

T. N. Phelan, for defendant.

W. M. McClemon, for plaintiff.

HON. MR. JUSTICE GARROW:—The judgment is for \$1,000 and costs. And the question of law relied on by the defendant is that the defence known as *volenti non fit injuria* applies to the breach of a statutory obligation which was denied in the Divisional Court.

The question is substantial and of general interest, and the leave should, I think, be granted, it appearing that there was an intention to appeal within the time communicated to the plaintiff's solicitors, and that the failure to serve the notice was through an oversight in the solicitor's office. See *Ross v. Robertson*, 7 O. L. R. 494.

The case must be set down in time to be heard at the September sittings, and the costs of the application will be to the respondent in any event of the appeal.
