

is entitled to an indemnity from him who requested that it should be done." See also *Bank of England v. Cutler* (1908), 2 V.R. 208.

Two very recent cases have been decided in which the above principles have been followed. These decisions are of great practical importance to solicitors, and do not seem to have attracted, in Ontario at any rate, the attention which they should receive. They are *Yonge v. Toynbee* (1910), 1 K.B. 215, and *Simmons v. "Liberal Opinion" (Re Dunn)* (1911), 1 K.B. 966, 27 T.L.R. 278.

But before considering these, we must notice the old case of *Smout v. Ilbery* (1842), 10 M. & W. 1, 12 L.J. Ex. 357, 62 R.R. 510. The defendant was a widow whose husband had gone to China and there died. The plaintiff was a tradesman who had previously supplied goods to the defendant on the credit of the husband and had been paid for them by him, the husband to the knowledge of the defendant being resident abroad. It was not until a year after the departure of the defendant's husband that she learned that he had died some six months previously. In the meantime, both parties being ignorant of the death of the husband, the defendant ordered necessities from the plaintiff which he had supplied to her. The action was brought to recover the value of the goods supplied to the defendant from the date of her husband's death up to the time she knew of it. *Held*, that the circumstances being equally within the knowledge of both parties, and the widow not having omitted to state any fact known to her which was relevant to the existence or continuance of her authority, she was not liable for the price of the necessities.

The law in such a case was thus stated by Sir W. Anson: "The death of the principal determines at once the authority of the agent, leaving the third party without remedy upon contracts entered into by the agent when ignorant of the death or his principal. The agent is not personally liable, as in *Kelner v. Baxter*, L.R. 2 C.P. 174, as having contracted on behalf of a non-existent principal; for the agent had once received an authority