

RATIFICATION IN AGENCY WITHOUT KNOWLEDGE OF MATERIAL FACTS.

The question for discussion is whether in cases of agency by ratification the doctrine that notice to the agent is notice to the principal has any application. Some of the general principles from which the argument is to proceed may be set forth in a few sentences. Where one without the semblance of authority assumes to act as the agent of another, that other may ratify the act and thereby acquire the rights and assume the obligations that would have been his had the agent's assumed authority been actual. In like manner, where an agent, whose authority is limited, acts on his principal's behalf beyond the scope of that authority, the principal's subsequent ratification is, in most respects at least, equivalent to actual prior authority. Further, where an agent is acting for his principal, within the scope of his authority, notice to or knowledge possessed by the agent, germane to the subject matter of the agency and affecting the execution of the agency, will with some exceptions be deemed to be notice to or the knowledge of the principal. This knowledge must have been acquired by the agent while he was acting as such; or, if acquired previously, must have been actually present in the agent's mind during the execution of his agency, and it must have been knowledge which he was at liberty to disclose to his principal. In cases where the knowledge of the agent is relied upon to affect the validity or the consequences of action on the part of the principal himself, the communication of such knowledge must have been within the scope of the agent's duty and there must have been an opportunity, in the exercise of reasonable diligence, to communicate such knowledge to the principal before he acted. Neither in cases where the agent is acting nor in cases where the principal is acting will notice to the agent be deemed notice to the principal where it is known to be to the agent's own interest to conceal his knowledge from his principal, or where he is known to be violating his duty and is acting in fraud of or contrary to the interest of his principal.¹

The maxim *ratihabitio retrotrahitur et mandato priori aequiparatur* has come to express an established doctrine of our law.

1. *Innerarity v. Bank*, 139 Mass 332; cf. *Fouche v. Merchants' Bank*, 110 Ga. 827, 842-848.

And if ratification is equivalent to prior authority, and, relating back to the beginning, makes actual *ab initio* the pretended authority of the agent, does it not follow that such agent must be regarded as having been acting within the scope of his authority all along and make his knowledge the presumed knowledge of his principal whether actually communicated or not? To some extent it seems to have been assumed that it does. It has been stated that in two cases a ratification may be absolutely binding upon the principal, even though made in ignorance of some material fact: first, where the principal wilfully chooses to remain ignorant of the fact and to ratify notwithstanding—a statement with which one can scarcely take issue; and, secondly, where knowledge of the fact will be imputed to the principal. Will it ever be so imputed? “Where the agent was authorized to act, but departed from his instructions, there is a presumption that the principal knows all the facts.”² It has also been said: “If a principal ratifies a contract or other transaction entered into or done for him by another without authority, he is chargeable with the other’s knowledge of fraud, illegality, or other facts in the transaction.”³ In so far as these statements lay down the proposition that a party may be held to have ratified unauthorized acts without actual knowledge of material facts connected therewith, on the ground that such knowledge will be imputed to him, they appear to be based upon a *petitio principii*. Notice will not be imputed to a principal unless an agency covering the specific transaction is somehow brought into existence. To bring it into existence by ratification requires a knowledge, either real or imputed, of all the material facts. But such knowledge cannot be imputed on the ground of agency, because the very object of imputing the knowledge is to establish the fact of agency.

The question may arise in a number of different cases, and the principles to be applied in them are not identical. It may be attempted to charge a principal upon a transaction entered into by one who had no authority to act for him in any matter whatever, or by one who had a limited authority but acted in excess thereof. The question may arise in cases between the principal and the agent, or between the principal and the party with whom the agent came di-

2. Huffcut on Agency, Ed. 2, § 37, citing *Meehan v. Forrester*, 52 N. Y. 277; and *Hyatt v. Clark*, 118 N. Y. 563. But it is further stated that this doctrine has not been recognized in all cases.

3. Clark and Skyles on Agency, § 476. The statement quoted above is made, however, as a part of the discussion of the doctrine of imputed notice, and not with especial reference to ratification as such.

rectly into contact (called herein the third party), or between the principal and outside parties not actually participating in the transaction with the agent. It may arise in actions where the principal is attempting to obtain relief against the third party, and in actions where the third party sues the principal. The material fact with knowledge of which the principal is sought to be charged may be an act of the agent himself and part of the transaction, such as a misrepresentation or a warranty; or it may be an extrinsic fact, such as a lien, a trust, or other equity of an outside party.

