

bakery with lodgings above, two small tenement houses in the rear, a stable and a shed. On the 1st February, 1907, the premises were leased for a period of five years to the defendants, who took possession of them on the following month of May, and occupied them up to about the end of November, 1909, when the defendants moved away, after sub-letting the premises to a Jewish baker of the name of Shwartz. Shwartz, however, only took possession one month later, and in the meantime the premises remained unoccupied. During the interval, thieves and marauders entered the premises, broke all the window panes in the two small tenements in the rear, and removed all the lead pipe and brass taps.

By her present action plaintiff sues defendants to compel them to replace the window-glass, the lead pipe and the taps and restore the buildings to their former condition. In default of doing so within a certain period of time, she claims \$200 damages.

The plea was to the effect that if strangers forced an entrance into the house, it was due to the fact that the gate leading into the yard was without lock or key, and, in any event, that the action was premature, inasmuch as under articles 1632 and 1633 C. C. the defendants were only bound to restore the leased premises in the same condition in which they had received them, at the end of the lease, and as no resiliation of the lease was prayed for in plaintiff's action, the plaintiff had no claim for damages at the present time and, therefore, her action, in so far as the prayer for damages is concerned, was premature.

In view of the allegations of the plea, plaintiff subsequently filed an incidental demand, and after claiming further damages for depredations, omitted from the principal action, and amounting to an additional sum of \$87.75, making a total of \$287.75, she prayed for the resiliation of the lease.