

to transfer the £9,000 above referred to to the credit of the company, but the money was never actually paid over to the company, he also notified his co-trustees that the £9,000 had been invested on the security of a mortgage made by the plaintiff company. In 1895 the solicitor absconded and was adjudicated bankrupt, and it was then discovered that he had misappropriated the £9,000, and that the mortgages of the company which that £9,000 should have been used to discharge were still unpaid. The company brought the present action claiming a cancellation of the mortgage on the ground that the mortgage was delivered as an escrow, and not intended to become operative until the money purported to be secured thereby was actually advanced, and because the mortgagors never gave, and the mortgagees never got, the mortgage consideration. But the Court of Appeal (Lindley, M.R., and Ludlow and Chitty, L.J.J.) affirmed the judgment of Kekewich, J., dismissing the action, and although conceding that a deed may be validly delivered as an escrow to a party who is to take under it, and that evidence is admissible to show the character in which a solicitor acting for both parties received the deed, and the terms on which it was delivered to him, yet that the circumstances of this case precluded the deed from being regarded as delivered as an escrow, and that the mortgage was valid and binding on the company, because it was sealed, and delivered to the solicitor as a perfect deed, and was immediately operative, and because the company had by its conduct put it into the power of the solicitor, as their manager and banker, to represent to his co-mortgagees that the trust money was invested on the security of the company's property, and the company was therefore now disentitled in equity to dispute the validity of the mortgage.

DISCOVERY—PENALTY, LIABILITY TO—PRIVILEGE.

In *Derby v. Derbyshire* (1897) A. C. 550, the House of Lords (Lords Herschell, Watson, Shand and Davey), have affirmed the judgment of the Court of Appeal in *Re County Council of Derbyshire v. Derby* (1896) 2 Q. B. 297, (noted ante vol. 32, p. 669). The proceedings in question were taken