

1849.

Crooks
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gations necessary for that purpose may be conclusions fairly deducible from facts alleged. Their nature may preclude them from being properly affirmed on oath. But such allegations cannot therefore be properly omitted; they find their proper place in the petition, and are absolutely requisite, before the court can permit such enquiries to proceed.

Judgment.

I feel, moreover, very forcibly the justice of the rule laid down by Chief Justice *Wilde*, on a recent occasion, when in disposing of an application of this sort, he is reported to have said: "You may take the first branch of the rule, but not the last. The courts have long since ceased to grant rules calling upon attorneys to answer the matters of an affidavit."—*Belcher v. Goodered*. (a) And although that rule neither agrees with my own experience in the courts of this province, nor with my recollection of the English rule, yet I find sufficient in the statement of that learned judge, coupled with the other considerations which I have mentioned, to lead me to the conclusion that the court cannot safely or properly enter upon several of the enquiries suggested in argument.—*Burton v. Chesterfield*, (b) *Re Grantham*. (c) Certain transactions have taken place. Those transactions, in my judgment, entitle the petitioner to relief, and subject the respondents to liabilities. No improper motive has been attributed to these respondents, beyond what necessarily grows out of the acts themselves. To enter upon such enquiries without the clearest notice and the fullest opportunity of defence, would appear to me palpably unjust; besides that, the court has been left in ignorance of very many points which would have been absolutely necessary to the determination of such issues. For these reasons, I consider the petition as resting on the naked facts detailed in the affidavits, and confined to the specific relief pointed out in the prayer. *Van Sandau v. Moore*. (d)

Before enquiring what order it will be proper to make upon those facts, I desire to make an observation or two relative to the suits out of which this petition has grown,

(a) 4 C. B. 472.

(b) 9 Jurist, 373.

(c) 4 D. & L. 427; Re A. B. 4 Jurist, 630.

(d) 1 Russ. 441.

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