Report of the Common Law Commissioners, s. 37, provided that "if any pleading be so framed as to prejudice, embarass or delay the fair trial of the action, the opposite party may apply to the Court or a Judge to strike out or amend such pleading, and the Court or any Judge shall make such order respecting the same, and also respecting the costs of the application, as such Court or Judge shall see fit." There already was at Common Law, apart from any statute, a rule that the Court would strike out sham pleas (*f*), but the difficulty was in proving them to be sham, for pleadings were not required to be verified by affidavit (*g*), except in cases of abatement (*h*), and the Court would not try the truth of pleadings on Chamber applications (*i*). Then, too, as the late Mr. Dalton pointed out (*j*), it was in the Irish Courts alone that a plea proven to be plainly false was treated as necessarily a sham plea. Owing to the facts that the above-quoted section only gave power to strike out pleadings "so framed" as to embarrass or delay, and that the decisions under the section were to the effect that the truth of pleadings regular in form would not be decided before trial (*m*), s. 101 did not bring about much change in the practice.

The Ontario C. L. P. Amendment Act (34 Vict., c. 12) went further, and directed (s. 8) that an "opposite party shall be at liberty to apply to the Court or a Judge to strike out any plea upon the ground of embarrassment or delay." Thus, the power to strike out on summary application was extended so as to include both the form and the substance of a plea.

The effectiveness of the foregoing enactments in overcoming the difficulty of proving, before trial, the falsity of a sham plea, and then in summarily disposing of it, was greatly increased by our Administration of Justice Act of 1873, declaring (s. 24) that "any party to an action at law, whether plaintiff or defendant, . . . may, at any time after such action is at issue, obtain an order for the oral examination upon oath . . . of any party adverse in interest, or in the case of a body corporate, of any of the

(*f*) Ch. Arch. Prac., 292-297.

(*g*) *Smith* v. *Backwell*, 4 Bing. 512; *Nutt* v. *Rush*, 4 Ex. 490.

(*h*) *Levy* v. *Railton*, 14 Q.B., N.S. 418; *Rawstorne* v. *Gandell*, 15 M. & W. 304.

(*i*) *Phillips* v. *Clagett*, 11 M. & W. 84; Ch. Arch. Prac., supra, *Gibson* v. *Winter*, 2 N. & M., 739.

(*j*) *McMaster* v. *Beattie* 6 P.R. 163.