tioned upon the argument: an estate, charged with debts: the first taker an infant; and out of his estate all the debts paid; improvidently in this respect, that the creditors had cancelled all their securities: I must by an equity have given that infant's estate a charge against the real estate, as nearly as I could, if he had taken an assignment of all those securities I now suppose to have been cancelled.

July 20*th*. The *Lord Chancellor*. Upon further consideration as to the leasehold estate, I think, that power of sale is void; for it may travel through minorities for two centuries; and, if it is bad to the extent, in which it is given, you cannot model it to make it good. I think, the soundest ground is, that the power is bad.

(1) Stat. 38 *Geo.* III. *c.* 60. Stat. 39 *Geo.* III. *chapters* 6, 21, 40, 43, 108. Stat. 39 & 40 *Geo.* III. *c.* 30. Stat. 41 *Geo.* III. *c.* 72, consolidated and amended by Stat. 42 *Geo.* III. *c.* 116.

DOLDER *v.* Lord HUNTINGFIELD. ST. DIDIER *v.* Lord HUNTINGFIELD.
Nov. 20*th*, 1805.

[See *Mason* v. *Wakeman*, 1848, 2 Ph. 517; *Republic of Peru* v. *Dreyfus*, 1888, 38 Ch. D. 358.]

Whether a Defendant can by answer refuse the discovery, insisting, that he is not bound to answer, *Quære*. But, having given part of the discovery, he was compelled to answer as to the rest. Whether a foreign State, not acknowledged by this country, can maintain a suit here, viz. the Government of *Switzerland*, in consequence of the Revolution, suing for Stock, vested in trustees by the former Government, *Quære*.

The Bill in the first of these causes stated, that previously to 1798 the magistrates and persons, in whom the powers of government of the several *Swiss* [284] cantons were respectively vested, remitted large sums to their agents in this country, for the purpose of being invested in the public funds; and that large sums were so remitted by the governments of the cantons of *Berne* and *Zurich*, and the town of *Neufchatel*; which were part of the public monies of the said cantons and town respectively; which sums were invested accordingly for the public use of such cantons.

The Bill then stated the several funds, in 1798 standing in the books of the Bank of *England* and the *South Sea* Company, in the names of the Advoyer the Less and Grand Council of the city and canton of *Berne*, the Burgomaster the Less and Grand Council of the canton or state of *Zurich*, and the town and citizens of *Neufchatel*; that prior to 1798 the said cantons of *Switzerland* were separate and independent states, connected by a certain league; and in that year the several cantons became united and consolidated into one independent State or Commonwealth, which assumed the name of the *Helvetic* Republic; and have ever since remained so united; and from that time the said several states or cantons ceased to exist; and there were no persons, answering the description of the former respective governments.

The Bill farther stated, that by a law of the *Helvetic* Republic, passed on the 12th of *March* 1799, it was declared, that the property, acquired by the then late governments of the said cantons, as representing the sovereignty, was national property; that part of said funds (specifying them) has been assigned by the *Helvetic* Republic to *Antoine St. Didier*, of the city of *Paris*, merchant. The Bill then stated the title of the Plaintiffs, as the Llandamman and two Stathalters of the *Hel*-[285]-*vetic* Republic; in whom by the constitution of the Republic the executive power is vested; and prayed, that the Defendants, the Bank of *England* and the *South Sea* Company, may be decreed to transfer to the Plaintiffs, and to pay the dividends accrued; and that the other Defendants, the agents, may be decreed to pay the dividends, received by them.

