jury to him. The defendant alone bears the consequences of the lame and ineffectual manner in which he puts forward his own defence. Facts thus advanced in the answer, by way of avoidance, operate, in many respects, as if they had been couched in the form of a plea; but whether presented in the one form or the other, they are never considered as evidence of any kind; because the plaintiff had not, in any manner, called for them. Hence, if the plaintiffs puts in a general replication, the defendant must prove them at the hearing, or they will be disregarded. *Simson* v. *Hart*, 14 *John.* 74. Yet if the plaintiff sets the case down to be heard on bill and answer, or refuses to reply, then such allegations must be received as true; not because they constitute any part of the answer called for by the bill; but, because the plaintiff by setting the case down on bill and answer, or refusing to reply, has precluded the defendant from proving them; and, therefore, by that act he makes a tacit admission of their truth, and they are accordingly received as admissions; *Barker* v. *Wyld*, 1 *Vern.* 140; *Grosvenor* v. *Cartwright*, 2 *Cha. Ca.* 21; *Wrottesley* v. *Bendish*, 3 *P. Will.* 237, *n*; *Wright* v. *Nutt*, 3 *Bro. C. C.* 339; *Beams' Orders*, 180; *Forum Rom.* 45; *Estep* v. *Watkins*, 1 *Bland*, 488; an infant plaintiff, however, can make no such admissions. *Legard* v. *Sheffield*, 2 *Atk.* 377.

* But, apart from those several grounds of defence, which a defendant may set forth, and rely upon in the shape of a demurrer, a plea, an answer responsive to the bill, or an answer in negation or avoidance of it; there may be found at the hearing a substantial defence arising out of the whole case which has not, in any manner, been specially advanced and relied upon by the defendant in his pleadings. A defendant may, in his answer, rely upon lapse of time as a defence against a stale claim. But even if he does so, it will not avail him if the delay is accounted for; because, in such case, although it may be a very old, it cannot be considered as a stale claim. *Clifton* v. *Haig*, 4 *Desau.* 341. If, however, the claim should, in truth, be a stale one, and the defendant should have been entirely silent, in his pleadings, as to lapse of time; yet he may have the benefit of the presumption of satisfaction arising from the lapse of time at the hearing. *Prince* v. *Heylin*, 1 *Atk.* 494; *Sturt* v. *Mellish*, 2 *Atk.* 610; *Hoare* v. *Peck*, 9 *Cond. Cha. Rep.* 165; *Coleman* v. *Lyne*, 4 *Rand.* 454; *Prevost* v. *Gratz*, 6 *Wheat.* 498; 1 *Mad. Chan. Pra.* 99; *The Attorney-General* v. *The Mayor of Exeter*, 4 *Cond. Chan. Rep.* 208. Consequently, this reliance upon an unopposed presumption is a mode of defence, which shews itself at the hearing, upon a consideration of the whole case, and not from anything directly alleged by the defendant. **142**

There are then, five modes of defence of which a defendant may avail himself, according to the nature and exigencies of his case; 1; a demurrer; 2, a plea; 3, an answer, properly so called; 4, a nega-