

THAMES & MERSEY MARINE INS. CO. v. CONTINENTAL INS. CO.

*Circuit Court, S. D. New York.*

January 30, 1889.

PLEADING—SUPPLEMENTAL ANSWER—LEAVE TO FILE.

Leave to file a supplemental answer<sup>1</sup> should be granted where the defenses proposed to be set up are an agreement by Which it is alleged defendant would be discharged from liability, the agreement not being shown by the opposing affidavits, and a prior judgment in an action in which the pleadings show a cause of action similar to the one now in issue.

In Equity. Motion for leave to file supplemental answer.

*Evarts, Choate & Beaman*, for complainant.

*Butler, Stillman & Hubbard*, for defendant.

LACOMBE, J. The supplemental answer which defendant asks leave to file sets up two supposed defenses. The first of these is an agreement made by plaintiff with the estate of Dimick, which defendants claim is of such a character as to discharge them from liability. The opposing affidavits do not set out this agreement; defendant should therefore have the opportunity of submitting it to the court for construction. The second supposed defense arises upon a judgment recovered in an action brought by the plaintiff against the estate of Dimick. The pleadings in that action indicate that a claim similar to the one in suit was advanced. Ordinarily a judgment is assumed to dispose of all issues raised by the pleadings. Whether the judgment in the *Dimick Case* did or did not dispose of this claim is a question which the defendant should be allowed to settle upon the trial. The motion for leave to file supplemental answer is granted.