

the account. At the same time Clark, in the name of the unlimited company, signed a hypothecation of the warehouse receipts, expressed to be in consideration of the bank having discounted the note of \$6,000 and as security for its payment. The defendants' manager, Mr. Young, says that at the time Clark agreed that he would bring in further warehouse receipts sufficient to cover the debt; also, that the loan would not have been made if security had not been given or promised; but there is no evidence that the 99 cases, which had been warehoused on 20th and 21st October were then or afterwards specifically referred to by Clark.

After placing the \$6,000 to the credit of the account, there remained a debit balance of \$4,258.01, in addition to the current \$1,700 note. This balance was thereafter gradually reduced, and at the time of the liquidation there was only outstanding the \$6,000 note, a \$2,000 note discounted on the 27th October, and an open debit balance of less than \$200.

No attempt was made to draw out the \$6,000, and the evidence leaves it uncertain whether the company would have been allowed to do so. The most I can say is that there was no express prohibition against doing so, nor was any attempt made to do so.

After the liquidation the defendant realized on the whole 500 cases, having given an indemnity to the warehouse company in respect to the 99 cases.

The following general questions arise for determination:—

(1) Had the plaintiff company any title to the 500 cases when warehoused? If the answer to this is no, of course the action fails.

(2) Assuming that they were the property of the plaintiff company, who is entitled to the proceeds of the 401 cases covered by the warehouse receipts?

(3) Who is entitled to the proceeds of the 99 cases?

As to the first question, I think the effect of the agreement between Mrs. Clark and the plaintiff company was, as against her, when it was adopted by the shareholders on 20th October, to vest in the company all her business, assets, and the right to continue the business in her trade name.

While the method adopted of continuing all the business in the name of the old company for the benefit of the