

"I am somewhat surprised at the decision which has been arrived at by the tribunals before whom this question has come," the Lord Chancellor is reported (*nn*) to have said in the course of his judgment on the appeal. "I think that if this is an example of the mode in which Order XIV. is administered, it would be desirable for the Legislature to consider whether that order should continue to be put in force. People do not seem to understand that the effect of Order XIV. is that upon the allegation of the one side or the other, a man is not to be permitted to defend himself in a court; that his rights are not to be litigated at all. There are some things too plain for argument; and where there were pleas put in simply for the purpose of delay, which only added to the expense, and where it was not in aid of justice that such things should continue, Order XIV. was intended to put an end to that state of things, and to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavoring to enforce their rights."

"The view which I think ought to be taken of Order XIV.," said Lord James, in part, "is that the tribunal to which the application is made should simply determine 'Is there a triable issue to go before a jury or a court?' . . . It ought to make the order only when it can say to the person who opposes the order 'You have no defence. You could not by general demurrer, if it were a point of law, raise a defence here. We think it impossible for you to go before any tribunal to determine the question of fact. We are not expressing any opinion whatever on the merits of the case. . . . On which side the chances of success are it is not for this House to determine, but thinking, as I do, that there is a fair issue to be tried by a competent tribunal, it seems to me to be perfectly clear that the order of the Court of Appeal ought to be reversed.'"

The effect of that most important unanimous decision of the House of Lords is thus summed up in the reporter's head note:

"Judgment should only be ordered under Order XIV., where, assuming all the facts in favour of the defendant, they do not amount to a defence in law."

For the purposes of this Order, a counter claim may be a defence. "The defendant says as regards the deed," said Jessel,

(nn) 85 L.T.R. p. 262.