

gistered, and on the 12th June, 1875, Napoleon Benoit sold to Martin Lefebvre and appointed Jules Trudeau to receive part of the *prix de vente*. Trudeau ought to have noticed the Society's hypothec registered seven weeks before. At this date the Society had not made actual payments of money. Only on the 28th August, 1875, was Benoit's acquisition deed registered, and then the Society made actual advances to defendant by authority of Benoit. The law of the time of Benoit's acquisition and of the mortgage to the Society, and of his sale to the defendant Lefebvre, was C.C. 2098. It read to make "without effect" his mortgage and sale so long as his (Benoit's) acquisition deed remained unregistered.

On the 28th August, after registration was made, what followed? That these deeds attained force and effect. Then we see the mortgage to the contestants first, and the sale to defendant, under which Trudeau has been collocated, second in date, the two equally well and simultaneously registered. Now the question is, who is to rank first, and the judgment of distribution has preferred Trudeau. The answer depends upon another question, viz: what is the nature of the Society's claim? Has it hypothec from the date of the obligation to it by Benoit, or only from the time it advanced money under the credit it opened to Benoit by the same obligation deed?

The obligation reads as for \$2,600 had and received on a loan for ten years, repayable in monthly instalments. It is in the form of the obligations usually dictated by the Lower Canada Building Societies. The Society, it is proved, paid out no money until the 28th August, 1875. It is contended against it that its mortgage is to date from that day—the day of advance made—and not from the 15th April when the mortgage was granted. Pothier seems to favor Trudeau; but against him are Paul Pont, *Priv. & Hyp.*, Vol. 2, p. 719; also, Massé, *Dr. Com.*, Vol. 4, No. 2854 (2nd Ed.); and considering our system of hypothecs and registration, I side with these last; and so the collocation in favor of Trudeau is set aside as prayed, and the Society, it is held, shall *primer* Trudeau; costs against Trudeau.

A. Mathieu, for Trudeau.

Lacoste & Co., for La Société de Construction.

MONTREAL, Oct. 16, 1880.

In re PELOQUIN, insolvent, LA SOCIÉTÉ DE CONSTRUCTION ST. JACQUES et al., creditors collocated, and LA CORPORATION DE LA VILLE DE TROIS-RIVIÈRES, contesting.

Hypothec, Unregistered, under special enactment.

The hypothec of the Corporation of Three Rivers, for monies advanced under the authority of 20 Vict., c. 130, does not require registration in order to preserve its privilege.

The Corporation of the City of Three Rivers contested the collocation in favor of the Société de Construction St. Jacques, claiming that the City of Three Rivers had a privileged claim which took precedence of that of the Building Society. This claim was for money advanced to the insolvent, the proceeds of whose immovables were distributed by the dividend sheet prepared by the assignee. The loan of the Building Society to the insolvent was made under the authority of 20 Vict., c. 130, for the purpose of enabling the borrower to rebuild premises destroyed by the great fire of 15th Nov. 1856, and the Statute gave for such advance a privilege over all others without the necessity of registration.

MACKAY, J., held that the contestation must be maintained, the judgment being as follows:—

"Considering that before the coming into force of the Civil Code, the claim of Three Rivers against the bankrupt's lands was perfect and with privilege, and without registration whatever being requisite to add or give force to it;

"Considering that Three Rivers had a vested right to such privileged claim against the bankrupt's lands, proceeds of sale of which are now before the Court in Insolvency;

"Considering that since the Civil Code as before, Three Rivers has such vested right, and must be held to *primer* the Société de Construction St. Jacques, as contended for in this case; that re-registration could not be asked against Three Rivers, to have to be performed by it under pain of losing its privilege or having to go after the Société de Construction St. Jacques; that the exception or saving clause of article 2613 C. C. saves Three Rivers; that 2173 C. C. has in view only real rights in respect of which registration was in time before required;