litigation, but encourage defendants to try it as a daily experiment to gain time. (r) The case referred to, of the purchaser without notice, was, in fact, one of that kind. The defendant, in that very case, had pleaded the fact of his being a purchaser without notice; and having failed to sustain his plea, as a protection against the discovery required of him, he presented the same matter in his answer for that purpose, and succeeded. (s)

The adjudications upon which these exceptions to the rule rest, stand opposed, however, by high and venerable authority. They have never been respectfully acquiesced in; nor passed by, at any time, without question, or impeachment. They have introduced an anomalous form of pleading; and, have, to the extent of their bearing, distracted the principles by which proceedings in Chancery had been previously well regulated. According to the orderly and regular course, a defendant is always expected to resort to a plea as a means of introducing any negation or new matter on which he proposes to rely, for the purpose of putting a stop to further litigation, or of protecting himself from any useless, or injurious disclosures; since it is much to be wished, that the plaintiff's title should, in every instance, be established before he has the discovery. (t) Yet, if a defendant undertakes to set forth in his answer any matter which shews, that the plaintiff has no title; or which, if put into the shape of a plea, might have protected him from discovery, still having submitted to answer, he shall answer fully. (u) And, upon this ground, it has also been held, that if the fact of partnership, being a component part of the plaintiff's title, be denied in the answer; or an averment be made therein, that the partnership had been determined; it shall not protect the defendant from the discovery, or the production of the books required of him; because it was a proper subject for a plea, and he should have availed himself of it in that form. (w.) And so too, where a plaintiff asked for specific performance, and the defendant relied upon the statute of frauds, still he was ordered to discover all he knew respecting the agreement; because, although as against a mere parol agreement, the statute was a bar; yet as, after he had stated the agreement, the plaintiff might be able to

(r) Freeland v. Johnson, Antr. 410.—(s) Jerrard v. Saunders, 2 Ves., jun., 187, 454.—(t) Newman v. Wallis, 2 Bro. C. C. 143.—(u) Richardson v. Mitchell, Sel. Ca. Cha. 51; Hall v. Noyes, 3 Bro. C. C. 483.—(w) Cartwright v. Hately, 3 Bro. C. C. 239; Hornby v. Pemberton, Mosely, 57; ——— v. Harrison, 4 Mad. 252; Leonard v. Leonard, 1 Ball & Bea. 323