

<p>1934 <u> </u> *May 15. *June 15. <u> </u></p>	<p>DELCO APPLIANCE CORPORATION } (DEFENDANT) }</p>	<p>APPELLANT;</p>
<p>AND</p>		
<p>WILLIAM DUNBAR SELBY AND } OTHERS (PLAINTIFFS) }</p>		<p>RESPONDENTS.</p>

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
 PROVINCE OF QUEBEC

Lease—Transfer—Right of renewal—Exercise by transferee—Notice to landlord—Liability of principal lessee for rent for the period of the lease renewed.

The Selby estate (respondents) leased to the Delco Appliance Corporation (referred to in the judgment as Delco Company) (appellant) a store on St. Catherine Street West, Montreal. The lease was dated the 6th day of April, 1927, and made for the term of five years, from the first day of May, 1927, subject, however, to the right of renewing the lease for a further period of five years from the expiration thereof. The material parts of the lease are as follows: "5. The lessee shall have the right to transfer its right in the present lease or sublet any part or portion of the above leased premises, subject however to the lessee continuing at all times responsible for the due fulfilment of all its obligations under the present lease. * * * Right of Renewal. The lessee will have the right of renewing the present lease for a further period of five years from the expiration hereof, for the rental of sixteen thousand dollars per annum during the said additional period of five years, and subject otherwise to all the other terms and conditions of the present lease, provided it gives the lessors notice in writing not later than the first of November nineteen hundred and thirty-one that the lease is so renewed." On the 12th day of November, 1930, the Delco Light Com-

*PRESENT:—Duff C.J. and Rinfret, Cannon, Crocket and Hughes JJ.

(1) (1865) 11 H.L. Cas. 375.

(2) [1908] 1 Ch. 185.

pany transferred and made over unto one Joseph Ostro "all the unexpired term to be accounted and reckoned as and from the first day of January (1931) of that certain lease" * * * and specifically the right "of renewing the said lease for a further period of five years on giving to the lessor notice in writing prior to the first day of November, nineteen hundred and thirty-one." On March 12, 1931, Ostro wrote to the appellant company, giving it notice that he intended "to exercise the option mentioned in the lease and to remain in possession * * * of the premises * * * for a further period of five years from the 1st of May, 1932." On April 13, 1931, Ostro, by notarial deed, which he caused to be signified upon the respondents, declared and notified them that he exercised the right of renewal. On April 18, 1931, the appellant company evidently unaware that Ostro had already done it wrote to him acknowledging receipt of his letter of the 12th of March, 1931, and advising him of the necessity of giving himself notice to the respondents as to the exercise of the right of renewal. On the 30th of October, 1931, the appellant company, being aware of some financial embarrassment of Ostro, had a notarial document served on the respondents to the effect that the appellant "disavowed the action of Ostro in renewing the lease for a further period of five years." The respondents, on November 6, 1931, advised the appellant that they held it responsible for the fulfilment of its obligations under the lease for the renewal period of five years. On August 5, 1932, the Selby estate brought action, both by principal and incidental demands, against the Delco company, claiming rental for the premises for the months of May, June, July and August, 1932, altogether a sum of \$5,333.32, which was contested by the Delco company, but the Superior Court and the Court of King's Bench unaniously maintained the action.

Held, affirming the judgment of the Court of King's Bench (Q.R. 56 K.B. 263), that, under the circumstances of this case contained in the head-note and more fully stated in the judgment now reported, the respondents' action should be maintained. Among the rights, derived from the contract which the Delco company was expressly authorized to transfer, was comprised the right of renewal. To the right of renewal was attached the condition that it shall be "subject otherwise to all the other terms and conditions of the present lease." And among the other terms and conditions to which the right of renewal was so made subject, there was the condition that, if the right of transfer is exercised by the Delco company, it shall be "subject, however, to (the company) continuing at all times responsible for the due fulfilment of all its obligations under the present lease" (or contract); one of the obligations being, of course, the payment of the rent. From the moment that the Delco company assigned to Ostro its right of renewal, the assignment necessarily carried with it, on the part of the company, the liability for the rent during the last period of five years, if the renewal was duly effected by Ostro. Now, the notice of renewal given by Ostro to the respondents, which did not require to be accepted by them, was sufficient to bind them and to effect a renewal of the lease *ipso facto*.

