

a month's notice of such option, and subject also to the right of the plaintiff under the law of the land to dismiss the defendant, in the event of his being incapable of performing the duties by him undertaken as aforesaid. The declaration further set out that the defendant entered upon his duties on the 1st March, 1866, and that the plaintiff, finding him incompetent, and that he had so mismanaged the greenhouse as to destroy and injure a large number of the most valuable plants, gave him notice in the latter part of September, that he would not require his services after 1st Nov. following, and had accordingly paid and dismissed him on that day, but that the defendant still remained in possession of the premises, and refused to leave. There was a further averment that the occupation of the tenement in question was worth the sum of \$10 per month. Conclusion, that by the judgment it be declared that the right of the defendant to the use and occupation of the premises ceased and determined on the 1st November, and that the defendant be ordered to leave the premises, &c., and in default of his so doing, he be expelled therefrom, and his furniture and effects *mis sur le carreau*, and the plaintiff placed in possession.

The defendant demurred on the ground that the case did not fall within the summary jurisdiction of the Court in ejectment. And he also pleaded an exception, setting up substantially the same agreement as that alleged by the plaintiff, but asserting that his engagement was for a year, and denying that he was incompetent, or that there was anything in the terms of his engagement which rendered him liable to be dismissed at a month's notice.

Upon these issues, the demurrer was heard and dismissed, and the parties thereupon proceeded to proof. A great deal of evidence was taken, chiefly as to the competency of the defendant as a gardener. This testimony was of a somewhat contradictory character, but appeared to show that the defendant was not competent to manage a large conservatory like that of the plaintiff. The month's notice to quit was also proved.

On the 6th Dec., 1866, MONK, J., in rendering judgment, said: There can be no question as to the jurisdiction of the Court. The defend-

ant occupied the plaintiff's house as his tenant, and the remuneration he gave for it was his services as gardener, which were partially paid for by that occupation; and his engagement having terminated by his dismissal, his lease terminated also, and he is now holding the premises against the will of the proprietor.* As to the right to dismiss the defendant it rests upon two grounds: the agreement that he should leave after a month's warning, and his incompetency; and both these grounds are fully proved. This branch of the agreement is really not denied by the defendant—no general issue having been filed, but merely a demurrer and exception; and it is amply and explicitly proved by the plaintiff. The incompetency of the defendant for the management of the green-house and vinery, has been made equally plain. In fact there is really nothing upon which to rest a case for the defendant. No rent is given, but the defendant must leave the premises,—and the usual period, three days, will be allowed him in which to do so.

The defendant then inscribed the case for review, assigning the following reasons for the reversal of the judgment. 1st, The defendant was not alleged to be the lessee of the plaintiff, but his employee. 2nd, There was nothing in the declaration which disclosed the existence of a lease, or agreement equivalent thereto, as required by the statute under which the action was brought.

Judgment was rendered in review, Dec. 31.

BERTHELOT, J., stated the facts and proceeded to say:—The principal question is whether this action was properly brought under the act respecting lessors and lessees, C. S. L. C., Cap. 40. The 16th section of this act says that "persons holding real property by permission of the proprietor, without lease, *shall be held to be lessees*, and bound to pay to the proprietor the annual value of such property, and their term of holding shall expire on the first day of May of each year, &c., and the person so in occupation shall be liable to ejectment for holding over, &c., or for any of the causes mentioned in this act." In section 1, these causes are enumerated, and sub-section 4 states that the lessor has the right to recover possession of the property