

LIABILITY OF ATTORNEYS FOR THE ACTS OF CLERKS.

sent to admissions, &c., as if he were attorney (*Baker v. Black*, 8 L. T. Ex. 398). And the fact of his acting as conducting clerk, in his master's absence, would furnish ground for imputing authority to him to give an extension of time for pleading. So, an attorney was held bound by the undertaking of his conducting clerk to this effect, given to the defendant's attorney, although on the same day, in another place, the plaintiff's attorney refused himself to give the same undertaking to the agent of the defendant's attorney; and a judgment marked notwithstanding the clerk's undertaking, was set aside, the attorney having to pay the costs (*Young v. Power*, 7 Ir. Jr., N. S., 388, 9 L. T., N. S., 176). So again, notice of an act of bankruptcy given by one attorney's clerk to another would be insufficient, unless indeed in particular circumstances, and the clerk receiving the notice being managing-clerk (*Pennell v. Stephens*, 7, C. B. 987; *Prestwitt v. Poley*, 18 C. B. N. S., 806). Much also, as regards the binding character of acts of clerks, would turn on the place where they occurred—whether at the attorney's office, or elsewhere. Thus, where a judge's order was made for payment of debt and costs, with leave to sign judgment on default in payment, and, the costs being taxed by a clerk attending for the purpose, the amount was demanded from the clerk in the master's office, but was not paid; held, that this did not constitute a default, and that judgment thereupon marked was premature. (*Perkins v. National Invest. Soc.*, 26 L. J. Ex., 182). But *semble*, the clerk would have had authority to pay or receive costs at the office of his employer (*ib.*; *Re Geoghegan*, *ante*). Where, however, a rule of court, calling on an attorney to deliver a bill of costs to the attorneys of a former client, was served by their clerk, who demanded the bill, this was held insufficient as ground for an attachment, on his refusal to give the bill (*Ex p. Briggs*, 18 L. J. C. P., 184). An attorney may also be stopped from setting up the absence of authority on the part of his clerk, as when a clerk, by mistake, after the time limited received the debt and costs as indorsed on the writ, the attorney, not having offered to return the money, was held not entitled to go on with the action (*Hodding v. Sturchfield*, 7 M. & G., 957).

But, as a rule, the clerk has not, like his employer, a general discretion over an action or suit (thus to consent to an irregularity: *Hodson v. Dreury*, 7 Dow. 769). He is deemed, however, an authorised agent to receive service of notices, &c., and what is said by him in his office as to acceptance of process, &c., may be taken to be said by him as agent (*Fowler v. Roe*, 4 D. & L., 639). And a clerk in the employment of a defendant's attorney, coming from his office to the plaintiff's attorney, and offering payment of a bill of exchange, before action, has been held *prima facie* authorized to make the offer, amounting thereby to a waiver of the defendant's right to notice of dishonor (*Ryan v. Seymour*, A. M. & O., 181). If consulted confidentially, the clerk stands in the same fiduciary position as his employer, and communications to him will generally be governed by the same rules as to privilege. But communications made by an attorney's clerk, in reference to the execution of a *ca. sa.*, would seem to be outside the ordinary scope of his employer's duty in respect of the conduct of the action, and so not privileged (*Caldbeck v. Boon*, C. P., Trin. T., 1872). Where a clerk, in his master's absence and by his authority, received money for a client, but refused to pay the client, it was held that the clerk was only answerable to his employer and he to the client (*Stephens v. Badcock*, 3 B. & Ad., 354). In *Re Garbutt* (9 Moore, 157), the court refused to strike an attorney off the roll, on an affidavit stating that a former clerk, living in a town eight miles from the attorney's residence, carried on business at an office over the door of which the attorney's name was affixed; it not being shewn either that the clerk participated in the profits or carried on business on his own account (see also 115 G. O., 1854). Happily now-a-days, frauds of this description are unknown. Elevated by culture, and strengthened by the bands of social organization, attorneys' clerks, as a body, are above reproach; and, so applied, the climax of the Athenian orator's vituperation, of old applauded to the echo, were now tame indeed, "a rascal and villain, and—clerk" (*De falsa Legat.*, s. 98).—*Irish Law Times*.