

rial and pertinent to the plaintiff's case as set forth in his bill. (*d*) But this defendant, after having thus submitted to answer, has offered a plea, covering the whole ground of his answer, in which he pleads and relies upon a decree, in another tribunal, upon the same matter, as a bar to this suit. A plea must always rest upon that which shews, that the defendant should not be compelled to answer at all; and therefore an answer to any thing relied on by way of plea overrules the plea; because, if a defendant answers to the matter covered by his plea he thereby waives his plea; and, hence it is an established rule, that where a defendant pleads and answers to the same case, the answer overrules the plea. Consequently, even supposing this plea to be good and available if it had stood alone, it is clearly overruled by the answer to which it has been subjoined. (*e*)

Whereupon it is *Ordered*, that the third exception of the plaintiffs to the answer of the defendant be overruled; and that all the other exceptions of the plaintiffs thereto be sustained; and that the defendant pay unto the plaintiffs all the costs of the said exceptions including a solicitor's fee to be taxed by the register. (*f*)

And it is further *Ordered*, that the said plea of the defendant be overruled; and that the defendant pay unto the plaintiffs, the sum of £5 current money, and the costs of the said plea to be taxed by the register, and be in contempt until the said sum of money and costs be fully paid. (*g*)

And it is further *Ordered*, that the defendant make a full and sufficient answer to the bill of complaint on or before the 20th day of February next.

The defendant answered as required by this order, to which the plaintiffs having put in a general replication; and commissions having been issued and returned with evidence taken under them, the case was, by consent, referred to the auditor, with directions to state accounts; and notice having been given by advertisement in the newspapers, to the creditors of *James Clarke*, deceased, to file the vouchers of their claims, the auditor made a report accordingly, which was confirmed, &c.

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(*d*) *Mazarredo v. Maitland*, 3 Mad. 69; *Salmon v. Claggett*, post.—(*e*) *Cottington v. Fletcher*, 2 Atk. 155; *Blacket v. Langlands*, Anstr. 14; *Forum Rom.* 58; *James v. Sadgrove*, 1 Cond. Chan. Rep. 3; *Hannah K. Chase's Case*, 1 Bland, 217.—(*f*) 1820, ch. 161, s. 8.—(*g*) 1785, ch. 72, s. 25.