The agents by their answer, admitting the remittances, and investment of the money in the funds, &c., and that prior to 1798 the cantons of *Switzerland* were separate and independent states, connected by a league, stated, that in 1798 a revolution took place in *Switzerland*: and that the said several states and cantons.

and among others the cantons of *Berne* and *Zurich*, ceased to exist, or to be separate and independent states; and that there was not from the time of such revolution any person, in whom the government of *Berne* and *Zurich* was vested, or answering the description of "Advoyer the Less and Grand Council of the City and Canton of "*Berne*, the Burgomaster the Less and Grand Council of the Canton or State of "*Zurich*, and the Town and Citizens of *Neufchatel*"; and that they are informed and believe, another Revolution has taken place in *Switzerland*; and the powers of government are now vested in different persons from those, in whom they were vested at the times, when the transactions in the Bill mentioned are represented to have taken place. They submitted, that the Plaintiffs upon their own shewing by their Bill have no title to the relief prayed, or to any account of the dividends, from the Defendants; and that the *Attorney General* ought to be a party.

A similar Bill was in *January* 1803 filed by *St. Didier*, described as residing at *Paris*, claiming under the assignment; and a similar answer was put in. The [286] Master having reported the answer insufficient in each cause, Exceptions were taken to the Report. The Defendants had, after the expiration of the usual time, applied for leave to demur; which was refused.

Mr. *Richards*, Mr. *Hollist*, and Mr. *Winthrop*, in support of the Exceptions, upon the question, whether the Defendants, having put in an answer, were bound to answer throughout, cited *Neuman* v. *Godfrey* (2 *Bro. C. C.* 332): *Jerrard* v. *Saunders* (2 *Ves. jun.* 454): a case in the Court of Exchequer; upon a Bill by a vicar against the occupier; who by answer denied the right of the vicar; but did not set forth the quantity and value; and an Exception was over-ruled; which decision was followed by a late case in the same Court.

They also insisted, that the Bill states no title in the Plaintiffs; neither, that the new government is recognized by the government of this country: nor, that it is the legitimate government: that, though every State may by consent of the Sovereign and inhabitants change the form of the government, nothing like force, conquest, or subjugation, can give a title in a Court of Justice: the facts, that a *French* army had entered *Switzerland*, and gained possession of the country by force after much blood-shed, were so notorious, that they may be stated in a Court of Justice; and under such circumstances it could not be represented, that the Union took place with the free will and consent of the Government and inhabitants; which free will and consent are essential; and the law of the *Helvetic* Republic was merely declaratory; and could not give the right, not given by the Union.

Mr. *Romilly* and Mr. *Bell*, for the Plaintiffs. [287] The question is, whether these trustees, having admitted, that this fund is in their hands, and, that they have received the dividends, shall not state, what dividends they have received. Upon the general question, whether a Defendant may by answer insist, that he is not bound to answer, there are many contradictory decisions: but it was never decided, that a Defendant, having answered as to particular facts, may stop short; and refuse to give any farther answer, as to the circumstances attending those facts. The proposition is most material. Great inconvenience would follow from receiving the objection at the hearing instead of by plea or demurrer. The party may die; and the whole benefit of the suit may be lost by not compelling the Defendant to answer in the first instance. Shall the party take the benefit of the delay? What recompence can the Court make to the other party; in whose favour the Decree is at last made; the object of the discovery being completely gone?

The result of all the decisions is, that, where a Defendant has submitted to answer, he is bound, unless in some particular case, to answer fully. As a general proposition, where the Bill is filed for relief and discovery, if the Defendant submits to answer, he is bound to answer fully, unless from particular circumstances he can shew something, exempting him from the general obligation to answer. There are two excepted cases, proving the rule: 1st, where the discovery tends to criminate the person, from whom it is sought. That is so fundamental a rule of the law of this country, that Equity, interfering to prevent the application of the general law to work injustice, will not interfere against that rule. The other exception is a purchase for valuable consideration: where by accident, perhaps negligence, the plea is defective in form; and the whole [288] relief is substantially obtained by the discovery; upon which the Plaintiff may go to law. In *Gethin* v. *Gale* (stated *Amb.* 354, in *Sweet* v. *Young*) Lord *Hardwicke* was struck with the hardship

