

cases where the act of Assembly allows the plaintiff to proceed on the default of the defendant, it is provided, that whenever the bill shall charge any matter as being within the private knowledge of the defendant, the plaintiff may, on making affidavit, in open court, that such matter does rest in the private knowledge of the defendant, have the bill, as to such matter, the same being sufficiently alleged, taken *pro confesso*, and have a final decree accordingly. (t) But where the relief sought can be obtained without the discovery of any fact by the defendant, the plaintiff may, at once, have a decree, without either interrogating the defendant, or making any affidavit of the truth of the facts alleged in the bill as to which the defendant ought to have answered.

The meaning of a demurrer, or a plea, is to intercept, in an early stage, a cause which must ultimately end in nothing; (u) or to prevent a discovery, that may be prejudicial to the defendant. It is, therefore, important, in most cases, that a defendant should not, by any slip or mistake, lose the benefit of his demurrer or plea; or have it snatched from him by any technical nicety. For these reasons, he may be allowed to amend, either his demurrer or plea, so as to make it as effectual as the nature of his case will allow. Where the demurrer is general, to the whole bill; but cannot be thus sustained, the court, after argument, by special leave, has permitted the defendant to demur to part of the bill only; considering it as a kind of amended demurrer; since a demurrer cannot, like a plea, be held good in one part and bad in another; (w) or a demurrer may be overruled, without prejudice to the defendant's insisting by way of answer against making a particular discovery, which is, in effect, allowing the demurrer to stand for so much. (x) So, too, on shewing what the amendment is, and how the slip happened, leave will be given to amend a plea; or, if it be incapable of amendment, that it may be withdrawn and an entirely new one filed. The court upon this subject exercises a sound discretion, allowing to a defendant reasonable time to put his plea in proper form, so that he may lose no advantage he can derive from presenting his defence in that shape; at the same time taking care, that the plaintiff sustains no material injury by the delay. (y)

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(t) 1820, ch. 161, s. 2.—(u) *Freeland v. Johnson*, 2 Anstr. 407.—(w) *Baker v. Mellish*, 11 Ves. 68.—(x) *Suffolk v. Green*, 1 Atk. 450.—(y) *Freeland v. Johnson*, 2 Anstr. 411; *Beam Plea*. Equ. 329.