

Another apparently pertinent line of preliminary enquiry is that relating to the powers of investigation possessed by the tribunal which has to exercise the discretionary power conferred by this Order. "It is necessary," says Hall, V.C. (m), "to try the case to a certain extent in order to ascertain whether there is a fair and reasonable defence or not, for the beneficial provisions of the clauses under which the plaintiffs are proceeding ought not to be frittered away by anything in the shape of defence or counter-claim which the court cannot consider of a substantial character." Pollock, B., thought (n) "it was not the object or intention of Order XIV. to try the case on affidavits, since that course would have very serious consequences in practice, entailing upon parties enormous expense in affidavits upon which, after all, the case could not be satisfactorily determined." This great expense, continued that learned judge, would be incurred in trying the preliminary question whether the cause should be tried or not, and, after all, it would have to be tried. Manisly, J., concurred in Baron Pollock's view, observing that "it was most important that Order XIV., which, if properly acted on, was most beneficial to suitors by saving unnecessary litigation, should not be perverted to the trial of disputed questions of fact upon affidavits."

As to disputed questions of law, Coleridge, C.J., held (o) that it was impossible for the court to try a question as to foreign law on affidavits; and, in such a case, gave leave to defend; while Wills, J., (p) "did not think that Order XIV. . . . applied to cases . . . raising what might turn out to be a difficult question of law. It was never intended to throw on the Judge at Chambers such a burden. To decide such questions satisfactorily at Chambers was not possible; and it only tended to put the Judge at Chambers in a false position."

The House of Lords has lately (r) defined the scope of the inquisitional powers of a court hearing a motion under Order XIV. in no uncertain way. The Lord Chancellor said, when deciding the appeal in that case, that "he did not propose to enter into the

(m) *Anglo-Italian Bank v. Wells*, 38 L.T.R. 198.

(n) *Saw v. Hakim*, 5 T.L.R. 72.

(o) *Western National Bank v. Perez*, 6 T.L.R. 366.

(p) *Electric and General v. Thomson*, 10 T.L.R. 103.

(r) *Jacobs v. Booth's Distillery Co.*, 85 L.T.R. 262.