

April 1828 ; provided a copy be served, &c. Which having been served as required, the matter was submitted.

21st April, 1828.—BLAND, *Chancellor*.—Ordered, that the exceptions of the plaintiffs to the answer of the defendant *Thomas Tyson* be and they are hereby ruled good ; and that he make a sufficient answer to all the several matters and allegations of the bill on or before the second day of June next, or the same may, after that day, be taken *pro confesso*.

The time allowed by this order for putting in a sufficient answer having elapsed, and the defendant *Thomas Tyson* having failed to answer as required, the plaintiffs brought the matter before the court, and moved that the case might proceed as against him, and the other defendants.

10th July, 1828.—BLAND, *Chancellor*.—Where the answer of the only person who has been made a defendant is, upon exceptions, held to be insufficient, the plaintiff is authorized, according to the English course of proceeding, to take the case up where it stood when the insufficient answer was filed, and proceed thenceforward against the defendant, so as to have him committed to custody until he does answer, or to have the bill taken *pro confesso* ; because an insufficient answer is as no answer at all. (a) And so, where only one of the defendants stands in the situation of not having answered sufficiently, the like course must be had against him alone, so as to enable the plaintiff to proceed with effect against the other defendants. (b)

Upon this principle, and as it has been provided by our acts of Assembly, that, where a defendant fails to answer, the bill may be taken *pro confesso* ; (c) so here where only one of the defendants has contumaciously neglected to put in a sufficient answer, after his first had been determined to be insufficient, it must be allowable and is essentially necessary, to have the bill taken *pro confesso* as against him alone, so as to enable the plaintiff to proceed safely and with effect against him together with the other defendants.

Whereupon it is decreed, that the bill of complaint be and the same is hereby taken *pro confesso* as against the defendant *Thomas Tyson* ; and the plaintiffs are allowed further to proceed with their

---

(a) *Child v. Brabson*, 2 Ves. 110 ; *Turner v. Turner*, Dick. 316 ; *Davis v. Davis*, 2 Atk. 24 ; *Darwent v. Walton*, 2 Atk. 510 ; *Gregor v. Ld. Arundel*, 8 Ves. 89. (b) 1 Fow. Exch. Pra. 199 ; *Royall v. Johnson*, 1 Rand. 421.—(c) 1799, ch. 79, s. 1 ; *Clapham v. Clapham*, ante, 126.