

therefore, they might, as between themselves and their clients, have been ordered to bear these costs. That there was only a very imperfect analogy between the case of solicitor and client, and that of an ordinary agent and his principal, which is the kind of case to which *Collen v. Wright* (supra), applies. The solicitor retained to defend an action is not like an agent employed to sell goods. He is a legal expert and officer of the court, and he is bound to go on taking the necessary steps in the conduct of the defence until he has notice of the revocation or determination of his retainer. The solicitors here only did what was their duty, and did nothing either legally or morally wrong, in taking the steps which they took.

*Smout v. Ilbery* (supra), and *Salton v. New Beeston Cycle Co.* (1900), 1 Chy. 43, were relied on. The Court of Appeal, however, were of opinion that the particular nature of the agency was not very material (p. 228), that the true principle as deduced from the authorities rests not upon wrong or omission of right on the part of the agent, but upon an implied contract. Referring to the argument based upon the special character of the agency of solicitors, it was said by Swinfen Eady, J.: "It is, in my opinion, essential to the proper conduct of legal business that a solicitor should be held to warrant the authority which he claims of representing the client; if it were not so, no one would be safe in assuming that his opponent's solicitor was duly authorized in what he said or did, and it would be impossible to conduct legal business upon the footing now existing; and whatever the legal liability may be, the court, in exercising the authority which it possesses over its own officers, ought to proceed upon the footing that a solicitor assuming to act, in an action, for one of the parties to the action warrants his authority" (p. 234).

The result of this case would seem to be that *Smout v. Ilbery* is overruled. "The agent is liable whether he represents himself as having an authority which he has never possessed, or as having an authority which has determined without his knowledge, even though he had no means of finding it out."