These, then, are the legislative rules, in regard to the whole bill where no answer at all is put in. But not one of these Acts of Assembly, which seem to have provided, with such an infinite deal of care and solicitude, for all the various causes and modes of neglecting or failing to answer the whole bill, do in any manner speak of or allude to the case of a neglect or refusal to answer a distinct and material part only of the whole bill, where an answer is made to all the rest. It has been declared, that a bill may be taken *pro confesso*, and the Chancellor shall proceed to decree in the same manner as if the defendant had admitted by his answer the facts stated in the bill. And in case the defendant has been summoned, or has appeared, and fails to answer, he must be ordered to do so by an appointed day, or an interlocutory decree **575** *may be entered on the default, and a commission issued *ex parte*. But, in every case, the consequence of the default is, that the bill may be taken *pro confesso*. 1795, ch. 88, s. 1.

Hence, it appears to be clear, that these legislative rules which, according to their letter, are only applicable to a case where there is no answer at all; must, in spirit and in principle, be alike applicable to the case where the answer only covers a part of the material allegations, and is totally and absolutely silent as to the residue of the bill. And, that the unanswered part of the bill must, on the hearing, be taken to be true; otherwise, there would be a manifest inconsistency in the course of the Court. But, the reason and principle being the same, the rule must be the same in both cases, if the whole bill be left unanswered it may be taken for true; or if a part only be left unanswered, that part must, in like manner, be taken for true.

These Acts of Assembly allowing a bill to be taken *pro confesso* on the defendant's default in not answering, authorize the Chancellor to pass a final decree at once, if he deems it unnecessary to issue a commission. The decree by default, in all such cases, is as absolute as a judgment by default in an action at common law.

The course of the English Court of Chancery is, in some respects, different. There when the plaintiff obtains a decree by default, a provisional clause is superadded, that such a decree is to be binding on the defendant, unless, being served with process, he shall, within a limited time, shew cause to the contrary. And this decree being *sub modo* only, is emphatically called a decree *nisi;* which cannot be, nor ever is considered as final until the party has been served with process, and it has been made absolute by the Court itself. 1 *Harri. Pra. Chan.* 625; *Beam's Orders*, 198; *Halsey* v. *Smyth*, *Mosely*, 186; *Venemore* v. *Venemore*, 1 *Dick.* 93.

This, it seems, has long been the established practice of the Courts of Chancery of Virginia. So, that where a defendant has not answered the bill, it is held to be error to enter a final decree against him, taking the bill *pro confesso*, without the previous