

in this same property; that the matter of those suits was finally settled, and thus they were dismissed; and therefore, they plead those suits, the agreement, and the dismissal of them in bar of the claim now made by the plaintiff.

But these defendants, not content with resting their case upon the matter thus set out by way of plea, have gone on to repeat the whole of the same matter, and to rely upon it by way of answer. The bill always calls for an answer from the defendant as to all the matters of fact therein set forth. But one of the peculiar and proper offices of a plea is to present such a defence as shews, that the defendant cannot be compelled to make, or may well be excused from making such an answer as the bill calls for; and therefore, upon the ground of inconsistency, the defendant cannot be permitted, by way of plea, to aver, that he ought not to be compelled to answer, as called upon in relation to any particular matter, and at the same time to put his defence, as to the same matter, into the form of such an answer as the bill calls for. Hence if a defendant answers to any thing as to which he has pleaded, he thereby overrules his plea; for his plea is only why he should not answer, so that if he answers he waives his plea to the same matter. The same principle is equally applicable to demurring and answering, and to demurring and pleading to the same part.<sup>(h)</sup> The plea of these defendants must, therefore, be totally rejected; as being overruled by the subsequent answer, covering exactly the same matter; and I have the less hesitation in thus striking it out, because it is evident, from the answer, that nothing at all necessary to the sound merits of the defence will be lost.

But in the answer itself, of these defendants, there are matters which may be safely banished from it without in the least enfeebling the force of the defence. That which is related of the matter of the bill, filed on the 17th of February, 1813, by this plaintiff and *John P. Paca*; what is said about the letter, and the conveyances from *John E. Howard* to the late *Samuel Chase*; what is related of the late *Samuel Chase's* intentions to make advancements of property to his children; and the allegations respecting the rough draft of his will, with some other particulars of less note, cannot certainly be at all material to the defence. I shall, therefore, lay them aside, as in no way necessary to the present matter in controversy.

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(h) Gilb. For. Rom. 58; Mitf. Tr. 320; Beams' Pl. Equ. 39.