to sub-let, except with the consent of the lessor in writing; and allege:—

1. That defendant abandoned the premises and sub-let the *house* to the Rev. Bernard without plaintiffs' consent;

2. That defendant committed waste and damage on the property, particularly by allowing his cattle to roam at will through a large orchard of young trees, whereby damage to the amount of $90 was caused;

3. That the premises were left insufficiently garnished to secure the rent for the balance of the year. The defendant had paid the rent up to the 1st of Nov. 1886.

The defendant pleads the general issue, and claims that no damage was done, that the orchard was injured prior to his occupancy; that he had sub-let with plaintiffs' knowledge and consent, had tendered the rent for the balance of the lease before going out, and had left upon the property much more than enough to secure the rent for the rest of the term.

From the voluminous evidence, it appears that the moveables left on the place by defendant, ranged in value from $200 to $800, according to the estimate of different witnesses; considerably more than the amount sued for, $172.50. The plaintiffs, therefore, fail entirely on this point.

As to sub-letting, our Code, Article 1638, says that the lessee has a right to sub-let or to assign his lease, unless there is a stipulation to the contrary. If there be such a stipulation, it may apply to the whole, or a part only of the premises leased, and in either case it is to be strictly observed.

Is this condition such, that the *writing* is essential, *de rigueur*?

Lorrain, Code des Locateurs et Locataires, p. 173, No. 457, says:—

"La clause prohibitive de sous-location "stipule ordinairement que le locataire ne "pourra sous-louer *sans le consentement par* "*écrit du locateur*. Il faut rechercher par les "termes de l'acte ou par les circonstances si "la condition de l'écriture est essentielle au "consentement, auquel cas l'écrit serait in- "dispensable pour prouver la consentement "à la sous-location, ou si elle n'est insérée "que par habitude et n'est qu'une forme de "style banale, auquel cas le consentement 'même verbal pourrait être prouvé suivant "les règles ordinaires de la preuve." But it is to be observed that this proceeds on the assumption that a consent of some kind has been given.

In the present case, the plaintiff denies that she gave consent, but says that when applied to, which was after the premises were abandoned and she had consulted her attorney, she replied that she had nothing to do with the matter, that it was out of her hands.

The case of *Cordner* v. *Mitchell*, 9 L. C. J. p. 319, is not in point, for there, there was the verbal consent of the plaintiff's agent, and the plaintiff had acquiesced therein during the entire term of the lease, which was held to be equal to a consent in writing. Here the plaintiff denies consent, and even the witness, Mrs. Wilson, does not pretend that plaintiff said anything further than that the Rev. Bernard would make a good tenant. The fact of her having nothing to urge against his desirability as a tenant, is not equivalent to consenting to receive him as such.

The case of *David* v. *Richter*, 12 R. L. 98, was not this case. There the defendant was not to sublet without the consent in writing of the lessor and without his approval of the new tenants. It was held that this was not so absolute as to prevent the Court from considering the motives of the lessor who refused systematically to consent to a subletting and finally put a price upon his consent.

The only question is, is this clause a complete prohibition to sublet? Our Code, Art. 1638, says it is, and when the law says expressly that a clause is *de rigueur*, it requires the most positive proof to establish the contrary.

Marcadé, Vol. 6, (Ed. 1875) under Art. 1717, C. N. says:—

"Mais si le locataire peut ainsi, en prin- "cipe, sous-louer ou même céder son bail, "il se peut aussi que cette faculté lui soit "enlevée par une convention particulière de "ce bail; et notre article a soin de déclarer "que cette convention, dont on tenait autre- "fois peu de compte dans les baux des "maisons, devra désormais être prise *tou-* "*jours à la rigueur*, c'est a-dire être sérieuse- "ment appliquée par les tribunaux, aussi