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. *Jerrard* v. *Saunders*, 2 *Ves. Jun.*, 187, 454; *Sugd. Vend. Purch.* 553; *Ovey* v. *Leighton*, 1 *Cond. Cha. Rep.* 433; *Co. Lit.* 303. 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. *Wollwyn* v. *Lee*, 9 *Ves.* 33.

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

155 *litigation, but encourage defendants to try it as a daily experiment to gain time. *Freeland* v. *Johnson*, *Antr.* 410. 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. *Jerrard* v. *Saunders*, 2 *Ves. Jun.*, 187, 454.

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 of 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