

# Attorney and Client: Knowledge of first attorney imputed to client

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this trade has been combined with other more serious offenses. *In re Newall*, 160 N. Y. S. 275, is such a case. Here the attorneys had a system of "runners" to search out victims of railway accidents, the added offense being that of cheating clients so obtained of all that was justly due them. The cases show an increasing stringency concerning those who violate the ethics of the profession which may be attributed to the growing strength and consciousness of the bar associations throughout the country.<sup>1</sup>

The *Cannons of Professional Ethics* of the various bar associations have sections devoted to this matter. Appended to many of them is the following portion from a law lecture delivered by Lincoln: "Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife and put money in his pocket? A moral tone ought to be infused into the profession which would drive such men out of it." Nicolay and Hay's *Works of Abraham Lincoln*, Vol. II, page 142. The register worms of Lincoln's day have extended the field of their activities. If Lincoln's admonition was applicable in that period of the profession called the "Golden Era," it is doubly true today, for now they overhaul the street, hospitals and homes.

Warvelle, in his *Essays in Legal Ethics*, pages 56-57, stigmatizes "ambulance chasing" as a "vile prostitution of the advocate's calling. It is not law practice; it is simply a form of legalized piracy."

Few attorneys are so endowed with wealth that they can give their services gratis. Recognizing this a New York court observed, "The standard should be raised, rather than lowered, for the age in which we live is one which is much concerned with money and the things money will bring. The fact that the lawyer must support himself by his professional labors, and that he receives his compensation from a purely private source, unquestionably has a tendency to commercialize his work and obscure even from his own mind the fact that his real client is Justice," *In re Newall*, 160 N. Y. S. 275, 278.

V. W. D.

**Attorney and Client: Knowledge of first attorney imputed to client.**—The rule of law that knowledge of an attorney is knowledge of his client was given a rather rigid application in the recent case of *Farnsworth, v. Hazelett* (Iowa, 1924) 199 N. W. 410. The client in this case procured the service of the attorney for the purpose of collecting a debt. The attorney made arrangements with a bank whereby the debtor was to make full payment. Before he had communicated such knowledge to his client, the client learned that the debtor contemplated a disposal of some of his property. He immediately "hot-footed" over to the attorney's home. On arriving there he was informed that the attorney was seriously ill and in no position to see or talk to anyone. In his anxiety he immediately consulted another attorney and insisted that a suit be brought at once. At the trial of the case the defendant put in a counter-claim for malicious prosecution and recovered judgment.

<sup>1</sup> See Note and Comment in next issue of the Review on *Hepp v. Petrie*, 200 N. W. 857 (Wis.).

The Supreme Court affirmed this judgment stating that there was no ground for such suit being brought inasmuch as a settlement had been arranged between the former attorney and the client and the presumption that knowledge acquired by an attorney is imputed to his client could not be rebutted by showing that, as a matter of fact, such knowledge was not communicated.

The general rule that a client is bound by the knowledge of his attorney is based upon the principle that it is the attorney's duty to communicate to his client the knowledge which he has respecting the subject-matter and the presumption that he will fulfill that duty.<sup>1</sup>

The two and only situations in which an attorney is not at liberty to disclose such information are (1) where such information is confidential as to former clients and (2) where the attorney is acting in fraud of his client; for when it is not the attorney's duty to communicate such knowledge or where it would be unlawful for him to do so, as for example where it had been acquired confidentially as attorney for a former client in a prior transaction, the reason of the rule ceases and in such a case an attorney is not expected to do that which would be a betrayal of professional confidence and his client will not be bound by his attorney's confidential information. This exception to the rule had its origin in England in cases involving large estates where men of great professional eminence were frequently consulted. In such cases it would be very mischievous to apply the rule for it would make the most eminent attorney the most dangerous to employ.<sup>2</sup>

Where an attorney acts fraudulently the presumption of communication is rebutted.<sup>3</sup> Just as soon as he forms the purpose of dealing with his client's property for his own benefit and advantage or for the benefit and advantage of persons who are opposed in interest, he ceases in fact to be an attorney acting in good faith for his client, and his actions thereafter based upon such purpose are deemed to be in fraud of the right of his client and the presumption that he has disclosed all the facts that have come to his knowledge no longer prevails.<sup>4</sup>

This doctrine of imputed knowledge rests upon one of either two grounds: (1) Upon the principle of legal entity, or (2) upon the ground that when a client has consummated a transaction in whole or in part through an attorney, it is contrary to equity and good conscience that he should be permitted to avail himself of the attorney's participation without being responsible both for his attorney's knowledge and for his attorney's acts.<sup>5</sup>

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**Libel and Slander: Words Imputing Crime and Immorality.**—The right protected by the law of defamation is the right of reputation. Causing damage to the reputation of another may be called a non-physical tort as distinguished from a physical tort. At common law it was not actionable *per se* orally to impute a want of chastity to a woman, nor orally to impute to her professional or habitual unchastity. The

<sup>1</sup> *The Distilled Spirits*, 11 Wall. (U. S.) 367.

<sup>2</sup> *Norsley v. Earl of Scarborough*, 3 Atkyns 392.

<sup>3</sup> *Melms v. Pabst Brewing Co.* 93 Wis. 154.

<sup>4</sup> *Benedict v. Arnoux*, 154 N. Y. 715.

<sup>5</sup> *Irvine v. Grady*, 19 S. W. 1092.