ruled the trial Judge and ordered a new trial, from which the defendants appeal.

MACLAREN, J.A.:—No English or Canadian authority was cited to us on the point. A number of American cases were referred to, the weight of authority there being in favour of the reception of such evidence. Among the cases that may be mentioned are *Miles* v. *Andrews*, 103 Ill. 262; *McCarthy* v. *Peach*, 186 Mass. 67; *Dannemiller* v. *Leonard*, 8 Ohio Circ. 735; *People* v. *McKane*, 143 N.Y. 455; *Shawyer* v. *Chamberlain*, 113 Iowa 742.

On principle I do not see how such evidence can be excluded. It is simply an application of the old recognized rules of evidence to modern methods and conditions. After a witness has sworn that he recognized by his voice the person to whom he was speaking, and who was answering him from the other end of the line, it is quite competent to produce in corroboration one who heard what he spoke into the telephone, in so far as it is relevant to the matter in question. In case of an oral contract it is not necessary that each witness should have heard the whole contract. The witness may testify as to what he heard, and it is for the Judge or the jury, as the case may be, to determine what weight is to be attached to it. If, for instance, two persons of different languages, but each understanding the language of the other, were to make a contract, each using his own language, a bystander, knowing only one of these languages, might testify as to what was said in the tongue he understood. Or a witness might testify as to what was said by one person on an occasion, although he might not be able to identify, or even see or hear the other party to the conversation provided the latter were identified *aliunde* as the other party. The fragmentary nature of the testimony, the possibility of a dishonest party talking into a telephone in the hearing of his witnesses without having any connection with the person to whom he was purporting to talk, and giving answers to questions that were never asked, are all circumstances that should be taken into account in determining what weight is to be attached to the evidence, but are not valid grounds for refusing to hear it at all. Such testimony is not in any way objectionable as being hearsay.

Appeal dismissed.

F. Arnoldi, K.C., and *D. D. Grierson*, for the plaintiffs. *A. McLean Macdonell*, K.C., for the defendants.