

point to be tried; and if that be denied, and shewn to be untrue, his whole case is broken up, his right destroyed; and therefore, he cannot have the discovery and account he calls for. A plea which denies the fact of partnership, in such case, is called a *negative plea*; and it will protect the defendant from the discovery or account; the right to call for which having been founded upon that which is denied.

Upon a like ground, where a defendant, in his answer, positively denies the fact of partnership, his answer, it is said, must be deemed sufficient; and consequently, that he cannot be compelled to go on and discover and account as required by the bill. This denial in the answer, it is obvious, in this respect, performs the office of a negative plea. It is one of the alleged exceptions to the general rule, that a defendant who submits to answer shall answer fully as the bill requires. This, and all similar negations in answers may be called *negative exceptions*.

Where a defendant, admitting all the facts in the bill to be true, advances and affirms other facts not mentioned in the bill, in the shape of a plea, as an avoidance and bar of the whole claim of the plaintiff; such a plea affords to the defendant a protection from the discovery sought by the bill. As where the plaintiff sets out his right to an estate, and prays a discovery of some particulars respecting the title, and the defendant, by plea, avers, that he is a *bona fide* purchaser for a valuable consideration without notice, he will be protected by such plea from the required discovery. In like manner, if the defendant, by his answer, avers, that he is such a purchaser; it is said, that such matter, so alleged, in his answer, must be deemed a sufficient answer; and allowed to protect him from the discovery called for. This is another of the alleged exceptions to the general rule. It is evidently founded on an averment of a new fact, in avoidance, which might have been made the subject of a plea; and gives a protection from discovery in like manner as such a plea would have done; therefore, this, and others of a similar nature, may be denominated *affirmative exceptions*.

There are various instances in which a defendant has been allowed to take shelter from the discovery sought of him by denying the title or some material fact constituting the title of the plaintiff. A denial of the whole demand has been held to be a sufficient answer, and one which affords protection against the discovery required. (b)