1. The jury having found under proper directions from the trial Judge that the accident was due to the carelessness of deceased in attempting to get out when he did, and the question being peculiarly for the jury, plaintiff could not recover even assuming that negligence in the operation of the elevator was proved.

2. The question as to whether deceased at the time of the accident was in the elevator on business or merely for his own pleasure, and as to whether the elevator was or was not a proper place for him to await the arrival of the person he wished to see, was also for the jury, but that the answer to this question was immaterial in view of the answer to the question respecting the negligence of deceased.

3. Where counsel on either side intends to make the refusal of the trial Judge to put a question, or to put a question in a particular way, one of the grounds for a new trial, he must submit the question in writing, and in the form in which he desires to have it put.

Per WEATHERBEE, J., dissenting.

1. As the accident could not have happened if the rule which required the door of the elevator cage to be closed before starting had been adhered to, the accident was due solely to the carelessness of defendant's servant and defendant was liable, and that the burden of proving contributory negligence rested on defendant.

2. The passenger might reasonably rely on the elevator cage not starting until the door was closed.

3. In view of all that took place, defendant could not treat deceased as a loiterer in the absence of distinct notice to leave the cage.

4. The finding that deceased was loitering was consistent with his being lawfully present for business purposes.

5. So long as it was left undecided whether defendant was guilty of negligence, any decision as to contributory negligence was inchoate.

6. There being an admission on the record that deceased was there on business, the question as to whether he was there merely for his own pleasure should not have been submitted to the jury.

W. F. O'Connor, for appellant. *R. E. Harris*, K.C. and *W. E. Thompson*, for respondent.

Full Court.] COMMERCIAL BANK OF WINDSOR *v.* SMITH. [April 27.

Promissory note—Accommodation maker—Conditional delivery—Bank held bound by notice to agent—Findings of jury set aside.

In an action brought by the plaintiff bank against the plaintiff M. as indorser of a promissory note made by S., and as joint and several maker with S. of two other promissory notes, the defence chiefly relied on was that the notes were signed by M. and delivered to plaintiff's agent under a special agreement, of which plaintiff had notice, that they were not to be used until they had been indorsed or signed by certain other parties, as co-