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DEMERS v. THE BANK OF MONTREAL.

1897

*Appeal—Interlocutory order—Trial by jury—Final judgment—R. S. C. c. 135, s. 24—Arts. 348-350. C. C. P.* \*Feb. 26.

APPEAL from a decision of the Court of Queen's Bench for Lower Canada (1) affirming the judgment of the Superior Court by which the application of the defendant to have the issues in the cause tried by a jury under arts. 348-350, C. C. P., was refused on the ground that the action was not founded on a debt, promise or agreement of a mercantile nature.

A motion was made by the respondent (plaintiff), to quash the appeal taken by the defendant, on the ground that the judgment appealed from was rendered upon a proceeding which was interlocutory only and was not a final judgment within the meaning of "The Supreme and Exchequer Courts Act."

\*PRESENT :—Sir Henry Strong C.J. and Gwynne, Sedgewick, King and Girouard JJ.

(1) Q. R. 5 Q. B. 535.

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The Supreme Court of Canada, after hearing counsel for and against the motion, quashed the appeal with costs on the ground that the decision appealed from was an interlocutory judgment only from which no appeal could lie under the provisions of R. S. C. c. 135 and amending acts.

*Appeal quashed with costs.*

*Fitzpatrick Q.C. and Ferguson Q.C. for the motion.*

*Lane contra.*

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