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Corporations—Agency—Imputation of Knowledge Where Two Corporations Have Common Officer or Agent.

A was vice-president and general manager of X corporation and also secretary and treasurer of Y corporation. The two corporations occupied the same offices and had virtually the same board of directors. Y corporation made a loan on land which X corporation, three years previously, had foreclosed as trustee under a deed of trust. A knew that X corporation had failed to pay, out of the proceeds of the foreclosure sale, certain bonds secured by the foreclosed deed of trust. In an action by the holder of the unpaid bonds, held, \textit{inter alia}, that A's knowledge that the bonds had not been paid was not imputed to Y corporation.\footnote{Cheek v. Squires \textit{et al.}, 200 N. C. 661, 158 S. E. 198 (1931). Conceivably it might have been urged that the two corporations were so nearly identified that there should have been a disregard of the corporate fiction and that knowledge should have been imputed. See, generally, Ballantine, \textit{Separate Entity of Parent and Subsidiary Corporations} (1927) 100 CENT. L. J. 107 or (1925) 14 CALIF. L. REV. 12; (1929) 42 HARV. L. REV. 1077. But this approach did not appear in briefs of counsels, nor was it alluded to in the opinion.}

The general rule is that notice to, or knowledge of,\footnote{"Notice" and "knowledge" are distinguishable, though often treated synonymously. See 4 \textsc{Fletcher, Cyclopedia of Corporations} (1918) §2216. "Absolute notice" and "notice which means knowledge" are discussed in Seaver, \textit{Notice To An Agent} (1916) 65 U. OF PA. L. REV. 1.} a corporate officer or agent while he is acting in his official capacity or within the scope of his authority, and in relation to a matter which his authority comprehends, is imputable to the corporation.\footnote{Simmons Creek Coal Co. v. Doran, 142 U. S. 417, 12 Sup. Ct. 239, 35 L. ed. 1063 (1892); Follette v. U. S. Mutual Accident Ass'n., 110 N. C. 377, 14 S. E. 923 (1892); LeDuc v. Moore \textit{et al.}, 111 N. C. 516, 15 S. E. 888 (1892); Short v. LaFayette Life Ins. Co., 194 N. C. 649, 140 S. E. 302 (1927); B\textsc{allantine, Corporations} (1927) 112; 4 \textsc{Fletcher, op. cit. supra note 2, §2215; for general agency background, see Note (1925) 10 IOWA L. BULL. 231.} Knowledge is attributed to the corporate principal by a rule of substantive law which renders actual communication immaterial\footnote{Re: True, any liability resulting from the imputation of notice attaches to the corporation in its abstract sense, that is, as a legal entity; but it is erroneous to conceive of imputation as based on a duty to communicate, to the corporation as an impersonal entity. For since the corporate functions can be realized only through natural persons acting as agents, communication must (except in the case of notice directly to a stockholders' meeting) be to some duly authorized officers or agents who are, for the particular transaction, "the corporation." These persons may be those who acquire the knowledge; or they may be those "higher up" in the corporate organization to whom the persons who acquire the knowledge are under a duty to communicate. See \textsc{Restatement of Agency, Tentative Draft} 5, §500; 2 \textsc{Mechem, Agency} (2d ed. 1914) §1843.} and which has for to enforce contracts here if such enforcement would work against our own citizens, and give to foreigners an advantage which the resident citizen has not.

its object the protection of third persons who deal with the corporation.⁵

There are three well established exceptions to the general rule. Knowledge is not imputable: (1) where the knowledge consists of confidential communications which it would be improper for the agent to disclose;⁶ (2) where the officer or agent is acting in his own or in another's interest and adversely to the corporation;⁷ (3) where the party seeking to have the knowledge imputed colluded with the officer or agent to defraud the corporation.⁸ Many courts recognize an exception to exception (2): even if the conduct of the officer or agent is adverse to the interest of the corporation, his knowledge will be imputed if he is the *sole representative* of the corporation in the transaction.⁹

There is substantial authority for the rule that knowledge is not imputable if it be acquired by the officer or agent before the period of agency or within the period of agency while he was acting in his private or individual capacity.¹⁰ But the view which prevails in England,¹¹ and that which has been recognized by the Supreme Court of the United States, has been that the knowledge is imputable if it be acquired during the period of agency, even if it be acquired by the officer or agent in his private capacity.⁰

Court of the United States as well as by many of the state courts, is that any knowledge which the agent possesses (i.e., which is actually present in his mind) while he is acting with regard to the subject matter of his agency and which is so pertinent to the subject matter that he owes a duty to communicate it, is imputable to the corporation, regardless of when such knowledge was acquired.

