

a person for goods "in his actual, visible and continued possession, as bailee thereof, in good faith, and not as of his own property."

The learned judge quotes with approval the opinion expressed by Mr. Falconbridge, that, "if the bank seeks to obtain a priority over other creditors by virtue of the Act, and the general law confers no priority, it is necessary for the bank, as against the creditors of the transferor, to shew that the transaction was in precise accordance with the provisions of the Act."

At the same time, and as evidence of a well-marked legislative intent, it is held in *La Banque Nationale v. Royer*, that regard is to be had to section 88, which not only clearly authorizes the taking of security from wholesale purchasers, or dealers, in a very large number of classes of commodities, in fact in most of the commodities which make up the wholesale trade, upon the security of goods belonging to them, but also expressly declares that the bank's rights, in virtue of the "security paper," are the same as if acquired by virtue of a warehouse receipt.

This being so, the element of exclusive physical possession has come to be of less significance, though it would, no doubt, continue to be an important element to be considered in cases where fraud was an issue, or where, for example, the expedient had been resorted to, to enable the bank to receive payment of a past-due debt. Per Cross, J., in *La Banque Nationale v. Royer*, 20 Que. K.B. 341.

The court held in that case, that, although the "warehouseman" was in the service of the insolvents and although the lease by them to him of two floors of their storehouse was made solely for the purpose of constituting him a warehouseman and of bringing the transaction with the bank into literal compliance with the Bank Act, it could not be said that the clerk was not in "actual, visible and continued possession," as bailee "in good faith." He, in fact, did exercise the control of a possessor. All consideration of fraud being eliminated, it was