.
21 [1937] 3 All ER 555.
22 *Registrar-General v Northside Developments Pty Ltd* (1989) 7 ACLC 52 (NSW CA).
23 *Custom Credit Holdings Ltd v Creighton Investments Pty Ltd* (1985) 3 ACLC 248.
24 Per McHugh J A and Samuels J A in *Northside Developments* at p 72; per Kirby P at p 61.
25 (1989) 7 ACLC 52, per McHugh J A and Samuels J A at p 72 and per Kirby P at p 61.

that doctrine it may be helpful to deal with the case in which an outsider can hold a company bound because the agent has actual authority, express or implied, to act for the company.

An outsider can hold the company bound by the acts of its agent within his actual authority, express or implied. As to express actual authority, a single director may be specifically authorised by the board of directors to make a particular contract on behalf of the company. As to implied actual authority, a director may, eg, under power in the articles, be appointed to an office, eg that of managing director, which carries with it authority to make a contract on behalf of the company.

In *Hely-Hutchinson v Brayhead Ltd*[26] the chairman of directors of a company acted as *de facto* managing director. The board knew of and acquiesced in that. It was held that he had actual authority implied from the conduct of the parties and the circumstances of the case to sign letters of indemnity and guarantee binding on the company.

A company is bound by the acts of its agent within his apparent authority where he lacks actual authority (although actual authority and apparent authority generally co-exist). For example, in *Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd,*[27] the company secretary had apparent authority to hire cars on behalf of the company. Thus an outsider may be protected where a single director acts on behalf of the company without actual authority but with apparent authority arising from a representation that he has authority made by the board of directors or by the company's public documents, including its memorandum and articles.

If a person acts on behalf of a company without actual authority the company, ie usually the board of directors, may ratify the contract, in which case the company will be bound by it. However, if in such a case the company does not ratify then, subject as below, the company will still be bound if the other party can prove that certain conditions are fulfilled.

As Diplock L J said in *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd:* [28] 'It must be shown:

(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 the company was not deprived of the capacity either to enter into a contract of the

26 [1968] 1 QB 549 (CA).
27 [1971] 2 QB 711 (CA).
28 [1964] 2 QB 480 (CA), at pp 505, 506. See *Registrar-General v Northside Developments Pty Ltd* (1989) ACLC 52 (NSWCA), per McHugh and Samuels JJ A at p 70.

kind sought to be enforced or to delegate authority to enter into a contract of that kind to the agent.'

Condition (2) is due to the fact that the principal, the company, is not a natural person. The representation is usually by conduct and is usually made by the board of directors. As a rule, the outsider cannot rely on the agent's own representation that he has authority.[29]

In *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd*[30] a director, who was never appointed managing director although that was permitted by the articles, acted as managing director to the knowledge of the board. On behalf of the company he instructed architects to do certain work for the company, a contract within the usual authority of a managing director, and the company was held bound by the contract.

Where the outsider relies on a representation by the board of directors it is not necessary that he should actually have inspected the company's public documents but where he seeks to rely on a representation in the public documents it is essential that he inspected them.

In *Rama Corporation Ltd v Proved Tin, etc, Ltd*[31] a director who purported to act for the company had no actual authority. The articles empowered the board to delegate their powers to a committee of one or more directors but the outsider did not inspect the articles until after the contract was made. Accordingly, the company was not bound.

An outsider is precluded from relying on the agency principles if he knew, or ought to have known, when he dealt with the company, that the person or persons who purported to act on behalf of the company lacked actual authority to do so.

## S 224—Validity of acts of directors and secretaries

Where there is a defect in the appointment or qualification of a director or secretary who acts for a company, an outsider may be protected by, and able to hold the company bound by virtue of, s 224 of the Companies Code or an article like Table A, art 78.

S 224(1) provides that the acts of a director or secretary are valid despite a defect afterwards discovered in his appointment or qualification.

Art 78 provides that acts done by a meeting of directors or of a committee of directors or by a person acting as a director are valid despite a defect in the appointment or qualification of a director or member of the committee.

S 224(2), a new provision in 1982, provides that where a person whose office as director of a corporation is vacated pursuant to s 222(1) (failure to obtain, or hold, share qualification, conviction of offence under s 229, etc) purports to do an act as director, the act is valid in relation to a person dealing with the corporation in good faith and for value and without actual knowledge of the cause of the vacation of office.

