

is beyond the power of the company to do or ratify, no judgment obtained by the consent of the company treating it as authority can remove the invalidity, for the virtue of such judgment rests merely on the agreement of the parties, and the incapacity to do the act involves the incapacity to consent that it be treated as valid. I think, therefore, that the judgment by consent forms no obstacle to the plaintiffs if the transaction impeached is inherently ultra vires." In the Court of Appeal, Hagarty, C.J.O., and Osler, J.A., sustained the Chancellor's judgment. Burton and Maclellan, J.J.A., while not adjudicating upon this point, differed on other grounds. Hagarty, C.J.O., says: "It is pressed on us that this judgment puts an end to all questions as to the legality of the arrangement. * * * We have not to deal with a decree affirming all such matters as intra vires, no such question being in issue. We have merely to decide whether a judgment submitted or agreed to by the company to do things wholly beyond their power necessarily validates their acts and creates an estoppel or matter of record against them. If this be the case a very easy method could always be devised to enable directors of the company wholly to do unlawful acts, and then to agree to judgment against them to make such acts valid and insure their performance without challenge. *I draw no distinction here because it was a consent decree.*"

If the question of ultra vires had been raised in the action, and an adjudication had taken place upon it, the consequence would have been, in the light of the cases we have referred to, that no reversal or variation of the judgment could take place, except by an appeal. It would necessarily involve the correctness of the adjudication arrived at, which, as we have seen, could not be attacked in any other way. How it might be were the question raised between parties not bound by the judgment, opens a large field for discussion, which, perhaps, may be dealt with at some future day.

FRANK ARNOLDI.