payment may be made to a stranger, without even the debtor's knowledge.

The Court attaches no importance to the word "security" being used in the books of account. If learned counsel can differ as to whether it was a security or not, the point may well have perplexed a commercial clerk. It was contended also that the plea should not have been allowed to be amended. We all think otherwise. The amendment appears to be a mere condensation of the first; and if it had remained as it was, it could not have affected the result of the case. The point of non-consent is also without foundation. If this lady was asked to pay her husband's debt, she had power to do so, or to refuse. The law permits it, and there is nothing whatever in the evidence as to the want of her free consent. Under Art. 989, a contract is none the less valid because the consideration is not expressed, or is incorrectly expressed in the writing which is the evidence of it. These are all the points in the case, and our judgment is to confirm with costs.

Judgment confirmed.

L. H. Davidson for the plaintiff.
Kerr & Carter for the defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, November 22, 1881.

DORION, C. J., RAMSAY, TESSIER, CROSS and BABY, JJ.

THE MOLSONS BANK (claimants on the insolvent estate of U. J. Robillard), Appellant, and DAME VIRGINIE LANAUD, (creditor and *cessionnaire*), Respondent.

Warehouseman—34 *Vict.*, *c.* 5, (*Can.*)

By the Statute 34 *Vict.*, *c.* 5, *s.* 48, *the owner of goods giving a warehouse receipt as warehouseman is put in the same position as any other warehouseman so doing.*

Under Sect. 50, *the bank does not forfeit its right of pledge by not selling the goods within six months.*

RAMSAY, J. This case comes up on the contestation of appellants' claim against the estate of an insolvent. The Bank, appellant, held two warehouse receipts granted by the insolvent to the Mechanics Bank, and transferred to appellants. The validity of one of these receipts is alone contested, being No. 22 of the record. It bears date 11 Nov. 1878.

The respondent, who is the wife of the insolvent, was not only a creditor of his estate, she was also *cessionnaire* of his estate under the insolvency and undertook to pay 25 per cent on the unprivileged debts. Her contestation sets up that the amount due the bank is not $5,500 but the smaller sum of $3,538.20, by reason of payments made on account, and it is admitted that this is correct. She also says that she is only obliged to pay 25 per cent of this balance of $3,538.20 or $884.55, the said warehouse receipt being null, prescribed and extinguished more than six months before the insolvency. She also says that the transfer to appellants from the Mechanics Bank was subsequent to the insolvency of the latter, and that she has a right to set up against the appellant what she could have set up against the Mechanics Bank.

On these issues the case was heard, there being no difference as to the facts.

The Superior Court dismissed the claim, on the ground that it appeared that the receipt was given by the insolvent, and that he was not a warehouseman, and that he could not give such a receipt and keep possession of the things.

It is quite evident by the facts relied on by both parties that the insolvent gave the warehouse receipt of goods in his own warehouse. It nowhere appears whether the insolvent was a warehouseman or not. There was no issue raised on this point, and the respondent admits by part of her plea that the receipt unless prescribed is a warehouse receipt. The particular wording of the judgment gives rise to some difficulty. It says: "*le dit failli* n'avait pas droit, n'étant pas une des personnes mentionnées dans le dit acte, de donner aucun reçu d'emmagasinage, tout en gardant la possession des marchandises." If it is intended to say that not being one of the parties mentioned in the act, the insolvent could not therefore give a receipt and keep possession of the goods, I think that the judgment goes too far, for it purports to decide a fact which is not in issue; but if it is intended to decide that no one can give a warehouse receipt, as warehouseman of his goods, then we have a new question and one of some moment.

Before proceeding to examine this second view I may observe that in the case of *Robertson & Lajoie*, this court held that the parties signing the receipt could not pretend against a