Under the terms of the original contract, in order to renew the lease, the Delco company had to give the Selby estate a notice in writing not later than the 1st November, 1931. The right of renewal was expressly transferred to Ostro. The transfer carried with it the right by Ostro

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to request the Delco company itself to give the notice in writing if that were required to insure the renewal. Ostro, in due time, notified the Delco company of his intention to exercise the option. The legal result was that, by force of the terms of the transfer, the Delco company was bound to carry out its obligation to have the lease extended and to give the notice itself if it were necessary.

The question whether the transfer of the lease and the rights thereunder is the transfer of "droit de créance" requiring service upon the Selby estate before Ostro could acquire possession available against the estate, is a question solely for the Selby estate itself. It might have been raised by that estate, but it was not open to the Delco company, who was bound to make good the transfer to Ostro (Arts. 1570 C.C. & seq.).

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Superior Court, Duclos J., and maintaining the respondents' action for rent.

The material facts of the case and the questions in issue are fully stated in the above head-note and in the judgment now reported.

John T. Hackett K.C. and *G. B. Foster K.C.* for the appellant.

J. A. Mann K.C. for the respondents.

The judgment of the Court was delivered by

RINFRET J.—The Selby estate (respondents) leased to the Delco Light Company (appellant) a store on St. Catherine street west, Montreal.

The lease was dated the 6th day of April, 1927, and was made for the term of five years, from the first day of May, 1927, subject, however, to the right of renewing the lease for a further period of five years from the expiration thereof.

The material parts of the lease, which it is necessary to consider for the purposes of our decision, were agreed to as follows:

5. The lessee shall have the right to transfer its right in the present lease or sublet any part or portion of the above leased premises, subject however to the lessee continuing at all times responsible for the due fulfilment of all its obligations under the present lease.

* * *

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The lessee will have the right of renewing the present lease for a further period of five years from the expiration hereof, for the rental of sixteen thousand dollars per annum during the said additional period of five years, and subject otherwise to all the other terms and conditions of the present lease, provided it gives the lessors notice in writing not later than the first of November nineteen hundred and thirty-one that the lease is so renewed.

On the 12th day of November, 1930, the Delco Light Company transferred and made over unto one Joseph Ostro

all the unexpired term to be accounted and reckoned as and from the first day of January (1931) of that certain lease, etc.

The pertinent parts of that transfer read as follows:

The said lease shall expire on the thirtieth day of April nineteen hundred and thirty-two with the right unto the said party of the second part of renewing the said lease for a further period of five years on giving to the lessor notice in writing prior to the first day of November nineteen hundred and thirty-one.

Consideration

The present lease is thus made for and in consideration of the sum of two thousand five hundred dollars (\$2,500.00) which the said party of the first part acknowledges to have received from the said party of the second part at the execution hereof, whereof quit.

And in further consideration the said party of the second part binds and obliges himself to pay to the said William Dunbar Selby et al. at the office of Frank H. Hopkins in the city of Montreal as the said William Dunbar Selby et al. may indicate in writing, an annual rent of fourteen thousand dollars (\$14,000.00) until the thirtieth day of April nineteen hundred and thirty-two, and in the event of the said party of the second part availing himself of the right to renew the said lease for a further period of five years to pay an annual rental of sixteen thousand dollars (\$16,000.00) during the said term, which said rental is payable in and by equal consecutive monthly payments on or before the tenth day of each month.

The said party of the second part declares to have taken communication of the lease above mentioned and binds and obliges himself to fulfil to the exoneration of the party of the first part all the clauses and conditions of the said lease.

The delay to give notice of renewal expired on the 1st of November, 1931. On March 12, 1931, Ostro wrote to the Delco company, in accordance with the terms of the lease and of the transfer thereof,

I hereby give you notice that I intend to exercise the option mentioned in the said lease and to remain in possession as lessee of the premises therein described for a further period of five years from the 1st of May, 1932.

