

## WOOSTER V. BLAKE AND OTHERS.

*Circuit Court, S. D. New York.* June 20, 1881.

## 1. EQUITY PRACTICE—RULE 34.

Rule 34 of the rules of practice prescribed by the supreme court for the courts of equity of the United States, requires that on overruling a plea the defendant shall be allowed to answer; that leave must be given to it.

In Equity.

*F. H. Betts*, for complainant.

*W. H. L. Lee*, for defendants.

BLATCHFORD, C. J. The company is willing to have its plea overruled. That is all the plaintiff can ask. But rule 34 requires that on overruling a plea the defendant shall be allowed to answer; that leave must be given to it. A preliminary injunction will be issued against the other defendants on the claims of the Robjohn patent, which was adjudicated upon in the decision; but if such an injunction is asked for against the company, it must be moved for on papers and notice. An order will be settled on notice.

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