

of the C. of P., which says that even in that case the right of action must be shown "by establishing by proof against the creditor, the want of probable cause."

On the whole case I am of opinion that the defendant acted very carelessly—perhaps very confidently—in believing the plaintiff without exacting a registrar's certificate. But this would not impair his criminal recourse. On the contrary, though it may be said with truth that he was incautious, and though in many cases under civil law his want of caution might be fatal to his recourse, that is not so in criminal law which is mainly directed to the protection of those who too easily confide, and get too readily taken in. I see, too, that when he had once begun proceedings the defendant went too far in his efforts to get the plaintiff punished, but all that will not give the plaintiff a right of action. Action dismissed, with costs.

Trudel & Co. for the plaintiff.
Ritchie & Ritchie for the defendant.

SUPERIOR COURT.

MONTREAL, June 30, 1882.

Before JOHNSON, J.

MCCALL v. BONACINA, PLFF. collocated, & LA SOCIÉTÉ DE CONSTRUCTION JACQUES CARTIER, contesting.

Order of hypothec—C.C. 2048.

PER CURIAM. In this case there are two contestations. The plaintiff's collocation being contested by the building society, and the society's collocation being contested by plaintiff.

We will take first the contestation raised by the building society to the plaintiff's collocation, being number eleven of the report, though the argument in the one really applies to both. The Registrar's certificate discloses: 1st. An obligation of the 4th February, 1871, by Bonacina to Gustave Drolet for \$800 and interest, registered the same day. The registration was renewed 9th December, 1871. By an *acte* of transfer of the 11th December, 1871, registered the 13th of the same month, this obligation, then reduced to \$400, was transferred to Lucien Huot; and on the 11th February, 1876, Huot transferred this balance of \$400 to the building society (contestant), they afterwards assigning it to the plaintiff by deed of the 7th July, 1876. 2nd. An obligation by Bonacina to Huot for

\$600, which Huot assigned on 11th February, 1876, to the building society, they transferring the same to the plaintiff on the 7th July, 1876.

3. Obligation by Bonacina to the Building Society for \$5,185.12, in which Huot, who was creditor of the two first obligations, intervened and gave priority to the Society. 4. Obligation by Bonacina to Lucien Huot for \$500, by the latter transferred on the 11th February, 1876, to the Building Society, who on the 7th July, 1876, transferred to plaintiff. 5. The transfer by Huot to the Building Society, first, of the balance of \$400 (first obligation); secondly, of \$600 (under the second obligation); and, thirdly, \$500 (under the obligation fourthly above mentioned by Bonacina to Huot), in all \$1,500. 6. Transfer 7th July, 1876, by the Building Society to plaintiff of Bonacina's debt of the \$400, and \$600 due by Bonacina, and of the \$500 transferred to the society by Huot. Bonacina intervened in this transfer, and became debtor of the plaintiff for another sum of \$1,500 with interest at 8 per cent., and for security Bonacina hypothecated lot No. 942. The certificate further mentions two obligations of Bonacina in favor of the Building Society for \$4,040.

It results from these entries that the Building Society here contesting was, on the 7th of July, 1876, creditor as the transferee or *cessionnaire* of Huot for—

1. The balance of the first obligation.....	\$400
2. The amount of the second obligation.....	600
3. The amount of the third obligation.....	500

Total amount of obligations transferred by Huot to the Society..... \$1,500

Besides this the Building Society was direct creditor on its own account of the defendant Bonacina by his obligation in the Society's favor which in order of hypothec preceded the third mortgage to Huot (that of \$500), and again of two other obligations forming together \$4,040, but they go for nothing in the present case. It further results from these entries in the certificate of the Registrar that the two first obligations from Bonacina to Huot were subjected by the latter to a preference or priority of hypothec in favor of the Building Society, as a further security for Huot's own obligation to the Society for \$5,185.12, registered 4th June, 1873. That by transfer of 11th February, 1876, Huot transferred to the Society the three