The appeal to the Supreme Court of Canada was heard by DAVIES, IDINGTON, DUFF, and BRODEUR, JJ.

D. L. McCarthy, K.C., for the appellants.

T. N. Phelan, for the respondent.

THEIR LORDSHIPS held, following the reasoning of the Court of Appeal as to the first objection, that the jury were sufficiently directed on the point as to the plaintiff being bound to obey the order of the employee whom he was assisting in repairing the car, and the evidence shewed that he did follow the latter's directions.

On the second objection Mr. Justice Davies dissented, holding that the question as to the plaintiff being *volens* should have been submitted. Mr. Justice Idington took the view that the issue as to *volens* should have been pleaded, while Duff and Anglin, JJ., were of opinion that it was covered by the finding that the plaintiff was not guilty of contributory negligence. Mr. Justice Brodeur held that as plaintiff was acting under the orders of a superior at the time the maxim *volenti non fit injuria* did not apply. The appeal was accordingly dismissed.

Appeal dismissed with costs.

MAY 7TH, 1912.

JUNE 4TH, 1912.

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

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

S. C. R.

Evidence—Telephone Conversation—Corroboration.

Appeal from a decision of the Court of Appeal for Ontario, 24 O. L. R. 282, affirming the judgment of a Divisional Court, 22 O. L. R. 441, by which a verdict for the plaintiff was set aside and a new trial ordered.

The action in this case arose out of a stock transaction, which was initiated by a telephone conversation between the plaintiff Gzowski and a member of defendants' firm. There