

An allegation of this description, of a defendant in his answer, not being responsive to the bill, cannot be allowed, before a decision, to go for any more than an allegation in the bill; if not proved at the hearing, they will, both of them, be disregarded. The court then, ought not to say, that the defensive negation or affirmation, of the defendant in his answer, should be assumed as true; or as so overthrowing the averments of the bill as to deprive the plaintiff of the discovery he asks.

But these reasonings appear to be founded upon a much broader and more extraordinary assumption; which is, that the defendant has no other means of protecting himself against the most frivolous and unfounded calls for disclosures, that may be attended with the most injurious consequences to him. If there was the least ground for this assumption the reasoning would be entitled to the greatest respect; but it is utterly destitute of foundation. We have seen that a defendant has the most ample means of protecting himself from all unwarrantable calls for discovery, by either a demurrer, or a plea; which he may mature, and advisedly rest upon; and which even after argument he may have revised and amended to reach and exactly to fit the merits of his case. Indeed it is said, that negative pleas were contrived expressly for the purpose of preventing this mischief. For, as it has been justly observed, any person might, by alleging a title, however false, sustain a bill in equity against any person for any thing, so far as to compel an answer; and thus the title to every estate, the transactions of every commercial house; and even the private transactions of every family might be exposed; and this might be done in the name of a pauper, at the instance of others, and for the worst purposes. (n)

This is a frightful view of the extent to which an unlimited right to call for a discovery by means of a bill in equity might be carried. But what is the remedy? A plea. This is not all. The reasons are here strongly presented to shew the great value and importance of pleas; not only as the commensurate and appropriate remedy or preventative, but as the sole and exclusive one. For it is not said, that if the party fails to betake himself to this shelter, he may find protection by any thing he can allege by way of answer; on the contrary, if he waives or is driven from his plea, we are told, that he will be then met by the rule which commands him to answer as fully as the bill requires. (o)

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(n) *Beam's Pleas Equ.* 130.—(o) *Prac. Reg.* 275.