

him : *Cameron v. Baker*, 1 C. & P. 268. See also *Kerr v. Malpus*, 2 P.R. 135.

Where the general solicitor of a client invested money on mortgage on her account, and soon afterwards discovering some defect in the title brought an action to recover back the money, the authority to commence the action was presumed : *Anderson v. Watson*, 3 C. & P. 214.

*Tabram v. Horn*, 1 M. & R. 228, was an action by an attorney against his client to recover the costs of an ejectment action commenced and abandoned. The client had delivered her papers to the attorney telling him "that she was entitled to an estate, and that she would pay him if she recovered it." The attorney took the papers, saying, "that he would do what he could for her," and, without communicating further with her commenced the action. The court held that he had no instructions to commence the action, but only to enquire into the defendant's title.

In *Herr v. Toms*, 32 U.C.R. 423, it was the solicitor who denied the retainer, but the court held the evidence established the retainer so as to make him liable for the negligence of his Toronto agents.

Although a solicitor has no right to institute proceedings without express authority, he may, in the exercise of a general authority given to him by his client, accept service and defend actions without a special retainer for the purpose : *Wright v. Castle*, 3 Mer. 12.

**II. Authority to retain solicitor.**—There is no doubt that one partner has authority to retain a solicitor to commence and prosecute actions for the firm in the firm name, subject to the right of the other partners, who object, to be indemnified against costs : *Whitehead v. Hughes*, 2 Cr. & M. 318.

Has one partner authority to instruct a solicitor to enter an appearance for the firm ? If *Mason v. Cooper* (1893) 15 P.R. 418, be correctly decided, he has not. In *Lindley on Partnership*, 5th ed. 271, it is said : "One partner may defend an action brought against the firm, indemnifying the firm against the consequences of so doing, if he acts against the will of the other partners." It is submitted that this is a correct statement of the law notwithstanding *Mason v. Cooper*.

Let us look at the authorities cited in support of the decision. *Joyce v. Murray*, R. & J. Dig. 672 ; *Holme v. Allan*, Tay. 348, and *Auff v. Cameron*, 1 P.R. 255, are all cases where one partner gave a *cognovit actionem* against the firm. *Massey v. Rapelje*, 5