

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

N.B.]

PORTER v. PURDY.

[March 29.

*Lease for years—Covenant for renewal—Option of lessor—
Ejectment—Equitable defence—Procedure.*

A lease for years provided that when it expired the lessor had the option of renewing for a further term or paying for improvements. On its expiration the lessor notified the lessee that he would not renew, that he had appointed an appraiser to value the improvements and requested her to do the same, which she did. The valuation was made and the amount thereof tendered to the lessee, but she refused it, claiming that valuable improvements had been excluded by the appraisers. As she refused to surrender possession of the premises the lessor took an action of ejectment to which the invalid appraisal was offered as a defence, and the lessee also, by plea on equitable grounds, asked for an order declaring the valuation of the improvements a nullity and directing the lessor to renew the lease.

Held, affirming the judgment appealed against, 38 N.B. Rep. 465, Idington, J., dissenting, that no valid appraisal had been made; that the acts of the lessor in giving notice of his refusal to renew, demanding possession and bringing ejectment constituted a valid exercise of his option under the lease, and that the lessor was entitled to possession.

Held, also, Idington, J., dissenting, that an equitable plea to an action of ejectment on which relief may be granted under s. 289, C.L.P. Act of New Brunswick, must state facts which would entitle defendant to retain possession which the plea in this case did not do.

Appeal dismissed with costs.

McKcown, K.C., for appellant. Ewart, K.C., and W. B. Wallace, K.C., for respondent.