London and Northern Bank vs. Jones, W. N. (1899), p. 230.

BANKING ACCOUNT, AND APPROPRIATION OF PAYMENTS.—Certain stockholders had two accounts with their bankers—one an ordinary account current, the other a loan account. On January 11th the brokers paid to the credit of their current account a sum of £790, which they had received from a customer named Parker for investment. Two days later the brokers were declared defaulters on the Stock Exchange, and in eleven days more were adjudicated bankrupt. A few days before the bankruptcy the bankers closed the current account and transferred its balance of £1,362 to a new account opened in the brokers' name in a book of the bank devoted to bankruptcies and liquidations. This balance was in part made up by the 790 pounds paid by Parker for investment. Some time before this the loan account showed that the brokers owed the bank £7,500 for advances, and, as security for this, the bank held certain securities which belonged in fact, not to the brokers, but to clients of theirs. The bankers had before this proceeded to realize upon the securities, and as sums came in they were credited in the liquidation account, and from time to time for liquidation account was debited with portions of the debt of £7,500 and interest until the loan account was squared and the bank paid in full. It appeared from the liquidation account that no part of the balance of £1,362 transferred from the current account was applied in reduction of the loan account, and that the proceeds of the sale of the securities were specifically appropriated in discharge of the loan account, leaving a balance in the hands of the bankers.

A dispute then arose between the clients whose securities had been sold and Mr. Parker whose £790 had not been invested over the disposition of the fund. The clients claimed that the legal principle known as the rule in Clayton's Case should apply, namely, that in the absence of express declaration the presumption arises of priority of receipt and payment. This would have made the £790 of Parker go first in extinguishment of the bank's claim, and have left the balance for the clients. Parker naturally opposed this, and claimed that the rule did not apply, and that he should be paid in full. The deliverance of Mr. Justice Byrne is in effect as follows:—

It is conceded that the bankers might, had they been so minded, have applied the balance transferred from current account in part discharge of the amount due to them on loan account, but they did not do so. They were entitled to appropriate the proceeds of the sale of the securties as they did in discharge of the loan account. It is to be noted that interest is charged in the liquidation account on the amount due in the loan account, a part of which would not have been chargeable had the balance of current account been carried into the loan account.

But it is argued for the clients whose securities were wrongfully deposited in this bank by the brokers that it does not matter as between rival claimants to the funds what entries the bankers make in their books, or what they in fact did, by way of appropriation, that as between banker and customer all the accounts make out one account, and that the rule in Clayton's case ought to be treated as applicable, not only as between the bankers and other persons, but as between third parties claiming the balance. The rule in Clayton's case applies when there is one unbroken account, and it applies as between claimants in an appropriate case.

Suppose the bankers had not made any appropriation of the moneys received from the sale of the securities, but had simply made our account by means of transfers to the liquidation account, and had added the amount received from the sale of the securities, entering it on the debit side without distinguishing, it may well be that the rule would have applied; but I have, in what was actually done, clear evidence that they appropriated, as they were entitled to do, specific receipt to payments of a specific balance due from their customer. I think that this excludes the application of the rule in Clayton's case. I think that Mr. Parker has established his claim. Mutton vs. Peat (1892), 2 Chy. 556.

STOCK EXCHANGE NOTES.

Wednesday, p.m., December 13th, 1899.

The steadiness of the local market in the face of the heavy decline in New York during the past two days, the unfavorable monetary conditions and the disquieting news from the seat of war in South Africa has been quite remarkable. It is again evident that stocks are in strong hands, and that with more favorable conditions a decided bull market might be looked for.

There seems little doubt that the breaks in New York have been directly influenced by the reverses which have been sustained by the British arms, and it is worthy of note that the New York market has been much more seriously affected than the London market.

This anomaly is no doubt due to the fear which has been imparted in New York that a further tightening of money in London as a natural consequence of the reverses would possibly lead to gold withdrawal from the United States.

The monetary situation has not improved to any extent during the week, and, as the private discount rate in London is now 6 per cent., it is quite possible that the Bank of England rate may be advanced still further before the end of the year. The fluctuations of money in New York during the week have been great; on Monday last, as high as 15 per cent. was paid, while on the afternoon of the same day the rate declined to 3 per cent. During yesterday and to-day it has been steady at 6 per cent. to 7 per cent., but the general conditions do not point to greater ease for three or four weeks to come.

Money in Montreal although not plentiful is to be had at 6 per cent. The Canadian Banks have been