should, in every instance, be established before he has the discovery. *Newman* v. *Wallis*, 2 *Bro. C. C.* 143. 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. *Richardson* v. *Mitchell*, *Sel. Ca. Cha.* 51; *Hall* v. *Noyes*, 3 *Bro. C. C.* 483. 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. *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. 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 *prove something which would take the case out of the statute, when applied **156** to the agreement disclosed, he was, therefore, entitled to a discovery of the particulars of the agreement to enable him to do so. But if the plaintiff fails to do so, then the defendant would be allowed the benefit of the statute, notwithstanding his disclosures. *Cooth* v. *Jackson*, 6 *Ves.* 37; *Rowe* v. *Teed*, 15 *Ves.* 375; *Givens* v. *Calder*, 2 *Desau.* 172.

The old rule was, either to demur, to plead upon something *dehors* the bill, or by a negative plea, or to answer throughout. And a wish has been expressed, even by one who seems to admit the correctness of some of the exceptions to this rule, that whenever a party is not bound to answer the interrogatories put, he should be obliged to take advantage of it by demurrer. But this new mode of proceeding, for such it is said to be, although the first instance of its allowance occurred as far back as the year 1661, has been stigmatized as a kind of incomprehensible nondescript. It is called a sort of illegitimate pleading; or a species of plea, which is neither a plea, answer, or demurrer, but a little of each; the various, and discordant opinions of some eminent men; that it was impossible the forms of pleading could be permitted to stand as altered by those reported cases; and that when the question came for decision it would be infinitely better to decide, that the objection to discovery should be made by plea; rather than by answer. *Randal* v. *Head*, *Hard.* 188; *Selby* v. *Selby*, 4 *Bro. C. C.* 12; *Dolder* v. *Huntingfield*, 11 *Ves.* 283; *Faulder* v. *Stuart*, 11