Hanbury, 2 *Vern.* 188; *Watkyns* v. *Watkyns*, 2 *Atk.* 96; *Clarke* v. *Periam*, 2 *Atk.* 333, 337; *S. C.* 9 *Mod.* 340; *Hawkins* v. *Crook*, 2 *P. Will.* 556; *Ward* v. *Buckingham*, 3 *Bro. P. C.* 581; *Clarke* v. *Turton*, 11 *Ves.* 240; *Smith* v. *Clarke*, 12 *Ves.* 477; *Gordon* v. *Gordon*, 3 *Swan.* 472; *Blake* v. *Marnell*, 2 *Ball & B.* 47.

Upon the whole this rule, in relation to pleadings in equity, appears to be as fully sustained by analogy to the course of the common law as by direct and positive authority.

There is, in many instances, a strong disposition manifested by Courts of Chancery, to harmonize their course of proceedings in principle with the positive rules of the common law. But when the Legislature has prescribed rules of proceeding for the Court itself; and cases occur, within the spirit, but not within the letter of them, the Chancellor feels himself, not merely invited, for the preservation of harmony, but becomes sensible of a duty to conform; upon the ground, that equity is bound to follow the law in spirit and in principle.

In equity, the consequences of a default before appearance, when pursued to the utmost, seldom enabled the plaintiff to obtain the precise relief he was in quest of; because, there could be no adjudication upon his case, applying the remedy, as specific performance, or the like, exactly to suit it, until the defendant had appeared, and the allegations of the bill had been taken for true or established.

573 *The English Courts, evidently under a strong sense of the necessity of there being some better mode of attaining justice than by a sequestration of the defendant's estate, have carried the doctrine, in relation to substituted and constructive summons, full as far as was within the compass of judicial power; further than it ever was in this State; and yet, short of the point of manifest and general utility. In the year 1718, the Parliament partially interposed, and provided the means of enabling a plaintiff to proceed against a defendant, who had not entered his appearance, and to have his bill taken *pro confesso*, which could not have been done in equity until then. 5 Geo. 2, c. 25; *Davis* v. *Davis*, 2 *Atk.* 23; 1 *Fowl. Exch. Pra.* 201. This statute was introduced into this State; *Kilty Rep.* 189; and seems to have been the prototype of those various legislative enactments, upon this subject, to be found in our statute book, from the year 1773, down to the present time.

There are many Acts of Assembly, under which a bill may be taken *pro confesso* against a defendant, who has not been summoned; nor has appeared. They provide for all the cases, that have, or, as it is supposed can occur; absent or absconding defendants; non-resident defendants, who are either *non compos mentis*, infants or adults; absent or non-resident mortgagors; defendants whose residences are unknown; resident defendants who cannot