cap. 40, C. S. L. C., under which act the action was instituted.

The defendant, the same day, on the demand of the plaintiff, pleaded to the merits, alleging that he was in lawful possession of the shop and premises in question, under a verbal lease of the same, and delivery of the key to him as tenant, at the rate of $14 per month, for the period of one year from 1st May, 1866, and rent free for the broken period from the 15th February, 1866, when he lawfully entered into possession.

The issue being joined, the parties proceeded to evidence, and the *enquête* having been closed, and the parties heard on the merits,—on the 23rd of March, *Smith*, J., rendered judgment in favour of the plaintiff, "considering that this action falls within the Lessor and Lessee Act, as it is a question of lease or no lease, the defects of the declaration, if any defects exist, being cured by the pleas of the defendant, and that by the issue raised it is a question of lease, and considering that the plaintiff hath proved the material allegations of her declaration, &c."

The defendant then inscribed the case for review, and the following judgment was rendered, May 30.

SMITH, J., dissenting. It appears that the defendant, wanting to lease a certain house, went to the proprietor for permission to go in and view the premises. After seeing the place he said he would not pay more than $14 a month, the rent asked being $15. Sometime after, under pretence of wishing to see the premises, he got into the house and refused to leave, and the present action was brought to eject him from the premises. The action was taken out under the Lessors' and Lessees' Act, but there is not much said about a lease in the declaration. The defendant pleaded by declinatory exception that it was an ordinary possessory action, which could not be brought under the above mentioned act. But in his plea to the merits, the defendant set up that there was a lease. Under the circumstances I considered that the defect in the declaration was cured by the mention made of a lease in the pleas, and I admitted the parties to evidence in the Court below. The question is, whether the pleas can come to the aid of the declaration. I always understood that they can. Another circumstance to be taken into consideration is, that the evidence of the parties plainly establishes the facts between them, and the only defect in the declaration could be remedied by the insertion of these words, that the defendant under a lease entered into possession.

BADGLEY, J. The declaration sets out a forcible entry and detainer, but it concludes very singularly for a *saisie-gagerie*. The facts are, that the defendant, under pretence of looking at the premises, obtained the key, and then persisted in remaining in occupation. As the case stands it is evidently one of forcible entry and detainer, and how can such an action be brought under the Lessors' and Lessees' Act? The judgment must be reversed, but under the circumstances of the case, each party is condemned to pay his own costs.

MONK, J. It is not without some difficulty that I have been able to concur in the judgment. The declaration sets out in express terms that the defendant, without any lease verbal or written, and by violence, took possession of the plaintiff's property, and it contains nothing to show that the case has any connection with the Lessors' and Lessees' Act. It is an elementary principle in all cases under the Lessors' and Lessees' Act, that the relation of landlord and tenant must necessarily exist. The present case does not come under any of the provisions of that act, the possession being one of violence. When this extraordinary declaration was filed, the defendant pleaded a declinatory exception, stating that the action was in the nature of a possessory action, and could not be brought under the act. Then the defendant put in his plea to the merits, setting up that there was a lease, and this would seem to bring the case under the provisions of the statute; but the plaintiff, in his answer, persists in stating that there was no lease, or holding with the permission of the proprietor. The parties have gone to evidence, but there is not a tittle of evidence to show that the relation of landlord and tenant existed between the parties. This, then, was a case in which recourse should have been had to the criminal law or the common law.

The judgment was entered up substantially