presumed, that he had waived the benefit of that of which he had failed to avail himself, and of which he had had full knowledge. *Callaghan* v. *Rochfort*, 3 *Atk.* 643; *Vaughan* v. *Worrall*, 2 *Swan.* 400. It is, in general, * true that a party cannot discredit his own witness, *Fenton v. Hughes*, 7 *Ves.* 290; *Purcell* v. **193** *McNamara*, 8 *Ves.* 326; *Wood* v. *Hammerton*, 9 *Ves.* 145; *Queen* v. *The State*, 5 *H. & J.* 232; 1 *Bro. Civ. Law*, 478, *said to be otherwise* in criminal cases; *State* v. *Norris*, 1 *Hayw. Rep.* 438; and therefore, if it should appear, at the hearing, as has been objected by this defendant, John Diffenderffer, that the plaintiffs have, in truth, taken testimony to discredit any one of their own witnesses, such testimony must be rejected. But as the examination cannot be suspended for the purpose of determining the bearing of any testimony in this respect, or of ascertaining the competency of a witness, the cross-examination, by the party who then makes the objection, cannot be deemed, at the hearing, a waiver of it; because a party cannot be presumed to have waived any ground of claim, or defence, which it was not in his power to have insisted upon, with effect, at an earlier stage of the case. *Moorhouse* v. *De Passau*, 19 *Ves.* 433; *S. C. Coop.* 300; *Harrison* v. *Courtauld*, 4 *Cond. Chan. Rep.* 499. No injury or disadvantage to any suitor can arise from this course of proceeding, since the Court cannot, in any respect, found its decree upon incompetent or irrelevant testimony; and if it should do so, it would be deemed error, and the decree might, on appeal, be for that cause reversed. *Clark* v. *Turton*, 11 *Ves.* 240.

I shall, upon the received principles of the English practice, hold the party or his solicitor strictly responsible for the propriety and pertinency of the interrogatories propounded by him to the witnesses. And although commissioners should not confine themselves strictly to the letter of the interrogatories; but ought so to take down everything, that the whole truth may plainly appear; yet, they should not insert any matter from a witness, not properly and substantially pertinent to the interrogatory propounded. 4 *Inst.* 278; *Whitelock* v. *Baker*, 13 *Ves.* 515. Any scandalous, impertinent or irrelevant matter returned under a commission may be suppressed and taken off the file; and the party solicitor, or commissioner on being convicted of the irregularity may be made to pay the costs or otherwise punished; since it is indispensably necessary, that the Court should be enabled to vindicate the regularity and purity of its proceedings, and prevent its records from being made the depository of any foul or scandalous matter foreign from the point in controversy. *Sanford* v. *Remington*, 2 *Ves. Jun.* 189; *Cooth* v. *Jackson*, 6 *Ves.* 41; *Eastham* v. *Liddell*, 12 *Ves.* 201; *Mill* v. *Mill*, 12 *Ves.* 498; 1 *Harr. Pra. Chan.* 455.

*I have so far only considered and disposed of the objections proceeding from the party to the suit; but, in this case, **194**