

Let it, however, be supposed, that the case shewn by the bill is one of which the court has jurisdiction; and that the plaintiff has a capacity to sue. Even then the plaintiff's inquiries, concerning the case, can only be such as he may lawfully make of the defendant, as being properly a defendant; and supposing him to be interrogated as a mere witness. The plaintiff, in this respect, places the defendant in the condition of a witness; and interrogates him for the purpose of obtaining evidence; or the defendant is thus called upon, as it were, by a *subpœna duces tecum*, and required to bring into court certain documentary evidence. A plaintiff is entitled to have a discovery as to two heads: first, to enable him to obtain a decree, or to bring an action; or to ascertain facts material to the merits of his case; either because he cannot prove them, or in aid of proof, or to save expense; and next he is entitled to a discovery of matters to substantiate his proceedings and make them regular and effectual in this court. (e) But the disclosures, thus called for, must be pertinent and material to the plaintiff's case, and necessary in order to enable him to recover; as where an executor was required to say, whether he had a sufficiency of assets; and to state an account; if he admits a sufficiency of assets to satisfy the plaintiff's claim, he need not answer as to the account. (f)

But, although a man is allowed, voluntarily, to disclose any thing against himself, however atrocious, he shall never be compelled to criminate himself; or even to subject himself to a forfeiture; *nemo tenetur scipsum accusare*, is a maxim of the English code, which, with an evident reference to proceedings in Chancery, has been engrafted into the fundamental law of the republic. The twentieth article of the Declaration of Rights provides, 'that no man ought to be compelled to give evidence against himself, in a court of common law, or in any other court, but in such cases as have been usually practiced in this state, or may hereafter be directed by the legislature.' The sound sense of which is, that a man shall not be obliged to discover what *may* subject him to a penalty, not what *must* only; (g) but the boundaries are often very nice, where a matter is near indictable, and a fraud in this court. (h) If, however, it should in any manner appear by the

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(e) *Finch v. Finch*, 2 Ves. 492; *Brereton v. Gamul*, 2 Atk. 241; *Moodalay v. Morton*, 1 Bro. C. C. 469.—(f) *Finch v. Finch*, 2 Ves. 492; *Agar v. The Regents' Canal Co.*, Coop. Rep. 212.—(g) *Harrison v. Southcote*, 1 Atk. 539.—(h) *Chetwynd v. Lindon*, 2 Ves. 450.