

## LIABILITY OF ATTORNEYS FOR THE ACTS OF CLERKS.

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"Ye Gods!" cried Thackeray, "what do not attorneys and attorneys' clerks know in London! Nothing is hidden from their inquisition, and their familiars mutely rule our city." In truth, not only in the "great metropolus," as Mrs. Malaprop has it, but wherever law exists, the law-clerk is omniscient, and his activity all-prevailing; as Morris, J., puts it, "Law-clerks busy themselves in everything, and are the best-known people in every town." (*McCue v. James*, 5 Ir. L. T. R. 89). And although what songs the syrens sang, or what name Achilles assumed when he hid himself among women may now be accounted puzzling questions, as Sir Thomas Brown concedes, yet, we cherish the conjecture that, to the law-clerks of antiquity these matters were perfectly familiar. But of course, it is in the legal world especially that the law-clerk is master of all he surveys. He is the little wheel that makes the works move. "Lord Mansfield was in the habit of saying, that the *quicquid agunt homines* was the business of Courts of Justice: if I may venture to extend the sentiment," adds Park, J., "the same may perhaps be said of attorneys' clerks." How far an attorney is responsible for and bound by the acts of his clerks, is a question which we must answer by referring to the result of the authorities.

When a clerk, directed by his employer to have a defence prepared by counsel, signs it in the name of counsel without his authority, though not so prepared, the defence will be set aside, and the attorney, though unaware of the act of the clerk, will be ordered to pay the incidental costs. So it was held by the Court of Common Pleas, in a case decided on this day week. And certainly, as a general rule, the principle involved would seem to be commended by practical considerations. When Constable Staff, as Fielding relates, arrested "*inter alios*" a half-pay officer and an attorney's clerk, "discharge the officer and the law clerk," said Squeezum, J.P., "there is nothing to be got by the army or the law—the one hath no money, and the other will part with none." Indeed, in such

case the learned justice might well have followed the precedent made by Wontor Van Twiller, condemning the constable to pay the costs. Again, when a clerk fraudulently simulated the seal of the Court to a writ, the writ was set aside, and the attorney was ordered to pay the costs (*Dunkley v. Ferrers*, 11 C. B. 457.) And so, when the clerk of the plaintiff's attorney extorted an excessive sum for costs, on a false statement that judgment had been signed, the Court ordered the attorney to refund the overcharge, and to pay the costs of an application against him personally, although he was proved to have had no actual knowledge of the intention (*Palmer v. Evans*, 1 C. B. N. S. 151). When the clerk of the plaintiff's attorney, having called at the office of the defendant's attorney, and received a sum of money in settlement of debt and costs in an action, embezzled the amount, the responsibility of his employer to recoup the loss to the plaintiff was held to turn on a question of fact, whether or not the clerk was the agent of the attorney for the purpose of receiving the money (*Re Geoghegan*, 32 L. T. R. 301.) A clerk has not necessarily *ex officio* authority to receive payment of claims sued for. As Littledale, J., observes, "Although a party puts his case into the hands of his attorney, who thereby becomes authorised to accept payment, it by no means follows that all the attorney's clerks have such an authority also" (*Bingham v. Allport*, 1 N. & M. 398). There, it was held that a tender made to a managing clerk, who at the time disclaimed authority from his master, the plaintiff's attorney, to receive the debt, was insufficient (see *Marks v. Lahee*, 6 L. J. C. P. 69). Yet, in a more recent case, it has been held that a managing clerk, having the general conduct of the business, has authority to bind his employer and his employer's client, by such a compromise as would be within the scope of his employer's authority to make. (*Prestwich v. Poley*, 18 C. B. N. S. 806). A great deal depends on whether the clerk is conducting clerk or otherwise, as well as on the extent to which a particular business may have been entrusted to his management. Thus, if the management of a trial were confided to him, he could con-