

to Mr. G. again on 25th March, and there was some further correspondence.

On 28th April the bond was sent to plaintiff's daughter by the widow of the person who drew it and in whose custody it had remained. It was not stated whether she communicated this fact to the solicitor. The writ was served on defendant on 5th May.

On 13th May defendant gave notice of motion to stay proceedings and dismiss action with costs to be paid by the solicitor.

The motion was heard on 25th June.

A. Mills for motion.

D. L. McCarthy, contra.

THE MASTER.—Mr. Mills relied on *Scribner v. Parcells*, 20 O. R. 554, where the judgment of Armour, C.J., leaves nothing more to be said, and is decisive of the motion, unless the present case is rightly distinguishable . . . "No bill ought to be filed without a written retainer, but unquestionably, if it is not a written retainer, there must be an authority to institute the suit, communicated expressly by the client to the solicitor, without any intermediate agency." . .

Mr. McCarthy endeavored to distinguish this case from *Scribner v. Parcells* by submitting that the present came under that class of cases where action had to be brought on behalf of some one who was being virtually imprisoned.

In all such cases it would, no doubt, be made to appear that the proceedings were really in the interest of the supposed plaintiff. So that they would not furnish any guide in the present case. Even then the solicitor in any such matter would have to see that he was made safe by an indemnity from the person on whose instructions he was assuming to proceed.

I trust that security has been obtained by the solicitor in the present case, which seems in its facts to be much stronger than *Scribner v. Parcells*. The presumption of authority of a husband living with his wife to institute an action on her behalf is much greater than that of a daughter to act for her mother, with whom she is not living at the time. Moreover, Mr. G.'s letters should have put the solicitor on his guard, and led him to make full inquiry before eventually serving the writ, nearly three months after its issue, and after the letters of Mr. G. stating that plaintiff repudiated the whole proceeding.

The order must be made as asked. The form is given in 20 O. R. at p. 563.