

to have the plea struck out on the ground that it was embarrassing as the Act was not retroactive.

*Held*, that questions of law going to the merits of a case will not be decided on an application to strike out pleadings as embarrassing.

It is open to either party to an action up to the time of the trial to attack the other's pleadings.

An appellant who is substantially successful is entitled to the costs of appeal.

The fact that a respondent is successful in some parts is not sufficient to deprive an appellant who is substantially successful of his costs.

*A. C. Galt*, for plaintiffs. *Taylor, K.C.*, for defendants.

Full Court.]

HASTINGS *v.* LE ROI No. 2.

[June 16.

*Master and servant—Negligence—Common employment—Mine owner and contractor.*

Appeal from judgment of IRVING, J. H. & M. contracted to sink a winze in defendants' mine at a certain price per foot, and by the terms of the contract the direction and dip of the winze were to be as given by the defendants' engineers; the defendants were to provide all necessary appliances, etc.; H. & M.'s workmen should be subject to the approval and direction of the defendants' superintendent and any men employed without the consent and approval of or unsatisfactory to such superintendent should be dismissed on request. A hoisting bucket hung on a clevis was supplied to H. & M. by defendants and through the negligence of the defendants' superintendent, master mechanic or shift boss, a hook substituted for the clevis by defendants at the request of H. & M. got out of repair in consequence of which the bucket slipped off and in falling injured the plaintiff who was one of H. & M.'s workmen engaged in sinking the winze:

*Held*, that the plaintiff being subject to the orders and control of the defendants was acting as their servant and the doctrine of fellow-servant applied and the action was not maintainable. Appeal allowed.

*Davis, K.C.*, and *J. S. Clute*, for appellants. *MacNeill, K.C.*, for respondent.

Full Court.]

HOPPER *v.* DUNSMUIR.

[July 20.

*Practice—Discovery—Examination for—Nature of Rule 703.*

Appeal from an order of Drake, J., refusing to strike out the defendant's defence on the ground of his refusal to answer certain questions on his examination for discovery. The action was to set aside the will of Alexander Dunsmuir on the grounds of insanity and undue influence exercised by the defendant who was the beneficiary under the will. On the examination for discovery of the defendant he refused to answer ques-