obligations of which he was creditor, *i.e* :—1st, Obligation, under which there was a balance due of $400 ; the second, for a sum of $600, and the third obligation (for $500), of which the registration is posterior to that of the Society's hypothec, $500; total $1,500. Thus by this transfer the Society became proprietor of two obligations (the first and second) on which it had priority of hypothec. Thus, also, by the transfer from the Society to the plaintiff, which is also a new mortgage from the defendant (7th July, 1876), the Society assigned to the plaintiff the $1,500 which Bonacina owed them, under the transfer from Huot, *i.e.*, the two first obligations registered before the Society's was, but on which the Society had been granted by Huot, before he transferred, a priority of hypothec for $1,000 ; and the third obligation from Huot to the Society, which was posterior ($500), making $1,500.

There was no mention in this deed of transfer of priority of hypothec, nor of the obligation of the defendant for $5,185, which took rank before the $500 one. There is not, I say, in the deed one word on the subject. By this same deed of the 7th July, 1876, the defendant Bonacina, who owed already the $1,500 that had just been transferred, obliges himself to pay the plaintiff another $1,500, and hypothecates the same lot, No. 942, already hypothecated for all the three sums above mentioned. The Society, a principal party to this deed, makes no reservation either of its right of priority nor yet of its hypothec for $5,185 which came before that for $500, by previous registration.

Now as to the contestation raised by the Society, it is evidently without foundation as against the plaintiff's collocation for $1,000. It is made up of the two sums of $400 and $600. The first of these sums was the balance under the obligation of defer dant to Gustave Drolet of the 4th February, 1871. The second was the defendant's obligation to Huot of the 11th of November, 1872, and both duly transferred to plaintiff, and registered anterior to Huot's grant of priority to the Society. The Prothonotary has disregarded the clause of priority given by Huot to the Society over these two anterior mortgages which he transferred to them. This is what they complain of in their contestation of item 11 in favor of plaintiff. But the Prothonotary was right, because the Society, having subsequently acquired from Huot on the 11th February, 1876, the two obligations on which it had already obtained a right of priority, the qualities of privileged and hypothecary creditor, and of transferee of the mortgages subject to priority became united in the Society. There was *confusion;* and the priority was extinguished, because there was no further reason for it. There was also a further reason, even if the priority had not been extinct by confusion, and that reason was that the Society in transferring these obligations ought to have reserved the benefit of their priority in their transfer to the plaintiff, of the 7th July, 1876. Instead of declaring that the two obligations transferred to plaintiff were subject to their right of priority, they keep perfectly silent on the subject, and must either have felt that their priority was extinguished by the confusion, or have meant to deceive,—for after all if their priority exists, the plaintiff has been completely duped. But it is said the plaintiff's agent (Mr. Hutchinson) could have seen at the Registry Office that this priority existed. Yes, he could, and he could also have thought it was extinct by confusion, or that the Society did not insist on it since it made no reservation of it. Again, not only did they not reserve any right of priority, but they may have intended that the property which was mortgaged to them should be pledged to the plaintiff, for the transfer of 7th July, 1876, is more than a transfer ; it is a new mortgage of the same property effected in the presence of the Society's Secretary. According to Art. 2048 C.C., "The creditor, who expressly or tacitly consents to the hypothecation in favor of another of the immoveable hypothecated to himself is deemed to have ceded to the latter his preference." Now that is exactly what happened here. Therefore the collocation of plaintiff by item 11 for the two sums of $400 and $600 is right, and the society's contestation of it is dismissed.

Now, as regards the plaintiff's contestation of No. 13, by which the society's collocation for the sum of $1,667.12, on account of $5,185.12, amount of defendant's obligation of the 4th June, 1873, is contested. This was an intermediate obligation never transferred at all by the Society to the plaintiff, and registered before the third obligation of Bonacina to Huot ($500) transferred to plaintiff ; the Prothonotary was right again, probably, as a matter of practice, under Art. 727 C. P., in collocating the parties according to their apparent rights ; but this does not prevent the plaintiff from asking for the application of the law under Art. 2048, and saying, as I think she has a right to say, that this society, in dealing with her, led her to believe they had no priority. Therefore I maintain the plaintiff's contestation of that item, and order a new report of distribution in that respect, in conformity with the law by which the society renounced their priority, with costs in both contestations against the loser.

Trenholme & Taylor for plaintiff.

Geoffrion & Co. for Building Society.