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## THE APPLICATION OF THE DOCTRINE OF IMPUTED NOTICE TO KNOWLEDGE ACQUIRED BY THE AGENT IN A PREVIOUS OR DIFFERENT TRANSACTION.

It frequently happens that two or more persons *bonâ fide* acquire equal rights in the same subject-matter or are equally deceived by a third person, and the courts are called on to determine which shall have the priority, or which shall bear the loss. In this class of cases neither party has had actual notice of the fraud practised on, or of the prior right of the other, and the object of the present inquiry is the principle upon which the law fixes upon one of them the effects of notice. The cases upon this subject are divided into two classes: First, those of *constructive* notice, in which the law will not allow a man to deny that he knows facts which he could and ought to have discovered: *Jackson* v. *Rowe*, 2 Sim. & Stu. 472; *Kennedy* v. *Green*, 3 Myl. & K. 699; *Worthington* v. *Morgan*, 16 Sim. 547; *Ware* v. *Lord Egmont*, 2 Sch. & Lef. 327. Second, those of *imputed* notice, in which the law will not allow a man to deny a knowledge of facts which his agent knew.

To begin with what nobody denies, it may be laid down that the law imputes to the principal a knowledge of facts which the agent learns in the transaction in which he is employed.

1. Because the agent stands for, or literally, within his agency,

is the principal, and therefore what he does or knows the principal does or knows.

2. Because it is the duty of the agent to communicate such facts to the principal, and the law presumes he has done so without putting upon any one the difficult task of actually proving it.

Both these reasons apply in cases where the agent has discovered the facts in the transaction in which he is employed, but not to those in which he has obtained his information in a different transaction or before his employment as agent. An examination of the latter cases we think will show that the courts have or have not imputed such knowledge to the principal, according as they have adopted the first or second of these reasons.

If the first, or technical reason, be followed, then notice can not be imputed to the principal, of any facts known to the agent, except such as he learned during and within the agency; which is the law of Pennsylvania and of most of the United States.

If the second, then all that the agent has notice of will be imputed to the principal, with the following natural exceptions:—

1. What the agent has forgotten entirely, or may have forgotten during the agency.

2. What he could not tell his principal, *e. g.*, professional confidences.

3. An exception introduced by Lord Ch. BROUGHAM, in *Kennedy* v. *Green*, 3 Myl. & K. 699, and entirely consistent with the spirit of the reason—facts which the previous conduct of the agent makes it certain he will conceal.

This second principle is, and we think always has been, the law of England, and is followed in some of the United States.

The first English case upon the subject is, like many of the earlier ones, unsatisfactory, in that it is not possible to say how far the opinion of the court is *obiter dictum*, the facts not being set out: *Preston* v. *Tubbin*, 1 Vern. 287 (1684), in which the Lord Keeper said: "Though notice to a man's counsel be notice to the party, yet when the counsel comes to have notice of the title in another affair, which it may be he has forgot, when his client comes to advise with him in a case, with other circumstances, that shall not be such a notice as to bind the party." Then came *Brotherton* v. *Hatt*, 2 Vern. 574, decided by Lord Ch. COWPER. A. mortgaged lands to B., then to C., with notice of B., then to D. E. F., with notice of B. but not of C. The same scriveners made all the deeds,

and it was therefore held that D. E. F. should be postponed to C., because the knowledge of their agent was their knowledge.