of the case; and distinguishes it from the case of a creditor or legatee. The cases, that followed, are *Neuman* v. *Godfrey* (2 *Bro. C. C.* 332), *Cartwright* v. *Hateley* (3 *Bro. C. C.* 238; 1 *Ves. jun.* 292), *Shepherd* v. *Roberts* (3 *Bro. C. C.* 239), *Hall* v. *Noyes* (3 *Bro. C. C.* 483). The Court cannot in every case judge of the materiality. *Jacobs* v. *Goodman* (in the Court of Exchequer, 3 *Bro. C. C.* 487, n.) has always been pressed; upon the argument, that in this way any man might compel the first mercantile house in *London* to account. That argument has always been disallowed by Lord *Thurlow*; though it had weight with the Court of Exchequer in that case; and was in a subsequent case taken up by Lord *Rosslyn*. *Selby* v. *Selby* (4 *Bro. C. C.* 11). *Jerrard* v. *Saunders* (2 *Ves. jun.* 454). *The Marquis of Donegal* v. *Stewart* (3 *Ves.* 446), and *Phelips* v. *Caney* (4 *Ves.* 107), are the only cases, besides *Jacobs* v. *Goodman* (in the Court of Exchequer, 3 *Bro. C. C.* 487, n.), in which the Defendant was held not bound to answer fully; and no reason is given; except in *Jacobs* v. *Goodman*, which goes upon the hardship in the case of a partnership. That case might be met by a plea; which is not confined in time, as a demurrer is. The books and papers would furnish the strongest evidence, whether there was a partnership, or not; and the strongest inference arises from declining that production. This would lead to an examination of the propriety or impropriety of the discovery in every case. In *The Marquis of Donegal* v. *Stewart* there was no inconvenience in compelling the Defendant to discover [289] the prices of the pictures: but there was great inconvenience the other way: the very object of the Bill being to detect the imposition. Suppose, in *Phelips* v. *Caney* the Defendant had admitted, that £100 was due; and, that he had assets for that: upon the particular statement of the Bill perhaps that answer would have been sufficient: but, if it is to go beyond that, it directly over-rules what Lord *Hardwicke* says as to a creditor and legatee in *Gethin* v. *Gale*; that they are entitled to an account; which must suppose a debt or legacy disputed. The result of all the authorities, from *Sweet* v. *Young* (*Amb.* 353) down to *Jacobs* v. *Goodman*, is, that the Defendant must take advantage of his situation by plea or demurrer; and in *Jacobs* v. *Goodman* the Court appears to have been struck with the argument, that in this way bankers might by the suggestion of a partnership be compelled to set forth all their accounts. These Defendants do not put themselves upon the point, that they are in such a situation, that they are not bound to answer: but, admitting, that to a certain extent, as to the funds themselves, they must answer, insist, that they will stop short; and refuse to go into the particulars.

It is objected, that the Bill should state, either, that the new government is recognized by the government of this country; or, that it is the legitimate government of the country. That argument is not conformable to the rules of pleading in this Court. It is not necessary in a Bill for an annuity to state, that all the circumstances required by the Act of Parliament have been complied with; or, in a bill to carry an agreement into execution, to state, that it is upon the proper stamp. Those circumstances are assumed; unless the contrary appears.

[290] The remaining question, whether it is necessary, that the government of this country should have recognized the new government of *Switzerland*, is a most important consideration, as to the legal doctrines and the political consequences it involves: viz. whether, when a foreign government has invested money in the funds of this country, upon the faith of our government, merely on account of some constitutional alteration, however inconsiderable, in the form of the government of that country, the *British* government has a right to say, the money so invested belongs to them, and not to the government of the country, by which it was invested. That is an extraordinary proposition. Suppose, previously to the union with *Scotland* the *British* government had money in a foreign bank: could the government of the country, in which that money was invested, have claimed it, on the ground, that the union was not recognized by that government? The same case might have arisen upon the Revolution of 1688. As to the Plaintiff in the second cause, they ought to have pleaded, that he was an alien enemy: a plea, held to great strictness both in law and equity. The Bill states only, that he was residing at *Paris* in 1803; upon which ground several of his Majesty's subjects might be considered alien enemies.