On the 13th day of April, 1931, Ostro made a notarial declaration of renewal of the lease, wherein he

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doth hereby declare to avail himself of the right to renew said lease for a further period of five years, as stipulated in said lease, and doth hereby renew said lease for a further period of five years and he has requested us, said notary, to notify said lessors accordingly.

The lessors therein referred to were the Selby estate; and the notary duly served on them a copy of that declaration.

Shortly after this had been done, Mr. A. N. Taylor, real estate section, on behalf of the Delco Company, acknowledged receipt of the letter addressed by Ostro to the company, on the 12th day of March, 1931, giving notice that he intended "to exercise (his) option to extend the lease." Mr. Taylor added:

Lest there may be a possible misunderstanding on the subject, I write to call your attention to the provision in the assignment of the lease to you whereby the right to renew this lease for a further period of five years is expressly assigned to you and that it will be necessary for you to give the notice provided for in the lease to effect such extension, there being no right reserved in the Delco-Light Company to give such notice.

On May 28, 1931, Mr. F. H. Hopkins, representing the Selby estate, wrote a letter to Mr. E. A. Lowden, c/o Frigidaire Corporation, Toronto. In a word, the explanation for addressing the letter in that way was that Frigidaire Corporation had taken over the lease from the Delco company. The Frigidaire Corporation administered the affairs of the Delco company in Canada. They were both owned by the same corporation (General Motors), and they had the same general manager (Mr. Shannon). As the appellant relied for his argument on this letter of May 28, 1931, we think, in all fairness, it ought to be set out in full:

When I was sick at home just recently a declaration of renewal of lease dated April 13, 1931, by Joseph Ostro, no. 3341, was left at my house, wherein, by virtue of the lease between the Selby estate and your company, that is the Delco Light Company, dated the 6th of April, 1927, under no. 22957, of R. H. Barron's minutes, the lessee therein, being the Delco Light Company, had the right, under a special clause of right of renewal therein inserted, to renew said lease for a further period of five years, that is, from the 1st of May, 1932, until the 30th of April, 1937, inclusive, for the rental of \$16,000.00 per annum.

I cannot understand why this was sent to me as the estate and myself personally have never recognized Joseph Ostro in any particular in connection with the lease which we have with your company, nor do we at this time, but I presume you were sent a similar notice, and that this is simply to confirm the fact that in your lease with him, which you had with you when you saw the writer at the beginning of your transaction with Ostro, that you had made a lease with him for the full

period including the option as covered in your lease with the Selby estate, and that you had made arrangements with the Bank of Montreal to take care of the payments to the Selby estate throughout this entire period to the 31st of April, 1937.

I would have written you earlier on this had I not been laid up and away from the office, and I am dropping you this note in case you have not been sent a copy of this notice, as this estate has no interest in the notice whatever, which was drawn up by Paul Labadie, N.P., under his number 3341, dated April 13, 1931.

To this letter came a reply from Mr. Lowden, Canadian manager for both the Delco company and the Frigidaire company. The reply was dated June 2, 1931, and the first paragraph thereof reads as follows:

Thanks for your letter of May 28. Mr. Ostro has already served us with a paper, of which I attach a copy, and I have written the head office of the Frigidaire Corporation arranging to have the transfer made from the Delco-Light Company to the Frigidaire Corporation, and also have asked the head office to proceed with the necessary papers for the renewal of the second five-year period according to Mr. Ostro's request, as this is in accordance with our agreement with him.

Our object in referring to Mr. Lowden's letter is only to show that Mr. Lowden, as manager of the appellant company in Canada, transmitted to Mr. Hopkins, representing the Selby estate, a copy of the notice of renewal sent by Ostro to the Delco company. Further, he did so in terms conveying to the Selby estate that Ostro's notice had the approval of the company and was "in accordance with our agreement with him."

We do not lose sight of the fact that Mr. Lowden's authority was disputed by the appellant. There is no controversy on the point that he was acting as manager in Canada for both the Delco company and the Frigidaire company. But it is stated that, as such, he had no power to bind the Delco company to a lease involving a total liability of \$80,000. We may assume that this was true. This was not, however, what Mr. Lowden was doing by sending with his approval a copy of Ostro's notice of renewal.

