not been obtained. The Master refused the motion, but upon appeal my brother Anglin reversed the decision of the Master, and set aside the appointment. The defendant now appeals.

The defendant's counsel, upon being asked upon the argument before us whether he, in order to succeed in the appeal, must not go so far as to contend that upon serving a notice of appeal to the Divisional Court he might examine without leave and of right all the brokers and miners and others in the province in order to strengthen his case in the Divisional Court, stated that he did make such a claim as of right.

That means that the contention is that when a litigant has failed in the trial Court, he may when he appeals examine compulsorily every person in Ontario, whether he knows anything about the case or not—and that without filing an affidavit of the appellant himself or obtaining the leave of the Court or a Judge. This is a most alarming claim to make—and before we accede to it we must see that it is well founded in the statutes or rules. Of course we must interpret the legislation as it stands, and not make new law, or hesitate to give full effect thereto without shrinking by reason of what we may think to be an unexpected result. A litigant is entiled to all that the law or practice gives him, and we have no right to dictate to him so long as he keeps himself within his rights.

The Rules governing examinations of this character are 489 et seq.

Rule 489 provides that "evidence upon a motion may be given by affidavit."

Rule 491: "A party to any action or proceeding may require the attendance of a witness to be examined before any officer having jurisdiction in the county where the witness resides, for the purpose of having his evidence upon any motion, petition, or other proceeding before the Court or any Judge or judicial officer in Chambers."

The case of Clisdell v. Lovell, 9 O. W. R. 687, 10 O. W. R. 203, shews how very far this Rule may be applied in cases to which it is held to be applicable. As at present advised, I would be of the opinion that if this were the Rule applicable to the present matter, the claim of Mr. McKay would have gone a short distance at least on the way to be substantiated. But 498 is the Rule which applies to motions of the kind.