merits of the case or the comprehension of it which is necessary to some extent in order to deal with the merits. That question will have to be dealt with when the cause is tried;" and Lord James wanted it made "very clear that in giving judgment in accordance with that which has been proposed by the Lord Chancellor, there is no expression of opinion upon the merits of the case. . . It is not for that tribunal (to which the application under Order XIV. is made) to enter into the merits of the case at all."

Nor is it in the way above shewn alone that the tribunal called upon to decide a motion for summary judgment is limited in the search for data whereon to base the exercise of its discretion. When, upon such an application, (*s*) it was urged on behalf of the defendants that they had been attacked by a very summary proceeding, and that there might be, and were, other facts which might entitle them to raise an entirely new defence to that raised on their affidavits filed on the motion, Jessel, M. R., replied that "under the rule . . . we are not entitled to take that into consideration in deciding upon this application, because it must appear to the court 'by affidavit or otherwise,' that is, by some kind of evidence beyond the mere statement of counsel; which is not sufficient."

Subsequently considering the same words (*ss*), James, L. J., said: "The Court or a judge may do certain things 'unless the defendant by affidavit or otherwise' satisfies the Court or judge that he ought to be allowed to defend. The grammatical meaning of the words is that the defendant may satisfy the Court or judge by affidavit, or by any other sufficient means. If 'by affidavit' means by the affidavit of the party defending, then 'or otherwise' must mean 'by some other means than the affidavit of the defendant.' The substance of the rule is, that by the affidavit of the defendant, or in some other way, the facts must be brought before the judge so as to satisfy him. I am of opinion . . . that any evidence which satisfies the Court or judge is sufficient within the meaning of the rule."

It appearing on an appeal from a Master's order, (*t*) however, that the Master had looked at some documents not brought

(*s*) *Anglo-Italian Bank* v. *Wells*, 38 L.T.R. 199.

(*ss*) *Shelperd* v. *South & S. E. R. W. Co.*, L.R. 4 Ex. D. 317.

(*t*) *United Founders Trust* v. *Fitz-George*, 7 T.L.R. 620.