duced or laid before the jury upon the record and issues before them.

An allotment without compliance with the requirements of section 106 is not a void, but a voidable allotment, per Buckley, J., in Finance and Issue, Limited v. Canadian Produce Corporation, [1905] 1 Ch., at p. 43, and if it is to be avoided it can only be upon a record properly framed for that purpose.

The defendant's real and substantial defence was the alleged misrepresentations, and upon that the jury's findings were against him.

Thre is no ground for disturbing the findings and so the judgment should stand.

The appeal must be dismissed. The plaintiffs to be at liberty to put in and file as an exhibit a copy of the by-law for issuing shares at a discount, filed in the office of the Provincial Secretary.

GARROW, MACLAREN, and MAGEE, JJ.A., concurred.

JUNE 17TH, 1911.

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

Evidence—Telephone Conversation between Parties—Testimony of Person Hearing Words of one Party—Admissibility—New Trial.

Appeal by the plaintiffs from the judgment of a Divisional Court, 22 O.L.R. 441, ordering a new trial on account of the rejection by the trial Judge of certain evidence tendered by the defendants.

The judgment of the trial Judge, SUTHERLAND, J., is noted ante 222.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

F. Arnoldi, K.C., and D. D. Grierson, for the plaintiffs.

A. McLean Macdonell, K.C., for the defendants.

The judgment of the Court was delivered by MACLAREN, J.A:— . . . The parties are brokers in Toronto and the dispute is over a stock transaction. Both plaintiffs and defendants admit that there were telephone conversations between them on

*To be reported in the Ontario Law Reports.