wild lands in the municipality. The plaintiffs set up in their statement of claim that they had appealed in respect of their assessment as being too high to the said Court of Revision, and that the members of the Court of Revision, by a fraudulent conspiracy amongst themselves, and from interested motives, in face of facts leading obviously to a contrary conclusion, and without any evidence to support the same, had not only dismissed the appeal but, on a cross-appeal brought in respect of the said assessment as too low, had greatly increased the amount of the said assessment.

*Held*, on demurrer *ore tenus*, that inasmuch as an appeal lay from the Court of Revision to the Stipendiary Magistrate, the plaintiffs should have appealed accordingly, and could not come to this Court for an injunction, at least until they had exhausted their other remedies.

The above judgment having been given, the plaintiffs applied for a stay of proceedings, pending a re-hearing or appeal.

*Held*, that there was jurisdiction to make the order, which could go upon terms.

At any time before formal judgment issued by the Court the judgment delivered, or a part of it, may be recalled, and a term imposed or a change made.

The defendants delivered a statement of defence in the action, but before any evidence was given at the trial, demurred *ore tenus*. The plaintiffs contended that under these circumstances the defendants should be allowed no more costs than if they had demurred to the statement of claim and succeeded on the demurrer.

*Held* (January 21st, 1885), that the dismissal of the action must be with costs. The case was of a peculiar character, presenting difficulties, and was one of much importance, involving a large sum of money.

*W. Cassels*, Q.C., for the plaintiffs.

*S. H. Blake*, Q.C., for the defendants.

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Proudfoot, J.] [January 2.

THOMAS v. INGLIS.

*Fixtures — Property in chattels under written agreement—Intention when affixed to freehold—Injunction.*

T. being liquidator of a company which was being wound up, sold the manufactory to H. for $9,000, part in cash and the balance secured by a mortgage on the premises. At the time of the sale there was an engine, boiler, pullies, etc., among the machinery on the premises, but no mention of them was made in the mortgage. H. afterwards undertook to sell the engine, boiler and pullies, but T. objected to his so doing until assured that they would be replaced by better machinery. H. purchased from J. and H., the defendants, another engine, boiler, shafting, hangers and pullies to replace the old ones upon certain conditions, set out in agreements in writing, one of which was as follows: "And it is hereby agreed between the parties that the property in . . . (machinery) is not to pass to the said H., but is to remain in the said J. and H. until the full payment of the price, . . . but the said H. to have possession at once and to use the same until any default made in the payment of the price . . . when the said J. and H. may resume possession." The engine and boiler were placed upon a stone foundation and bricked over in a building on the premises, other than the one from which the old ones had been removed, but they could be removed by taking down a part of the wall of the building in which they were placed and without injury to the old building, and the hangers and pullies were bolted to joists but could be removed without injury to the building if done carefully. H. failed in business assigned his estate for the benefit of his creditors, and made default in payment, and J. and H. began to remove the machinery.

In an action brought by T. for an injunction restraining the defendants J. and H. from such removal. It was,

*Held*, that under the circumstances and in cases of this kind the intention when the chattels were affixed to the freehold must govern, and that the plain agreement, evidenced by writing between H. and the defend-