

poration. That such conclusions could only be taken in proceedings under the Act respecting injunctions, or by a public officer under the provisions of the law respecting the remedies against corporations for acts in excess or abuse of their franchises.

The defendants alleged substantially the same grounds of defence by a plea, *exception péremptoire en droit*.

The plaintiff moved to reject the demurrer and plea upon the ground that the matters therein set forth ought to have been pleaded by an *exception à la forme*.

The Superior Court granted the plaintiff's motion, on the ground stated, and rejected the demurrer and plea from the record.

Abbott, Tait & Abbotts for defendants, moved for leave to appeal from this judgment, contending, amongst other things, that the grounds of the demurrer and plea were properly the subject matter of plea to the merits, as they put in issue plaintiff's *right of action*, and that the sufficiency of those pleas could not be tried by motion.

MacLaren & Leet, for plaintiff, contended that the pleas attacked the quality of the plaintiff, and therefore an *exception à la forme* was the proper pleading. And that as the subject matter of an *exception à la forme* was irregularly introduced into the record, by styling it a demurrer and a plea to the merits, after the time at which the exception ought to have been filed, the proper proceeding to get rid of the irregularity was by motion.

The Court allowed the appeal, mainly on the ground that the sufficiency of pleas to the merits could not be tested on a motion to reject them; and that the Court below should have rejected the plaintiff's motion, leaving the merits of the plea to be tried in the usual way after joinder of issue.

Appeal allowed.

MacLaren & Leet for plaintiff.

Abbott, Tait & Abbotts for defendants.

COURT OF REVIEW.

MONTREAL, Oct. 31, 1881.

[From S. C., St. Hyacinthe.

JOHNSON, MACKAY, RAINVILLE, JJ.

MICLETTE V. LE MAIRE, ETC., DE LA VILLE DE ST. HYACINTHE.

Lease of Stall—Failure to pay license fee—Lessor's right of re-entry.

The defendants, the City of St. Hyacinthe, leased to the plaintiff for two years and nine months from the 1st of February, 1877, the butchers' stalls or *étal double*, Nos. 28 and 29, in the central market of the city. The rent was \$70, payable in advance on or before the 15th October annually, the first rent apparently for the nine months was to be paid at the passing of the lease, for it is dated the 3rd of February, and makes the first payment of rent to be payable on the first of February *courant*. The lease stipulated that the lessee was not to sublet, nor to permit anybody but himself to occupy the stalls, that he was to conform to all the *règlements* then in force or afterwards to be made concerning the markets, that if the rent was not punctually paid, the city might either sue for payment or might retake the stalls (*les reprendre*), and finally the city might, at any time "*s'emparer du dit étal ou b'mc, sans être tenu de payer aucune indemnité quelconque, dans le cas de contre-vention de la part du preneur à aucune des clauses du présent bail et des règlements des marchés.*" On the 15th October, 1878, the plaintiff paid his rent, \$70, up to the 1st November, 1879.

MACKAY, J. On the 27th September, 1879, the plaintiff protested the defendants, because of two policemen, or clerks of markets, employees of defendants, having on the 16th June, by malice and without cause taken possession of plaintiff's stalls 28 and 29, locking them up, and preventing plaintiff carrying on his business. The plaintiff, following his protest, has sued the defendants for \$526.25. The \$26.25 is a sum equal to the rent from 16th June to 1st November, 1879, paid October, 1878, in the \$70 paid in advance that day. The \$500 are damages for the alleged causeless and illegal dispossession of the plaintiff.

The defendants' first plea is that plaintiff had sublet the stalls in May and June, 1879, and suffered other persons to occupy; that by a *règlement* of 1877 all persons in St. Hyacinthe are prohibited from exercising the occupation of butchers unless upon payment to defendants before the 1st of May each year, of \$5. That before 1st May, 1879, the plaintiff had permitted a third person unlicensed to carry on the trade of butcher in the stalls against the will of the