

that if a fair case for a defence was made out by the defendant, unless it was displaced by some undoubted documentary evidence, as an account shewing a balance due, or a letter promising to pay, the defendant ought to be allowed to defend; or, on the other hand, that if the defence set up was so met and disposed of, then the defendant ought not to be allowed to defend."

But, Wills, J., said, (*ll*) in entire disagreement with Pollock, B.'s statement of the practice, that "he could not help concurring with those judges who had said that, even though the case for the plaintiff appeared to be supported by documents and letters, yet it might be there was a defence; and if there was a fair probability of a defence, a defence ought to be allowed."

In a case not belonging to either of the classes he mentions above, that is, where there is a *prima facie* case for the plaintiff, and *prima facie* a case for the defence, and then, as to the facts, the affidavits were entirely contradictory, Pollock, B. considered (*mm*) that leave to defend should be given.

Those numerous and sometimes conflicting definitions of the practice were still too relative and general in their language to furnish any really satisfactory practical criterion by which to judge of just what sort of a defence was necessary to be shewn in order to successfully resist a motion for judgment under Order XIV. This needed criterion has been supplied by the House of Lords in the case of *Jacobs v Booth's Distillery Co.*, above-mentioned and cited.

Jacobs, the (appellant) defendant, along with a co-defendant who did not contest his own liability, signed a memorandum of charge and two promissory notes to secure an advance and further moneys. Jacobs, who had received an indemnity from his co-defendant, stated that he had signed the memorandum and notes, relying on a representation made to him that he was thereby incurring no liability. The distillery company sued for the amount due from Jacobs and the co-defendant; and, on an application under this Order, the Master ordered that judgment should go against defendants unless the amount claimed was paid into court within seven days. This order, successively affirmed by the Judge-in-Chambers and Court of Appeal, was reversed by the House of Lords.

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*ll*) *Ward v Plumley*, 6 T.L.R. 198.

*(m m)* *Saws v. Hakim*, *ubi sup.*