

ance. *Forum Rom.* 26, 64; 1 *Harri. Pra. Cha.* 194; to prevent which it was declared, by an English statute, passed in the year 1705, and adopted here, that no process for appearance should issue till after the bill was filed, except in cases of bills for injunction to stay waste, or to stay suits at common law. 4 *Ann, ch.* 16, s. 22; *Kilty Rep.* 247; 2 *Mad. Cha.* 197; 4 *Inst.* 92. But even in these excepted cases, as no injunction is ever granted in England without an affidavit setting forth the circumstances out of which the equity arises, to which the bill, in order to insure a continuance of the injunction, must substantially conform, the defendant is thus, in all cases, according to the present course of proceeding, at once informed, on his appearance, of the cause of complaint to which he is called upon to answer. But no relief whatever can be granted upon the bill against an absent person; because no proof can be made against him, and there can be no foundation for a decree without confession or proof of the matters stated in the bill. *Forum Rom.* 36.

The first process for calling the defendant in, to appear and answer, is the subpœna. If he should be abroad, or cannot be served with that process, the case can proceed no farther, and the plaintiff must, according to the English course of proceeding, in many cases, go without redress. But if after having been summoned by the subpœna, a defendant fails to appear, then there goes against him an attachment for contempt, *Cowell v. Seybrey*, 2 *Bland*, 18, *note*; and after that an attachment with proclamation; then a commission of rebellion, and then a sergeant-at-arms; and if he should not be taken and brought in upon any of those writs, then there may be issued a sequestration, by which all his property may be taken, and held by the officer of the Court; from which property, so taken, a plaintiff may; in some cases, obtain satisfaction. *Nodes v. Batle*, 2 *Rep. Cha.* 283; *Moyser v. Peacock*, 3 *Rep. Cha.* 22; 2 *Freem.* 127; *Davis v. Davis*, 2 *Atk.* 23; 1 *Harri. Pra. Cha.* 194, 229, 242, 254.

But, notwithstanding that there could be no decree upon the bill against the defendant, until it was declared, by a British statute, passed in the year 1732, and adopted here, that in such cases, on publication being made as therein prescribed, warning the absent or absconding defendant, who had, or who had not been served with the subpœna, to appear, the bill * might be taken *pro confesso*. 5 *Geo.* 2, ch. 25; *Kilty Rep.* 189; *Mawer v. Mawer*. 450 1 *Cox*, 104; *Short v. Downer*, 2 *Cox*, 84; *Neale v. Norris*, 5 *Ves.* 1; *Winchester v. Beavor*, 5 *Ves.* 113; 1 *Fovcl. Exch. Pra.* 212. But as an express, or constructive appearance is deemed indispensable to enable a plaintiff to obtain relief; and as it sometimes happened, that a defendant, who had been arrested and brought in upon some one of the writs, following the subpœna, refused to enter his appearance, it was, by the same statute, declared, that if a