For our present purpose there is very little distinction to be drawn between cases where the agent had no prior authority of any kind and cases where he merely exceeded authority that he actually possessed (though in one of the statements quoted above the distinction was apparently drawn). It may be that in the latter case conduct will be held to amount to a ratification that would not be sufficient in the former case. But in neither case is the principal bound to ratify the unauthorized act, and he is not even bound to make inquiries concerning it or to be diligent to acquaint himself with the facts.⁴ Instead, it is the duty of the third person to acquaint the principal with the material facts.⁵ In both cases it may well be said to be the agent's duty to acquaint the one on whose behalf he assumes to act with all the material facts at once, but in neither case has the third party a right to suppose that the agent will do this duty. The principal has not held him out as a person likely to do this duty; and if a subsequent ratification by the principal is such a holding out, the third party cannot take advantage of it, because he did not rely upon it and was not induced by it to act. There has been no such holding out even in the second case, where the agent had some authority but exceeded it. He has there been held out by the principal only as one whom third parties may trust to perform such duties as are within the scope of the authority he has. The third party is here bound to know that the agent is acting in excess of his authority (for if he was within his apparent authority the third party will not be depending upon ratification); he knows that the agent is not obeying instructions, and this is surely positive notice that the agent is not to be depended upon. At all events, if the third party trusts the agent in this regard, it is at his own risk and not because the principal has induced the trust.

As between the principal and the agent there is no possible foundation for charging the principal with knowledge merely be-

4. *Combs v. Scott*, 12 Allen, 493; cf. *Meehan v. Forrester*, 52 N. Y. 277.

5. *Wheeler v. Northwestern Sleigh Co.*, 39 Fed. 347.

cause the agent has such knowledge. The agent himself knows that the facts have not been communicated. One of the results of a real ratification is that the agent is relieved from all liabilities except those which would have fallen upon him had he been acting with authority; but he will be relieved from no liability to the principal by reason of a ratification made by the latter in ignorance of facts not communicated by the agent.⁶

As between the principal and the third party, a distinction must be drawn between cases where the third party is suing the principal and cases where the principal is suing the third party. In the latter case it is obvious that the principal cannot hold the third party upon any different contract or transaction than the one into which such third party actually entered, even though the principal's suit is brought in ignorance of material facts that were part of that transaction. But this is not at all the same thing as saying that the principal has ratified the contract or act of his agent, notwithstanding his ignorance of the facts. If he does ratify, he must ratify as to the burdens and obligations as well as to the benefits. The only contract the third party can be held to is the one he made. If the principal continues to press his suit after he has become acquainted therein with the facts of which he was previously ignorant this may constitute a ratification; but it will not be upon the ground of imputed notice, but because he then has actual notice. In any event he must fail in his attempt to extort the benefits from the third party, when he himself has not assumed the burdens.⁷ So if the principal attempts to hold the third party to a contract made through an agent, who made an unauthorized warranty as a part thereof, the principal must make good the warranty also.⁸ In such case it is wholly unimportant to determine whether or not the agent had apparent authority to make the warranty.⁹ If an agent sells his principal's goods on terms other than those within his real or apparent authority, if the principal is unwilling to ratify those terms he is not entitled to sue at all on the contract for the price,¹⁰ and persevering in his action with knowledge of those terms may be a ratification. So also, if the agent has entered into an illegal transaction on behalf of his principal, as where he has made an

6. See *Bank of Owensboro v. Western Bank*, 13 Bush (Ky.) 526.

7. *Eberts v. Selover*, 44 Mich. 519; *Brigham v. Palmer*, 3 Allen, 450; *Wheeler & W. Mfg. Co. v. Aughey*, 144 Pa. 398.

8. *Loomis v. Vawter*, 8 Kan. App. 437.

9. See *Eberts v. Selover*, *supra*.

10. *Shoninger v. Peabody*, 57 Conn. 42; but see *Stewart v. Woodward*, 50 Vt. 78.

illegal sale of liquors, the principal is not entitled to reap the benefits of the transaction, and to maintain an action for the price, without assuming the burdens. He cannot separate the transaction into two parts—a sale of liquors and an illegal intent—and ratify the former while repudiating the latter.¹¹ The real remedy of the principal in such cases—and he will not be deprived of it because he has seemed to ratify, in case his ratification was in ignorance of material facts—is to repudiate the whole transaction and to sue in replevin or in trover in case goods of his have come into the possession of the third party through the unauthorized act of the agent.¹² It might be held that he cannot regain his goods if they have come into the possession of bona fide purchasers; but this is not the proper doctrine, and anyway it would not be on the ground of ratification, as will appear hereafter.