29 *Crabtree-Vickers Pty Ltd v Australian Direct Mail Advertising, etc., Co Pty Ltd* (1976) 50 ALJR 203.

30 [1964] 2 QB 480 (CA), applied in *Crabtree-Vickers Pty Ltd v Australian Direct Mail Advertising, etc, Co Pty Ltd* (1976) 50 ALJR 203.

31 [1952] 2 QB 147.

One of the grounds on which the High Court decided *Albert Gardens (Manly) Pty Ltd v Mercantile Credits Ltd*[32] was that the predecessor of s 224(1) applied. Certain securities to secure the repayment of money lent to a company were executed in formal conformity with the company's articles in that the company's seal was affixed and they were signed by two persons 'as directors'. Those persons had been formally 'appointed' directors but did not hold the shares which the articles required them to hold to qualify for appointment as directors. The lenders claimed validly to have appointed a receiver of the company's property under the securities. It was held that the defects in the appointment of the directors and the execution of the securities were validated by the predecessor of s 224(1) and by an article which was almost identical to the present Table A, art 78. It was also held that, under the rule in *Turquand's* case, the lenders were entitled to assume that the company had duly appointed as directors the persons who signed the securities as directors.

S 224(1) does not validate acts which cannot be done even by a properly qualified director. Thus in *Craven-Ellis v Canons Ltd*[33] the then English equivalent of s 224(1) did not empower improperly qualified directors to do what properly qualified directors could not do, namely, appoint an improperly qualified director as managing director.

S 68A, *post*, extends the protection afforded by s 224(1).

## Ss 68A, 68C and 68D—Assumptions which persons having dealings with companies are entitled to make

S 68A(1) provides that, subject as below, a person having dealings with a company is entitled to make certain assumptions in relation to the dealings and, in any proceedings in relation to the dealings, the company is not allowed to assert that the matters entitled to be assumed were not correct.

S 68A(2) provides that a person having dealings with a person who has, or purports to have, acquired title to property from a company is entitled to make similar assumptions in relation to the acquisition of title and, in any proceedings relating to the dealings, neither the company nor the second person is allowed to assert that the matters entitled to be assumed were not correct.

In *Barclays Finance Holdings Ltd v Sturgess*[34] it was said[35] that 'dealing' in s 68A(1) refers to the source transaction with a company rather than a step taken unilaterally pursuant to such transaction, eg giving notice or exercising a power under the deed, since otherwise the section would be self-defeating where the outsider later acquired knowledge of some internal irregularity. In that case the source transaction was a lease and guarantee which was executed, and to which the company's seal was affixed, in 1979, by one director and the secretary without the authority of the other directors. An application for summary judgment was dismissed on the ground that the company's lack of defence was not clearly

32 (1973) 131 CLR 60.
33 [1936] 2 KB 402 (CA).
34 (1985) 3 ACLC 662 (SC of NSW).
35 Per Wood J at p 667.

demonstrated. According to *Australian Capital Television Pty Ltd v Minister for Transport and Communications,*[36] 'dealings' is not limited to contractual relationships. The same case also shows that only assertions by the company (or the person who has acquired title to property from a company) can be disregarded.

S 68A(1) was inapplicable in the *Australian Capital Television* case because the Minister could not assume that the certificate was sealed in accordance with the company's articles since he could not disregard the assertion to the contrary by a third party as opposed to by the company. However, the section was applicable in *Lyford v Media Portfolio Ltd*[37] where in 1986 the company entered into a loan agreement through a person who was both its accountant and a director, and who affixed the company's seal to and signed the agreement. There was no board resolution as required by the articles but the outsider was held to be entitled to assume that the articles had been complied with and the company was not allowed to assert the contrary. Proof that the assumptions were in fact made was unnecessary.

The assumptions referred to in s 68A(1) and (2) are set out in s 68A(3) and are:—

(a) That the memorandum and articles have been complied with.

This provision, which was applied in *Lyford*, states the common law that the outsider's protection under the rule in *Royal British Bank v Turquand* is not lost merely because the company's memorandum and articles have not been complied with.

(b) That a person who appears from the returns lodged with the Commission under s 238 (Return of Directors, etc) or s 263 (Annual Return) to be a director, the principal executive officer or a secretary of the company has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by a director, the principal executive officer or a secretary, as the case may be, of a company carrying on business of the kind carried on by the company.

