

modified in view of the modern practice of using flying machines, and the courts may have to say some day whether an aviator has any right to interfere with the free use of a man's column of air usque ad cœlum. We may, however, dismiss that inquiry for the present, as we are now more particularly concerned with that modern convenient nuisance which we call the telephone. In the case in question the defendants tendered the evidence of a witness as to what had been said by one of the defendants at a telephone instrument in a conversation which the defendant proved was held by him with one of the plaintiffs. Sutherland, J., who tried the action rejected the evidence but the Divisional Court (Boyd, C., and Latchford and Middleton, J.J.) held that it should have been received quantum valeat and granted a new trial; the Divisional Court adopting the view taken by the American Courts which have held that such evidence is admissible; e.g., *Miles v. Andrews* (1894), 153 Ill. 262; *McCarthy v. Peach* (1904), 186 Mass. 67; *Planters Cotton Oil Co. v. Western Union Telegraph Co.* (1906), 6 L.R.A.N.S. 1180. As the learned Chancellor points out such evidence may be intrinsically entitled to but little weight, because the witness cannot testify who was the person with whom the conversation was actually held, nor that such person, whomsoever he was, actually heard what was said.

But these considerations go, in the opinion of the Divisional Court, merely to the question of the weight to be attributed to such evidence, and not to its admissibility. But it may not be improper to remark that this decision seems somewhat to invade the hitherto accepted principles regarding the admissibility of evidence. The evidence in question is clearly admissible only on the ground of its alleged corroborative character, and is only admissible so far as it actually is corroborative. Evidence that such and such statements were made by a defendant, can only derive any right to be admitted as evidence by reason of the fact that they were made to some particular person, and it is just at this point that the evidence of a bystander at a telephone as to what is said there wholly fails. The evidence therefore may appear to