

The powers conferred by the defendants' Act of incorporation, as amended by 45 Vict. c., 95 (D.), are not curtailed by the provisions of 45 Vict. c. 71 (O.), as regards the right to construct, erect and maintain their line or lines of telephone along the sides and across any highway or street of the city of Toronto, subject, however, to the provisions set forth and contained in s. 3 of the Act of incorporation as amended. Maclellan, J. A., dissenting.

Judgment of Street, J., 3 O.L.R. 465, reversed.

*W. Cassels, K.C., Lynch-Staunton, K.C., and S. G. Wood, for appellants. C. Robinson, K.C., and Fullerton, K.C., for respondents.*

C.C.R.]

REX v. NOEL.

[Sept. 19.

*Criminal procedure—Trial—Right to re-examine*

The right to re-examine follows upon the exercise of the right to cross-examine, and even if inadmissible matter be introduced in cross-examination, the right to re-examine remains, and the rule holds good where the witness volunteers the statement. If it be desired to avoid re-examination upon such matters, it must be expunged at the instance of the party cross-examining. While it remains as part of the testimony, the right to re-examine upon it also remains.

*Du Vernet* for the prisoner. *Cartwright, K.C.*, for the Crown.

HIGH COURT OF JUSTICE.

Falconbridge, C. J. K. B., Street, J.]

[July 16.

RUSHTON v. GRAND TRUNK R.W.

*Practice—Motion for new trial—Examination on pending motion—Admissibility of evidence—Witness at trial—Con. Rule 491.*

The plaintiff herein having given notice of motion for a new trial on ground of surprise, in that certain witnesses called for the plaintiff, had withheld evidence which they could have given in his support at the trial, and were willing to give such evidence if a new trial were granted, subpoenaed three of these witnesses under Rule 491, for examination before the local registrar upon the motion for a new trial. The defendant moved before the Master in Chambers to set aside the subpoena and appointment and he referred the matter to the Divisional Court.

*Held*, that Rule 491 applies to motions for a new trial before a Divisional Court.

*Held*, however, that evidence of persons who had been witnesses at the trial, that the evidence they then gave was not in fact true, and that certain statements made by them before the trial to the plaintiff's solicitor