

There appears to be some stress laid upon the peculiar claims which, it is said, a purchaser without notice has upon the court for its protection. And, from a careful consideration of the only case in which any reasons are to be found for the decisions which sanction this, as one of the exceptions to the rule, the court seems, in its anxiety to take due care of that favoured character, to have entirely skipped over the previous question; whether the defendant was, in truth, such a purchaser or not; and, taking it for granted, that he really was such a person, to have gone on to declaim upon the very eminent standing of such a character in a court of equity. The true and only question before the court was, whether a defendant, who had, in his answer, averred, that he was a purchaser without notice, could, thus, protect himself from the required discovery, without, or after he had failed to do so by plea, seems to have been passed by, or wholly lost sight of.

It may be admitted, that a purchaser without notice stands in a court of equity, upon the highest and strongest grounds; yet the course of the court is not to be perverted, or thrown into confusion for his behoof; he is to have justice; and the means whereby he may obtain it are ample and open to him. He may plead the fact, and thus avail himself of the advantage of his situation; and if he fails to do so, or does so improperly, he must, like other negligent persons, abide the consequences. (*p*) And there is much reason why he should be thus left to his fate, when it is recollected, that by a plea of purchase for valuable consideration without notice, the defendant tacitly admits, that he has no title; and thereby assumes a position analogous to that of a witness who refuses to answer lest he should criminate himself. (*q*)

But we have seen, that, in general, after a plea has been overruled, the defendant may insist on the same matter in his answer. Therefore, if these exceptions are to be allowed to the extent laid down, then the defendant's negation of the plaintiff's title; or allegation, that he himself is a purchaser without notice; which is thus to stand in the place of, and to do the business of a plea, will amount in fact to a mere repetition of the same plea, without the leave of the court; and the controversy may be thus renewed and reiterated for no one useful purpose. If a plea could be repeated, it would not do its office, it would not have the effect of saving

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(*p*) *Jerrard v. Saunders*, 2 Ves., jun., 197, 454; *Sugd. Vend. Purch.* 553; *Ovey v. Lighton*, 1 Cond. Cha. Rep. 433; *Co. Litt.* 303.—(*q*) *Wallwyn v. Lee*, 9 Ves. 33.