of the same or some other kind substituted therefor, can the bank hold the substituted goods as against a subsequent *bona fide* purchaser or mortgagee thereof without notice of the claim of the bank? And can a bank acquire and hold such a security for a pre-existing debt? If Mr. Justice Killam's decision be correct, both these questions must be answered in the affirmative.

There seems to be no longer any doubt that sections 73 and 74 of the Act, which empower banks to acquire title to goods, wares, and merchandise by taking warehouse receipts, bills of lading, or assignments in the form of Schedule C, without registration under any Provincial enactments, are constitutional: *Merchants Bank of Canada* v. *Smith*, 8 S.C.R. 512; *Tennant* v. *Union Bank of Canada*, [1894] A.C. 31. But one would have supposed that such title would be confined to the identical goods, wares, and merchandise described in the documents, except that as against the warehouseman, carrier, or owner who should himself fraudulently or otherwise substitute other goods of a like kind for the original goods, an estoppel would, no doubt, arise, preventing him from taking advantage of his own wrong. It has been held that a warehouse receipt ordinarily does not cover goods substituted for those originally warehoused: *Lado* v. *Morgan*, 23 U.C.C.P. 525 (1874), though there are some exceptions caused by the usages of trade. (See "Gormully on Banks and Banking," 2nd edition, pp. 100 and 101, and cases there cited.)

The bank having a perfect legal title to the original goods could follow and take them from any subsequent purchaser or mortgagee even without notice, and, as to the substituted goods, they would have a good title as against their customer, because he could not be heard to dispute it. If, however, the decision in the case under review can be supported, would not the bank have a legal title against all the world both to the original and the substituted goods? which seems a rather startling result.

In the judgment the following passages occur: "Yet when Allen set aside and appropriated the (substituted) bacon to the plaintiff (bank), and the bank's officers accepted the appropriation, it appears to me that, at common law, as between Allen and the bank, the property passed to the bank. . . . The plaintiff bank was certainly a transferee for value in good faith, and without notice of the claim of the other bank."

At that time, according to the findings of fact, there was not