*Fitzgerald* v. *Fauconberge*, Fitz Gibbon 207 (1729), is often referred to as a leading case upon the subject. The plaintiff certainly did argue that the defendant was affected by knowledge of his counsel previously acquired. As to this, Lord Ch. B. REYNOLDS said: "I think there is nothing in it; for there is not the least shadow of notice," and decided the case for the plaintiff on another ground. What he said was consequently *obiter* and lacked weight, even as an opinion, because he merely said there was no notice to the defendant, without giving any reason why. Lord Ch. HARDWICKE discussed the question in four cases. In *Lowther* v. *Carlton*, 2 Atk. 242 (1741), he said: "If a counsel or attorney is employed to look over a title and by some other transaction, foreign to the business in hand, has notice, this shall not affect the purchaser; for if this was not the rule of the court, it would be a dangerous consequence, as it would be an objection against the most able counsel, because of course they would be more likely than others of less eminence to have notice, as they are engaged in a great number of affairs of this kind." It appears from the report of this case in Cas. temp. Talb. 186, that the defendant was a purchaser of a lease, with notice of the plaintiff's claim, from the executors of one who had purchased the lease without notice of it, and the point decided was that he could protect himself under the good title which he had bought, for the obvious reason that he who has a good title and sells, sells what he has. What Ld. HARDWICKE said was *obiter*, but could be well rested on either of the principles which we have said lead to opposite conclusions in these cases. On the first, because the notice of which he speaks was had before the agency commenced, and on the second, because he seems to have been thinking of notice, which was a professional confidence, and could not be communicated, or which was such as a man of large business would be likely to forget. The reasons which the chancellor gave seem clearly to show that the latter explanation was the one in his mind. He was speaking of an attorney, of looking up a title of a purchaser taking it without actual notice of a flaw, which though known to the attorney he would not communicate, either because it was a professional confidence or because he had forgotten it. For what other reason would able counsel be more dangerous to employ than those of less eminence, since

both must be equally presumed to do their duty to their clients? In *Warrick* v. *Warrick*, 3 Atk. 294, Warrick, a tenant for life under marriage articles, made a mortgage and afterwards the mortgagee assigned the mortgage to Kniveton and the tenant for life sold him the equity of redemption. The plaintiff, who was the son of the tenant for life, and entitled to the remainder under the marriage articles, brought his bill against Kniveton for possession and an account. Kniveton answered that he was a purchaser for valuable consideration without notice of the marriage articles. It appeared that one Hawkins, since deceased, had drawn a case for opinion of counsel as to whether Warrick could not cut off the estate-tail created by the marriage articles and raise money, and that he drew the mortgage-deed for the original mortgage, and the assignment of it to Kniveton.

"It would be a pretty hard thing to affect the lender of the money with all kind of knowledge which the agent may have of the title of the borrower, but still I will not lay it down as a general rule, that where the same person is concerned for the mortgagor and mortgagee, that notice to such persons will not be good constructive notice to the mortgagee.

"But consider what kind of notice the defendant Kniveton had. Mr. Hawkins had not notice at the time of the assignment, nor relative to this business, but before, even before the original mortgage. In the case of *Fitzgerald* v. *Fauconberge*, it was held that notice should be in the same transaction; this rule ought to be adhered to; otherwise it would make purchasers' and mortgagees' titles depend altogether on the memory of their counsellors and agents, and oblige them to apply to persons of less eminence as counsel, as not being so likely to have notice of former transactions.

"The notice here was clearly arising from that case, stated by Hawkins at the request of Warrick in order to do something towards suffering a common recovery. And it is a year and six months after that Kniveton is to be affected with this notice.

"It is very probable that Hawkins might have forgotten it in this length of time, or which is much more likely, did not understand the rule of this court, but took the limitation for an estate-tail absolute."

Does not Lord HARDWICKE seem to have thought that by the general rule Kniveton would be affected by Hawkins' knowledge,

but that the particular circumstances made this case an exception?

In *Worsley* v. *The Earl of Scarborough*, 3 Atk. 392, a case without any statement of facts, he said: "Fourthly, it settled that notice to an agent or counsel *who was employed in the thing by another person or in another business and at another time is no notice* to his client who employs him afterward, and it would be very mischievous if it was so, for the man of most practice and greatest eminence would then be the most dangerous to employ."

This language would not include notice learned in another business at the *same time*, as if the chancellor was still insisting that in imputing notice to the principal regard would always be had to the agent's memory.

