

also the bill is taken *pro confesso*; because it is presumed to be true when he has appeared and departed in despite of the court, and withstands all its process without answering. (n) But these modes of having a bill taken *pro confesso* having been deemed, in many respects, too oppressive, or unnecessarily tedious, more easy and expeditious modes have been provided, by which, if a defendant, who has appeared, fails to demur, plead or answer, according to the rules of the court, within a limited time, the bill may be taken *pro confesso*. (o)

At law, where the nature and amount of the plaintiff's demand may be distinctly ascertained from the declaration, as in debt, *assumpsit*, upon a promissory note, or the like, the judgment by *nil dicit* is final; but in actions for the recovery of damages only it is not so; because the amount claimed is uncertain; and, therefore, an enquiry must be made and proof heard as to the *quantum* which the plaintiff is entitled to recover. Hence it is, that several of our acts of Assembly, which allow the bill to be taken *pro confesso*, go on to declare, that the Chancellor may, in his discretion, order a commission to issue for the plaintiff to examine witnesses to prove the allegations of his bill; or that the plaintiff may himself be examined on oath; which acts of Assembly, apparently in affirmance of a former course of proceeding, have enabled the Chancellor to call for proofs and explanations in all cases which appear to require it. (p)

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

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(n) Forum Rom. 36.—(o) 1785, ch. 72, s. 20; 1799, ch. 79, s. 2 and 9; 1820, ch. 161, s. 1; Buckingham v. Peddicord, 2 Bland, 447.—(p) 1799, ch. 79, s. 5; 1818, ch. 193, s. 5; Johnson v. Desmineere, 1 Vern. 223; Hawkins v. Crook, 2 P. Will. 556.