

action at common law has been properly originated and now revived against these defendants; and therefore he is entitled to the discovery he asks from them.

This, it has been urged, being a mere bill of discovery, in which the plaintiff asks only for a disclosure of the defendants' knowledge of a specified fact, they cannot be permitted to set forth, in their answer, any thing foreign to that special inquiry. If this position be correct, then every thing in an answer to a bill of this kind, which cannot be comprehended within the terms of the interrogatories propounded, no matter what may be the nature of the case, must be rejected as irrelevant. The validity of this position, therefore, presents a preliminary question, which must be determined before any inquiry can properly be gone into as to how far the matter objected to may be considered as impertinent in regard to the whole case as stated by this bill.

If a plaintiff has a right to relief in this court, he has a right to an answer from the defendant to every allegation of his bill, the admission of the truth of which, or the proof of the truth of which is necessary to entitle him to relief. (c) And after having given, in all respects, such an answer as the bill requires, the defendant may, and indeed, always should go on, by way of further answer, to state all matters in bar, or by way of avoidance which he may make available as a defence against the plaintiff's claim; for it is a well established rule, that a party cannot be allowed to offer evidence to sustain any allegation which he has not made and relied upon in his bill or answer. (d) As where to a bill for a specific performance, although the defendant is bound to answer fully as to the agreement relied on by the plaintiff; yet he may, by way of avoidance, and as a defence against the claim presented by the bill, set forth the agreement which was really entered into between them; and the plaintiff may, if he admits the truth of the defendants' answer, amend his bill and take a decree accordingly upon the discovery and confession of the defendants. But having, by his amendment, virtually waived all claim founded on the contract as set out in his original bill, he cannot be allowed to offer proof to sustain such claim after the amendment has been made. (e)

The object of a discovery from the defendants for the purpose of giving relief here, is to obtain evidence in relation to the subject

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(c) *Cooth v. Jackson*, 6 Ves. 37.—(d) *Whaley v. Norton*, 1 Vern. 483; *Sidney v. Sidney*, 3 P. Will. 276; *Clarke v. Turton*, 11 Ves. 240; *Smith v. Clarke*, 12 Ves. 480.—(e) *Lindsay and Lynch*, 2 Scho. & Lefr. 9.