

If we were asked to point out where the crucial mistake was made, we should be inclined to say that it was on the occasion of the first trial. We are aware that it is often a great temptation to a judge of assize to decide a case on some preliminary point. So long as the case is cleared from the docket, there is an inclination to feel that all has been done that need be done. This method of disposing of cases by short cuts ought to be very cautiously exercised, if, indeed, it ought not be entirely abandoned. If the learned judge who first tried the case had refrained from ruling on the question of notice of action, and had required each party to give all his evidence, reserving the question of notice of action, the case would probably have taken a longer time to try in the first instance, but time would really have been saved to the litigants. Instead of the case drawing its slow and weary length through four years of a battledore and shuttlecock litigation, the Court would have been able to give the proper judgment without any second trial, because had the course we have suggested been adopted, the provisions of Rule 755 might have been invoked on the first appeal, and the case would then have been ended. Under the former practice at common law, if a wrong judgment was given at a trial, the only remedy was to obtain a new trial; and some judges seem anxious to perpetuate this antiquated practice, notwithstanding that under the present procedure it is possible to avoid it.

Judges seem occasionally to lose sight of the fact that it is a duty they owe to the public to administer the law in the way that is calculated to be least oppressive to the litigants. A desire to save judicial time and hurry through business by short cuts, may and does in some cases result in the most serious injustice to suitors. And we feel sure that it is only necessary to draw attention to the fact to induce our judges to pause before yielding to the temptation to take short cuts—more particularly in cases which must result in a new trial, if the short cut is afterwards found by an Appellate Court to be the wrong road.