The question most commonly arises, however, in cases where the third party attempts to hold the principal upon a contract or transaction entered into by the agent and later ratified by the principal. It is the universal doctrine that in such case a ratification is not binding upon the principal unless made with knowledge of all material facts,¹³ or unless made intentionally in conscious ignorance;¹⁴ though to constitute a ratification, if the principal knew all the facts it is not necessary that he should have understood their legal effect.¹⁵ The receiving and retaining of benefits under a contract is no ratification when the principal was ignorant of representations or collateral contracts made by the agent as part of the transaction.¹⁶ It is among these cases that the doctrine of imputed notice should appear, if it is to appear anywhere in the case of agency by ratification. But, as indicated heretofore, there is no ground for its appearance, and as a matter of fact it does not so appear in the decisions. In all the long line of cases holding that a principal whose agent has exceeded his authority is not bound by a ratification made in ignorance of material facts, the agent actu-

11. *Backman v. Wright*, 27 Vt. 187; see also *Singleton v. Bank of Monticello*, 113 Ga. 527.

12. See *Brigham v. Palmer*, 3 Allen, 450; *Shoninger v. Peabody*, 57 Conn. 42.

13. *Combs v. Scott*, 12 Allen, 493; *Roberts v. Rumley*, 58 Iowa, 301; *Wheeler v. Northwestern Sleigh Co.*, 39 Fed. 347.

14. *Phosphate of Lime Co. v. Green*, L. R. 7 C. P. 43, 58; *Meehan v. Forrester*, 52 N. Y. 277; *Lewis v. Reed*, 13 M. & W. 834.

15. *Hyatt v. Clark*, 118 N. Y. 563; *Kelley v. Horse Ry.*, 141 Mass. 496.

16. *Wheeler v. Northwestern Sleigh Co.*, 39 Fed. 347; *Smith v. Tracy*, 36 N. Y. 79; *Baldwin v. Burrows*, 47 N. Y. 199.

ally had knowledge of those facts, but in not one case is the knowledge of the agent imputed to the principal. It is safe to say that the third party can no more hold a principal to a contract that he did not knowingly ratify than a principal can hold the third party to a contract that he did not make. In both cases the *plaintiff* must show affirmatively that he has a cause of action against the defendant; and in case the third party is plaintiff, it is essential for him to show affirmatively that the principal's ratification was made with knowledge. So far is the law from holding the principal to know what his agent knows in these cases, that it does not even throw upon him the burden of proving that he had no actual knowledge.¹⁷ Suppose an agent has sold goods with an unauthorized warranty; knowledge that the agent made it is not imputed to the principal, and his ratification of the transaction is worthless unless made with actual knowledge that a warranty was given.¹⁸ Where an agent sold corporate stock, agreeing without authority that a certain dividend already declared thereon should be included, it was held that the principal's receiving the price from the purchaser, in ignorance of the unauthorized agreement, was no bar to his recovering the amount of the dividend in a suit against the corporation.¹⁹ Accepting and using goods that an agent was directed to buy for cash, but which he actually bought on credit, is no ratification;²⁰ nor is there a ratification where the principal receives the consideration from an agent without knowing the terms of the contract by which it was obtained.²¹ It is even held that the retention, by the principal, after he has obtained knowledge of the unauthorized acts of the agent, of the benefits of the transaction, does not amount to a ratification of it in case the reason for the principal's failure to return the benefits is that their identity is lost,²² or that the property received has been disposed of so that it has become impossible or useless to return it,²³ or that it cannot now be returned without loss to the prin-

17. See *Combs v. Scott*, *supra*.

18. *Smith v. Tracy*, 36 N. Y. 79.

19. *Wheeler v. Northwestern Sleigh Co.*, 39 Fed. 347.

20. *Manning v. Gasharie*, 27 Ind. 399.

21. *Penn. D. & M. Nav. Co. v. Dandridge*, 8 Gill & J. 248, 323; cf. *Meehan v. Forrester*, 52 N. Y. 277.

22. *Schutz v. Jordan*, 32 Fed. 55.

