Held, that the action ought to have been instituted in the Circuit Court.

On appeal to the Supreme Court,

Held, that as the case was originally instituted in the Superior Court, and that upon the face of the proceedings the right to the possession and property of an immovable property is involved an appeal lies. Supreme and Exchequer Courts Acts, s. 29 (*b*), and ss. 28 and 24. STRONG, J., dissenting.

Motion to quash dismissed with costs.

Archibald, Q.C., for appellent.

Duclos for respondent.

LANGEVIN *v.* THE SCHOOL COMMISSIONERS OF THE MUNICIPALITY OF ST. MARK.

Mandamus—Judgment on demurrer not final—Appeal—Supreme and Exchequer Courts Act, s. 24 (g)—ss. 28, 29, 30.

A judgment of the Court of Queen's Bench for Lower Canada (Appeal side) reversed an interlocutory judgment of the Superior Court which had maintained the petitioner's demurrer to a certain portion of the respondent's pleas in proceedings for and upon a writ of mandamus.

Held, that interlocutory judgments upon proceedings for or upon a writ of mandamus or habeas corpus are not appealable to the Supreme Court under s. 24 (*g*) of the Supreme and Exchequer Courts Act. The words "the judgment" mean "the final judgment in the case." STRONG and PATTERSON, JJ., dissenting.

Appeal quashed with costs.

Cornellier, Q.C., and *Geoffrion*, Q.C., for respondents.

Lacoste, Q.C., for appellants.

THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING, ET AL, *v.* THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY.

Appeal—Order for new trial—When not appealable—Supreme and Exchequer Courts Act, ss. 24 (g), 30 and 61.

Where a new trial has been ordered upon the ground that the answer given by the jury to one of the questions is insufficient to enable the court to dispose of the interests of the parties on the findings of the jury as a whole, such error is not a final judgment, and cannot be held to come within the exceptions provided for by the Supreme and Exchequer Courts Act in relation to appeals in cases of new trials. See Supreme and Exchequer Courts Act, ss. 24 (*g*), 30, 61.

Appeal quashed with costs.

Doherty, Q.C., and *M. Kavannagh* for respondents.

Trenholme, Q.C., for appellants.

Ontario.] [Dec. 10.

HOBBS *v.* ONTARIO LOAN & DEBENTURE CO.

Mortgage—Re-demise clause—Creation of tenancy — Rent reserved—Tenancy at will—Agreement for lease—Specific performance—Excessive rent—Intention.

A mortgage of real estate provided that the money secured thereby, $20,000 with interest at 7 per cent., should be paid as follows: $500 on December 1st, 1883, and on the first days of June and December in each of the years 1884, 1885, 1886, 1887, and $15,500 on June 1st, 1888. The mortgage contained the following clause:

"And the mortgagees lease to the mortgagor the said lands from the date hereof until the date herein provided for the last payment of any of the moneys hereby secured, undisturbed by the mortgagees or their assigns, he, the mortgagor, paying therefor in every year during the said term, on each and every of the days in the above proviso for redemption appointed for payment of the moneys hereby secured, such rent or sum as equals in amount the amount payable on such days respectively according to the said proviso, without any deduction."

The goods of the mortgagor having been seized under execution the mortgagees claimed payment as landlord, under the said clause, of a year's rent out of the proceeds of the sale of the goods under the Statute of Anne.

Held, that it is competent for mortgagee and mortgagor to create by agreement the relation of landlord and tenant between them.

Held, per STRONG, GWYNNE, and PATTERSON, JJ., affirming the decision of the Court of Appeal (16 Ont. App. R. 225), RITCHIE, C.J., and TASCHEREAU, J., contra, that such relationship did not exist under the re-demise clause of the mortgage in this case the amount purporting to be reserved as rent under such