ponsibilities is involved. An agent is appointed to control and dispose of the whole. The capacity, integrity, and industry of another are brought to the management and the fitness of the party selected is judged of solely by one member of the firm."

It is thus well put, that granting the authority of a partner to sell the whole of the partnership effects, an authority which seems to have been upheld in the Court of Queen's Bench in this Province, in *Fox* v. *Rose*, 10 U. C. Q. B. 16, still it is going much further to say that he can assign to a trustee, *Butchart* v. *Draper*, 10 Ha. 453, before Sir Page Wood, and in appeal (4 D. M. & G.) before the Lords' Justices, is certainly no authority for this position. The point decided was only this, that after a dissolution of partnership one partner has authority to do what is necessary to carry out a contract made during the partnership—that contract being within the scope of the partnership business. This case is stronger than those cited, in this, that the plaintiff in express terms dissented from the proposed assignment. I think that the defendant has exceeded his authority, and that the plaintiff is entitled to the relief prayed by his bill.

COMMON LAW CHAMBERS.

(*Reported by* ROBERT A. HARRISON, Esq., *Barrister-at-Law.*)

EXPARTE GLASS, IN RE MCDONALD, ONE, &C.

Bill of costs—Conveyancing charges—Con. Stat. U. C. cap. 35—Third party's clauses.

A bill exclusively for conveyancing charges cannot be referred to taxation in Upper Canada. (In re Lemon & Peterson, 8 U. C. L. J., 185, upheld.)

If the bill contain any one taxable item, the whole bill is liable to taxation.

Where two bills were delivered at the same time, the one being for the costs of an action of ejectment, and the other for expenses attending a sale of mortgaged property, pursuant to a power of sale contained in the mortgage, both bills being referable to a written statement containing an item "Solicitor's costs, $143." *Held*, as the ejectment bill was taxable, it drew with it the remaining bill (or conveyancing charges).

A mortgagor has a right to have a taxation of the mortgagees solicitor's bill, because he is liable to pay it; but the act in no way alters the relation between the solicitor and his client.

(CHAMBERS, February 28, 1863.)

The applicant, Glass, mortgaged his property to the Trust and Loan Company, with power of sale.

Default was made, and mortgagees, by Mr. Macdonald, their attorney, brought ejectment and then sold the land under the power, and paid the surplus purchase money to Glass, deducting their attorney's costs of this ejectment and the sale.

Mr. McDonald sent mortgagor a statement of principal and interest due on mortgage, and an item for solicitor's costs $143.

Applicant requested an account in detail of this item, and received two bills, one for £10 14s. 7d., costs in the ejectment, the other £20 12s. 3d., costs of exercising power of sale.

These bills he received in March last.

In November following, he obtained a summons to have the bill taxed. After several enlargements the summons came on before Hagarty, J., for argument.

W. H. Burns for the summons.

S. J. Vankoughnet contra.

The following cases were cited during the argument: *Re Phillpotts*, 18 Beav., 84; *Re Fyson*, 9 Beav., 117; *Re Dawson & Bryan*, 28 Beav., 605; *Re Loughborough*, 23 Beav., 439; *Re Abbott*, 4 L. T. N. S., 576; *Re Begnald*, 9 Beav., 269; *Re Lemon & Peterson*, 8 U. C. L. J., 185.

HAGARTY, J.—Before the passing of our attorney's act, 16 Vic., cap. 175, now Consol. Stat. U. C., cap. 35, the applicant would have had no such remedy as asked, because no sufficient privity existed between him and the mortgagee's solicitor, and his only course would have been to file a bill for an account.

But sec. 38 of Consol. Stat. U. C., cap 35, (taken from Imperial Act 6 & 7 Vic., cap. 73,) declares that any person not being chargeable as the principal party, who is liable to pay or has paid any bill to the attorney, or to the principal party entitled thereto, the party so paying may make the like application for a reference thereof to taxation, and in like manner as the party chargeable therewith might himself have made, and the same proceedings shall be had thereupon as if such application had been made by the party so chargeable. Section 39 of the same act allows the court or a judge to consider any additional special circumstances applicable to the persons making the applications, although they be not applicable to the party chargeable with the bill. Section 40 empowers an order to be made on the attorney to deliver to the applicant a copy of the bill, on paying costs of copy.

These provisions, under the name of "third party clauses," have made an important change in the law.

I consider the present applicant comes clearly within their reach, if there be no difficulty as to the right to refer this peculiar kind of charges.

I agree with the judgment of my late lamented brother, Judge Burns, in *Re Lemon & Peterson*, 8 U. C. L. J., 185, that a bill exclusively for conveyancing charges cannot be referred to taxation in Upper Canada.

The Imperial Act, already cited at section 37, gives express power to the Lord Chancellor and Master of the Rolls to order a taxation of a bill "in case no part of such business shall have been transacted in any court of law or equity." Our statute has no analagus provision, and merely refers to business done by any attorney or solicitor "as such." In England it is common to find a petition to the Chancellor or Master of Rolls (when no cause in court) to refer in a case exactly like the present.—(In *re Abbott*, 4 L. T., N. S., 576). It has, I think, always been our practice to see if the bill contained any one taxable item, and if so, then to hold, as in the language of Park, J., in *Smith* v. *Taylor*, 7 Bing., 263, "one taxable item draws into its vortex all others in the same bill."

I have had some doubts as to my power to refr the bill for the costs of exercising the power of sale, as it is made out separately, but I think a liberal construction of the rule and practice warrants my considering, that although on separate sheets of paper, and headed separately, the two documents, viz.. the ejectment costs and the power of sale costs are referable to the item in the statement rendered to the mortgagor, "solicitor's costs $143, and so I may consider them as the particulars of this item, and that as the ejectment costs are clearly taxable, they must draw the other charges after them.

It must be understood, that in the taxation, the principle on which the bill is taxed is not as between the third person (viz.: the applicant) and the solicitor, but as between such solicitor and his own client. (See 1 Smith, Ch'y Prac., 134.)

It is also to be noted as laid down in the same work, "that if the mortgagee thinks fit to pay his own solicitor's bill, then, although the right of the mortgagee to charge the full amount against the mortgagor is left open, the mortgagor cannot, as of course, open that settlement as between mortgagee and his solicitor." The mortgagor would not, in such a case, be without a remedy, for, in the settlement between him and the mortgagee, every improper payment made by the mortgagee to his solicitor would be disallowed as between mortgagee and mortgagor.

This language is taken almost *verbatim* from that of the Master of the Rolls in *Exp. Bignold*, 9 Beav. 271. The Master of the Rolls further says: "a mortgagor has a right to have a taxation of the mortgagee's solicitor's bill, because he is liable to pay it; and I have often had occasion to say, that this act in no way alters the relation between a solicitor and his client; * * the mortgagor cannot, as of course, open that settlement (viz.: between mortgagee and his solicitor) and say, "the matter is still open, for the bill has never been settled as between me and the mortgagee's solicitor." The solicitor has a right to say, "I never acted as your solicitor; I have fairly settled all matters with my own client, and am not liable to account again to you." I also refer to *Exp. Fyson*, 9 Beav., 118; *Exp. Goutskill*, 1 Phill., 581; *Exp. Dickson*, 28 L. T. 153; Marshall on Costs, 217, 218.

I therefore direct a reference of these bills to be taxed by the Master of the Court of Common Pleas, in which court the ejectment suit was brought.

When the true amount properly taxable to the mortgagees, as between them as clients and Mr. Macdonald as their solicitor, is ascertained, the applicant can be readily advised as to his remedy for any amount which he can prove has been unwarrantably retained by the mortgagee.

Order accordingly.