

their managing clerk, who conducted the conveyancing business of the firm without supervision. Acting as the representative of the firm, he induced her to give him instructions to sell the cottages, and call in the mortgage money, and for that purpose to give him the deeds (for which he gave a receipt in the firm's name), and to sign two documents, which were neither read over nor explained to her, and which she believed it was necessary to sign in order to effect the sale of the cottages. These documents were in fact transfers to the clerk of the cottages and mortgage, and by means of them he dishonestly disposed of the property for his own benefit. The Court of Appeal thought that the clerk was not acting within the scope of his authority and that as his master got no benefit from the fraud, therefore that the defendant was not liable; but the House of Lords holds that he was acting within the scope of his authority, and his master was consequently liable for his fraud, which seems a very reasonable and just conclusion. The attempt to escape liability on the ground that the principal had derived no benefit from the fraud was based on *Barwick v. English Joint Stock Bank*, L.R. 2 Ex. 25, but their Lordships hold that case does not lay down any such proposition as, that in order to make a master liable for the act of his servant the master must have profited by it. The only difference which arises where the master gets the benefit, is that he may then be said to have adopted the act. As Lord Macnaghten observes, it would have been absolutely shocking if the master were not held liable in such circumstances.

MORTGAGE—PRIORITY—MORTGAGE TO BANK TO SECURE CURRENT
ACCOUNT—SUBSEQUENT MORTGAGE—NOTICE—APPROPRIATION
OF PAYMENTS—RULE IN CLAYTON'S CASE.

Deely v. Lloyds Bank (1912) A.C. 756. This was an appeal from the Court of Appeal (1910) 1 Ch. 648 (noted ante vol. 46, p. 449). The question involved is comparatively simple. One Glaze in 1893 mortgaged land to a bank to secure his current account, limited to £2,500. In 1895 he gave a second mortgage on the property to secure £3,500 to his sister Mrs. Deely. Frank Deely, her husband, acted as solicitor for Glaze in the transactions which led to the litigation. Notice of the Deely mortgage was given to the bank, but they continued the account as an unbroken account, instead of opening a fresh account. Glaze from time to time made payments into his account, which, if applied according to the rule in Clayton's case, would have