

be found; the case where there are two or more defendants of one or some of them being non-residents; the case of a bill of revivor where the party had removed out of the State, &c. 1773, ch. 7, s. 3; 1785, ch. 72, s. 30 and 31; 1787, ch. 30, s. 1; 1790, ch. 38, s. 3; 1792, ch. 41, s. 2 and 4; 1794, ch. 60, s. 2, 3, 5 and 9; 1795, ch. 88, s. 1 and 2; 1797, ch. 114, s. 2 and 3; 1799, ch. 79, s. 3 and 4; 1804, ch. 107, s. 2; 1820, ch. 161. And where a party has been returned summoned, but has failed or refused to appear and answer, other Acts of Assembly provide, that the plaintiff may, according to a prescribed mode, have his bill taken *pro confesso*. 1785, ch. 72, s. 19; 1799, ch. 79, s. 1 and 2; 1820, ch. 161.

According to the course of the English Courts there are cases in which an implied confession is held to be a sufficient ground for a decree. As where the defendant, having appeared, has been attached for not answering, and is brought three times from prison into Court, and has the bill read to him, and refuses to answer; such a public refusal in Court amounts to a confession of the whole bill. So, too, where a person appears, and departs without answering, after process has gone against him to sequestration. There \*also the bill is taken *pro confesso*; because it is presumed to be true when he has appeared and departed in despite the Court, and withstands all its process without answering. *Forum Rom.* 36. But these modes of having a bill taken *pro confesso* having been deemed, in many respects, too oppressive, or unnecessarily tedious, more easy and expeditious modes have been provided, by which, if a defendant, who has appeared, fails to demur, plead or answer, according to the rules of the Court, within a limited time, the bill may be taken *pro confesso*. 1785, ch. 72, s. 20; 1799, ch. 79, s. 2 and 9; 1820, ch. 161, s. 1; *Buckingham v. Peddicord*, 2 *Bland*, 447. 574

At law, where the nature and amount of the plaintiff's demand may be distinctly ascertained from the declaration, as in debt, *assumpsit*, upon a promissory note, or the like, the judgment by *nil dicit* is final; but in actions for the recovery of damages only it is not so; because the amount claimed is uncertain; and, therefore, an enquiry must be made and proof heard as to the *quantum* which the plaintiff is entitled to recover. Hence it is, that several of our Acts of Assembly, which allow the bill to be taken *pro confesso*, go on to declare, that the Chancellor may, in his discretion, order a commission to issue for the plaintiff to examine witnesses to prove the allegations of his bill; or that the plaintiff may himself be examined on oath; which Acts of Assembly; apparently in affirmance of a former course of proceeding, have enabled the Chancellor to call for proofs and explanations in all cases which appear to require it. 1799, ch. 79, s. 5; 1818, ch. 193, s. 5; *Johnson v. Mesmineere*, 1 *Vern.* 223; *Hawkins v. Crook*, 2 *P. Will.* 556.