

suggested by the question. I think, however, that this description, and the objection founded upon it, are sometimes applied more extensively than the principle upon which they are founded requires; the good sense of the rule is perfectly manifest, with respect to all cases where the question propounded involves an answer immediately bearing upon the merits of the cause, and indicating to the witness a representation which will best accord with the interests of the party; but where the questions are merely introductory, where the mere answer yes or no, will leave the point of the case precisely as it found it, and can only be material as laying the foundation for a further inquiry, the reason of the objection does not occur, and the objection itself appears to be ill-founded; and the making it can only proceed from a captious and petulant disposition to interrupt the course of examination. If a witness is asked generally with reference to a particular occasion, whether a person said anything, the answer yes or no, cannot very materially advance the interest of the party; and can only serve as the foundation for the more general question, of what it was that was said. But I have very frequently known this preliminary question excite a clamorous interposition for correcting the supposed impropriety, by telling the advocate that his question should be, What did the person say? A question which necessarily supposes the existence of the general fact of something having been said, which possibly may not be the fact. I think that, according to the principles of good sense and fair reasoning, the restriction ought not to be extended to cases to which the occasion of it cannot be deemed to apply, and that if the question does not prompt an answer bearing upon the subject in dispute, if the negative or affirmative answer will be perfectly indifferent, except as serving for a foundation of further inquiry, the Court would best consult the ends of justice, by discouraging a conduct that can have no other effect than a frivolous