## SELECTIONS.

### LIABILITY OF THE FIRM FOR THE ACTS OF A PARTNER.

The question under what circumstances the receipt of a client's money by one member of a firm of solicitors constitutes a receipt by the firm so as to render them jointly and severally liable therefor, is a question which involves not only some consideration of the law of partnership, but also of the general relations between solicitor and client. It is a fundamental axiom of the law of partnership, that the act of one partner does not bind the rest, unless it fall within the general scope of the partnership. Where it is sought to charge the firm with liabilities occasioned by the act of a single member, the first question is, whether the act which occasioned the liability relates to the partnership. If it does, then it is well settled that the act of the single partner binds all the others (*Hope* v. *Cust*, 1 East 53).

In those unfortunate cases which sometimes occur, where a suit is instituted to make the partners in a firm of solicitors liable for moneys misappropriated by a defaulting partner, the chief question is, whether the money so misappropriated came to the hands of the defaulting partner in the ordinary course of the business of the firm. If it did, then the firm are liable. And this, as we shall presently see, may lead to nice questions as to what is the ordinary course of business of a solicitor *qua* solicitor, when he is not acting in pursuance of any special authority given to him by his client.

As a general proposition it has been said that it is not in the ordinary course of a partnership business of solicitors to receive money for their clients. This point was raised in *St. Aubyn* v. *Smart* (16 W. R. 394, 1095), where a client who was entitled to a share in a fund in court gave a power of attorney to the firm of solicitors who had acted for him in the matter to receive the money. The power was a joint and several power, and one of the partners to whom it was forwarded availed himself of it to obtain the money, which he paid into his own account and afterwards absconded. The Lords Justices, affirming Vice-Chancellor Malins, held that this money must be treated as having come into the hands of the firm in the course of their business as solicitors, it being the ordinary course of business at the end of a litigation for the solicitors to receive the fruits of that litigation for their clients. The case went a good deal on the knowledge of the transaction which the firm were constructively deemed to have possessed; but is at any rate an authority for it being in the ordinary course of business for solicitors to receive money for their clients, when that money is the fruit of the litigation they have conducted to a successful issue. We shall presently see that the general proposition above stated must be accepted with considerable modification.

It is not within the scope of the ordinary business of a solicitor to receive money from a client for the general purposes of investment (*Harman* v. *Johnson*, 2 E. & B. 61). But it seems that if money be deposited with one partner by a client of the firm for the purpose of being invested in some particular security, and the partner misapply the money, the other partners may be made jointly and severally liable to account for it, on the ground of the transaction being within the ordinary course of business of solicitors.

Thus in the well known case of *Blair* v. *Bromley* (5 Ha. 556, 2 Phil. 354), the client had handed a sum of money to a partner in the firm for the purpose of being invested on a particular mortgage. The recipient partner presently represented to the client that the money had been so invested, and paid him regularly what professed to be the interest on the mortgage, until the partner became bankrupt. It was then found out, twelve years after the transaction took place, that the recipient partner had misappropriated the money. It was argued in that case that it was no part of a solicitor's ordinary duty to receive money to lay out on mortgage for his clients. That may be so where no particular mortgage security is in contemplation. But in *Blair* v. *Bromley* the representation was that a particular security was in contemplation. That being so, to receive a client's money for the purpose of being invested on it was within the ordinary course of business, and the defaulting partner had power to undertake on behalf of the firm the transaction which he professedly undertook on their behalf; and, therefore, his unfortunate partner, though he had had no opportunity of knowing anything of what was being done, was necessarily held liable for the acts of the other no less than six years after the partnership had come to an end.

Vice-Chancellor Wood, in *Bourdillon* v. *Roche* (6 W. R. 618), considered at some length the position and duties of solicitors in this respect. The decision was that it is no part of a solicitor's business *quâ* solicitor to receive on behalf of his clients money coming to them upon payment of a mortgage debt, or to retain such money for the purpose of investment generally. For a specific investment, we have already seen, it is quite in the ordinary course of business so to retain it, as the money in fact merely passes through his hands, and he is not the custodian of it, unless during the limited period which precedes the re-investment of the fund. In *Bourdillon* v. *Roche*, where a mortgage had been paid off and the money was retained by the defendant's partner for re-investment, and misapplied by him, the bill, which sought to make the defendant liable as well as the estate of the partner who misapplied the money, was dismissed as against the defendant, upon the ground that there was no evidence that the money was received for the purpose of being invested on any specific security, and, therefore, that the transaction was not within the ordinary range of business of a solicitor.