

takes place. One has only to read the evidence in an ordinary building contract case which has been referred to the Master for trial, to see the great confusion that results, even in a small matter, where this course has not been adopted. Each succeeding witness proceeds to find further defects, and before the reference is closed the whole evidence is in a chaos from which it is almost impossible to evolve order.

In this case the real difficulty is to get some scheme by which the respective rights of the parties will be adequately protected.

Discovery is of necessity limited by the pleadings and by the particulars which may have been given under them. To order particulars at this stage would, I think, unfairly hamper the plaintiff. The plaintiff is entitled to search the conscience and the conduct of the defendant, its agent, to the utmost; and it is better that this should all be done before the final formulation of the particular charges to be investigated at the trial. If the particulars given in the pleadings turn out to be so vague and general as to be insufficient to direct the mind of the party to be examined for discovery to the real issues, this may create difficulty when the examination is on foot; but it seems to me to be better that this should be left to work itself out during the progress of the examination than that an attempt should be made unduly to tie the hands of the plaintiff at this stage.

As has often been remarked, the true function of particulars is dual: to give the information necessary for intelligent pleading by the opposite party and to define the issues to be dealt with at the hearing. Sometimes the one aspect completely overshadows the other. Sometimes the due conduct of the action indicates discrimination. In this case I think that there can be no difficulty in pleading to the statement of claim as it now stands. No doubt, the defendant intends to deny the charges made against it; in fact, its counsel said so, and intimated the intention to counterclaim for a large sum which is said to be due to the defendant upon the contract. When the plaintiff has had discovery, an order should, I think, then be made, as I have already indicated, directing the issue to be more clearly raised by means of some supplementary particulars.

I have felt some difficulty in devising some means by which the rights of the defendant will be adequately protected so as to secure to it full and fair discovery from the plaintiff. I do not think these particulars should be ordered until after the