goods, and that the assignment to the Hochelaga Bank was ineffectual, inasmuch as it could not convey goods the title to which had already passed to the Merchants Bank.

As there is no question of preference under any insolvent Act to be considered, this case resolves itself into a very nice point of the respective rights of two assignees under the common law. Had the Merchants Bank taken possession on the morning of the 21st June, before Allen set apart goods for the Hochelaga Bank, there could be no doubt that they would have thereby made good their title beyond question ; the defect up to that time was this, that while Allen had appropriated the substituted goods to them by the marking, they had not accepted the appropriation, and the act of taking possession would have been an acceptance. Whether at Common Law such an appropriation without any privity on the part of the assignee of the property is good, is, we are advised, an extremely doubtful question, but the fact that possession followed would have much weight. The learned judge took the view that the Merchants Bank had a good title to the substituted goods, quoting in support of the principle involved *C. W. R. Co.* v. *Hodgson*, 44 U.C.R., and the *Bank of Hamilton* v. *Noye* above referred to, and gave judgment in their favor.

There are certain other points in the judgment of interest to bankers. Reference is made to the description of the goods in the assignments as probably not in conformity with the form in schedule "C." This is a point on which it is clear that much more definiteness than is customary among banks is desirable, if not absolutely necessary.

On another point the learned judge says:

"I agree with the contention of the plaintiff's counsel that in lending money to the classes of persons and upon the security of the goods mentioned in Sec. 74, the bank is not limited to taking security in the form set out in the schedule, but may take it in any form known to the law. The clause as to the form is permissive only, and cannot, I think, control the general enabling powers contained in the earlier portions of the section."

He refers to Sec. 64, prohibiting loans on security except as authorized by the Act, as affecting the substance and not the form of transactions under Sec. 74.