

GARDNER *v.* CROSSMAN AND ANOTHER.

Circuit Court, S. D. New York. August 4, 1881.

PRACTICE—AMENDMENT—ANSWER.

Where no sufficient reason is shown for amending an answer which a general replication treats as a denial of the existence of the agreement set up in the complaint, the motion to amend will be denied.

Richards & Heald, for plaintiff.

Scudder & Carter, for defendants.

BLATCHFORD, C. J. On more careful consideration I am of opinion that my ruling on the objection to cross-question 395 was wrong, and that the objection ought to be overruled. As both parties acquiesced in going on in this court under the complaint and answer in the state court, without the filing of a new bill in equity in this court, and as the plaintiff treated the answer of the defendant as a general denial of the agreement set up in the complaint, by proceeding to prove such agreement as set up, it is proper that it should be so treated by this court. In addition to this I think it is a fair construction of the answer that it denies the existence of the agreement set up in the complaint. The putting in of a general replication to 852 it so treats it. But I think the defendants must be held to such answer, and that, while they are entitled to all that legitimately flows from it, they are not entitled now to amend it. No sufficient reason is shown for allowing it to be amended, and the motion to amend it must be denied, and an order be entered to carry into effect the foregoing decision.

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