The plaintiff now moved for an order requiring defendant John B. Harris to attend again and answer the questions.

W. T. J. Lee, for plaintiff.

W. R. Riddell, K.C., for defendants.

THE MASTER:—I think the motion must succeed, and the questions should be answered. As long as paragraphs 5 and 6 appear in the statement of claim, plaintiff is entitled to have full discovery in regard to them.

Every fact material to his case on which a party relies is to be stated in his pleading, and evidence of all such facts can be given at the trial. If any fact is stated as a ground of action or defence which the other side considers irrelevant, and therefore embarrassing, he should move to strike it out. This was done in such cases as Flynn v. Toronto Industrial Exhibition Association, 2 O. W. R. 1047, 1075, 6 O. L. R. 635, and Gloster v. Toronto Electric Light Co., 4 O. W. R. 532. Whether or not such a motion would succeed in the present case I have not now to consider. . . .

If alleged facts are material, they can be proved at the trial. If not material, they should be struck out unless clearly introductory or incapable of affecting the result.

SEPTEMBER 27TH, 1906.

DIVISIONAL COURT.

MILLER v. BEATTY.

Water and Watercourses—Dam—Flooding Lands of Riparian Owner—Cause of Injury—Damages—Release—Statutory Powers.

Appeal by plaintiff from judgment of ANGLIN, J., 7 O. W. R. 605, dismissing the action with costs.

R. McKay, for plaintiff.

E. E. A. Du Vernet, for defendants.

THE COURT (FALCONBRIDGE, C.J., BRITTON, J., CLUTE, J.), dismissed the appeal with costs.