152 tected himself from the discovery by *plea, or demurrer, the Judge is made to say, you are not entitled to an account unless there be a partnership; and your position is much too wide; at that rate, if an utter stranger were to file a bill against Child's shop, (then a great London banker,) alleging a partnership, it could not be sufficient to deny that any such partnership existed. There may be cases where the Court will require an account although the principal point in the bill is denied; but not in a case like this. *Jacobs* v. *Goodman*, 2 *Cox*, 282. In a third case the plaintiff, after setting out his title, prayed a discovery; the defendant answered, that he was a purchaser without notice; exceptions were taken to the answer, as being insufficient; upon which the Chancellor, among other things, is reported to have said, that this Court will never extend its jurisdiction to compel a purchaser, who has fully and in the most precise terms denied all the circumstances, mentioned as circumstances from which notice may be inferred, to go on to make further answer as to all the circumstances of the case that are to blot and rip up his title. To do so would be to act against the known established principles of the Court. *Jerrard* v. *Saunders*, 2 *Ves. Jun.*, 458. In one other of these cases some reasons are given; but they are very obscurely expressed; and, perhaps, convey no other idea than the supposed inconvenience to the defendant alleged in some of the other cases in which reasons for the decision are given. *Sweet* v. *Young*, *Amb.* 353.

Here then, we have before us all the reasons, that have ever been given in favor of these exceptions to the rule. Now, it is perfectly manifest, that in each of these cases the reasons given are based upon an assumption of that, against the plaintiff, and in favor of the defendant, which is the very fact about the truth of which they are at issue. This assumption does, in effect, contrary to the general rules of pleading, treat an answer as being as conclusive as a plea. *Cartwright* v. *Hateley*, 1 *Ves. Jun.*, 292. The custom, the partnership, or the notice, was the very fact put in issue between the parties; and therefore, it would seem to be exceedingly rash to pronounce any judgment founded on the truth or falsehood of such fact, before the issue was tried and determined. *Wigram on Discovery*, 8. To say, that a party might feign a suggestion to warrant a call for discovery is tantamount to saying, he might commit a fraud. Either party, any one may commit a fraud; but the law presumes every one to be innocent until the contrary appears; and

153 the Court is bound to act upon that presumption. *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