The liability of the Delco company for the first five years' period of the lease, and the further liability for the subsequent five years resulting from the renewal, were both covered, as we will show presently, by the original contract and by the transfer to Ostro, the validity whereof is not even questioned. Incidentally, it may be pointed out, the transfer to Ostro was signed and executed on behalf of the appellant by Mr. M. A. Morison; and when

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Mr. Morison was asked under whose authority he executed the transfer, he stated he had received such authority and instructions from Mr. E. A. Lowden.

When Mr. Lowden, on June 2, sent Ostro's notice of renewal to the Selby estate and gave it the stamp of approval of the Delco company, he was not thereby involving that company into a new liability; he was merely acting in accordance with the terms of the transfer to Ostro and, as we will see later, fulfilling one of the obligations the company had undertaken towards its assignee. He was doing something which the company was bound to do. We have no doubt that his authority to do at least that cannot, in the premises, be challenged by the appellant.

As a consequence of the initial letter from Mr. Hopkins, a certain correspondence was subsequently exchanged between the latter and Mr. Lowden, in the course of which Mr. Lowden undoubtedly put on the lease and the transfer a construction hardly to be reconciled with the stand now taken by the Delco company in the present litigation. As this judgment develops, it will be noticed that our interpretation of the two documents is substantially in agreement with that of Mr. Lowden. Since, however, his authority to engage the liability of the company for the last period of five years was not admitted, and since, in our view of the case, his participation in the matter could not affect the rights of Ostro, or of the Selby estate, we do not intend, with regard to that point, to base our decision on the letters written by Mr. Lowden. We will, therefore, omit referring to them, as it would only obscure the sequence of the essential facts.

On June 18, 1931, Mr. A. N. Taylor, of the real estate section, apparently apprehending that his letter of April 18 might not be fully understood, again wrote to Ostro; and from that letter we extract the following paragraphs:

The original lease has been assigned to you and with it the right to an extension if you elect to have the lease extended. Consequently, this notice should be given by you and any new lease which may be entered into for the extended period should be between you and the landlord. Neither the Delco-Light company nor the Frigidaire Sales Corporation should be in any way a party to the lease or assume any disability in connection with the same.

I am sending a copy of this letter to Mr. Salisbury of the Frigidaire Sales Corporation and will ask that if there is any misunderstanding of the matter by either of you that I be communicated with further.

This will again show the close connection, at least in relation to the lease of the premises on St. Catherine street, between the Delco company and the Frigidaire Sales Corporation. It may be noted here that the authority of Mr. Taylor, in all matters concerning this case, is admitted; and, in fact, invoked by the appellant.

On the 30th day of October, 1931, the Delco-Light Company caused to be served upon Ostro and the Selby estate respectively a protest reciting the facts as it understood them, stating that Ostro was then

in default in payment due the (Delco company) of the rent for the month of October, 1931; and

and that the company

disavows the purported renewal made by the said Joseph Ostro of the said lease * * * and hereby notifies the said lessors that the company will not be responsible for the rental of the said premises after the 30th day of April, 1932.

Whereupon, on November 6, 1931, the Selby estate wrote to the Delco company, advising them that

in view of the exercise of the right of renewal for a further period of five years, from the 1st of May, 1932, of the lease from the Selby estate to the Delco company, dated 6th April, 1927, which right of renewal has been exercised both notariially and by correspondence, the Selby estate look to the Delco company and all concerned as being responsible for the fulfilment of the obligations incurred by reason of this renewal.

The Delco company was further advised in the same letter that the protest served on the 30th October, 1931, was of no force and effect, and did not in any way alter the situation or relieve the Delco company of its liability.

Under the above circumstances, the Selby estate brought action, both by principal and incidental demands, against the Delco company, claiming rental for the premises for the months of May, June, July and August, 1932, altogether a sum of \$5,333.32, which was contested by the Delco company, but which the Superior Court and the Court of King's Bench unanimously maintained.

