interest and costs. The action was brought against the defendant as the universal legatee of one Tugault, who had specially endorsed a note for £100, dated 29th May, 1854, made by Raphaël Chéné and Olivier Hebert in favor of the plaintiffs, payable eight months after date. The defendant pleaded an *exception péremptoire* that Tugault, fearing the insolvency of the makers of the note, tendered to plaintiffs on the 25th Aug., 1856, the amount then due on said note in capital and interest, on condition that plaintiffs should subrogate him in all their rights with respect to said note, and at the same time surrender the note; that plaintiffs had absolutely refused to accede to this demand; that the makers of the note were solvent at the date of the tender, and afterwards became insolvent; and thus in consequence of plaintiffs' refusal, he, Tugault, had lost all recourse against the makers whose insolvency had become complete. The prayer of the plea demanded the dismissal of the action. The answer of Edward MacDonald, one of the plaintiffs, to whom the tender was made, was: "I am ready to receive the amount of this note, but I am not willing to sign any document without taking advice." The judgment of the Court below maintained the plaintiffs' action on the following grounds.—1st, That defendant had failed to prove that at the time of the tender the makers of the note were solvent, and had subsequently become insolvent. 2nd, It was not proved that plaintiffs refused to accept the tender. 3rd, That before taking advantage of plaintiffs' alleged refusal, Tugault should have renewed his tender *en justice*, which he had failed to do.

DUVAL, C. J., considered the judgment of the Court below right. As to the subrogation demanded there was nothing to subrogate. All the plaintiff had to say was, this is a simple promissory note, pay me and I will give it to you. The judgment must be confirmed with costs.

Judgment confirmed unanimously.

Belanger and Desnoyers for Appellant; Bethune, Q.C., for Respondents.

JANE GIFFIN, (defendant in the Court below), Appellant; and ANATHALIE LAURENT, (plaintiff in the Court below), Respondent.

Question of evidence only, as to whether defendant's son acted for himself, or as agent for his mother.

This was an appeal from a judgment of the Superior Court, rendered by Mr. Justice Loranger on the 30th April 1864, condemning the appellant, widow of Henry Duncan, to pay the respondent, widow of David Laurent, the sum of $863, balance of account for goods sold and delivered. The plea was that none of the dealings referred to in plaintiff's account had reference to any business carried on by the defendant, but were solely about the business of John Duncan, her son, who had no authority to deal with plaintiff as agent of defendant. The plaintiff answered specially that the defendant's son acted as her agent under Notarial power of attorney, and bought and received the goods for defendant's benefit. This pretension was sustained by the Court below, and defendant appealed.

DUVAL, C. J., observed that it was entirely a question of fact. The transactions certainly commenced between the deceased Laurent and the husband of the appellant. There could be no doubt that the debt was first contracted by Duncan deceased. After his death the widow gave a power of attorney to her son to continue the business commenced in the name of her husband. In view of these facts alone the widow must be held responsible for her husband's debt. But there was a fact which threw some doubt upon the subject. In the books of the deceased, the name of young Duncan was found as the debtor. The bookkeeper, however, explained this by saying that Mr. Laurent never saw this entry; it was made by the clerk himself without receiving any instructions from Mr. Laurent. Under the circumstances there could be no doubt that the plaintiff had a right to claim the amount of the account from the widow. The judgment must therefore be confirmed.

Judgment confirmed unanimously.

A. & W. Robertson for appellant; S. Rivard for respondent, and E. Barnard, counsel.

DOUTRE, *es qualité*, (defendant in the Court below), appellant; and WALSH, (plaintiff in the Court below), respondent.

The respondent, a tenant, asked for the resiliation of a lease on the ground that the house was damp and and not habitable on account of water in the cellar. Held, that this was not good ground for resiliating the lease, inasmuch as the tenant was aware that there was water in the cellar at the time he entered into possession, and nine months subsequently he gave notice that he would keep the house another year.

By the judgment appealed from, rendered in the Circuit Court, at Montreal, on the 29th April, 1865, the plaintiff obtained the resiliation of a lease entered into with defendant on the 10th May, 1864. By this lease the plaintiff rented from the defendant for one year from 1st May 1864, with right to continue the lease for a second year on giving three months' notice previous to the expiration of the first year, a two story stone house at Cote St. Louis. When the plaintiff entered into possession of the premises, in the month of May 1864, there was a small quantity of water in the cellar, but Mr. Daoust, defendant's brother-in-law, who had been occupying the house, having informed him that this would soon disappear, plaintiff did not hesitate to take possession. During the following autumn the water again appeared in the cellar and remained several days. But the plaintiff believing that this water only entered accidentally, did not give the defendant the required notice to terminate the lease, and the absence of such notice caused the lease to run for another year. On the 16th March following, the water entered the cellar to a depth of about four feet. The plaintiff thinking it would disappear, allowed several days to elapse; but finally, seeing it remain, on the 28th March he protested defendant, calling upon him to make a drain, or devise some other means of carrying off the water. The defendant declining to accede to this demand, on the