the action for want of proof by the plaintiff of negligence. We consider that judgment wrong. Under the principles of our law it cannot be admitted that parties are liable to receive injury from causes within the control of others, and are without recourse against them. We consider that the proof is clear as to the snow having fallen from the roof of the church. That proof is only encountered by the evidence of one witness whose position appears to have been that of being primarily responsible for this accumulation of snow on the roof; but Mr. Larocque, who was in the same sleigh with the plaintiff, and Johnson, another coachman, put that question practically beyond doubt, and beyond the reach of the scientific, or rather conjectural theory that was attempted to be set up. Under these circumstances, we consider that the injury being proved to have proceeded from a cause *prima facie* within the control of the defendants, it was for them to prove a *force majeure* that might exonerate them, and that they have not done so. We therefore reverse this judgment, and considering the extent of the injury, and the amount of the doctor's bill, we give $150 damages and costs.

The judgment is as follows :—

"Considering that the present action is to recover damages for injury suffered by plaintiff from causes alleged to be within the control of the defendants, who have pleaded the plea of not guilty only;

"Considering that the plaintiff has proved that the said injury was the immediate effect and consequence of a horse being driven in the public street having taken fright from the sudden fall of a mass of snow from the roof in plaintiff's declaration described, and which was under the control and management of the defendants, who have not proved *force majeure*, nor any other sufficient excuse or defence; doth adjudge and condemn the said defendants to pay and satisfy jointly and severally to the plaintiff $150 damages for his loss and suffering from the causes in the declaration mentioned," &c., with costs of action as brought.

Judgment reversed.

Geoffrion, Rinfret & Dorion, for plaintiff.

Kerr & Carter, for defendants.

JOHNSON, JETTE, LAFRAMBOISE, JJ.

THE DOMINION TYPE FOUNDING CO. v. THE CANADA GUARANTEE CO.

[From S. C., Montreal.

Judgment fixing the facts for jury trial is not susceptible of revision.

JOHNSON, J. This is a motion by the plaintiffs to reject the inscription made by the defendants, on the ground that the judgment inscribed for review is not one that is susceptible of review. The order complained of was one fixing and defining the facts to be submitted to the jury to be summoned in the cause. We are with the plaintiff. The terms of the law are express. The case that was cited was before the Code, and before any review existed. It decided that there was an appeal, and so there may be still perhaps; but the review is only given from *final* judgments, from which an appeal lies, and this is not a final judgment. At the hearing it struck me that it might be attended with some inconvenience if no review were allowed in such a case as this; because it is clear that a new trial may be had if the facts have been wrongly settled, and it seemed to me that prevention was better than cure; but this inconvenience disappears, if there is an appeal.

Motion granted.

Davidson, Monk & Cross, for plaintiffs.

J. C. Hatton, for defendants.

JOHNSON, JETTÉ, LAFRAMBOISE, J J.

EX parte CHARTRAND et vir, petitioners, and LAMBERT, respondent.

[From S. C., Montreal.

Review—An order of the Superior Court, cancelling the appointment of a bailiff, for misconduct, is not susceptible of revision.

In this case the appointment of Lambert as a bailiff of the Superior Court, had been cancelled by Mackay, J., 31 January, 1880, in consequence of improper conduct on the part of Lambert in connection with an execution.

Lambert having inscribed the above judgment in Review, the petitioner moved to reject the inscription.

JOHNSON, J. We are of opinion that the motion must be granted, and the inscription dismissed. Art. 494 C. C. P., as amended by 34 Victoria, c. 4 (Que.) is what gives the right to review. It is under par. 2 of 494 that the right