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* Feb. 19, 20
* April 15.

MASON v. SCOTT AND ANDERSON

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA
IN BANCO

*Contract—Alleged substitution of oral contract for previous written one—
Evidence.*

APPEAL by the plaintiff from the judgment of the Supreme Court of Nova Scotia *in banco* (1) dismissing (Hall J. dissenting) his appeal from the judgment of Graham J. (2) holding that he was not entitled to recover

*PRESENT:—Duff C.J. and Lamont, Cannon and Davis JJ., and
Dysart J. *ad hoc*.

(1) 8 M.P.R. 219; [1934] 3 D.L.R. 769. (2) 8 M.P.R. 219, at 220-223;
[1934] 3 D.L.R. 769, at 769-772.

the sums payable under the terms of a certain written agreement under seal, on the ground that the parties had subsequently substituted a certain oral agreement for the said written agreement relied on by the plaintiff.

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On appeal to the Supreme Court of Canada, after hearing the arguments of counsel, this Court reserved judgment, and on a subsequent day delivered judgment allowing the appeal with costs throughout. Written reasons were delivered by Lamont J., with whom the other members of the Court concurred. These reasons, after discussing the evidence at length, concludes that the evidence does not justify a finding that the parties substituted an oral agreement for the original written one.

Appeal allowed with costs.

W. P. Potter for the appellant.

D. K. MacTavish and *H. C. Moseley* for the respondents.
