

## SHEEHY v. MANDEVILLE.

{2 Cranch, C. C. 15.}<sup>1</sup>

Circuit Court, District of Columbia. Nov. Term, 1810.

PLEADING—GENERAL ISSUE—WHEN MAY BE  
PLEADED—MANDATE OF SUPREME COURT.

The court may, in its discretion, allow the general issue to be pleaded after judgment upon demurrer has been awarded by the supreme court of the United States, and a mandate to this court to enter the judgment and award a writ of inquiry.

The plaintiff being about to execute his writ of inquiry, Mr. C. Lee, for the defendant, moved for leave to plead the general issue.

Mr. E. J. Lee and Mr. Jones, for plaintiff, contra. The mandate from the supreme court (see 6 Cranch [10 U. S.] 253) is peremptory to render judgment for the plaintiff on the first count, and to award a writ of inquiry. But if it be within the discretion of the court, they will not permit the defendant now to amend his pleadings, as the plaintiff's principal witness is dead.

Mr. Youngs, for defendant, cited 3 Bl. Comm. 407; 1 Com. Dig. 467; 2 Strange, 787; 5 Term R. 112, 118; 7 Term R. 132, 133; [Rapp v. Elliot] 2 Dall. [2 U. S.] 184; 1 Wash. 318.

THE COURT refused to permit the defendant now to plead the general issue; because he might have availed himself of the special matter, which he has already pleaded, upon the general issue; and because the plaintiff's witness has died since the former judgment.

THE COURT said, however, that they had little doubt as to their power to allow the plea; but it was a matter of discretion.

The residue of this case as it appeared upon the writ of inquiry is reported in 7 Cranch [11 U. S.] 208.

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

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