

Books and Papers, Production of.

An. Code, sec. 25. 1904, sec. 24. 1888, sec. 24. 1798, ch. 84.

26. The courts of equity shall have power and authority, on the application of either party on the trial of any actions at law or suits in chancery, either for discovery or relief, to require and decree that the parties shall produce either the original books, writings or papers, or copies certified by a justice of the peace, of all such parts of such books, writings or papers in their possession or power as contain evidence pertinent to the issue, or relative to the matters in dispute between the parties, to be used as evidence at the trial of such cause; but before any such order shall be made, the party making such application shall satisfy the court, on oath or affirmation, that the said books, writings or papers contain material and necessary evidence, and that such party cannot safely proceed to the trial of his case without the benefit of such testimony.

The power given by this and the following section should be exercised with caution, but without hesitation, in a proper case. When a proper case is made out. When an answer is required to a petition for discovery. Amendment of the bill of complaint not necessary. *Eschbach v. Lightner*, 31 Md. 532; *Williams v. Williams*, 1 Md. Ch. 201; *Ringgold v. Jones*, 1 Bl. 91.

The power of the court under this section sustained, but the application held defective. *Williams v. Williams*, 1 Md. Ch. 201; *Duvall v. Farmers' Natl. Bank*, 2 Bl. 686. And see *Williams v. Hall*, 1 Bl. 196; *Williams v. Savage Co.*, 3 Md. Ch. 419.

This section is merely an affirmance of the powers of the court of chancery. *Winder v. Diffenderffer*, 2 Bl. 195.

Cited but not construed in *Buckingham v. Peddicord*, 2 Bl. 457.

As to the production of books and papers before the auditor, see sec. 23.

Re. production of books, and bills of discovery at law, see art. 75, sec. 106, *et seq.*

An. Code, sec. 26. 1904, sec. 25. 1888, sec. 25. 1807, ch. 140.

27. In any case where a court of equity may order the production of books in the possession of any party in the said court, on the failure of such party to produce such books so directed to be produced by the day therein limited, or to show sufficient cause for such failure, during the first four days of the succeeding term, or any other time that may be appointed therefor, the said court may in its discretion take the allegations in the bill of complaint of the party requiring the production of the said books *pro confesso* and decree *ex parte*, in such manner as shall appear just and reasonable.

Cited but not construed in *Buckingham v. Peddicord*, 2 Bl. 457.

See notes to sec. 26.

Declaratory Decrees.

An. Code, sec. 27. 1904, sec. 26. 1888, sec. 26. 1888, ch. 478.

28. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such legal character or right; and the court may, in its discretion, make therein a declaration that he is so entitled without any further or other relief being asked or given.

The jurisdiction of the court under this and the following sections, should never be invoked for the purpose of determining a mere moot or abstract question. It