ration; in which case, the plaintiff may join issue on 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. (*h*) 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. (*i*)

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.

(*h*) 1 Chitty Plea. 509.—(*i*) Matthew *v.* 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.