

**Case No. 1,940.**

BROOKLYN WHITE LEAD CO. v. PIERCE.

[4 Cranch, C. C. 531.]<sup>1</sup>

Circuit Court, District of Columbia.

March Term, 1835.

PLEADING—PLEAS IS ABATEMENT—AMENDMENT OF DECLARATION.

1. A plea of misnomer, in abatement, is too late after the expiration of the rule to plead.
2. The plaintiff, in a joint action against two defendants, may, of right, at the trial term, amend his declaration by suggesting the proceeding by two non ests against the defendant who has not been taken.

The rule to plead expired on the first Monday in November, 1834. Mr. Hall, for the defendant, in January, 1835, pleaded misnomer in abatement.

THE COURT said it was too late, and rejected the plea, and refused to continue the cause, or to permit the defendant to plead de novo, as of right.

Mr. Bradley, for the plaintiff, then moved to suggest in the declaration the proceeding by two non ests against the joint defendant who had not been taken.

THE COURT (nem. con.) said it was an amendment of course, and no leave of the court was necessary.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]