

for an assignment of the debt and the securities held by the bank in connection with it. Soon after this, he, through his co-defendant Biehm, acting on his behalf, took possession of the plaintiffs' factory and goods, and proceeded to carry on the business, claiming a right to do so by virtue of the securities so assigned to him.

For present purposes the question of the manner by which possession was obtained, beyond the mere mention that it was against the will of the plaintiffs, and the fact of efforts having been made to bring about a settlement, is not material.

The defendant Krug has continued in possession, and has to some extent at least been carrying on the business; he has also made sales of goods of the plaintiffs. The substantial ground of the application is that Krug had no right or power to take possession; that, even if the bank possessed such power, it was not transferable to Krug. Section 88 extends, in favour of banks, in cases coming within its purview, the right to take the security therein specified without requiring registration, which in certain other cases is necessary to give priority over subsequent purchasers, transferees, mortgagees, etc.; and, being a statutory extension of the powers otherwise possessed by banks, the benefit of such enactment should not be extended beyond what the language of the statute in its strictest interpretation confers. The right of a bank, therefore, to assign these securities which it is so privileged to accept must be only such as sec. 88 expressly gives. The rights and powers given by this section must not be confused with the rights arising under other sections of the Act which deal with securities of a different character, and in respect to which the Act specifically gives the bank powers not expressly given in the case of securities taken under sec. 88, and not necessarily incident to the possession of these securities.

The position of the bank holding security under sec. 88 was fully considered by the learned Chief Justice of the King's Bench in *Re Victor Varnish Co.*, 16 O.L.R. 338, in an appeal from the judgment of the Master in Ordinary. It was there held that this security is not assignable by the bank so as to transfer the special lien or security to a third person, and that a guarantor to a bank which holds such a security for the debt guaranteed is not subrogated to the right of the bank in the security on payment of the debt by him.

It was urged by counsel for the defendants that that case has no application here. The facts in the two cases are so nearly identical that I see no such ground of distinction as to justify me in