Mr. *Richards*, in Reply. Upon the question of pleading there is certainly great want of uniformity; and the late authorities are in favour of the Defendant:

Jacobs v. *Goodman* (3 *Bro. C. C.* 487, n.). *Jerrard* v. *Saunders* (2 *Ves. jun.* 454). *The Marquis of Donegal* v. *Stewart* (3 *Ves.* 446); and *Phelips* v. *Caney* (4 *Ves.* 107). In *Gunn* v. *Prior*, which is [291] not in print, the Bill was filed by a person, claiming as heir at law. A plea, that he was not heir, was disallowed. Then an answer was put in; insisting, that the Plaintiff is not heir. Upon exceptions to the report as to the sufficiency of that answer *Lord Kenyon*, sitting for Lord *Thurlow*, held, that if the Plaintiff was the heir, he was entitled to all the discovery, sought by the Bill; if he was not the heir, he was not entitled to any discovery; that therefore the preliminary fact must be ascertained; and an issue was directed, upon this principle; that, if an allegation is made by the Defendant of a fact, destroying the Plaintiff's title, whether it is by way of plea or answer is immaterial. In either case that must be first decided. *Selby* v. *Selby* (4 *Bro. C. C.* 11) was a different case; for there was a devise to *Lowndes*, in case no heir should appear within a year. He was without doubt the acknowledged devisee; and took possession and the year elapsed, long before the Bill was filed. A Bill of discovery was filed by *Lowndes*; and Lord Chief Baron *Eyre* said, that Bill must be answered in all its parts. The case of *Cookson* v. *Ellison* (2 *Bro. C. C.* 252), which really cannot be considered as a decision, has had great influence in all these cases. As to *Jerrard* v. *Saunders* (2 *Ves. jun.* 454), upon what ground is that an exception to the rule? Why is not a purchaser as much bound to answer as any other person? The discovery is, not relief, but merely ancillary: the allegation being, that the Defendant holds deeds belonging to the Plaintiff; as the estate belongs to the Plaintiff. If the Plaintiff could prove, that the Defendant has the title-deeds, he would be entitled to a decree for them without putting the Defendant to answer. A Bill to carry an agreement into execution does not aver, that the agreement has been stamped; as, though not stamped, it is not the less an agreement. It [292] is enough, if it is stamped even during the hearing. (*Coles* v. *Trecothick*, 9 *Ves.* 234; 11 *Ves.* 593, 5.) It is not necessary to state, that an annuity has been duly enrolled; as without enrolment there is no grant, giving the party a title to sue as an annuitant. The circumstances of this case are now matter of history.

The *Lord Chancellor*. You would be obliged upon an indictment for a libel to prove, that *France* is now at war with *Austria*; not as to the war with this country: the Courts taking notice of that with reference to our own country.

Reply. Such a body as this, not acknowledged by this country, is not entitled to sue in the Municipal Courts of this country. The comparison to the union with *Scotland* does not hold. This country, with its government by the King and Parliament, still continued the same, with that accession. There was not an end or dissolution of the nation, as a nation. Upon the revolution in 1688 the constitution remained precisely the same; with the change only of the King, a part of the legislative sovereignty of the country: the supreme power being in the King and Parliament. This is a total dissolution of the country; not merely the introduction of a new chief magistrate into the same country, that reposed this confidence in these Defendants.

