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prosecute. At that time, no appeal could be had from a denial of defendant's request to have his conviction reviewed *in forma pauperis*.[63] Eight years later defendant's first conviction was vacated. Consequently, defendant appealed for resentencing as a first offender. In conjunction with this appeal defendant also applied for a review of the merits of his 1948 conviction.[64]

In 1959, the Court of Appeals, in *People v. Pitts*,[65] held that the denial of an appeal in a criminal action because the defendant is unable to pay the costs of his appeal, is a denial of equal protection of the law as guaranteed by the Fourteenth Amendment of the United States Constitution.[66]

People v. Williams,[67] a companion case to *People v. Pitts*, held that the defendant could no longer procure a review on the merits of his 1948 conviction because his request was untimely.[68] However, in view of the *Pitts* decision, the defendant should now have the privilege which was unavailable to him at the time of his conviction, i.e., to show that the refusal to allow his appeal *in forma pauperis*—"which led to the later dismissal of the appeal, deprived him of a 'right' to appeal and constituted a denial of the equal protection of the law."[69]

The Court's decision may enable the defendant, if the constitutional question is decided in his favor, to gain review of the merits of his 1948 conviction. This result seems equitable in view of the possibility that the defendant may have served a sentence for over ten years which, had he been able to afford to appeal, might never have been imposed.

CORPORATIONS

POWER OF CORPORATION PRESIDENT TO BRING SUIT ON BEHALF OF THE CORPORATION

In the case of *West View Hills, Inc. v. Lizau Realty Corp.*,[1] three men owned all of the plaintiff's stock, and also constituted its board of directors, with one of them being its president as well. The remaining two owned all of the defendant's stock, the president of the plaintiff having sold his interest in the defendant (along with some nine other corporations) to the other two. Without any meeting or other authorization of the board of the plaintiff, its president instituted suit against the defendant, in the name of the plaintiff, to recover amounts which it was allegedly wrongfully required to pay to the defendant, for a building which the latter had built for the former. The remaining two directors of the plaintiff, the complete owners of the defendant,

63. People v. O'Rafferty, 291 N.Y. 801, 53 N.E.2d 571 (1944).
64. People v. Williams, 6 N.Y.2d 193, 189 N.Y.S.2d 149 (1959).
65. 6 N.Y.2d 288, 189 N.Y.S.2d 650 (1959); See Note, 9 BUFFALO L. REV. 97, *supra*.
66. Griffith v. Illinois, 351 U.S. 12 (1956).
67. *Supra* note 63.
68. People v. Baumeister, 283 N.Y. 625, 28 N.E.2d 32 (1940).
69. 6 N.Y.2d 193, 196, 189 N.Y.S.2d 149, 152 (1959).

1. 6 N.Y.2d 344, 189 N.Y.S.2d 863 (1959).

moved to dismiss the complaint. The motion was denied by the Supreme Court at Special Term, and both the Appellate Division and the Court of Appeals affirmed this denial.

In the United States generally, very little statutory guidance exists as to the authority of corporate officers. The most relevant provision in New York is probably Section 27 of the New York Stock Corporation Law, which provides, "The business of a corporation shall be managed by its board of directors . . . ," and this provision is of little assistance. This lack of statutory guidance has caused the courts to resort to agency concepts of actual, apparent and implied authority. If actual authority is found, there is no problem. But when does apparent or implied authority exist to allow the president to institute suits in the name of the corporation? This is the issue in the present case.[2]

This question has been answered in various ways. Generally, the presidential power to institute suits is not implied in the absence of authorization by the board of directors.[3] Some prominent authorities, however, have pointed to at least three types of exceptional or serious circumstances where such authority could be implied without the sanction of the board.[4] The first such circumstance arises when, in order to preserve the corporate interests, a suit must be instituted.[5] This class of cases has generally required that the threat to the corporation, either by the board itself or from outside the corporation, be quite serious.[6]

As the New York case of *Sterling Ind. v. Ball Bearing Pen Corp.*[7] pointed out, however, when the board is deadlocked as to whether to institute suit, and the by-laws require board authorization, this is not a sufficient ground for the president to institute suit on his own initiative. By similar reasoning, it appears unlikely that the situation in the *West Hills* case is grave enough to warrant the employment of the "preservation of corporate interests" exception as a ground for implying presidential authority to institute suit. For as the dissent noted, when there are only three stockholders and two of them oppose the suit, whose interests, other than those of the outvoted shareholder, are being protected?