The Delco company now brings the whole matter by way of appeal to this court and argues that the trial court and the appeal court both erred in failing "to take into account the true character of the rights and obligations of the appellant by reason of the assignment and renewal clause of the lease"; in failing "to take into consideration the true character of the assignment by appellant to Joseph Ostro"; in failing "to take cognizance of the Selby estate's refusal to recognize Ostro's alleged renewal for the added

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term of five years, which estopped respondents from invoking same at a later date"; in failing "to observe * * * that the contract was only with Delco Light Company, and that any option of renewal binding upon it should come from it."

The appellant again raised the matter of the authority of Lowden; but we have already stated why we did not deem it necessary to discuss that question.

Our views must first be stated in respect to the terms of the lease and of the assignment thereof to Ostro, as well as to the rights and obligations deriving therefrom with regard to all parties concerned.

The Delco company was expressly given "the right to transfer its right in the present lease." It was also given "the right of renewing the present lease for a further period of five years" at a higher rental per annum, but "subject otherwise to all the other terms and conditions of the present lease."

The appellant attempted to distinguish between its obligations during the first five years of the lease (which, according to it, were alone designated under the expression "present lease") and its obligations during the subsequent five years, in respect of which the company urged the court to decide that they did not come under the designation of the "present lease," but really constituted a new lease. The argument was stated as follows: The right of renewal was not a right of extension of the existing lease, but a right to have a new lease. The Delco company was responsible for all its obligations under "the present lease" (i.e., for the first five years); but it had no obligations under the new lease, if Ostro availed himself of the right of renewal which had been transferred to him.

We are unable to accede to the proposition that, in the notarial document signed by the appellant and the respondents on the 6th day of April, 1927, the expression "present lease," wherever found, refers only to the first five years and not to the renewal period. The expression, we think, throughout the document, and particularly in the material sections of it dealing with the right to transfer and the right of renewal (above set out), has reference to the document itself in full, and that is to say: to the whole of the contract between the parties.

Among the rights, derived from the contract, which the Delco company was expressly authorized to transfer was comprised the right of renewal. To the right of renewal is attached the condition that it shall be "subject otherwise to all the other terms and conditions of the present lease." And among the other terms and conditions to which the right of renewal is so made subject, there is the condition that, if the right of transfer is exercised by the Delco company, it shall be "subject, however, to (the company) continuing at all times responsible for the due fulfilment of all its obligations under the present lease" (or contract); one of the obligations being, of course, the payment of the rent.

From the moment that the Delco company assigned to Ostro its right of renewal, the assignment necessarily carried with it, on the part of the company, the liability for the rent during the last period of five years, if the renewal was duly effected by Ostro.

It was under those conditions that the Delco company expressly transferred to Ostro its right of renewing the lease; and again we are unable to agree with the appellant in its interpretation of the terms of that transfer. It was not, as the appellant contends, a transfer whereby the

appellant divested itself of all and any interest, intention and power to exercise the right of renewal on its own behalf and gave such right as it might in the premises to Ostro.

The appellant could not have divested itself in that absolute way without the consent of the Selby estate. Under its contract with the estate, the appellant had been given the right of renewal to which certain conditions were essentially attached and without which the right of renewal itself would not have existed. It was that right with all its conditions which the appellant transferred to Ostro. For that transfer, it stipulated and was paid a substantial consideration in money. It is not necessary to enter here into the discussion whether a transfer of that character is a sublease or an assignment. Laurent (vol. 25, no. 188) says that, so far as the legal effects are concerned, the two words are synonymous and that: "*La tradition ignore la différence que l'on veut établir entre sous-louer et céder son bail*" (p. 215). The view of the transaction most favourable to the appellant is to treat it as an assignment of its right of renewal. The assignment could

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be made only with all the conditions and obligations attached thereto. It would be a fallacy to say that, after the transfer, the Delco company ceased to have any interest whatever in the exercise of the right of renewal. It had ceded or sold that right for a consideration. It was bound, therefore, to make good the transfer; and that carried with it the obligation towards Ostro of doing and making all that would be necessary to insure the exercise by Ostro of the right of renewal and to keep the lease alive for the subsequent five years. That was part of the bargain for which the Delco had been paid. It followed that if, under the terms of the lease with the Selby estate, it was a condition that the notice required to exercise the right of renewal should be given by the principal lessees, the Delco company, that company, having bargained with Ostro to make good to him its right of renewal, became bound to itself give the required notice, if that were necessary to enable Ostro to exercise the option assigned to him.