The *Lord Chancellor* [Eldon]. It is not necessary to make any observations upon the cases, that have been cited. I remember, it struck Lord *Thurlow*, who endeavoured to decide upon questions of pleading with analogy to the law, as extraordinary, that, [293] if there are settled modes, forming the practice, according to which a Defendant is to proceed, there could be a deviation from them. The practice required a demurrer within a given time: or the Defendant could not demur alone; but must have applied for leave to plead, answer, or demur; not demurring alone. Most of the cases, that have been stated, are distinct from this; for in those cases, taking the bill to be true, neither the Plaintiff, nor the Defendant, had any doubt, that the Plaintiff was entitled to relief. For instance, where a partner, prays a partnership account, if the partnership is admitted, the relief follows. So, where the Plaintiff is admitted to be a creditor or legatee, the bill sustains itself against any thing, suggesting that no relief is due. But cases in modern times have said, that, if the Defendant denies some substantive fact, which, if admitted, would give relief, until the truth of that fact is disposed of, no farther answer shall be compelled. Many topics of great weight must be disposed of, when that case comes to be decided; if it is still open. The Court has got to a species of plea; which is, neither a plea, answer, or demurrer; but a little of each. The consequence

is, that the Commission must go to a number of facts; instead of one; as in the case of a plea. The late cases, as far as they are authorities, as to which I say nothing now, establish this; that if the bill is both by the Plaintiff and the Defendant allowed to give a right to the relief, if true, the Defendant, not demurring, not denying by answer the title to relief upon the bill, but negativing one fact positively, says, the Court, if they will take that fact not to be true, ought not to call for an answer. In order to make those cases authorities for the Defendants, they must say, that, taking the case, made by the bill to be true, they deny some leading fact. But that is not this case.

[294] The principle, upon which I dispose of this question upon the Master's Report, is not connected in any degree with the merits of this cause. The question of merits is not decided by the *Maryland Case*, which does not touch such a case as this; a foreign independent state. (*Barclay* v. *Russell*, 3 *Ves.* 424. See *The Nabob of the Carnatic* v. *The East India Company*, 1 *Ves. jun.* 371; 2 *Ves. jun.* 56; 3 *Bro. C. C.* 292.) That state was only a corporation under the Great Seal, dissolved by means, which a Court of Justice was obliged to consider rebellious; and then the transfer of the title from the state of *Maryland* to any other state was a question, a Court of Justice could look at, as a question of law, only in one way; and the principle was, that the Court could not admit, that the title passed to the independent states of *America* by an act which we were obliged to call "rebellion." What national justice was to do, after national policy had arranged the relative situation of the countries, was to be decided, and was decided, elsewhere. This is perfectly different. No civil offence has been committed against this country by the dissolution of the former government, or the arrangement of the present government, in *Switzerland*. The question is therefore to be discussed upon great principles of the law of nations; without attending to the situation of the Defendants, as subjects of this country. If it is true, that the Plaintiffs have shewn, that they have no title whatever to the relief (for that is the proposition), the rules of the Court require a demurrer; before the Defendant comes here to ask for time to plead, answer, or demur, not demurring alone. The proposition is extraordinary, that a person, in a situation, in which he must answer, and may, and is sometimes called upon to, state the want of parties, can say, that, as the suit hereafter cannot be effectual for want of parties, he will not answer at present. I do not understand the principle of that. I do not say, whether the *Attorney General* is a necessary party.

[295] The Defendants applied for leave to demur alone; having got themselves into a situation, in which they could not do that. Then the answer is quite new in this respect; that the Defendants, not being allowed to demur to the discovery or the relief, will discover what they please; and refrain from discovering the rest; putting in an answer that objection both to the discovery and relief, which ought to have come by demurrer. Upon that ground, refusing this, I cannot be said to shake any of those decisions.

As to the question, Whether, if a new state was to arise in *Europe*, a Court of Justice is to take notice of it; if it does not appear by averment on the record; or upon an allegation, according to information and belief, that a revolution has taken place; first, those last words are too loose: 2dly, it is not easy to decide, what a revolution means in a Court of Justice; for, when a sovereign and the whole nation give their individual consent to the change, that is in a sense a revolution. There is another sense of that word, much more grievous. But I do not know, that I can give a legal construction to such a word, unless a sense has been put upon it by authority in this country. My opinion is, that these Defendants must answer.

There is no difference in the other case, except, that the objection ought to come in a different form; with the observation, that it is too much for me to suppose, that the title, made by the former government, would meet with no attention from the present government.