The second exceptional instance when such authority may be implied arises in those cases where the management and control of the corporation has been vested in the president.[8] For instance, in *Rothman & Schneider Inc. v.*

2. Bank presidents are in a peculiar position because of the nature of their duties, and this discussion has no reference to them.

3. Note, 52 HARVARD L. REV. 322 (1938).

4. *Annot.*, 10 A.L.R.2d 701, 707 (1950). This note offers an informative discussion of authority of corporation presidents to institute suit in the absence of authorization by the board of directors.

5. *Ibid.*

6. Recamier Mfg. Co. v. Seymour, 15 Daly (N.Y.) 245, 5 N.Y.S. 648 (C.P.N.Y. City, 1889). When a majority of the board was wrongfully converting corporate funds, the president was permitted to bring suit.

7. 289 N.Y. 483, 84 N.E. 790 (1949).

8. *Supra* note 4, at 708.

Beckerman,[9] a New York case, Rothman and Schneider agreed to dissolve the corporation, and to place full control of the corporation's affairs in Schneider in the interim period. The Court of Appeals, after an express acknowledgment of this placement of control, then stated the holding relied on by the court in the present case, namely, "Where there has been no direct prohibition by the Board . . . the president has presumptive authority . . . to . . . prosecute suits in the name of the corporation."[10] In the present case, however, there was no such placement of control in the president, and therefore, the validity of the reliance, by the Court, on the holding of the *Rothman* case appears difficult to justify.

The third instance in which presidential authority to institute suits may be implied, arises when the president has been charged with special duties,[11] which by their nature, virtually require the institution of court proceedings, such as to dispose of corporate property,[12] this being practically impossible without implied authority to try the title thereto. Obviously, the *West Hills* case does not meet this criterion.

This discussion does not mean to imply that these are the only three instances in which such presidential authority may be implied. However, these authoritative groupings, along with Section 27 of the New York Stock Corporation Law, do tend to show that such authority will and should be implied only when the circumstances of the corporation are either very grave or quite exceptional. However, in the present case, the fact that the president was opposed by the other two stockholders appears to present circumstances which are neither grave nor exceptional. Therefore the dissent by two of the Justices seems to be more accurate than the decision of the majority.

ARBITRATION AS AN INCIDENT OF WINDING UP

A written agreement between a contractor and a corporate sub-contractor, contained a provision providing for the arbitration of all disputes arising thereunder. The contract also contained a clause prohibiting the sub-contractor from subletting, assigning or otherwise transferring the contract without the contractor's prior consent. This latter clause was to be non-arbitrable.

The Court in *Ehrlich v. Unit Frame and Door Co.*,[13] was confronted with a question as to whether the voluntary dissolution of the corporate sub-contractor, precluded such corporation from demanding arbitration. Ehrlich claimed, on a motion to stay arbitration, that such dissolution and distribution of the contract to the corporate shareholders for completion, without Ehrlich's consent, was a breach of the non-assignability clause, and that Unit Frame had thus lost its arbitration right.

9. 2 N.Y.2d 493, 161 N.Y.S.2d 118 (1957).
10. *Id.*, at 497, 161 N.Y.S.2d 121 (1957).
11. *Supra* note 4, at 710.
12. New York B.&E.R.R. Co. v. Motil, 81 Conn. 466, 71 A. 563 (1908).
13. 5 N.Y.2d 275, 184 N.Y.S.2d 334 (1959).