

An. Code, sec. 149. 1904, sec. 140. 1888, sec. 127.

164. Upon service of process, or notice given by publication, as the case may be, the adult defendants, not being insane, shall appear and file their answer, plea or demurrer, to the bill or petition, within the time allowed by this article, or by the terms of the order of publication, or special order for the extension of time; and in default of appearance, or of answer, plea or demurrer, after appearance within the time allowed, the plaintiff may, at his election, obtain an order as of course, that the bill be taken *pro confesso* as against such defendants; and thereupon the cause shall be proceeded with *ex parte* as against the defendants so in fault; and the matter of the bill or petition may be decreed by the court or judge thereof at any time after the lapse of thirty days from the date of the order *pro confesso*, if there be no answer, plea or demurrer interposed, and the allegations of the bill or petition present a proper case for relief. But the court or judge thereof, may, in all such cases, if it be deemed proper, order that the allegations of the bill or petition, or any of them, be supported by affidavit or deposition to be taken as may be directed.

The practice prevails in this state of requiring plaintiffs to support the allegations of a bill or petition by proof, and a final decree must be sanctioned by the evidence, although a decree *pro confesso* has passed. *Turpin v. Derickson*, 105 Md. 625. And see *Benson v. Ketchum*, 14 Md. 331; *Buckingham v. Peddicord*, 2 Bl. 447; *Purviance v. Barton*, 2 G. & J. 315.

No notice of decree *pro confesso* is required. *Harrison v. Morton*, 87 Md. 677.

Proof taken *ex parte* cannot be used against defendants who are not in default. *Kerr v. Martin*, 4 Md. Ch. 343.

For cases arising under art. 16, sec. 115, of the Code of 1860 (analogous in some of its provisions to this section), see *Rust v. Lynch*, 54 Md. 637; *Mondell v. Shafer*, 49 Md. 493; *Brown v. Kemper*, 27 Md. 674.

For cases dealing with the act of 1820, ch. 161, sec. 1 (analogous in its provisions to equity rule 12), see *Higgins v. Horwitz*, 9 Gill, 343; *Richardson v. Stillinger*, 12 G. & J. 479; *Hatton v. Weems*, 12 G. & J. 106; *Grove v. Fresh*, 9 G. & J. 280; *Neale v. Hagthrop*, 3 Bl. 573; *Buckingham v. Peddicord*, 2 Bl. 454; *Campbell's Case*, 2 Bl. 219; *Ringgold's Case*, 1 Bl. 19.

No decree *pro confesso* may pass against infant or insane defendants—see sec. 219. See notes to secs. 163 and 167.

An. Code, sec. 150. 1904, sec. 141. 1888, sec. 128. 1820, ch. 161, sec. 2.

165. Whenever any bill shall charge any matter or thing as being within the private knowledge of the defendant and shall pray a discovery, on oath, as to such matter or thing, and an interlocutory decree, as provided for in the last preceding section, shall have been entered, and the plaintiff shall satisfy the court, by affidavit, to be taken in open court and filed in the cause, that such matter or thing does rest in the private knowledge of the defendant, and that there is reasonable ground for believing, *prima facie*, that such matter or thing does exist, the said court is authorized and required to order the bill as to such matter or thing, the same being sufficiently alleged and charged, to be taken *pro confesso*, and to proceed to make a final decree in the case, in the same manner as if such matter or thing had been proved or admitted by answer.

The decree *pro confesso* must precede the final decree upon bills of discovery under this section. *Oliver v. Palmer*, 11 G. & J. 445.

Cited but not construed in *Korns v. Shaffer*, 27 Md. 89; *Purviance v. Barton*, 2 G. & J. 317; *Salmon v. Claggett*, 3 Bl. 148; *Buckingham v. Peddicord*, 2 Bl. 454. See sec. 209.