119, there might perhaps be some doubt as to the propriety of striking out the plea, as that only gave power to strike out pleas "so framed" as to embarrass or delay. But the Common Law Procedure Amendment Act, 34 Vict. cap. 12, goes further, and gives power to strike out any plea upon the ground of embarrassment or delay, and thus extends to the whole plea, and not merely to its form. As to the rule before the Administration of Justice Act, that the Court would not decide as to the truth of pleadings regular in form previous to the trial, the reason was, that it might not be put to the trouble of deciding between conflicting affidavits, and also that there might be no temptation to a defendant to put in affidavits on which he would have no cross-examination. This does not now apply, as there are no conflicting affidavits, and the evidence is taken in the same way as at a trial. There always was at Common Law, irrespective of statutory enactments, a rule that the Court would strike out sham pleas, the only difficulty being the proving them to be sham: Ch. Arch. Prac., pp. 292–297, and the cases there cited; *Gordon* v. *Hassard*, 9 Ir. C. L. Rep., appendix, 21; *Stokes* v *Hartnett*, 10 Ir. C. L. Rep., appendix, 20 *Bank* v. *Jordan*, 7 Ir. Jur. N. S., 28; *Leathly* v. *Carey*, 8 Ir. C. L. Rep., appendix, 1; *Nutt* v. *Rush*, 4 Exchequer, 490. As to their having pleaded over this is a case of the discovery of new facts, and we have availed ourselves at the very earliest possible moment of the power of obtaining the information. The Legislature has not given this power until issue is joined, in order to prevent its being used as a means of discovering some defence, and also that it might not come to be used as a matter of course, and thus greatly exhance the expenses of a suit.

Mr. Dalton.—This is an application to strike out the plea of the defendants, on the ground that it is false and merely for delay.

The action is against the maker and two endorsers of a promissory note. The plea by all the defendants is payment before action. Issue was joined by the plaintiff on the plea. Since then the plaintiff has caused the defendant, Beattie, the maker of the note, to be examined under the Administration of Justice Act of 1873, and this is his examination.—"I am one of the Defendants. I made the promissory note sued on in this action for $420. I made it in favor of Mr. Robbs, I think. I know that he and O'Dwyer are endorsers on the note. I know that the plaintiffs are the holders of his note. I did not pay this note, nor did the other defendants. I gave instructions to defend this suit for all three defendants. The object of the defence is to gain time to pay the amount. The whole amount, $420, and interest, is still due from the Defendants to the plaintiffs."

Upon this the plaintiff has moved to strike out the defendants' plea as false and pleaded for delay, upon the admission of the defendant himself made in the suit.

I think I ought to make the summons absolute.

At one time, undoubtedly, it was considered that the Court had a jurisdiction to strike out the plea of a defendant, and allow the plaintiff to sign judgment where it manifestly appeared that the plea was false. *Rickly* v *Proone*, 1 B. & C., 286, was a case of this kind. There, to a declaration for use and occupation, the defendant pleaded that he had delivered certain named goods to the plaintiff, as "satisfaction." The plea was struck out, upon an affidavit that it was false—the defendant not filing any counter affidavit. I believe that this is not the law now, and that the Court at this day does not feel that it has jurisdiction to force the defendant to verify his plea by affidavit, or to try on affidavits the truth of the plea—the law having assigned a different tribunal for such trial. This was settled by *Mornington* v. *Becket*, 2 B. & C. 81, and *Smith* v. *Backwell* 4 Bing., 512. These cases have been followed ever since, and no doubt the result from the cases of the present law is correctly stated in Arch. Prac. 11 ed, 291, that "the Judge will not interfere and strike out a plea upon the mere ground of its being false, although *the plaintiff swear* that it is in every respect so." Thus in *La Forest* v. *Langa*, 4 D. P. C. 642, a defendant pleaded that the bill sued on was outstanding in the hands of a third person, and upon affidavit that the plea was wholly false, and a production of a letter of the defendant in proof of it, in which the defendant requested from the plaintiff time for payment, it was said by Tindal, C. J., on a motion to strike out the plea,—"It is a plea upon which issue may be taken, and if we were to allow this rule, we should in effect be trying the case upon affidavit."

All this relates to pleas on which a single issue may be taken, and the reason which runs through the cases is this alone, that to strike out such a plea is an assumption by the Court of the power to try on affidavit that which, by the law, is to be tried by jury.

But there is another class of cases, viz., those where, from the form or substance of the plea,