

MOSS, C.J.O., was of the same opinion, for reasons stated in writing. He referred to *Whinney v. Moss Steamship Co.*, [1910] 2 K.B. 813, affirmed by the House of Lords (*Moss Steamship Co. v. Whinney*, 131 L.T.J. 193), and said that that case was helpful only in so far as it defined the position and powers of a receiver and manager appointed by the Court in an action on behalf of debenture-holders.

MACLAREN and MAGEE, J.J.A., also concurred.

MEREDITH, J.A., dissented, for reasons stated in writing.

JULY 13TH, 1911.

*CARTER v. CANADIAN NORTHERN R.W. CO.

*Contract—Extrinsic Oral Evidence to Vary—Inadmissibility—
Specific Clause in Contract Dealing with Variation—Con-
struction—Action for Return of Money Paid—Commission
Evidence—Unsatisfactory Nature of.*

Appeal by the defendants from the judgment of a Divisional Court, 23 O.L.R. 140, ante 639, affirming (MEREDITH, C.J.C.P., dissenting), the judgment of LATCHFORD, J., 23 O.L.R. 140, 1 O.W.N. 892, awarding payment by the defendants to the plaintiff of \$507.55, with costs.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

I. F. Hellmuth, K.C., and G. F. Macdonnell, for the defendants.

W. J. Elliott, for the plaintiff.

MOSS, C.J.O.:—On or about the 18th April, 1908, the plaintiff gave to the defendants his cheque upon the Buckeye National Bank, payable to the defendants' order, for \$480, "for land." The amount was paid to and received by the defendants, and the plaintiff's claim in this action is for repayment by the defendants to him. . . .

[Reference to the pleadings and evidence.]

The testimony in support of the plaintiff's case was taken under commission. This may have been unavoidable, but it is

*To be reported in the Ontario Law Reports.