23. *Humphrey v. Havens*, 12 Minn. 298; *Martin v. Hickman*, 64 Ark. 217; *Swayne v. Ins. Co.*, (Tex. Civ. App.) 49 S. W. 518; and see *Henry v. Wilkes*, 37 N. Y. 562.

principal.²⁴ It would seem that in such cases the principal would be under a quasi contractual obligation to pay for benefit received, but it seems correct to say that the principal's conduct does not amount to ratification.

Where the third party is attempting to hold the principal liable for the misrepresentation, fraud, or other tort of the agent on the ground of ratification, the rule laid down by the courts is found to be the same as where the principal is to be held liable on unauthorized contracts. As a general thing, where an attempt is made to charge the principal for the tort of an agent, the liability of the principal is based upon some real or apparent authority conferred by him upon the agent, although in many cases the principal's liability has been determined by the doctrine that one who sets an instrument in motion should be responsible for injuries done by it so long as it acts within the course of the employment, a doctrine more properly applicable to servants than to agents.²⁵ But in some cases the basis of the principal's liability has been an alleged ratification, and to show such ratification it is uniformly required that the principal be shown to have ratified with actual knowledge of the tort for which he is to be held liable. Such knowledge will not be imputed to him, and there is no presumption that the agent has told him of the tort. Thus a principal is not chargeable with the fraud of his agent, in an action of deceit or otherwise, on the ground of ratification, unless he knew of the fraud when he ratified.²⁶ In such case the ratification is no ratification of the fraudulent representations. In *Lewis v. Read*,²⁷ defendant authorized bailiffs to distrain for rent and to seize anything found on the place but nothing elsewhere. The bailiffs seized sheep belonging to plaintiff (who was not the tenant), which were not on the tenant's place when seized. The sheep were sold and defendant received the money, without knowledge, however, that the sheep had been outside the boundary when seized. The court says: "Mr. Read could not be liable in trover unless he ratified the act of the bailiffs, with knowledge that they took the sheep elsewhere than on Penybryn (the farm in question); or unless he meant to take upon himself, without inquiry, the risk of any irregularity which they might have committed and to adopt

24. *Bryant v. Moore*, 26 Me. 84.

25. See Huffcut on Agency. Ed. 2.

26. *Colvin v. Peck*, 62 Conn. 155; *Nichols v. Bruns*, 5 Dak. 28; *Keefe v. Sholl*, 181 Pa. 90.

27. 13 M. & W. 834.

all their acts." There is no suggestion here that the knowledge of the bailiffs might be imputed to the defendant.

The case of *Hyatt v. Clark*²⁸ has been cited to sustain the doctrine that the knowledge of the agent may be imputed to the principal so as to make that a ratification of an unauthorized act which otherwise would not be,²⁹ but in fact the court decided no such thing. In that case an agent, acting under a power of attorney, made a lease, conditioning it upon the principal's approval. The principal was never informed of this condition. She actually disapproved of the lease, but on being informed by her agent that the lease was binding, she accepted rent from the tenant. There was doubt as to whether the power of attorney authorized the agent to make such a lease. The court held that it was not necessary to resolve this doubt. Either the agent was authorized or he was not. If he was not, the principal was bound to know that, for she executed the power, and hence she must be regarded as knowing that she was not bound by the lease. If she knew one good ground for repudiating the lease, she did not need to know two such grounds. The court did not hold that in this event the knowledge that the lease was conditioned on her approval would be imputed to the principal, but merely that under such circumstances the fact was not material (a conclusion possibly open to criticism in itself). If, on the other hand, the agent was authorized by the power of attorney to execute the lease, then the acceptance of rent would bind the principal; for in such case the knowledge of her agent would be imputed to her, and she would be presumed to know that the lease was conditioned on her approval. But under this supposition, the agent was acting within the scope of his authority; the agency was established by the power of attorney and not by the ratification; the agent was held out as worthy to be trusted to do the very thing he failed to do, and the tenant was justified in believing that the agent would do his duty within the scope of his authority and report all the terms of the contract to his principal.

It seems safe to conclude that where the third party seeks to hold the principal by virtue of a ratification, he must affirmatively show that the principal had actual knowledge of every material act or representation of the agent and every other material fact forming a part of the transaction, and that the principal will not be presumed to have had knowledge of them merely because the agent had.

28. 118 N. Y. 563.

