head. The mill contained some 400 looms, and for every forty-six, there was a man, called the "loom fixer," whose duty it was to keep them in proper repair. The evidence showed that the accident was caused by a bolt breaking by the shuttle coming against it, and as this bolt served as a guard to the shuttle, the latter could not remain in the loom. The jury found that the breaking of the bolt caused the accident, and that the "loom fixer" was guilty of negligence in not having examined it within a reasonable time before it broke. T. obtained a verdict, which was affirmed by the Court of Appeal.

Held, Gwynne, J., dissenting, that the loom fixer had not performed his duty properly; that the evidence as to negligence could not have been withdrawn from the jury; and that though the mill was well equipped, as the jury had found the accident due to negligence, there being evidence to justify such finding, the verdict should stand.

Held, per Gwynne, J., that the finding of the jury that the negligence consisted in the omission to examine the bolt was not satisfactory, as there was nothing to show that such examination could have prevented the accident, and there should be a new trial.   Appeal dismissed with costs.

Martin, Q.C., for the appellants.

Tate, for the respondent.

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26 February, 1897.

Quebec.]

DEMERS v. BANK OF MONTREAL.

Appeal—Commercial case—Trial by jury—Refusal of—Interlocutory matter.

By arts. 448, 449 and 450 C.C.P., trial by jury may be had in actions on debts, promises and agreements of a mercantile nature at the option of either party. In this case the trial judge held that the action was not mercantile and refused a jury, and his decision was affirmed by the Court of Queen's Bench. On motion to quash an appeal to the Supreme Court,

Held, that the judgment of the Queen's Bench was interlocutory only, and the appeal did not lie.

Appeal quashed with costs.

Fitzpatrick, Q.C., Sol.-Gen. of Canada, and *Ferguson, Q.C.*, for the motion.

Lane, contra.