It should further be said that we must also disagree with the appellant when it states that all that Ostro got by the transfer from the Delco company was

a mere right of offer of renewal * * * depending upon whether or not he was, in the opinion and consideration of the respondents, a desirable person.

The contention put forward by the appellant was that the right of renewal, in so far as the appellant was concerned was an open offer, but not so as to Ostro, in regard to whom the respondents had an opportunity to accept or reject his notice.

Such a contention is not in accord with the true legal relations resulting from the contracts between the parties. The Delco company had an absolute right of renewal, a right which could be exercised by the mere giving of a notice in writing to the Selby estate not later than the 1st of November, 1931. This did not require any new agreement or the signature of any new document between the Selby estate and the company. There was not to be a new lease. The original contract contains the whole of the agreement of the parties with regard to it; and, as held both by the trial judge and by the Court of King's Bench, the renewal would be effected by the sole fact that, and as soon as, the lessee sent the notice therefor to the lessors. It was that absolute right which was transferred by the Delco company to Ostro; and, through the transfer, Ostro

acquired a right of renewal just as complete and as extensive as the right of renewal which the Delco company itself had been given by the Selby estate.

This was an absolute right of renewal which (provided the conditions were fulfilled) was not in any way subject to the acceptance or the control of the Selby estate. If the notice in writing was given, the renewal took place *ipso facto*. The Selby estate became bound by it, and the lease was automatically extended for the further period of five years stipulated therein. The whole matter was entirely left at the option of the lessee; and the lessor was powerless to repudiate the option, if it was exercised within the terms of the lease. As soon as it was so exercised, and without anything more being required, the lease with all its conditions became extended for the further period agreed upon, and the Selby estate was bound to respect it.

It follows that, as stated by Mr. Justice St. Jacques:

Les propriétaires ne pouvaient pas refuser à Ostro l'exercice de ce droit; ils avaient donné leur consentement d'avance, et ils ne pouvaient rien faire pour se délier.

A similar observation was made by Mr. Justice Bond.

But it must also be added that the Selby estate was bound by the notice of renewal only within the terms of the contract, to wit: with the express condition that the Delco company would remain obligated to pay the rent; and that obligation was part of its undertaking towards Ostro as a consequence of the transfer for which it received the lump sum of \$2,500.

After what we have said so far, the only question remaining to be considered is whether the right of renewal was properly exercised and whether, as a consequence, the lease of the store premises was extended for the further period of five years, for the rent of which, in the present case, the respondents try to have the appellant held responsible.

Under the terms of the original contract, in order to renew the lease, the Delco company had to give the Selby estate a notice in writing not later than the 1st November, 1931. The right of renewal was expressly transferred to Ostro. The transfer carried with it the right by Ostro to request the Delco company itself to give the notice in writing, if that were required to insure the renewal. Ostro, in due time, notified the Delco company of his intention

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to exercise the option. The legal result was that, by force of the terms of the transfer, the Delco company was bound to carry out its obligation to have the lease extended. However, it is unnecessary to go so far in the present case, for Ostro did not wait for the Delco company to give the required notice. He himself caused a notarial declaration of renewal to be served upon the estate. This, further, was in accord with the advice given to him on behalf of the Delco company by Mr. Taylor, whose authority is not disputed. In Mr. Taylor's two letters (April 18th and June 18th, 1931), Mr. Taylor took the stand that it would be necessary for Ostro to give the notice. It happened that that was precisely what Ostro had already done. It is true that Mr. Taylor also contended that no right was reserved in the Delco company to give such notice, or that neither the Delco company, nor the Frigidaire company should be in any way a party to the lease, or assume any disability in connection with the same.

