prosecuted with apparent vigor and well done by the 30th. The demand for resiliation absolutely, and without alternative, is severe and often harsh. It is unusual, and can only be accorded if the strongest case is made out, and the plaintiff must appear to be free from blame. Whose fault was it that the house was not habitable on the 12th when Dr. Durocher visited it, and why was the protest not served till the 16th in a matter requiring the utmost despatch? Did the plaintiff desire to present to the doctors a strong case by which his abandonment of the premises might be justified? It does not appear. He knew the premises well, having occupied them for years. The law in these matters is well understood. C. C. 1641 says, "the lessee has a right of action to compel the lessor to make the repairs and ameliorations stipulated in the lease, or to which he is obliged by law; or to obtain authority to make the same at the expense of such lessor; or, if the lessee so declare his option, to obtain the rescision of the lease in default of such repairs or ameliorations being made." Pothier, Louage, No. 325, says: "Le locataire peut demander la résolution du bail, lorsque la maison devient inhabitable, faute de réparations, et que le locateur a été mis en demeure de les faire faire." The usual course always has been, as indicated by Pothier, to put the lessor *en demeure* to make the necessary repairs, in default of which resiliation might follow; but the plaintiff should first have proceeded against the defendant for an order for repairs, which might have been done much earlier than the 16th of June, but for reasons of his own he preferred a resiliation. The article of the Code just read, 1641, indicates precisely the course which is usually taken in these cases. Ever since the case of *Boulanget* v. *Doutre*, 1 L. C. R. 283, the jurisprudence has been generally regarded as settled. I do not think that the facts of this case or the jurisprudence would justify the conclusions taken by the plaintiff. The defendant met the demand for repairs with reasonable despatch. I cannot say that she has acted unfairly, or that the plaintiff is free from blame in his pretensions. The order cannot go to annull the lease, or to award damages.

Ethier & Co., for the plaintiff.
T. Bertrand, for the defendants.

THYMENS v. BEAUTRONC dit MAJOR.

Use and Occupation—Notice of termination of Occupancy—Compensation—Notice of suit, C.C. 1152.

The plaintiff demanded from the defendant $120, for two years' occupation of a house, ending the 1st May, 1879, and concluded in ejectment.

The defendant pleaded that he had settled with plaintiff for the rent for the year ending 1st May, 1878, and as to the second year, the occupation was not worth more than $2 per month, or, $24 per annum. Moreover, plaintiff was his debtor for $500, bearing interest at six per centum, from the 13th November, 1876, and he prayed that if any sum be found due by defendant to plaintiff, it be declared compensated by reason of said sum of $500.

The plaintiff answered that the compensation invoked by the defendant could not be legal, operating *pleno jure*, but facultative; that plaintiff's claim was in fact not *liquide*; that defendant had sued plaintiff for the entire amount of the sum of $500, and the said action was still pending, and there was litispendence as to this sum. Moreover, the principal aim of plaintiff was to get possession of his house, which defendant had by the simple tolerance of the plaintiff.

TORRANCE, J. It is proved by the receipt produced by the defendant that the claim for rent was settled up to the 1st of May, 1878. I also find it proved that the occupation of the rooms in question was not worth more than $2 per month. It is also proved that plaintiff owes defendant $500, amount of a notarial obligation, and I do not see any reason why the defendant should not plead compensation if he please. With respect to the demand of the plaintiff for his house, it appears that the defendant occupied it for two years, and the termination of the second year did not justify the plaintiff in demanding from defendant possession unless he had given three months' previous notice of his intention to re-enter into possession. I would further remark that plaintiff admits in his testimony that this action was brought against the defendant without any previous notice or demand, contrary to C. C. 1152. My conclusion is to declare compensation to the extent of $24 from date of the action, and the action is dismissed.

Longpré & Co., for the plaintiff.
Hutchinson & Walker for the defendant.