29. See Huffcut on Agency, Ed. 2, §37; Clark and Skyles on Agency, §107.

There remains but one further phase of the matter for consideration. What are the doctrines to be applied as between the principal and outsiders who were not directly involved in the transaction with the agent? Should the law, in favor of such outsiders, impute to the principal knowledge that his agent possesses, though the agent exceeded his authority and the principal's ratification was in ignorance of material facts? Such knowledge, as we have seen, is not imputed to the principal in favor of the third party who dealt with the agent; but such third party had no sufficient reason for supposing that the agent would inform his principal as to the facts, and he had an opportunity to protect himself. It is not necessarily so as to outsiders, who may not know or have the chance to know that the agent exceeded his instructions or even that an agent existed.

The question may arise in various ways. Suppose A, acting in the name of P, buys property of Z, A having knowledge that it had been obtained fraudulently from X. Later P, in ignorance of this defect, approves the deal, receives the property, and pays the price. Three questions may arise: 1. Can X recover the property or its value from P? 2. Can P repudiate the purchase and recover the price from Z? 3. Can P hold A responsible in damages? The answer to the first seems to be in the affirmative. P is not regarded as a bona fide purchaser as against X, the knowledge of A being for this purpose imputed to P.³⁰ But in this case the second and third questions must also be answered in the affirmative. The knowledge of A will not be imputed to P in favor of the agent and the third party. There has been no ratification. Were the first question to be answered in the negative, possibly the second and third should also be so answered: not because in such case the knowledge of A would be imputed to P, but because knowledge of the fact would then be immaterial to P. The decision that P is not a bona fide purchaser and did not get good title as against X is not at all the same as holding that P has ratified. It is not that P has ratified the contract of purchase, but that he will not now be allowed to retain the proceeds of such a contract as against an equally innocent prior lienor. It may be correct to say that in these cases the law imputes to the principal the knowledge of his

30. In the case of *The Distilled Spirits*, 11 Wall. 356, one B, acting as agent of H, bought liquors, B knowing that the liquors had been taken from a bonded warehouse by fraud. The court held that B's knowledge was to be imputed to H, that H was, therefore, not a bona fide purchaser, and that the liquors in H's possession were forfeited to the government. It is reasonable to suppose that B exceeded his authority in buying liquors to which good title could not be obtained, although this does not appear in the report. See also *Russell v. Peavy*, 131 Ala. 563, apparently supporting the doctrine of the text.

agent, but it is not correct to say that there has been a ratification. It is fair to impute the knowledge to the principal in favor of the prior claimant, for it will not have the effect of holding the principal to the unauthorized and disadvantageous contract or transaction, though it may have the effect of causing him a loss if his vendor and his agent are irresponsible. The agent has been party to a fraud on another while acting in the course of his employment and for the principal's benefit, and in such case the general doctrines of agency should hold the principal irrespective of knowledge and irrespective of ratification. If the principal in such case insists on retaining the property after he learns of the lien or claim of the third party, he puts himself practically in the position of claiming the benefits and repudiating the burdens. This he is never allowed to do. It remains true, however, that the reason he is not a bona fide purchaser is that notice is imputed to him.

This doctrine should not be applied in favor of bona fide purchasers of goods that have been sold by an agent who had neither apparent ownership nor apparent authority to sell on the terms he made, where the principal has not himself acted so as to create an estoppel. The principal, even though in ignorance of the facts he received the proceeds, may repudiate the sale and reclaim the goods from the possessor, whoever he may be. In this case the fact of which the principal was ignorant is not the existence of a lien or trust or other equity in favor of another, but is the existence of an act or representation of the agent. Knowledge of such a fact is not to be imputed to the principal in any case. The innocent purchaser's title, in the absence of actual authority in the agent and in the absence of an estoppel against the principal because of his own conduct, depends upon ratification. There has been no ratification. The principal is as innocent as the purchaser and his claim is prior in point of time. The principal is not attempting to retain the benefits while repudiating the burdens, but is repudiating the whole transaction.

It thus appears that whether between principal and agent, principal and third party, or principal and outsiders, whether the principal is suing or being sued, a ratification is never to be based upon the doctrine of imputed notice, although in one case knowledge of extrinsic facts may be imputed to the principal even in the absence of any ratification. The doctrine of ratification and the doctrine of imputed notice have no connection. Ratification requires actual knowledge of all material facts, and there is no exception.

Arthur L. Corbin.

NEW HAVEN, CONN.