In *Le Neve* v. *Le Neve*, 3 Atk. 648, Le Neve and his wife were life-tenants under marriage articles of certain property, remainder to their issue. Upon the death of his first wife, Le Neve made second marriage articles of this same property, as if it had been his in fee with the defendant his intended wife. The defendant employed one Norton as her attorney, who had previously received a copy of the first marriage articles from Le Neve, in order to take the opinion of counsel how to secure against their effect. This was *Warrick* v. *Warrick* over again, and yet Lord HARDWICKE imputed her attorney's knowledge acquired previously and in another transaction to the defendant. He said that the evidence showed the strongest kind of notice to the attorney Norton. It will be remembered that he considered the notice to Hawkins in *Warrick* v. *Warrick* very weak. This appears to be the only difference between the cases, and seems to confirm what we have heretofore said of Lord HARDWICKE'S views. It may be generally observed in the reported arguments that wherever these decisions have been cited the first three have been relied on by one side, and the fourth by the other. We have gone into them at this length because Lord HARDWICKE has often been spoken of as the father of the first principle, which the English courts do not follow, but we think that an examination of them shows that the general principle in his mind was that the knowledge of the agent affecting the transaction was the knowledge of the principal, except where it appeared probable that the agent had forgotten it or where he could not professionally communicate it. If we are right, then the English courts, from *Preston* v. *Tubbins* to the

present day, have followed the same rule, and certainly their own books do not speak of or endeavor to reconcile any inconsistency in the cases.

*Hiern* v. *Mill*, 13 Ves. Jr. 120 (1806), which is often referred to as an authority on this point, was decided by Lord Ch. ERSKINE on the ground of actual notice.

In *Toulmin* v. *Steere*, 3 Meriv. 221 (1817), a conveyancer who had made an annuity deed in 1805, and paid it ever since, made a deed of the property upon which it was a charge in 1810, to the defendant who had no notice of the annuity. *Lowther* v. *Carlton* and *Warrick* v. *Warrick* were both cited to prove that notice to the agent to affect the principal must have been acquired in the same transaction. But Sir WILLIAM GRANT, M. R., held that the defendant must be considered to have notice, because his agent had "complete and continued notice of the existence of the annuity," an unmistakable assertion of the second principle, without a comment on Lord HARDWICKE'S decisions, to show that he considered them really or apparently irreconcilable with his own opinion.

In *Mountford* v. *Scott*, 3 Mad. 40 (1818), Sir JOHN LEACH gave clear expression to the first principle for the first time in the English books, saying: "The agent stands in place of the principal, and notice therefore to the agent is notice to the principal, but he cannot stand in the place of the principal until the relation of principal and agent is constituted; and as to all the information which he has previously acquired, the principal is a mere stranger."

But in the same case on appeal, 1 Turn. & Russ. 279, Lord ELDON expressly disapproved of what the M. R. had said on this point as follows: "The vice-chancellor in this case appears to have proceeded upon the notion that notice to a man in one transaction is not to be taken as notice to him in another transaction, in that view of the case it might fall to be considered whether one transaction might not follow so closely upon the other as to render it impossible to give a man credit for having forgotten it. I should be unwilling to go so far as to say that if an attorney had notice of a transaction in the morning, he shall be held in a court of equity to have forgotten it in the evening, *it must in all cases depend upon the circumstances.*"

*Kennedy* v. *Green*, 3 Myl. & K. 699, although really decided upon the ground of constructive, contains also an interesting discussion of imputed notice, which has given the case its greatest

