The general rules are thus laid down by Lord Lindley (Partnership 125).

1. "That if an act is done by one partner on behalf of the firm and it was necessary for carrying on the partnership business in the ordinary way, the firm will *prima facie* be liable, although in point of fact the act was not authorized by the other partners."

2. That if an act is done by one partner on behalf of the firm, and it was not necessary for carrying on the partnership business in the ordinary way, the firm will *prima facie* be not liable."

"In the first case the firm will be liable *unless* the one partner had in fact no authority to bind the firm, and the person dealing with him was aware of that want of authority; whilst in the second case the firm will not be liable *unless* an authority to do the act in question, or some ratification of it, can be shown to have been conferred or made by the other partners"

Substantially the same principles are laid down by M. Troplong, at No. 810: (Trans.) A partner who borrows in the name of the firm, binds the firm, and it is not incumbent on third parties to follow up the ultimate destination of the loan.

811. However, there are some modifications to this rule.

The first is that the agreement must not be clearly beyond the scope of the partnership business. For in cases of fraud and collusion it is clear that the plaintiff could not recover.

Where a manager clearly surpasses his powers by mortgaging the inalienable realty of the firm, the mortgagee would rank as an ordinary creditor on simple contract.

812. The second modification arises where there is an express clause in the deed of partnership restraining the authority of one or other of the partners, and the creditor dealing with that partner has had actual or constructive notice of it.

At this point it will be opportune and, we think, instructive, to note the points of divergence of the two systems of jurisprudence and the reasons therefor.

The furthest point reached by the Court of Cassation is thus stated in the syllabuses of the decisions dated 11 May 1836; 22 April 1845; 7 May 1851. (Trans.) "A contract made in the firm's name by one of the members, binds jointly and severally all the members of the firm, even where such contract was made with the sole view to its application to the contracting member's private debts, and that the creditor was aware of its application." In the next and latest decision we find this modification which was inserted to partly meet the severe criticisms made against their former decisions:

"Held thus, where the creditor had reason to believe that the contracting member was using the firm's name with the consent and in the interest of the firm." (Cass. 21 Feb. 1860.)

It appears from the facts in this case that plaintiff was acting in good faith, believing that the firm was sufficiently interested in the welfare of one of its members to take up his debts although such debts were anterior to the formation of the present firm. There was, it is true, a clause in the partnership deed declaring each member solely liable for his own debts, but this clause had not been published, and thus the plaintiff had not legal notice of it. But here is another reason for the decision. The old firm had dissolved (Lemichez Frères) and in forming a new one (Lemichez Frères & Cie) the new members specially absolved themselves from all liability for the debts of the old firm and hence the clause in the deed of partnership