

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 appeal to the Supreme Court was heard by SIR CHARLES FITZPATRICK, C.J., and DAVIES, IDINGTON, DUFF and BRODEUR, JJ.

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

Macdonnell, K.C., for the respondents.

THEIR LORDSHIPS, after hearing counsel for both parties, reserved judgment, and on a subsequent day dismissed the appeal and cross-appeal with costs.

*Appeal dismissed with costs.*

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MAY 22ND, 1912.

### TEMISKAMING MINING CO. v. SIVEN.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

S. C. R.

*Negligence—Accident in Mine—Fall of Rock—Covering of Shaft—Fellow Servant.*

Appeal from a decision of the Court of Appeal for Ontario, 25 O. L. R. 524, maintaining the verdict for the plaintiff at the trial.

The plaintiff, Siven, was working in the defendants' mine when he was injured by a rock falling down the shaft and striking him. The rock came through a man-hole above the shaft where men were engaged in stoking, and there was a trap-door over the mouth of the shaft which was open at the time. Before proceeding with the stoking the workman in charge sent a helper to see if this trap-door was shut, and when the latter called out "everything is all right," went