

1912

WARREN, GZOWSKI & CO. v. FORST & CO.

*March 26,
27.

*May 7.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Evidence—Telephone conversation—Corroboration.

APPEAL from a decision of the Court of Appeal for Ontario(1), affirming the judgment of a Divisional Court(2), by which a verdict for the plaintiff was set aside and a new trial ordered.

The action in this case arose out of a stock transaction which was initiated by a telephone conversation between the plaintiff Gzowski and a member of defendants' firm. There was a dispute as to the date and terms of this conversation and, at the trial, the defendants tendered the evidence of their stenographer, who was in their office where the telephone was when it took place. The trial judge refused this evidence on the ground that the stenographer could not know who the other party to the conversation was. The verdict for the plaintiff was set aside and a new trial ordered on account of the rejection of this evidence.

The Supreme Court of Canada, after hearing counsel for both parties, reserved judgment, and on a subsequent day dismissed the appeal with costs.

Appeal dismissed with costs.

Nesbitt K.C. and *Arnoldi K.C.* for the appellants.

Macdonnell K.C. for the respondents.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Brodeur JJ.

(1) 24 Ont. L.R. 282.

(2) 22 Ont. L.R. 441.