Where two corporations which deal with each other have a common officer or agent, the question is presented: is his knowledge imputable to either or both corporations?

If the officer or agent acts with the consent of both corporations, and he owes a duty to each to communicate his knowledge, both principals will be charged with his knowledge. Where there is no such consent, and the two corporations are adversely interested, there are two possible situations: (1) if the officer or agent represents only one of them, his knowledge is obviously imputable to this one alone; (2) if he occupies a representative position in both, it is said that there is a conflict of duty on his part, and there is no imputation, the question of knowledge under such circumstances depending on actual communication. It may be generally stated that where there is an interlocking officer or agent, his knowledge is not imputable to either of the corporations unless he acquires or possesses the knowledge under such circumstances that it becomes his duty to communicate it.

Two reasons (perhaps three) are advanced in support of the

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13 Willard v. Denise, 50 N. J. Eq. 482, 26 Atl. 29 (1893); Craigie et al. v. Hadley, 99 N. Y. 131, 1 N. E. 537 (1885); Union Bank v. Campbell, 23 Tenn. (4 Humph.) 394 (1843); Tagg v. Tennessee Nat. Bank, 56 Tenn. (9 Heisk.) 479 (1870); see Red River Land & Investment Co. v. Smith, 7 N. D. 236, 74 N. W. 194, 197 (1898). Mechem, supra note 4, §1850.
16 Note (1886) 36 Am. Dec., 188, 193.
17 In re Fenwick, Stobart Co., Ltd., (1902) 1 Ch. 507, in which Buckley, J., says: "What the court has to see is whether the information he gets, as secretary of one company, comes to him under such circumstances as that it is his duty to communicate it to the other company." 3 THOMPSON, CORPORATIONS (3d ed. 1927) §1770.
18 Mr. Justice Connor states in the opinion that there was no finding that A "acted for or represented" Y corporation in the negotiation of the loan, but does not comment further on this. If A did not represent Y corporation in
holding in the instant case: (1) A did not acquire the knowledge while acting as an officer of Y corporation; (2) it was to the interest of X corporation that Y corporation should not know of irregularities in title to the land; hence, it could not be presumed that A would communicate the knowledge to Y corporation.

The fact that A did not acquire the knowledge while acting as an officer of Y corporation would not have been conclusive, in many jurisdictions, if it had appeared that he had acted for Y corporation with the knowledge actually in mind; but there was no such finding. Furthermore, the sole-representative doctrine is not applicable to the facts. The second reason advanced seems entirely adequate. That A would communicate his knowledge to Y corporation under the circumstances is contrary to experience.

Wm. Adams, Jr.

Criminal Law—Effect of Void Sentence.

Plaintiff was indicted on three counts, convicted and sentenced to one term of one year and one day and to two terms of six months each; confinement in Leavenworth. A federal statute provided that no prisoner be sentenced to a penitentiary except the period be for longer than one year. After plaintiff had served the first two terms and two months on the third, he petitioned for a writ of habeas corpus, contending that the sentence under which he was serving was void in that the court did not have jurisdiction to impose it. Held, sentences two and three are void. Writ ordered to be issued but without prejudice to the United States to have plaintiff sentenced in accordance with the law on the verdict against him.

the particular transaction, there remains only one possibility of imputation of knowledge through A to Y corporation; and that is, that A's authority was so general as to constitute him the alter ego of the corporation in respect to all its business. The statement of facts would indicate that he had quite general authority: "The two corporations occupied the same offices and were under the general control and management of" A. Does the court recognize such general authority in A, or instead, does it regard his authority as limited, and therefore rely on the absence of a finding that he was acting in regard to a matter over which his authority extended?

14a C. J. 491, §2359 (2).