v. *Hart*, 1 *Vern.* 114; *Story* v. *Windsor*, 2 *Atk.* 632; *Dobson* v. *Leadbeater*, 13 *Ves.* 233. Hence it is not unfrequent, where a case arises as to which former decisions furnish no safe guide, to have recourse to the illustrative analogies of the common law. *Davis* v. *Davis*, 2 *Atk.* 21; *Foster* v. *Vassall*, 3 *Atk.* 589; *Bayley* v. *Adams*, 6 *Ves.* 594; *Dolder* v. *Huntingfield*, 11 *Ves.* 292. Supposing then, that, in relation to this subject, there was a total absence of all manner of precedent and authority, the analogous course of the common law would be found to afford much and strong light.

At common law there are two defaults, the one before, and the other after appearance. The consequence of the first, in England, is, that the defendant may be outlawed; and in this State, in many cases, is, that an attachment may go against his estate. The consequence of the second default, or the defendant's not putting in any plea at all, is, that the plaintiff may have a judgment by *nil dicit*. The plea is called, at common law, the answer of the defendant; and if he fails to answer, judgment is awarded against him on the ground, that he has thus tacitly admitted, or confessed the case of the plaintiff; and left him nothing to litigate or to prove. So, in equity, after an appearance, the taking a bill *pro confesso* where no answer has been put in; or no sufficient answer, after exceptions have been sustained, is analogous to the taking the declaration for true, where the defendant has put in no plea at all, or it has been held insufficient on demurrer. *Davis* v. *Davis*, 2 *Atk.* 21; *Buckingham* v. *Peddicord*, 2 *Bland*, 447.

It is a rule, at common law, that every plea must answer the whole declaration, or at least every material part of it, which goes to constitute the gist of the action. But the defendant may fail, or purposely decline to plead, or answer to every part of the * declaration; in which case, the plaintiff may join issue on **572** the plea and take judgment for the unanswered part as by *nil dicit*. And, we are told, that it is frequently judicious to plead only to part, or to admit a part of the cause of action, in order to save the costs of the trial of such matter; for, nothing can be tried that is not put in issue, and the defendant by declining to answer a part deprives the plaintiff of the power to burthen him with the costs and expense of proving that on a trial which he has not denied and put in issue. 1 *Chitty Plea.* 509. So in equity, where the defendant fails, or declines answering any material part of the plaintiff's bill, as to which he seeks and may obtain relief, it amounts to a tacit admission of so much; and such part of the bill may, therefore, be taken *pro confesso*. If the declining to answer a part of the cause of action may, from any motives, be judicious at common law, certainly a defendant in Chancery may be induced, for like reasons, to pursue a similar course; since no costs or expense can be allowed in Chancery any more than at law for the proof and trial of any matter not put in issue. *Matthew* v.