

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. (*j*) This statute was introduced into this state; (*k*) 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 be found; the case where there are two or more defendants of one or some of them being non-residents; the case of a bill of revivor where the party had removed out of the state, &c. (*l*) And where a party has been returned summoned, but has failed or refused to appear and answer, other acts of Assembly provide, that the plaintiff may, according to a prescribed mode, have his bill taken *pro confesso*. (*m*)

According to the course of the English courts there are cases in which an implied confession is held to be a sufficient ground for a decree. As where the defendant, having appeared, has been attached for not answering, and is brought three times from prison into court, and has the bill read to him, and refuses to answer; such a public refusal in court amounts to a confession of the whole bill. So, too, where a person appears, and departs without answering, after process has gone against him to sequestration. There

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(*j*) 5 Geo. 2 c. 25; *Davis v. Davis*, 2 Atk. 23; 1 Fowl. Exch. Pra. 201.—(*k*) *Kilty Rep.* 189.—(*l*) 1773, ch. 7, s. 3; 1785, ch. 72, s. 30 and 31; 1787, ch. 30, s. 1; 1790, ch. 38, s. 3; 1792, ch. 41, s. 2 and 4; 1794, ch. 60, s. 2, 3, 5 and 9; 1795, ch. 88, s. 1 and 2; 1797, ch. 114, s. 2 and 3; 1799, ch. 79, s. 3 and 4; 1804, ch. 107, s. 2; 1820, ch. 161.—(*m*) 1785, ch. 72, s. 19; 1799, ch. 79, s. 1 and 2; 1820, ch. 161.