COLEMAN v. MARTIN ET AL.

Case No. 2,986.
{6 Blatchf. 291.}[1]

Circuit Court, S. D. New York. Dec. 30, 1868.

PLEADING IN EQUITY—REPLICATION—ENLARGING TIME TO TAKE PROOFS—PRACTICE.

1. Under rule 66 of the rules in equity prescribed by the supreme court, the answer of every defendant in a suit in equity, when sufficient, must be replied to, without reference to the state of the cause or of the pleadings in regard to any other defendant.

2. The practice as to enlarging the time for the plaintiff to take proofs, under such circumstances, stated.

{In equity. Bill by Charles R. Coleman against D. Randolph Martin and others.}

Enoch Louis Lowe and Robert J. Brent, for plaintiff.

Enoch L. Fancher, for defendant Martin.

BLATCHFORD, District Judge. Under rule 66 of the rules in equity prescribed by the supreme court, the answer of every defendant, when sufficient, must be replied to, without reference to the state of the cause or of the pleadings in regard to any other defendant. The replication must be a general one. Rule 45 abolishes special replications. Any defendant, whose answer is sufficient, has a right to have the cause, as to him, put at issue, so that he may, under rules 67, 68, and 69, proceed to take his testimony, if he wishes to. But, where the cause is not at issue as to all the defendants, and where it is not proper to compel the plaintiff to go to proofs until it is at issue as to all of them, the court will, on a proper application, enlarge the time, under rule 69, for the plaintiff to take proofs in respect of the defendants as to whom the cause is at issue.

[1] {Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.}