According to the Explanatory Memorandum circulated with the Companies and Securities Legislation (Miscellaneous Amendments) Bill 1983, the first part of this provision states the common law that protection of a person dealing with a company under the indoor management rule is not affected merely because the directors, etc, have not been properly appointed and extends the protection afforded by s 224(1), and avoids the decision in *Morris v Kanssen*[38] that although the English equivalent of s 224(1) validated the acts of a person where there was a defective appointment of him as a director, it did not apply where there was no appointment of him at all.

36 (1989) 7 ACLC 510 (Fed. Court of Australia).
37 (1989) 7 ACLC 271 (SC of WA).
38 [1946] AC 459.

The second part of the provision states the common law doctrine of ostensible or apparent authority, ante.

(c) That a person who is held out by the company (i.e. the directors) to be an officer or agent of the company has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by an officer or agent of the kind concerned.

This provision is intended to achieve the same effect in relation to officers and agents as provision (b) is intended to achieve in relation to directors, principal executive officers and secretaries.

Provisions (a) and (c) applied in *Re Madi Pty Ltd.*[39] In that case a guarantee was executed on behalf of a company in 1984. The affixing of the seal was attested by a director and one McCorley and the witnessing signatory was another director. No board resolution had been passed and there was some doubt as to whether McCorley was the secretary, although he was held out by the company as having authority to execute the guarantee. The company was bound by the guarantee.

(d) That an officer or agent of the company who has authority to issue a document on behalf of the company has authority to warrant that it is genuine and that an officer or agent who has authority to issue a certified copy of a document on behalf of the company has authority to warrant that it is a true copy.

Thus a company cannot escape liability for a false document where the issuing officer or agent was authorised to issue a true document.

(e) That a document has been duly sealed by the company if it bears what appears to be an impression of the company's seal and the sealing appears to be attested by two persons, one of whom may be assumed to be a director and the other a director or secretary under provision (b) or (c).

This provision states the rule in *Turquand's* case.

(f) That the directors, principal executive officer, secretaries, employees and agents properly perform their duties to the company.

This provision states the common law presumption of regularity.

S 68A(4) and (5) provide that a person is not entitled to make one of the above-mentioned assumptions if he actually knows, or his connection with the company is such that he ought to know, that the matter in question is not correct.

The Explanatory Memorandum referred to above states that the object of subsections (4) and (5) is to make it clear that the protection of the 'indoor management rule' is only available to innocent parties.

39 (1987) 5 ACLC 847 (SC of Vic).

This accords with the general law in *Howard v Patent Ivory Manufacturing Co*[40] and *Morris v Kanssen.*[41]

It was held in the *Lyford* case[42] that s 68A(4)(b) refers to knowledge which a person ought to have by reason of his connection or relationship with the company and not to knowledge which he ought to have because something in the particular transaction would put a reasonable person on enquiry. Further 'connection or relationship with the company' require reference to the facts which show the nature of the connection, etc, and an assessment whether that connection, etc, ought to have produced knowledge of the matter in question. The connection between the company (through the director/accountant) and a director of the outsider company was not one from which the director should have known that the matters which he was entitled to assume were not correct—earlier borrowings had been conducted through the director/accountant, who was in day-to-day control of the company's management and finances.

It has been said[43] that s 68A is not a comprehensive code but a provision designed to repair the failings of the common law, so that there remains scope outside the section for the development of the rule in *Turquand*, although the rules of law and equity should be developed upon a course parallel to that of the principles of the legislation.[44]

S 68C abolishes the general law doctrine of constructive notice of the contents of the 'public documents' of a company which have been lodged with the Commission except with respect to registrable charges. The doctrine used to restrict the protection of outsiders under the 'indoor management rule'.

S 68C(1) provides that a person shall not be taken to have knowledge of:

(a) the memorandum or articles of a company or any contents thereof; or

(b) a document or its contents; or

(c) any particulars,

by reason only that it or them has or have been lodged with the Commission or referred to in any other document lodged with the Commission.

It is provided by subsection (2) that subsection (1) does not apply to a document or the contents of a document lodged under Division 9 of Part IV of the Code (Registration of Charges) to the extent that it relates to a registrable charge.