value as an authority. An attorney had induced a client by fraud to execute an assignment to him of her interest in certain property, and subsequently secured from his father-in-law a loan upon the security of it. Sir JOHN LEACH, M. R., completely corrected by Lord ELDON in one direction and about to be corrected by Lord BROUGHAM in the other, considered the mortgagor the attorney of his father-in-law and said: "It is said that this is a case similar to those in which the court has declared that a client is not to be affected by notice of a solicitor in a prior transaction. This case has no analogy to that principle. Bostock is here to be considered as if in this transaction notice had been given to him by a third person of the fraud committed upon Mrs. Kennedy. If Bostock, acting both for the mortgagor and mortgagee, had received notice of a fraud thus committed upon Mrs. Kennedy by a third person, it would plainly have been notice to Kirby; and Bostock, being in full possession of knowledge of the fraud, because he was himself the author of it, Kirby is as much affected by his solicitor's knowledge of the fraud as if the solicitor had acquired the knowledge from a third person." The spirit of this reasoning evidently is that the knowledge must certainly have been in the attorney's mind during his second employment. But Lord BROUGHAM, on appeal, dissented from these views, on the ground that where the solicitor was himself the contriver of and gainer by the transaction he would certainly conceal the fraud from his client, and therefore the law would not impute it to the latter. Thus adding to the second principle the third exception we have mentioned, which is entirely consistent with the spirit of it; the law will not impute to the principal the knowledge of the agent when the conduct of the latter has been such as to compel concealment.

Upon the second principle generally see also *Hargreaves* v. *Rothwell*, 1 Keen 154 (1836); *Senehan* v. *McCabe*, 2 Ir. Eq. 351 (1840), and *Fuller* v. *Bennett*, 2 Hare 394 (1843).

In *Hewitt* v. *Loosemore*, 9 Hare 456, a solicitor had obtained money from a client upon the deposit of a lease. He afterwards made a mortgage upon the leasehold property to his brother to whom it was clearly proved he did not communicate the fact of the prior mortgage. Vice-Chancellor TURNER said: "I am of opinion, therefore, that R. Loosemore (the mortgagor) must be considered to have been the agent and solicitor of the defendant in the transaction of his mortgage; but I do not think that the

defendant is therefore to be considered to have notice of the plaintiff's deposit; such notice would be constructive merely, and constructive notice is knowledge which the court imputes to a party upon a presumption so strong that it cannot be allowed to be rebutted, that the knowledge must have been communicated, and I cannot act upon such a presumption in the face of the evidence which the plaintiff has himself adduced.

"In determining this point in favor of the defendant, I desire it to be understood that I do not proceed upon the case of *Kennedy* v. *Green*." Yet *Kennedy* v. *Green* would appear to be the only ground upon which to justify such a conclusion, and the reason of that case would seem to apply, viz: that the conduct of the attorney was such as to require concealment of the fact of the prior equitable mortgage. Regarded in any other light the judgment of the court does away with the doctrine of imputed notice entirely, because it is tantamount to saying that the inquiry always is whether the facts have or have not been actually communicated.

In *Atterbury* v. *Wallis*, 8 DeG., M. & G. 454 (1856), one Parsons mortgaged certain property, May 22d 1838, to a solicitor, Lampray, who assigned his mortgage six days after to the plaintiff. A year after, Parsons, Warder and Lampray, without any mention of the assignment of his mortgage to the plaintiff, released the premises in fee to the defendant, Wallis. L.JJ. KNIGHT BRUCE and TURNER both considered Lampray to have acted as solicitor to the purchaser, the defendant, and imputed his knowledge of the assignment to the latter, and distinguished the case from *Kennedy* v. *Green*, on the ground that there a fraud had been committed originally, and independently of the consideration whether the act was made known or not, while here, the question of fraud depended upon whether the act done had been made known or not. Why the judgments should have been different in *Hewitt* v. *Loosemore* and this case can only be explained by supposing that the court found actual notice in the latter and not in the former to the defendant, without in any way depending upon the doctrine of imputed notice. A very much better reasoned case, where the facts were exactly similar, is *Espin* v. *Pemberton*, 3 DeG. & J. 554 (1859). A solicitor deposited a lease with the plaintiff as security for an advance, and afterwards assigned the leasehold to the defendant for a valuable consideration. Lord CHELMSFORD held in opposition to the two foregoing cases that under such circum-

