

arise, not any mere matter of opinion or idle assertion. In the case before alluded to, (c) the party alleged; *first*, the validity of the deed; *second*, the receipt of the money under the deed; and *third*, that the intention of the deed was, that he should hold the money so received. The two first of those allegations stated, and admitted the truth of the facts upon which the judgment of the court was founded; and the third amounted to no more than an expression of the defendant's opinion of the intention of the deed, which being erroneous, was therefore passed over unnoticed. But, although parties may be indulged in a brief expression of their opinions as to the law arising out of the facts they set forth; and the doing so may, in many cases, be received as a useful indication of the objects they aim at; yet there is no absolute necessity, in any case, to make any statement or allegation as to the legal consequences of any facts; since it is the peculiar and exclusive duty of the court to pronounce what is the law arising out of any combination of facts which may be regularly brought before it. In this case, and at present, all the allegations of fact contained in the answer of *Eleanor Dawson*, must be taken to be true, as well those which are immediately responsive to the bill, as those which introduce new facts by way of avoidance and defence.

The petitioners, however, assuming a view of the answer, in relation to the matter now under consideration, which they assert is the correct one, contend, that all the admitted facts necessary to lay a proper foundation for the desired order, are to be found in the answer of *Eleanor Dawson*, except those set forth in the account settled by her with the Orphans Court, a copy of which is exhibited as a part of their petition. And that account, they urge, is now admissible as part of the foundation of the proposed order; as being analogous to a confirmed auditor's report; and as proof of collateral facts within the meaning of this court's opinion in the case alluded to. (d) Therefore, if that account should not be deemed admissible, for that purpose, there is, even by the petitioner's own concession, no just ground for his application, and it will be unnecessary to notice any other matter in relation to it.

The confirmation of an auditor's report is, in every sense, a judgment of the court. For although it may not constitute a part of the final judgment on the whole case, it is nevertheless always considered as a judgment conclusive of the matter which it affirms,

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(c) *McKim v. Thompson*, 1 Bland, 155.—(d) *McKim, v. Thompson*, 1 Bland, 155.