holder in good faith that the signers were not warehousemen. The dissent turned entirely on a question of pleading, and I do not understand there was any difference among the members of the Court as to the point now in question. Now it appears that the respondent is exactly in the position of the person who signed the receipt. She is the *cessionnaire* of the person who signed it, and her position of creditor is merged in that of *cessionnaire*. On the other point we must have recourse to the Statute, (34 Vic., cap. 5, sect. 48), and it seems to put the owner of the goods giving a warehouse receipt in precisely the same position as any other warehouseman so doing.

We then come to the so-called prescription. The whole question turns on the effect to be given to Sect. 50. "No cereal grains or goods, wares or merchandize shall be held in pledge by the Bank for a period exceeding six months, (except by consent of the person pledging the same)," (I presume in writing) etc. It is clearly intended that the Bank shall sell, after notice of ten days, within six months from the pledging. But what is the penalty of the bank allowing the six months to elapse? Respondent contends that it is the forfeiture of the right of pledge. On the other side it is contended that the bank can then be obliged to sell. I am at a loss to conceive on what principle it can be contended that the bank shall forfeit its pledge by not selling within the six months. It is vain to seek any guide from the history of the enactment or from its principle. There are evident reasons why a bank should not be allowed to hold the article pledged until it is reimbursed its advances, but I cannot see any reason for compelling the bank to sell perhaps to its own loss and to the detriment of its customer and of his creditors.

The question is only important in this case if the consent must be in writing. If there be no need of a writing, Robillard's acquiescence would necessarily be presumed. But it seems strange to pretend that the failure to make a private writing of this sort should operate the loss of the pledge. It seems hardly necessary to say that if a written consent were necessary the consent of the 28th May came too late. It was too late to keep alive the warehouse receipt, and it could not be a new receipt, for then it would be for past advances.

I am, therefore, of opinion that the receipt is not *prescribed*.

It does not appear what respondent could have validly opposed to a claim in the name of the Mechanics Bank, so it is unnecessary to discuss the question as to how far the respondent could set up any defence she might have to an action by the Mechanics Bank. I fancy, however, it will be admitted that she could set up any equitable reason for a discharge.

The judgment is as follows:—

"The Court, etc.

"Considering that by the warehouse receipts given by Ulysse J. Robillard, an insolvent, and which are mentioned in the pleadings in this cause, the said Ulysse J. Robillard has acknowledged himself to be a warehouseman, within the terms of the Banking Act;

"And considering that it has not been pleaded nor proved that he was not such a warehouseman;

"And considering that the Mechanics Bank acquired, under the said warehouse receipts, a pledge on the barley and the plaster therein mentioned for the payment of the notes thereby secured, which pledge was duly transferred with the said notes by the said Mechanics Bank to the Appellants;

"And considering that the prescription invoked by the Respondent has been interrupted as well by the agreement of the 15th April, 1879, as by the letter of the 28th May, 1879;

"And considering that under the circumstances the Appellants were entitled to the preferences, claimed in and by their claim against the estate of the insolvent Ulysse J. Robillard;

"And considering that there is error in the judgment rendered by the Superior Court, sitting at Montreal on the 31st January, 1881, doth annul and reverse the said judgment:

"And proceeding to render the judgment which the said Superior Court ought to have rendered, doth maintain the claim of the Appellants for the sum of $3,715.96, to wit: 1st, the sum of $3,582.52, balance due on a note of the said U. J. Robillard, dated at Beauharnois the 11th of November, 1878, for a sum of $5,500, payable in four months from date, on account of which said sum of $3,582.52 the said Appellants are entitled to retain the sum of $2,824.22 proceeds of the 5,592½ bushels of barley covered by the warehouse receipt of the said U. J. Robillard, dated the 11th November, 1878, the said Appellants ranking as an ordinary creditor for the balance $758.30; and, 2nd, the sum of $133.44, balance due on $600, amount of another note of said U. J. Robillard, dated at Beauharnois, the 5th of March, 1879, payable in three months from date, for which said sum of $133.44 the said Appellants hold the said warehouse receipt of the insolvent U. J. Robillard for 600 barrels of plaster, dated the 5th of March, 1879, and on payment of said sum of $133.44 the said Appellants shall release said plaster, the whole in accordance with the admissions filed by the parties in the Court below, dated the 11th of November, 1880;

"And this Court doth condemn the said Respondent to pay to the Appellants the costs incurred as well in the Court below as on the present Appeal."

Judgment reversed.

Maclaren & Leet for Appellants.

Doutre & Joseph for Respondent.