stances the mortgagee could not be said to have employed the mortgagor as his attorney, and therefore the knowledge of the latter could not be imputed to him. If the chancellor had considered him to have so acted, it will be seen from the following extract from his opinion, that he would have come to a conclusion the direct opposite of that which was arrived at in the first of those cases: "But if the mortgagor under those circumstances becomes the solicitor of the mortgagee, it is hardly possible to stop of applying all the consequences of the relation and to refuse to impute the knowledge which the mortgagor possesses, to his client, the mortgagee. You cannot escape from this conclusion unless you apply the principle of the case of *Kennedy* v. *Green*, and exclude this particular knowledge, because the mortgagor was committing a fraud in the transaction which he could not be presumed to communicate. But I have already shown that imputed knowledge does not depend upon whether it was communicated or not, and therefore the presumption of non-communication does not seem to be the proper principle to apply."

*Ogilvie* v. *Jeaffreson*, 2 Giff. 353 (1860), was a case like *Kennedy* v. *Green*, and decided upon the ground of constructive notice, though Vice-Ch. STUART said that there was no substantial difference between cases decided on ground of constructive and those decided on ground of imputed notice, both depending upon negligence.

In *Dresser* v. *Norwood*, 17 C. B. N. S. 466 (1864), and *Rolland* v. *Hart*, Law Rep. 6 Ch. App. 678 (1871), the second principle, as we have laid down, is adopted so as to leave no doubt about the law in England. In the former, POLLOCK, C. B., says: "We think that in a commercial transaction of this description, where the agent of the buyer purchases, on behalf of his principal, goods of the factor of the seller, the agent having present to his mind, at the time of the purchase, knowledge that the goods he is buying are not the goods of the factor, though sold in the factor's name, the knowledge of the agent, however acquired, is the knowledge of the principal. It seems to be conceded, that if at the time of the sale the factor of the seller had expressly told the agent of the buyer, that the goods were not his property, but the property of his principal, it would not have been a case for a set-off, but why should the factor tell the buyer's agent that which he was well aware that the agent already knew? The knowledge of the factor of the seller that the buyer's agent was aware that he was only the factor, in our judgment makes the case perfectly clear. But it is not to be

understood that we mean to admit that the case would have been different if the factor was ignorant that the knowledge of that fact was present to the mind of the buyer's agent, provided it really was so present."

In the latter, Lord Ch. HATHERLY says, after approving of the distinction drawn in *Atterbury* v. *Wallis*, between that case and *Kennedy* v. *Green:* "It has been held over and over again, that notice to a solicitor of a transaction and about matters as to which it is part of his duty to inform himself, is actual notice to the client. Mankind would not be safe if it were held, that under such circumstances a man has not notice of that which his agent has actual notice of. The purchaser of an estate has, in ordinary cases, no personal knowledge of the title, but employs a solicitor, and can never be allowed to say, that he knew nothing of some prior encumbrance because he was not told of it by his solicitor."

Whatever the agent has in his mind during the transaction, which affects it, and which he could communicate, is the knowledge of the principal wherever obtained, except where a prior fraud committed by the agent makes it certain that he would conceal his knowledge.

The Supreme Court of the United States, in the case of *The Distilled Spirits*, 11 Wallace 356, which appears to be the only one that has arisen there upon this question, has adopted the rule laid down in *Dresser* v. *Norwood* with full approval, after an argument in which all the authorities were cited.

The first case in Pennsylvania upon this subject was *Hood* v. *Fahnestock*, 8 Watts 489. Jacob Hennington having bought land and received a deed, afterwards surrendered the deed to his grantor and took a new deed to James Hennington, the latter paying no consideration. This deed was drawn by Banks, an attorney. The property was afterwards sold at sheriff's sale as the property of James Hennington to McGill, who sold it to Hood, Banks preparing this second deed. The creditors of Jacob Hennington brought ejectment against Hood, and sought to impute to him the knowledge of Banks. SERGEANT, J., said: "It is now well settled that if one in the course of his business as agent, attorney, or counsel for another, obtained knowledge from which a trust would arise, and afterwards became the agent, attorney or counsel of the subsequent purchaser in an independent and unconnected transaction, his previous knowledge is not notice to such other person for whom

he acts. The reason is, that no man can be supposed to carry always in his mind a recollection of former occurrences; and moreover, in the case of the attorney or counsel, it might be contrary to his duty to reveal the confidential communications of his client. To visit the principal with constructive notice, it is necessary that the knowledge of the agent or attorney should be gained in the course of the same transaction in which he is employed by his client."

