tual as well as imputed knowledge which arose from services on and notice to, his agent.

And if the application had been merely to set aside the award, I should have been prepared to hold it too late, not having been made in Trinity Term, or possibly because not made within the first four days of that term.

But a difference is taken in this case, where a judgment entered upon an award is moved against, and it appears settled that such a motion is not so limited in point of time, but it can only be made on objections apparent on the face of the award, and the argument for the plaintiffs is, that the agreement of the 17th of August being set out on the award, the objection is open on this motion, and that as Mr. Wilson had no authority to bind the defendants by it, the award is bad.

The form of the objection is that Mr. Wilson, as defendants' counsel had no authority to change the original submission, and vary and extend the authority given to the arbitrator.

I take it to be sufficiently established that Mr. Wilson filled not only the character of counsel for defendants, but also of agent to the defendants' attorney. Many decided cases shew the authority of an attorney to refer a cause, to select the tribunal by which the matter in dispute between his client and the opposing party shall be decided, and some of them extend to counsel also. I refer generally to *Swinfen* v *Lord Chelmsford*, 6 Jur. N S. 1042; *Filmer* v *Delber*, 3 Taunt. 486, which is approved in *Faviell*, v. *the Eastern Counties Railway Company*, 2 Exch. 344, a case particularly applicable, for there as here, the defendants were a corporation, and there, though not here, it was objected that it should be shewn that their attorney had authority under seal to defend or refer the cause. The language of the judges as to the authority of the attorney to refer a cause is explicit, and if this be so, it carries with it power to alter or vary the terms of the submission. The case of *Hatton* v. *Royle*, 3 H & N. 500, does not conflict with this view while the case of *Withers* v. *Parker*, 4 H. & N. 524, and in error, 5 H. & N. 725, shews the authority of the agent for the attorney to be as effectual in the matters entrusted to him as that of the attorney himself.

Upon either ground, therefore, viewing Mr. Wilson as counsel for the defendants, or as agent for the defendants attorney, especially entrusted as he was, I am of opinion that he could and did bind the defendants by his agreement of the 17th August, 1861. This is the only objection apparent on the face of the award, or at all events any others apparent on the award depend on it, and as I think it fails, the rule must be discharged.

HAGARTY, J.—In this application it is admitted that the reference was duly made at *nisi prius* as endorsed on the record. This was signed by Mr Wilson as representing the defendants. It contains a provision that any question of law should be referred to the court at the request of either p. 'y.

The chief point urged against the award is the agreement of the 17th August, 1861, as an alleged excess of authority on Mr. Wilson's part. This gentleman, as is abundantly evident, was entrusted either as counsel or agent for defendants' attorney with the management of the defendants' case before the arbitrator.

It appears to me to be of no moment whatever as to which position he filled. It is sufficient to say that on him devolved the legal management of the case, and it is not pretended that he acted otherwise than in perfect good faith and to the best of his judgment. I also consider that in this branch of the application it is quite immaterial whether he had or had not authority to make this agreement. To my mind it disposes of the question simply to state the fact that the arbitrator was not requested by defendants' counsel or agent to reserve any legal question for the court.

It must be borne in mind that we are not now discussing any dispute between the client and his professional adviser, but we are asked to set aside an award and judgment as against defendants on an alleged excess of authority.

I think the law would be in an intolerable state, and the conduct of suits rendered almost impracticable, if the court were bound to accede to defendants' view of the powers and duties of an advocate. It is matter of every day practice for counsel to take the responsibility of the entire management of a case, to decide on not pleading a particular defence, to decline calling or cross-examining a particular witness, to take or to abstain from taking legal exceptions; to accept a nonsuit, withdraw a juror, &c, &c

As the court of Exchequer decided in *Swinfen* v. *Lord Chelmsford*, "counsel has complete authority over the suit, the mode of conducting it and all that is incident to it, such as withdrawing the record, withdrawing a juror, calling no witnesses, or selecting such as in his discretion ought to be called, and other matters which properly belong to the suit and the management and conduct of the trial," &c. I do not think that even the vivid imagination of the counsel for Mrs. Swinfen, in all the stages of her celebrated litigation, ever conceived much less induced him to urge that the conduct of a counsel in such a matter as not asking an arbitrator to reserve a legal question for the court, could, if not assented to by his client, invalidate an award otherwise good.

This disposes of the substance of the application. I think we can hardly be expected to consider it as a fatal objection in the defendants' mouth, that the large sum ordered to be paid by them was made payable at a future day and not forthwith. Such day, moreover, being now long past. As to the costs, they stand very much in the same position. By the admitted reference, they were to abide the event, which was against the defendants. The arbitrators' decision places the payment on a more favourable footing for defendants

As to whether this application is too late, I have not considered it fully. I incline to agree with the plaintiffs. In my view, the case wholly fails on the merits. I think the rules should be discharged with costs.

Per cur.—Rule discharged.

CHANCERY.

(*Reported by* THOMAS HODGINS, ESQ., LL B., *Barrister-at-Law*).

STANBURY V. MILLIKEN.

Judgments—Priority—Partnership.

Judgments recovered against two, out of three, members of a firm for a partnership debt, are available only against what may appear upon winding up the partnership to belong to the two judgment debtors.

This was a motion to dispense with payme ' of the purchase money of certain property into court. The question raised was whether judgment creditors of two partners of a firm—which firm were the original mortgagees—were entitled to rank on the proceeds instead of the assignee of the firm. It appeared that plaintiff was a derivative mortgagee, Ross, Mitchell & Fisken being the original mortgagees. Bone & Co., and Gagne & Co. were creditors of Ross, Mitchell & Fisken, but only sued and recovered judgment against Ross and Fisken; after which Ross, Mitchell & Fisken were adjudged bankrupts under a Scotch sequestration and their estate vested in one Robson as trustee. It was alleged that as Ross, Mitchell & Fisken had paid off plaintiff that the judgments could attach, but Ross, Mitchell & Fisken alleged they paid off plaintiff as acting for their trustee Robson.

McDonald for Robson, Ross, Mitchell & Fisken.

McGregor for Bone & Co. and Gagne & Co.

Davis for the purchaser.

SPRAGGE, V. C.—The Master finds the plaintiff has been paid off by Ross, Mitchell & Fisken and that nothing is due to him, and he then finds the amount paid by them as due to Robson, the trustee of their sequestered estates. He also finds the judgments of Bone & Co. and Gagne & Co, proved against the interests of Ross and Fisken after settlement of partnership affairs. In settling the priorities the Master places Bone & Co. and Gagne & Co. as incumbrancers upon the estate of Milliken, in addition to the mortgage to Ross, Mitchell & Fisken—this is erroneous. Suppose the judgments of Bone & Co and Gagne & Co. had been against Ross, Mitchell & Fisken instead of against the two partners, their priority would have been the second on that of Ross, Mitchell & Fisken upon the estate of Milliken to the extent of their judgment. The judgments are against the two only; it is admitted, however, for the purpose of this argument that the judgments are for debts of Ross, Mitchell & Fisken Another question is, what is the effect of such a judgment? Now, what was determined by *Ex parte Higgins* and the *Commercial Bank* v. *Ave-*