

by F. W. Oliver to sell the stock, and who innocently acted under the power of attorney, and was allowed by the bank to transfer the stock to other persons. On the death of F. W. Oliver, the fraud was discovered, and an action was brought by the surviving trustee, E. Oliver, against the bank for restitution; to this action the appellant was made a third party upon a claim for indemnity by the bank. The action was tried before Kekewich, J., whose judgment declared that the transfers were invalid, and ordered the bank to place equivalent amounts of consols and bank stock in the name of E. Oliver in the bank books, and to pay him a sum equal to the dividends which had accrued since the transfers; and also ordered the appellant to indemnify the bank by similar transfers and payment to the bank: [1901] 1 Chy. 652.

This decision was affirmed by the Court of Appeal (1902 1 Chy. 610). An interesting criticism upon the decision of the Court of Appeal is to be found in an article in 18 L.Q. Rev. 364, the learned writer of which considers the judgments to be "wholly unwarranted by legal principles." The House of Lords unhesitatingly affirmed the decisions appealed from, and approved of *Collen v. Wright* and *Firbank's executors v. Humphrey*, holding that the principle in *Collen v. Wright* was not confined to cases where the transaction with the person representing himself to be an agent, results in a contract.

Lord Davey repeated Lord Bramwell's statement that it was a fallacy to treat *Collen v. Wright* as "an exception from the law relating to actions of deceit, that it really and truly was a separate and independent rule of law." And he added:—"As a separate and independent rule of law it is not confined to the bare case where the transaction is simply one of contract, but it extends to every transaction of business into which a third party is induced to enter by a representation that the person with whom he is doing business has the authority of some other person." (pp. 118, 119.) The House of Lords have thus definitely established the rule that where a person, by representing that he is authorized to act for a principal, induces another to enter into a transaction, and that assertion turns out to be untrue, to the injury of that other, he must be deemed to have *warranted* the truth of the assertion. It is now "unquestionable law that an innocent agent may be liable for the consequences of a fraud, which he had no knowledge of, or means of detecting."