S 68D deals with the effect of fraud. It provides that s 68A entitles a person (an outsider) to make the assumptions set out in s 68A(3) notwithstanding that a person referred to in s 68A(3) (b), (c) or (e), or an officer, agent or employee of the company referred to in s 68A(3)(d)

40 (1888) 37 Ch D 156.

41 [1946] AC 459.

42 *Lyford v Media Portfolio Ltd* (1989) 7 ACLC 271 (SC of WA).

43 *Australian Capital Television Pty Ltd v Minister for Transport & Communications* (1989) 7 ACLC 525, per Gummow J at p 535. This is contrary to the view expressed by Wood J in *Barclays Finance Holdings Ltd v Sturgess* (1985) 3 ACLC 662, at p 667.

44 *Registrar-General v Northside Developments Pty Ltd* (1989) 7 ACLC 52 (NSWCA), per McHugh J A (Samuels J A concurring) at p 71.

or (f), has acted or is acting fraudulently in relation to the dealings or the acquisition of title to property from the company, or has forged a document that appears to have been sealed on behalf of the company, unless the first-mentioned person (the outsider) has actual knowledge of the fraud or the forgery.

The first part of this provision states the common law that a company does not escape liability for the acts of a director, etc, merely because he has acted fraudulently if the company would otherwise be liable. The second part was intended to abolish what was thought to be an exception to the rule in *Royal British Bank v Turquand* which was to the effect that the rule did not apply where a document was forged so as to purport to be the company's document and which arose from *Ruben v Great Fingall Consolidated.*[45]

## Personal liability of directors

If, for instance, a director acts for a company without authority and the outsider has no actual or constructive knowledge of the lack of authority, the director is liable to the outsider in damages for breach of express or implied warranty of authority.[46]

## Conclusions

1. The rule in *Royal British Bank v Turquand* is part of the common law in Australia. Subject to what the High Court of Australia has to say in the appeal against the decision in *Registrar-General v Northside Developments Pty Ltd,* whatever the basis for the rule is in England, in Australia the rule is a special rule of company law and not simply an illustration of agency principles. The rule is that where a company has executed a document under seal the company is bound by the affixing of its seal if the company under its memorandum or articles might have had power to enter into the transaction and if, where required, the seal is affixed in the presence of and countersigned by the persons who either by virtue of their offices or positions or the company permitting them to act in those offices or positions might have had authority to be present and countersign the document.

   The policy behind the rule is that, *prima facie,* losses from unauthorised acts purporting to be done on behalf of companies should be borne by the companies and not the persons dealing with the companies. Although the protection given to such persons by the rule has been increased by the abolition of the doctrine of constructive notice of the contents of the public documents of a company by s 68C of the Companies Code, and in view of s 68D there is little, if any, scope for the operation of an exception to the rule where a document which purports to be the company's document is forged, exceptions to the rule remain, eg where the

45 [1906] AC 439.
46 *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549 (CA), ante.

person dealing with the company knows of the irregularity, or is put on enquiry as to an irregularity and fails to make enquiry and satisfy himself that there is no irregularity.

2. Where the person dealing with a company does not rely on the seal of the company but on the representation of some person as agent of the company, agency principles, i.e. the common law doctrine of ostensible or apparent authority, apply.

3. S 68A(1) and (3) also state the rule in *Turquand's* case as well as the doctrine of ostensible authority, although the statutory provisions are not identical to the common law principles. Further, s 68A(1) and (3) extend the protection given to persons dealing with companies by s 224(1) of the Code and avoid the decision in *Morris v Kanssen.* S 68A(4) and (5) state the common law that the protection of the rule in *Turquand's* case is only available to innocent parties. As already stated, s 68C abolished the doctrine of constructive notice of a company's public documents. S 68D states the common law where the person who acts for a company acts fraudulently and was intended to abolish an exception to the rule in *Turquand's* case where a document is forged.

4. In so far as 68A states the common law its provisions are not identical to those of the common law. It is not a comprehensive code but is simply designed to repair the failings of the common law. Consequently, there is scope for the development of the rule in *Turquand's* case outside the section, although the rule should be developed along lines parallel to those of the legislation. Within the limits indicated, the rule in *Turquand's* case remains and will continue to be important in some cases in which the statutory provisions are inapplicable.