Torrance & Morris, for the Appellant.

H. Stuart, Q. C., and *R. Roy, Q. C.*, for the Respondents.

June 3.

MULLIN, (defendant in the Court below,) Appellant; and ARCHAMBAULT ET AL., (plaintiffs in the Court below,) Respondents.

Notice to terminate lease—Transmissible right.

Two persons, joint owners of a certain property, leased it, reserving to themselves the right to give notice terminating the lease on their electing to build. One of the joint owners sold his undivided half of the property, and notice to terminate the lease was given by the purchaser and the owner of the other half:—

Held, that the right to give notice was properly exercised by the purchaser, who was substituted in the rights of his vendor.

This was an appeal from a judgment rendered on the 28th June, 1866, by *Monk*, J., confirmed in Review, *Smith*, J., dissenting. The action was instituted by P. U. Archambault and James Baylis to obtain the resiliation of a lease made by Archambault and one Levesque to the defendant Mullin. This lease, passed in February, 1860, was for a period of six years and ten months and a half, to be reckoned from the 15th June, 1861, to the 30th April, 1868, and contained the following stipulation:

"And finally it is understood and agreed that the lessors shall have the right to cancel this lease on the 30th April, 1866 or 1867, by giving the lessee notice of such their intention, in writing, at least three months previous to the day on which they desire the lease to expire, and this right shall be exercised in the event of their electing to build, and not otherwise."

On the 25th August, 1865, Levesque and his wife sold their undivided half of the property to Baylis, who gave the notice required to cancel the lease, and upon the refusal of Mullin to give up the property, brought the present action to resiliate. The only part of the pleas necessary to be noticed is that which set up that the stipulation or reserve, giving the right to the lessors to cancel the lease on their electing to build, was *personal* to the lessors, and did not pass to the purchaser.

The Superior Court considered that the right to cancel on electing to build was not personal to the lessors, but was transmitted to the purchaser, and gave judgment in favour of the plaintiff. The defendant having inscribed the case for review, the judgment was confirmed, *Smith*, J., dissenting. The defendant then appealed.

The Court (DUVAL, C. J., AYLWIN, BADGLEY, and MONDELET, JJ.,) was unanimously of opinion that Baylis was substituted in the rights of Levesque by his purchase of Levesque's undivided half, and therefore he had a right to terminate the lease.

Judgment confirmed.

B. Devlin, for the Appellant.

P. A. O. Archambault, for the Respondent.

MONTHLY NOTES.

COURT OF QUEEN'S BENCH.—(APPEAL SIDE.)

June 8th, 1867.

DUFAUX ET AL., (defendants in the Court below) APPELLANTS; and HERSE ET AL., (plaintiffs in the Court below) RESPONDENTS.

Will—Donation—Substitution.

This was an appeal from a judgment rendered by *Smith*, J., in the Superior Court at Montreal, on the 26th of January, 1865. The action was instituted by Marie Louise Herse (and husband), to recover the half of certain immoveable property in Montreal. The declaration set out that by *acte* of donation on the 21st of May, 1825, Pierre Roy gave to his son Joseph, the land in question, to enjoy it *à titre de constitut et précaire*, reserving to himself the usufruct during his lifetime. After the death of Joseph Roy, this property was to go to the children, and, in default of children, to the other heirs of the donor. This donation was enregistered and published on the 28th of June, 1825. Pierre Roy died on the 16th of August, 1832, without making a will subsequent to this donation. After his death, his son, Joseph, took possession of the land in question, built two houses upon it, and died without children, on the 9th of October, 1848. At the time of his death, the plaintiff, Marie Louise Herse, grand-daughter of Pierre