

his engagement with the defendant, by undertaking, for \$80, to protect the interests of the contractor; and that he had, in consequence, been justifiably dismissed.

The action was dismissed in the Court below, on the ground that the proved engagement with the contractor was a direct violation of the plaintiff's previous undertaking to superintend the building in the interest of the proprietor.

The plaintiff appealed from this judgment. His version of the affair, as stated in his answers on *faits et articles*, was as follows:— That the defendant first engaged him without any rate of remuneration being agreed upon, with the understanding that he, the defendant, and the contractor were to bear the expense equally. That as the tariff rate for architects is five per cent, in the absence of any agreement, the plaintiff's remuneration would have been \$600, on £3000, the cost of the building. But about the time the work was commenced, the defendant induced him to stipulate to do the work for \$100, to be paid by the defendant, leaving the plaintiff at liberty, as he pretended, to make his own arrangements with the contractor. That he subsequently agreed with the contractor for \$80; that the defendant was aware of this all along, and merely made use of this fact as a pretext to evade payment of the \$100, when the house was nearly finished, and the services of an architect were no longer required.

DRUMMOND, J. We are of opinion that the judgment in this case must be confirmed. Mr. Fahrland was in the position of an advocate who accepts a retainer from both the plaintiff and the defendant. The interests of the proprietor and of the contractor are conflicting, and the architect could not serve both at the same time. We have the assent of the Chief Justice in this case.

MEREDITH, and MONDELET, JJ., concurred. Judgment confirmed.

Doutre & Doutre, for the Appellant.

J. A. A. Belle, for the Respondent.

September 8th.

OWLER, *et al.*, (defendants in the Court below) Appellants; and Dame HENRIETTE

MOREAU *et vir.*, (plaintiffs in the Court below) Respondents.

Lease—Clause prohibiting subletting—Acquiescence—Exception of Guarantee.

The plaintiff's *auteur* leased certain premises with a clause in the lease, that the premises should not be sublet without his consent in writing. The lessee did sublet the premises, and the lessor's agent collected the rent from the sub-tenants for more than a year, without making any objection to the sublease. The heirs of the lessor subsequently sold the property to the plaintiff, and assigned to her their right to have the lease set aside, but without any guarantee. The assignee having brought an action to resiliate the lease:—

Held, that the lessor by receiving the rent from the sub-tenants for more than the period of one year, tacitly sanctioned and acquiesced in the subletting, and abandoned his right to oust the lessee. That the lessor therefore could not confer upon the assignee any right to oust the lessee. That to any action arising out of a violation of the lease subsequent to the assignment, the exception of guarantee could be opposed by the lessee, and as the assignment was stipulated to be without any guarantee, the assignee was bound in law in the same way as his *auteurs* were bound.

This was an appeal from a judgment of the Superior Court sitting as a Court of Review at Montreal, on the 30th of April, 1866, reversing a judgment of the Superior Court rendered by *Smith, J.*, on the 14th of April, 1866.

The action was brought under the Lessor and Lessees' act, to eject the Appellant, William Owler, in consequence of his having sublet the premises leased, contrary to a written clause in the lease, without having first obtained the lessor's consent in writing.

The judgment rendered by *Smith, J.*, in the Superior Court, dismissed the action, on the ground that the subletting had been tacitly sanctioned by the lessor.

The facts of the case sufficiently appear from the following note of the judgment in Review (BADGLEY, BERTHELOT, and SMITH, JJ.)

SMITH, J. This is an action of ejectment. In October, 1862, a lease was entered into by the late George Desbarats with the defendant, Owler, of certain premises at the corner of St. Gabriel and St. Thérèse Streets, known as the Odd Fellows' Hall, including the basement, for the term of five years. In this lease