and when they were by any reasonable means sufficiently warned, formal objections to the proceedings should at all times be admitted with great caution.

This but gives an instance of the superior advantage of Judges' rules over those fixed by the Legislature.

Perhaps the most important consideration for facilitating the administration of justice, is compelling the parties to place promptly before the Court the points really in dispute between them, and the avoidance of issues, designed only to embarrass an adversary; a familiar example of which may be given in the plea of *défense en fait* or general issue, but the same may be said of every special denial of a fact which the party making it knows to be true.

The articulation of facts has been tried as a remedy to this evil; it has not succeeded. Were it even better guarded than it has been and practised with a greater desire for its efficacy on the part of the profession than has been manifested, the measure of its success must still prove very incomplete, and I think not worth the experiment of attempting its amelioration.

A pleader in bad faith or with a view to delay will endeavour to spread the issues as much as possible, and to embarrass his adversary with as many difficulties as it is possible for him to raise. The only preventative suggested has been to visit him with the penalty of costs, but this has been unsuccessfully attempted during the last twenty years and upwards, while this system has been in force, nor can it ever under improved rules attain to any great measure of success. The pleader who is interested in creating embarrassments in framing the issues will be equally so in the construction of the articulation of facts; they may be framed in a complex form partly applicable and partly inapplicable. The labour of the Judge, already sufficiently taxed in the unravelling of legitimate issues, becomes ten times more so in framing out of such labyrinth of confusion the main issues actually raised. When that is done the separation of the portions of proof applicable to the issues on which one of the parties has failed, has proved a task of such difficulty that it has seldom been attempted, and when done, not over successful in the result. It is not a labour which ought to be imposed on the Judge, nor one that he can fulfil to the satisfaction of the parties. It is they and not he that should have the labour and responsibility of framing the issues that are to be tried. It is by compulsion much better done by them than by him. This could be easily accomplished by the adoption of a system of pleading so far scientific as to oblige all distinct defences to be arranged under separate heads, not to allow duplicity of pleading but to have each separate demand or substantive ground of defence kept distinct from others which might be available, and which could also be pleaded under distinct separate heads. Separate costs could be easily taxed on each of these separate issues against the party who had succumbed, whether Plaintiff or Defendant. Each would consequently have great interest in raising only such issues as he thought could be sustained, and there could be no great difficulty for a Judge when as a general rule taxing each issue against the party who had wrongfully raised it, giving such temperament to the rule as not to impose costs against a party losing an issue when he seemed on the whole to have had probable cause for raising the issue. By this means the responsibility of allegations could readily be made to fall upon the party affirming, and that with a distinctness of measure which involved no serious difficulty. The issues would be naturally narrowed to those only which the parties thought worth while seriously to raise; their interest would prompt them to make these as few as possible; the case would then come to be tried not on what the Judge supposed to be real issues as he gathered them from a mass of allegations which contained false and true issues intermingled, broadened to the extent that the parties might think desirable to embarrass each his adversary. The parties themselves would have the responsibility of framing their respective pretensions, and no arbitrary notion of the Judge could take this power out of their hands, as for instance, is the case in framing the questions to be submitted to a Jury, a system borrowed from the practice in Scotland under a Statute made for the introduction there of jury trial in civil cases; a system which even there, under a much better practice than we have, has been far from resulting in a success, and which here may be said to have been a miserable failure.

The articulation of facts, as practised here, should certainly be abolished. It has created