which had been filed, having been thus withdrawn, the case was accordingly submitted for hearing on bill and answer.

BLAND, C., 14th April, 1828.—This case having been set down for hearing by the plaintiffs upon the bill and answers thereto alone; and having been submitted on their part without argument; and the solicitors of the defendants having on the 28th of March last filed a note in which they say, that "the counsel for the defendants having understood that this case is set down for hearing at the present term; and that the object of complainants is to obtain against the defendant Law a decree to account. They, therefore, respectfully submit to the Chancellor, whether the complainants are entitled to any such decree; no such relief having been prayed in the bill, and no foundation having been laid for the same." Upon which the proceedings were read and considered.

One of the plaintiffs, McKim, as assignee of his co-plaintiff Moore, claims the one-half of the schooner Beauty, as tenant in common with the defendant John Odom. The plaintiffs complain that the defendants Law, Harrison, and Odom, have refused to account with them for the proceeds of this vessel, which has been sold, and her earnings. And by their bill pray, that one-half of those proceeds and earnings may be delivered over to them, or that they may have such other relief as is best adapted to the nature of their case.

When a case is set down for hearing, as this has been, on the bill and answers alone, every thing contained in the answers, including the exhibits which constitute a part of them, being prayed to be made so, are necessarily admitted by the plaintiff to be true in every particular, so far as it may be at all pertinent and applicable to the case set forth in the bill; because, if the plaintiff does not contest the answer by putting in a replication to it, he thereby admits it to be true; and even if he should have put in a replication; yet, if he afterwards, without laying the defendant under a rule to proceed, brings the case to be heard on bill and answer,

410 *the answer must, in like manner, be taken to be true in all points; because the opportunity which the defendant had of proving his answer, is thereby as effectually taken from him as if no replication had been filed. *Beam's Orders*, 29, 180; *Forum Rom.* 45; *Grosvenor* v. *Cartwright*, 2 *Cas. Chan.* 21; *Barker* v. *Wyld*, 1 *Vern.* 140; *Wrottesley* v. *Bendish*, 3 *P. Will.* 237, *note; Legard* v. *Sheffied*, 2 *Atk.* 377; *Paul* v. *Nixon*, 1 *Bland*, 201, *note; Estep* v. *Watkins*, 1 *Bland*, 488; *Wright* v. *Nutt*, 3 *Bro. C. C.* 340.

It is also an established rule, that when any one of two or more defendants makes out a defence which goes to the whole case, as regards himself, at least, the bill must be dismissed; and where a complete bar as to the whole case is thus established by any one defendant; and there can be no relief granted against any one de-