This language, though more positive and definite, is very much like Lord HARDWICKE'S in *Lowther* v. *Carlton*, in respect that the rule laid down looks one way, and the reasons given for it the other. In *Bracken* v. *Miller*, 4 W. & S. 110, nothing ought to have been said about imputed notice at all, because there was no evidence that the person who had knowledge of the trust, if any, was the agent of the person to whom his knowledge was sought to be imputed. But SERGEANT, J., said: "It is at best rather a dubious ground on which to conclude that a principal had notice, because, for various reasons, he may not communicate his knowledge to his principal, although strictly it might be his duty to do so, but to a certain extent it has been so considered, and where it occurs during the same transaction where the knowledge of it is fresh, and the memory recent and the events transpiring are of importance to the interests of the principal, there is perhaps good reason for it; but it cannot be so inferred of an old and different transaction, of a knowledge deposited in a secret paper, one which the agent has long ago perhaps laid aside as obsolete, or which he may, as the plaintiff suggests, have an interest in suppressing all knowledge of, lest a development of it should defeat the object contemplated by him." Which certainly is open to the objection before made, that in any case where the reasons given for the rule did not exist, knowledge of the agent might be imputed to the principal whenever acquired, which would be a virtual abandonment of the principle. In *Martin* v. *Jackson*, 3 Casey 508, there was also no occasion to refer to this doctrine, because the purchaser at sheriff's sale claimed by a title paramount to, and independent of that of which it was attempted to charge him with notice. LEWIS, C. J., however, said: "The knowledge acquired by attorney in another transaction between other parties, does not affect one who subsequently employs him," and referred to the two foregoing cases.

Within a few months the Supreme Court of Pennsylvania has

decided the case of *Houseman* v. *The Building Association*, 33 Leg. Int. 108, which came up on a case stated as follows: "The action was in trespass on the case for damages alleged to have been suffered by the plaintiffs, by reason of the inaccuracy of certain certificates of search given by the defendant in his official capacity as recorder of deeds of Philadelphia.

"In 1871, C. M. S. Leslie, a conveyancer of good standing, applied to the Girard Mutual Building and Loan Association (the plaintiffs) for two loans of $2000 and $1600, to be respectively secured by mortgages which were duly executed upon premises belonging to Leslie.

"It was testified by the plaintiffs' conveyancer that Leslie was in haste, and had offered to procure the searches for him, saying that he could get them more quickly out of the recorder's office, as he had more facilities. He was permitted to do so. The searches failed to show any prior mortgages and were received and examined by the conveyancer before the money was paid Leslie. Prior mortgages existed which rendered those in question valueless."

The counsel for the recorder endeavored to impute to the association the knowledge which their agent Leslie had of the prior mortgages. SHARSWOOD, J., said: "It is argued that by the employment of the owner as his agent for this purpose, the defendants are affected with his knowledge of the existence of the mortgage, which was omitted in the certificate. This is a very familiar principle and well settled. But it is equally well settled that the principal is only to be affected by knowledge acquired in the course of the business in which the agent was employed; this limitation of the rule is perfectly well established by our own cases, and it is not necessary to look further: *Hood* v. *Fahnestock*, 8 Watts 489; *Bracken* v. *Miller*, 4 W. & S. 110; *Martin* v. *Jackson*, 3 Casey 508. It is a mistake to suppose that it depends upon the reason that no man can be supposed always to carry in his mind a recollection of former occurrences, and that if it be proved that he actually had it in his mind at the time the rule is different. It may support the reasonableness of the rule to consider that the memory of man is fallible in the very best and varies in different men. But the true reason of the limitation is a technical one; that it is only during the agency that the agent represents and stands in the shoes of the principal. Notice to him, then, is notice to the principal.

