And again, if the bill makes a mere witness a defendant he need not demur, or plead; but if he answers and disclaims all interest whatever in the matter in controversy his answer is conclusive and sufficient; because, having thereby reduced himself to the condition of a mere disinterested witness, his testimony, if required, may be taken as such. (*o*)

Now we have seen, that the reason why the defendant may be compelled to answer as the bill requires, is, that the plaintiff is entitled to his evidence, either because he cannot otherwise prove his case, or to save expense. But, no man can be compelled to criminate himself; nor shall any attorney be permitted to divulge the secrets of his client. These are fundamental axioms restrictive of the right to call for testimony in any manner or form whatever. Inquiries, made in violation of these axioms, are unlawful; and consequently, cannot be answered; since the submission of a defendant to answer must be understood to be qualified by restrictions, that are applicable, indiscriminately, to all modes and forms of calling for evidence. The plaintiff has a right to a full answer to save expense. But he cannot be thus indulged in the saving of expense to himself to the injury of another disinterested and innocent person. *Nemo debet locupletari ex alterius incommodo.* A plaintiff shall not be permitted to burthen a keeper of public records with the expense of making out, and producing copies which any one may obtain on paying the legal fees; nor shall a plaintiff be permitted to save expense to himself by making a mere disinterested witness a party and burthening him with the expense incident to that character.

But these allegations can never be advanced in avoidance, or put in issue as a defence; because they create no defence. (*p*) They are grounded merely on the privilege of the defendant or his client; and on the right of every one to disengage himself at once from a controversy with which he cannot be encumbered as an interested party, either in his public or private capacity; and consequently they are qualifications; but cannot be considered as exceptions from the general rule; since that which must always be, and necessarily is assumed as an admitted proposition, without which a rule cannot be applicable to any case, cannot, with propriety, be considered, as, in any respect, an exception to such rule.

(*o*) Richardson v. Hulbert, 1 Anstr. 65; Cartwright v. Hateley, 1 Ves., jun., 292; Fenton v. Hughes, 7 Ves. 287.—(*p*) Brownsword v. Edwards, 2 Ves. 246.