

sionally cases in which appeals succeed upon the ground of the non-admission of evidence or the admission of evidence which ought not to have been admitted. If a case is tried before a judge, and he has improperly admitted evidence—and I may say that that is the rarest of all contingencies, because as a rule we admit the evidence subject to objection, and then we never allow it to influence our minds, of course—if a judge has refused the evidence improperly, the Divisional Court does not as a rule send the case back for a new trial, but the court often says, 'We will sit on such a day; you can bring the evidence you desired the judge to hear and we will hear it here.' We hear the evidence and determine the case then and there, without sending it back with all the risk, expense, inconvenience, annoyance, and trouble of a new trial. If there is a row about the pleadings—because even yet we have some people who talk about pleadings, though pleadings are pretty nearly defunct in our courts, we know them by name and know them by sight, but we pay very little attention to them—if there is any row about the pleadings we say: 'Very well, we will amend the pleadings.' If a lawyer says: 'If that amendment had been made in the court below, we should have had other evidence,' we may say: 'Very well, what day will suit you? We shall hear your witnesses.' One of our substantial rules, and one of the rules more beneficial than perhaps fifty of the other rules is this, all amendments are to be made which are necessary in order that judgment shall be given according to the very right and justice of the case. No case in Ontario fails from defect of form—that is one of our rules. Again, no disregard of forms laid down, or disregard of the time under which proceedings should be taken, no disregard of terminology, according to our practice, bars a man who has a right, of his right."

The foregoing statement by Mr. Justice Riddell implies great freedom in interpreting rules of evidence. The leading question is employed until the witness arrives at the nub of his story. Witnesses are treated as though they had human feelings and the judge obviates a great deal of silly cross-examination by