Notice to him twenty-four hours before the relation commenced is no more notice than twenty-four hours after it has ceased would be. Knowledge can be no better than direct actual notice. It was incumbent on the plaintiff to show that the knowledge of the agent, to use the accurate language of our cases, 'was gained in the transaction in which he was employed.' There was not only no evidence of this offered by the plaintiff, but it was plain that it had been gained before and in an entirely different transaction. It is not necessary to consider, in this view of the matter, whether the alleged agent was really such, or only the servant or clerk of the conveyancer."

This opinion is most satisfactory in putting the doctrine that confines imputed notice to what the agent learns in the very transaction upon the only ground on which it can consistently rest. Wherever else it has been expressed reasons have been given for it which practically nullify it as a principle, except in the opinion of Sir JOHN LEACH, Vice-Ch., in *Mountford* v. *Scott*, *supra*, which was repudiated by Lord ELDON on appeal. It is noticeable that starting from cases very much alike in tone the English and the Pennsylvania courts have reached directly opposite conclusions. The former have followed out to their legitimate results the reasons given for the positive rule that confines imputed notice to the very transaction and have abandoned the rule itself; the latter have clung to the rule and have abandoned the reasons given for it. At last we have a rule that is perfectly simple and which leaves only questions of fact to be determined. Pennsylvania courts will be spared the distress of going through the refinements and distinctions that have perplexed those of England, and so far as the comparative equity of the two rules is concerned little can be said for the superior equity of any principle which is intended to select one out of two or more equally innocent and deceived persons to bear a loss. Perhaps the consideration that the court went very far out of its way to decide the case upon the question of notice may weaken it as a judicial authority. For everywhere and under every rule it is clear that the knowledge of the agent to affect his principal, however or whenever obtained, must concern his agency. The knowledge that a man's coachman may chance to possess of a prior lien upon property that his employer is about to lend on, will certainly not affect the latter, and so Leslie's knowledge of prior liens could not possibly be grafted on an agency merely to

order searches and not to make them. It was on this ground that *Keenan* v. *The Ins. Co.*, 12 Iowa 132, was decided. An insurance had been effected upon a large hall in a foreign insurance company, through its resident agent, a condition of which policy was that nothing should be done by the insured to increase the risk. This condition the insured subsequently broke and the building was burned. In an action on the policy the insured sought to charge the company with the knowledge that the building was being so used, because their agent knew it. The court said: "But even then it must be understood that the knowledge which he acquired and by which the company would be bound must have been communicated to him as such agent and not by mere rumors and talks upon the street corners." So in *Winchester* v. *Vallette*, 4 Md. 231, the president of a railroad company, to secure his own indebtedness to the company, had mortgaged to it lands upon which his wife had a prior equitable claim by virtue of an unrecorded deed. His knowledge was held not to affect the company because the principle "can have no application to a case in which the one party does not act as agent, but avowedly for himself, and adversarily to the interests of the other."

Similarly in *Ins. Co.* v. *Shriver et al.*, 3 Md. Ch. 388, a company lent on certain property and registered their mortgage upon which there existed a prior unregistered mortgage. The court declined to impute to the company the knowledge that its president had of the prior mortgage, on the ground that he must have received notice of it officially in order to bind his company. And this was the principle upon which the case of *The Bank* v. *Davis*, 2 Hill 463, was decided, the only ground for questioning the decision being whether one director out of a board of five who were considering some commercial paper for discount could be said to represent the bank sufficiently to affect it with his knowledge of a fraud in the paper.

All these cases go on the ground that in the transaction in which the person with notice was acting, he either was not the agent of the person to whom the notice was sought to be imputed at all, or else the facts of which he had notice were not within his agency. It would appear to be a mistake to cite them as they constantly are cited upon the question of imputed notice when the agency itself is not in dispute. See also *Bank* v. *Payne*, 25 Conn. 449.