

aforesaid against him the said *Simpson* to have and maintain ought, and so forth." The plaintiff entered a *special demurrer* to the 2d and 3d pleas, and assigned for causes of demurrer—1. That the defendant in his 2d and 3d pleas hath altogether omitted the words "*comes and defends the force and injury when, and so forth.*" 2. That the defendant in his 2d and 3d pleas, hath plead the same, and the matters therein contained in bar, without beginning the same with a defence, and in the same pleas hath made no defence. The defendant joined in demurrer; and the county court at February term 1804, ruled the demurrer good. A verdict was given for the plaintiff on the issue to the first plea, and damages assessed, &c. judgment thereon *de bonis intestatoris, si non*, &c. From which judgment the defendant appealed to this court.

1810.

Dent's Adm'r's
vs
Scott

The cause was argued at the last term before CHASE, Ch. J. BUCHANAN and GANTT, J.

W. Dorsey, for the Appellant. This is a plain case, in which it is unnecessary to cite authorities. It is admitted that the defendant must take defence, this he does immediately on his appearance, and this record states that the defendant "*comes and defends the force and injury when, and so forth, and prays leave to imparle,*" &c. This is a full defence, and it need not be repeated. In 3 *Blk. Com.* 296, it is said, that "it is incumbent on the defendant within a reasonable time to make his *defence*, and to put in a *plea*," showing that it is not necessary that the defence should be in the plea. *Co. Litt.* 127, is to the same effect. But if it is necessary that there should be defence taken in the plea, the plea might have been refused for that defect, but being accepted, it is made good, and the defect cannot be taken advantage of by special demurrer. *Ferrer vs. Miller*, 1 *Salk.* 217. It is admitted that defence must be taken in some part of the record. It has been done in this case on the appearance of the defendant, and also in his *first* plea. Every thing is admitted to give jurisdiction to the court. If the declaration contains *four* counts, then the *fourth* count has not been answered by the pleas of the act of limitations. Where there is a special demurrer the first fault may be resorted to. Here it appears that the *third* count, if there are only three, is defective, for there are two distinct promises alleged in the same count; first the intestate's promises and