The exceptions were over-ruled.(1)

(1) See *Taylor* v. *Milner*, 11 *Ves.* 41. *Faulder* v. *Stuart*, the next case. The general point, that a Defendant cannot by Answer refuse to answer fully, has been since decided. See the note, 11 *Ves.* 42; 1 *Ves. jun.* 293. In the Court of Ex-

chequer, where Exceptions come immediately before the Court, the rule is the other way: *John* v. *Dacie*, 13 *Pri.* 632.

[296] FAULDER *v.* STUART. STUART *v.* FAULDER. *Dec. 7th, 9th*, 1805.

[See *Mason v. Wakeman*, 1848, 2 Ph. 517.]

Whether a Defendant can by Answer refuse the discovery, insisting that he is not bound to answer, *Quære.* The Answer held insufficient; as being argumentative; and not containing positive averment. Under the general charge as to the fact of payment the Plaintiff may interrogate as to all the circumstances, that go to prove or disprove the truth of the fact, as when, where, &c., without particular charges.

The bill in the first of these causes stated a purchase in 1799, by the Defendants *Daniel Stuart* and *Thomas George Street*, from *John Parry*, of the property and copyright of *The Courier* newspaper, in consideration of an annuity of £400; that in 1801 *Street*, in consideration of £500, sold a moiety of his share to the Plaintiff *Faulder*; who in 1804 assigned that share to the other Plaintiffs, *Bosanquet* and Co., upon trust to secure the balance of his account with them, as bankers; and prayed an account of the profits of the paper; and, that the Defendant *Stuart* may be decreed to pay one-fourth part, &c., according to the assignment.

The Defendant *Stuart* by his answer stated the circumstances of his original connection with *Street* in publishing the paper; that the annuity to *Parry* was made redeemable upon payment of £4000, and, as to a moiety, £2000; that certain conditions were agreed upon between them; one, that all the profits should be applied to the redemption of the annuity; that *Street* was to subsist on a salary; that, to prevent the introduction of any improper person, it was agreed, that neither should sell, until an offer made to the other; and it was understood and agreed, that each was to have the option of purchasing upon the terms any third person would give. The answer then stated, that all the purchase-money is now paid, and the annuity redeemed; and all accounts between the Defendants settled to the 13th of *April* 1804; with several other circumstances: that the Defendant had no notice of the assignments to the Plaintiffs until *May* 1804, and not from them until *June*: that he be-[297]-lieves, the Plaintiff privately received money from *Street* on account of the paper; that the Defendant has received different sums of money on account of the paper since the 27th of *January* 1804; and he insists, *Street* had no right to sell, until he had made an offer to the Defendant; that *Street* never did make that offer. The Defendant therefore insisted upon the agreement; and that *Faulder* could not purchase, nor *Street* sell, except subject to the equity, under which he held; and claimed to be entitled to an assignment of the share, upon the terms under which *Faulder* purchased; and, that it is immaterial whether the Plaintiffs had notice of the particular terms of the agreement between the Defendant and *Street*: but under the circumstances it must be presumed, they knew, *Street* could not assign without leave of the Defendant, and unless he declined to purchase. The answer farther suggested, that the Plaintiffs had not made the affidavit, required by the statute 38 *Geo.* III. *c.* 78, upon a change of the property in a newspaper; and therefore the assignments, being made fraudulently and kept concealed, are void; and insisted, that for the reasons aforesaid the Plaintiffs have not any right to compel this Defendant to come to any account for the profits of the said concern, or set forth any account of his receipts or payments on account thereof.

Exceptions were taken to the answer, for not setting forth, what profits had arisen since the 27th of *January* 1804: and whether the Defendant had not received and converted to his own use the whole or part; and for not setting forth an account of the money accrued or received since the 13th of *April* 1804, on account of the profits.

The Master reporting the answer insufficient, the Defendant took an Exception to the Report.

[298] The second cause was instituted against the Plaintiffs in the other cause. The Bill stated the same sort of case as the answer to the other Bill; and, charging