

Case No. 2,003.

BROWN v. DUCHESNE.

[2 Curt. 97.]¹

Circuit Court, D. Massachusetts.

Oct. Term, 1854.

PLEADING—DEMURRER.

If there be one good plea on the record, and a demurrer be filed, alleging that “the several pleas” are not sufficient, this will be intended to be taken to all the pleas, and must be overruled.

[At law. Action by John Brown against Duchesne for the violation of a patent right Plaintiff interposed a demurrer to the pleas, which was overruled.]

R. H. Dana, Jr., in support of demurrer.

I. J. Austin, contra.

CURTIS, Circuit Justice. This is an action on the case for the violation of a patent right. The defendant pleaded the general issue and two special pleas. The plaintiff demurred, commencing his demurrer as follows: “And the said plaintiff says that the several pleas by the said Duchesne, in manner and form aforesaid pleaded, and the matters therein contained, are insufficient to bar the plaintiff,” &c., in the usual form of a demurrer. And he assigns several causes of demurrer specially. Without regard to the defects of form specially pointed out, if this demurrer is taken to all the pleas, and any one is found good, the demurrer must be overruled. There is certainly one good plea, for the general issue, in the usual form, is upon the record. And it is clear the demurrer covers all the pleas. It applies in terms to the several pleas, which means all the several pleas. There is a settled form of replying to one or more pleas to the exclusion of others, which is “as to the said pleas by the said defendant secondly, or secondly and thirdly above pleaded,” &c. When not thus restricted, the legal intendment is, that all are included in the answer made to them. The demurrer must be overruled.

[NOTE. For decision overruling a subsequent demurrer, see case following (No. 2,004).]

¹ [Reported by Hon. B. R. Curtis, Circuit Justice.]

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