

C. H. A. P.  
LXXII.

affection, partiality or prejudice; and all accounts directed to be stated, audited, or settled, by order of the chancellor, shall be referred for such purpose to the auditor, who shall have power and authority to administer an oath to all witnesses and persons proper to be examined upon such account, and shall audit, state and settle, such accounts, agreeably to the order of the chancellor, and shall return the same to the chancellor, to be done with as the chancellor shall think just; and the said auditor shall be allowed thirty-five shillings current money per day for every day he shall reasonably be employed in stating, auditing and settling, any account, to be paid by the party desiring such account to be stated, audited and settled, and taxed in the bill of costs as aforesaid.

Payment may  
be compelled,  
&c.

XVIII. AND BE IT ENACTED, That payment of the allowances to commissioners, witnesses, and the auditor aforesaid, may be compelled by order of the chancellor, and process of contempt for disobedience to such order may be issued as in other cases.

Defendants refusing,  
&c. shall  
stand committed,  
&c.

XIX. AND BE IT ENACTED, That if any defendant, being of full age and regularly summoned to appear to any bill or petition in chancery, shall refuse or neglect to appear thereto at the return court, and thereupon shall stand out the process of attachment of contempt, and attachment with proclamations, and do not appear and put in a good and sufficient answer to the said bill or petition by the fourth day of the court to which the said attachment with proclamations is returnable, or being served after appearance with, and brought into court upon, any process of contempt, for not answering the bill or petition filed, the said defendant, so brought into court, shall and may, upon motion, stand committed by order of the court for the same until discharged by the further order thereof; and if the defendant in the case first mentioned shall not appear and answer as aforesaid, by the fourth day of the court to which the attachment with proclamations is returnable, or if the defendant so committed for not answering as aforesaid shall not put in a good and sufficient answer by the fourth day of the court next after the court at which he shall be committed, in either case, unless the defendant shall have further time granted by the court to put in such answer, the bill or petition shall be taken *pro confesso*, and such decree made thereupon as by the court may be thought just; and if in either of the cases aforesaid the defendant shall have further time granted him to answer; and the said defendant shall not, before the expiration of such further time, put in a good and sufficient answer to the bill or petition exhibited against him, such bill or petition shall be taken *pro confesso* without any further delay, and such decree made thereon as by the court may be deemed just; or the chancellor, in his discretion, may, in the cases aforesaid, order commission to issue for the plaintiff to examine witnesses to prove the allegations in his bill or petition, or the chancellor may examine the plaintiff on oath upon interrogatories, to ascertain the allegations in his bill or petition, and such decree shall be made in either case as the chancellor shall think just.

By 1795, ch. 88, on a bill being filed against a person not residing in the state, the chancellor may direct notice to be given, and thereupon may proceed to decree. A provision is also made for a rehearing. And by 1797, ch. 114, a publication may be ordered on a subpoena being returned *non est* from the county where the defendant is known or supposed to reside, and the chancellor being satisfied that he evades the sheriff, and thereupon the suit may proceed, reserving to such person the privilege of appearing, &c. within a limited time. By 1799, ch. 79, when a defendant living out of the state is summoned, the chancellor may limit a day for his appearance and answering, and on his failure, after a publication of the order, or its being served three months before the day limited, the chancellor may either take the bill *pro confesso*, or direct commission, &c. and proceed to decree as if the defendant had appeared; and by section 9, if such defendant shall appear by the time limited, or if any other defendant shall voluntarily appear, an answer shall be put in on or before the fourth day of the next term, or they shall be proceeded against as in other cases against residents and nonresidents respectively. By section 3, provision is made respecting defendants out of the state, where the complainant died and a bill of revivor is filed.

Defendants appearing,  
shall  
file an answer,  
&c.

XX. AND BE IT ENACTED, That every defendant appearing at the return court of the *subpoena*, shall file a good and sufficient answer to the bill or petition exhibited against him, with the register in chancery, on or before the fourth day of the court next following the said return court; and if the defendant, (not having further time granted by the court to file an answer,) shall omit or neglect to file such answer accordingly, the defendant shall be in contempt, and the plaintiff shall and may, upon motion, have an attachment (a) of contempt against him, and if the defendant upon such attachment shall be returned *non est inventus*, the plaintiff shall be at liberty to obtain, upon motion, the usual process of attachment with proclamations to compel the defendant to answer, and if the defendant shall stand out the said process of attachment, and attachment with proclamations, and shall not file a good and sufficient answer by the return court of the last of the said process, the bill or petition filed, unless the defendant shall have further time granted him by the court to put in such answer, shall, upon motion, be taken *pro confesso*, (b) and such decree made thereupon as by the court may

(a) By 1799, ch. 79, section 2, on failure of a defendant to appear, after such attachment is returned attached, the chancellor may, on application, limit a day in the following term for his appearance and answering, or otherwise may take the bill *pro confesso*, or direct a commission, &c. and proceed to a decree.

(b) By 1799, ch. 79, section 3, the chancellor is, in such cases, (in his discretion,) either to take the bill *pro confesso*, or direct a commission for taking depositions *ex parte*, &c.