I have not to find here whether there was malice on the part of the defendant in making this charge, but whether there was want of probable cause. Technically the broker's note contained an untrue statement, namely, that he had bought the stock on the 11th, and perhaps technically the false pretence did exist. But did it really exist? If we look at the agreement between the parties, we see that they were agreed that the 25 shares of bank stock should be bought by Barthe and 12 shares transferred as security by Mrs. Campbell. All this was done. What right, then, had Mrs. Campbell to complain of Mr. Barthe, two months afterwards, that he got the 12 shares on a false pretence, causing his arrest and examination and detention before the magistrate for four weeks? The plaintiff explains that the stock was not really bought on that day, because he had not yet received the security of the 12 shares, and he was responsible for the loss if there had been a rise in the 25 shares before he got possession of them for the defendant. It is also to be considered that the transactions between the plaintiff and defendant were of a confidential character, and I do not believe that the real grievance of the defendant was that the stock had not been purchased on that day. No complaint was made then or long subsequently. My conclusion is, looking at the relations of the parties, that the charge was made by the defendant unjustifiably to coerce the plaintiff into a settlement of accounts, the real grievance being something else,—a statement from her broker which showed losses and not gains. The defendant having under color of this charge caused the arrest and imprisonment of the plaintiff, it was an abuse of the process of the court—without probable cause, and the damages are assessed at $200 and costs.

Keller & McCorkill for plaintiff.

Lebourveau and *M. M. Tait* for defendant.

Bank of Montreal v. Maclachlan et al.

Promissory note—Claim of holder against Endorser of composition for maker—Lien de droit.

This was a demand to recover from the defendants the sum of $1,455.03. The circumstances were peculiar. In the year 1877 the plaintiffs were holders of four several notes for $822.16, $619.75, $1,417.26 and $1,298.12, made by the firm of Robert Dunn & Co., and endorsed by one John Fraser. Dunn & Co. went into insolvency, and James Court was appointed their assignee on the 14th of August, 1877, and John Fraser went into insolvency and Thomas Darling was appointed his assignee on the 15th of January, 1878. Both these assignees were made defendants in the present action. On the 2nd of October, 1877, the insolvents Dunn & Co. made a composition with their creditors and were duly discharged. By this composition they undertook to place in the hands of Mr. Court, their assignee, notes for the amount of their composition, endorsed by the firm of McLachlan Brothers & Company, to the amount of thirty-five cents in the dollar, and in the terms of the deed the estate was transferred by Mr. Court to John S. McLachlan, one of this firm, on the 31st of October, 1877. On the 7th of May, 1878, Mr. Court called the attention of the defendant, John S. McLachlan, to the fact that the Bank of Montreal had filed a claim against Dunn & Co. as makers of the above four notes, $4,157.29 in all, on which the composition notes endorsed would be $1,455.06, and informed him that if this claim and that of Mr. Aitken were adjusted, there would be no obstacle to delivering over the notes reserved for John Fraser's claim. This claim amounted to $7,928.81, including the notes for $4,157.29 held by the Bank, but it had been dismissed on the ground that the notes were accommodation notes. Torrance, J. So far as the Bank was concerned, Fraser's claim might have been dismissed against Fraser, because the Bank, and not John Fraser, was the holder of the four notes for $4,157.29. The composition was only carried out by the notes endorsed by McLachlan Bros. & Co. being delivered to the assignee for the benefit of the parties concerned, but the Bank not having filed a claim in time, their claim was included in the notes given for the Fraser claim. They now seek to get the benefit of the indorsement *pro tanto* on the Fraser notes, and they are certainly the only parties entitled to it. The defendants contend that there is no *lien de droit*, no binding link between them and plaintiff, and that their indorsement was only in favour of Fraser, whose claim did not exist. But it is certain that though the claim of Fraser did not exist for an accommodation note, the claim on the same paper did