A clear distinction, however, must be made between the two contentions put forward by Mr. Taylor on behalf of the company. The advice to Ostro that he should himself send the notice remains as a fact which the company may not be allowed to dispute in the stand it is now taking in the present case. But the contention that the right to renew the lease was not reserved in the Delco company and that it should not in any way be a party in the lease or assume any liability in connection with it was a contention of law to which the courts below refused to accede; and, on that point, we find ourselves in full accord with them. Having regard to the terms of the transfer, and to the advice given to Ostro by Mr. Taylor on behalf of the Delco company, we fail to see how the company may be heard to say that the notice given by Ostro was not an effective notice to renew the lease within the terms of the contract between the parties. It may be that the Selby estate might have questioned the right of Ostro to give that notice. It is impossible for us to understand how the appellant can do so.

It was said that the transfer of the lease and the rights thereunder was the transfer of a "droit de créance" which should be assimilated to the sale of rights of action against third persons covered by Art. 1570 & seq. of the Civil Code, the consequence being that, as the transfer to Ostro had

not been served upon the Selby estate, Ostro had no possession available against that estate.

This objection, in our view, is not open to the Delco company. We are willing to assume, for the purposes of the argument, that, as Laurent puts it (vol. 25, no. 200): En principe, il n'intervient aucun lien juridique entre le bailleur principal et le sous-preneur; and that, as a consequence, the sub-tenant has no direct right of action against the principal lessor.

We may assume also that the Selby estate was not bound to recognize the possession or the status of Ostro; and this may have been true both under the civil code (Art. 1571) and under its contract with the Delco company, whereby the latter remained responsible for the due payment of the rent, notwithstanding any transfer to Ostro. In our view, that was exactly what Mr. Hopkins, writing on behalf of the Selby estate, wished to convey to the Delco company when he sent his letter of May 28, 1931. We think Mr. Justice St. Jacques, in the Court of King's Bench, correctly stated the meaning and purport of that letter in the following passage of his reasons for judgment:

Le sens véritable de cette lettre est que les propriétaires voulaient bien prendre leurs précautions vis-à-vis le locataire originaire, et ne rien faire qui pût être interprété, en quoi que ce soit, comme novation de l'obligation que ce locataire avait assumée pour toute la durée du bail.

The letter was not, as urged by the appellant, a repudiation of Ostro's notice. In our view, it showed the contrary intention, for it draws the attention of Mr. Lowden to the fact that Ostro's notice must have been given as a consequence of the lease made

with him for the full period, including the option as covered in your lease with the Selby estate;

and that, as a result, the Delco company has no doubt made arrangements with the Bank of Montreal to take care of the payments to the Selby Estate throughout this entire period to the 31st of April, 1927.

The letter, therefore, clearly contemplates the new situation created by the notice from Ostro as having the effect of prolonging the lease for the subsequent period of five years. That being the construction put by all courts upon that letter, perhaps it is unnecessary to point out that the letter was addressed to Mr. Lowden and that, if the appellant is unwilling to assume responsibility for the letters written by Mr. Lowden, it should not be permitted to rely upon part only of the correspondence exchanged between

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Mr. Hopkins and Mr. Lowden. If the letter is used for the limited purpose of showing the opinion of Mr. Hopkins after he received the notice from Ostro, we do not think it is of much consequence. If Mr. Hopkins intended to repudiate the notice, the proper way, if not the only way, was to communicate that intention to Ostro, which he did not do. Under all the circumstances, we think the letter of May 28 was certainly open to the construction put upon it by the two courts; and its purpose was not the repudiation of Ostro's notice; but, on the contrary, an assertion of the Selby estate's right against the Delco company, as a consequence of the right of renewal exercised by Ostro.

The notice of renewal did not require to be accepted by the Selby estate. In the circumstances of the present case, the notice given by Ostro was sufficient to bind the Selby estate and to effect a renewal of the lease, as provided for in the contract between the appellant and the respondents. At all events, the appellants cannot be heard to contend otherwise.

The action of the respondents was therefore rightly maintained and the appeal ought to be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Hackett, Mulvena, Foster, Hackett & Harmen.*

Solicitors for the respondents: *Mann & Mackinnon.*
