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. *Phelips* v. *Caney*, 4 *Ves.* 107. *The plaintiff claimed tithes according to a particular custom. The custom being **151** denied by the answer, it was held to be sufficient; and to preclude the right to the discovery prayed. *Randal* v. *Head*, *Hardr.* 188. A plaintiff claimed as next of kin; the answer denied his being next of kin and it was considered as sufficient, and a bar to the discovery called for. *Sweet* v. *Young*, *Amb.* 353. A plaintiff claimed as a partner; a denial of the partnership, by way of answer, was deemed sufficient, and a bar to the discovery. *Hall* v. *Noyes*, 3 *Bro. C. C.* 487; *Jacobs* v. *Goodman*, 2 *Cox*, 282. The plaintiff alleged, that his claim arose from a specified mode of dealing, the answer denied the mode of dealing; and it was held to be sufficient, and a bar to the discovery. *Donnegal* v. *Stewart*, 3 *Ves.* 446. These are all the cases, that have fallen under my observation in which the exception was produced by a negation in the defendant's answer.

I have met with two cases, furnishing but one instance of an exception, arising from an averment of some new matter in avoidance; and that is, where the defendant alleged, that he was a purchaser for a valuable consideration without notice. In the first of them, the answer was held to be sufficient, and a bar to the discovery required by the bill. *Jerrard* v. *Saunders*, 2 *Ves. Jun.*, 458; *Ovey* v. *Leighton*, 1 *Cond. Cha. Rep.* 433.

Such have been the adjudications upon this subject; but, as it is the reason and spirit of cases which make law, and not the letter of particular precedents, we may be permitted to investigate the solidity of the reasons of these decisions. The reports of some of them furnish no reason of any kind; and therefore, I shall not venture to guess at what might have been the reasons on which the judgment of the Court was founded.

In one of these cases in which the plaintiff demanded tithes according to a particular custom, the Court is reported to have said, that where there is a full answer given to the thing in demand, till that be tried, the defendant is not obliged to discover; otherwise, any plaintiff might, upon a feigned suggestion, compel a defendant to discover what writings he has, or what goods, or other thing whatsoever, upon pretence, that he is joint-tenant with him; and so what he has gained by his trade, which would be strangely inconvenient. *Randal* v. *Head*, *Hardr.* 188. In another of them, where the alleged partnership was denied only in the answer; in reply to the argument, that the defendant could only have pro-