

the premises. The contract was absolutely broken by this lease to Dorion. The sale of the property by Desbarats took place on the 19th of Feb., 1866. The terms of the deed show that the parties to it were aware that the defendants were in possession as sub-tenants, but the purchasers by the contract were to have the privilege of ousting them when they pleased. Their knowledge of the sub-tenant's possession was no acquiescence, because they reserved their right to oust them. The only question then is this, did the vendors acquiesce? Did they change the condition of the contract by any act on their part? As I have already stated, there was no infringement of the contract by the lease to C erat; the breach was the lease to Dorion. Stodart was the mere receiving agent, or collector, of the landlord: he could not bind the landlord in any way, and I can see no acquiescence in the case.

The evidence, it must be remarked, has been taken in a very irregular way. Finlay, who pretends to be the agent of Owler, has been allowed to be examined by a series of interrogatories to which he has answered, yes, yes. On his cross-examination it appeared that he knew nothing about the matter, except that he heard Stodart say nothing against the sub-letting, and this is called an acquiescence! More than this was necessary. We must come to the old rule *nemo facile presumitur renunciare*. Under the circumstances, the judgment of the Court below was wrong, and it must be reversed.

From this judgment the defendants appealed, submitting that there had been a sufficient acquiescence.

AYLWIN, J. We are fully of opinion that the judgment of the original Court is right, and that the judgment of the Court of Review is wrong. The judgment of this Court will therefore be in the following terms: "Considering that the respondent has proved by legal evidence, that by the deed of acquisition made by the said Respondent, she did acquire from the estate of the late George Desbarats, the real property therein set forth, and now in the possession of the Appellant Owler and

others, mentioned in the declaration in this cause, and that in and by the said deed the said plaintiff did receive also a transfer of the lease by the said estate Desbarats, together with all the rights and privileges of the said estate Desbarats, under the said lease to the said Owler, to exercise all the rights of the said estate Desbarats, in respect thereof; and all rights of the said estate Desbarats to expel the said Owler, in case he had violated the clauses of the *baill*, in respect of having sub-let the said premises.

And further, considering that the said estate of the said George Desbarats, had allowed and tolerated the sub-letting of the said premises by the said Owler, by tacitly sanctioning the said sub-lease, by receiving for a period of more than one year the rent of the said premises without protest, and with a full knowledge of the fact that the said Owler had sub-let the said premises, and had for the period of more than one year approved tacitly thereof; and that by reason thereof he had acquiesced in the said sub-letting, and had thereby abandoned all rights to oust the said Owler from the possession of the property, which became a *droit acquis* in favor of the said Owler; and further, considering that the said estate of Desbarats, could not in law give the said purchaser, to wit, the said plaintiff, any such right, as the same had been abandoned by the said estate, and which was well known to the said purchaser, and considering that by the common law, the rights under the said lease could only accrue to the said plaintiff after she had purchased the same, and for any further violation of the conditions of the said lease and deed, the exception of guarantee could therefore be opposed to the said plaintiff, by the said Owler, and as the said estate Desbarats has stipulated a clause that the transfer of the lease in that respect is *sans aucune garantie*, the said plaintiff is bound in law, in the same way as the *auteurs* of the said plaintiff are bound, &c., the Court reverses the judgment of the Court of Review and confirms that of the Superior Court."

DRUMMOND, J. The only difference between our judgment and that of the Superior Court is with reference to the period to which the acquiescence dates back. The Superior Court