

BANKERS—DEPOSIT OF SECURITIES BY BROKER—FOREIGN BONDS PAYABLE TO BEARER—NEGOTIABLE SECURITIES—MEASURE OF DAMAGES.

*Simmons v. London Joint Stock Bank* (1891), 1 Ch. 270, is a very important decision on a question of mercantile law. The plaintiffs had deposited with a broker named Delmar a number of bonds and certificates of shares, etc., which the Court of Appeal assumed in the defendants' favor were negotiable securities. Some of these securities Delmar, without authority, sold, and others of a like character were bought by him and substituted in their place. All these bonds, certificates, etc., including the substituted ones, were entered in Delmar's books as belonging to the plaintiffs, the particular bonds or certificates being indicated therein by their numbers, or by other sufficient identification. Delmar, in order to secure an advance to himself, deposited the plaintiffs' bonds, etc., together with the securities of other customers, with the defendants. The defendants subsequently sold some of the plaintiffs' securities in part discharge of Delmar's debt to them. The present actions were brought to compel the defendants to deliver up such of the plaintiffs' securities as they still retained, and to account for the proceeds of those which they had sold. On the trial it appeared from the evidence that the bank officials assumed that the securities were not the property of Delmar individually, but of his customers; that brokers were accustomed to borrow money for their clients on the securities in their hands, and that they did this, not by borrowing on the securities of each client separately, but by borrowing on the securities of divers customers which they held, *en bloc*; and that the bank did not actually know that any one else was interested in the securities deposited by Delmar, and never asked any questions, assuming that he was acting within his authority, the defendants' manager admitting that he considered no useful purpose would be answered by making inquiry, because the honest customer would be offended, and the fraudulent one would give a satisfactory though false reply. Under these circumstances, Kekewich, J., held that the plaintiffs were entitled to the relief claimed; and on the question of damages, he held that the plaintiffs were not entitled to the value of the bonds which had been sold, at the highest market price which they had reached while in the defendants' hands, but only to what had been actually realized for them, with interest from the date of sale at four per cent. The plaintiffs were also held entitled to all dividends and income on the bonds, etc., sold or unsold, which the defendants had received. The Court of Appeal (Lindley, Bowen and Fry, L.JJ.) affirmed the decision of Kekewich, J., on the main question, no appeal being had on the question of damages. Whether the securities in question were in fact negotiable securities in the technical sense seems doubtful, and the judgment of the Court of Appeal points out that though an instrument may be framed so as to pass the benefit of the contract thereby evidenced by delivery to bearer, yet that alone does not constitute it "a negotiable instrument" in the technical sense, so that a *bond fide* transferee, without notice, would take any better title than his transferor had; but for the purpose of the decision the point was assumed in the defendants' favor, that the instruments were in fact negotiable securities. The assumption that a broker may raise money on deposit of his customers' securities in his