

An. Code, sec. 151. 1904, sec. 142. 1888, sec. 129. 1799, ch. 79, sec. 5.

**166.** If any defendant, after appearance and before he puts in a sufficient answer, shall leave the State, or if any non-resident defendant appears and does not put in a sufficient answer, the court may order such defendant to answer by a particular day, and upon his failure to comply with such order, the bill may be taken *pro confesso* against such defendant.

An. Code, sec. 152. 1904, sec. 143. 1888, sec. 130. 1795, ch. 88, sec. 1. 1797, ch. 114, sec. 3. 1799, ch. 79, sec. 2. 1820, ch. 161, sec. 3.

**167.** Any defendant against whom an interlocutory decree shall be entered, and also any defendant against whom an order to take a bill as to any matter or thing *pro confesso* may be passed, may appear at any time before final decree and file his answer, on oath, to the bill, which shall be filed forthwith, or within such reasonable time as the court in its discretion, and on special cause shown by affidavit, shall appoint; and on such answer being filed, such proceedings shall be had as would or might have been had in case such answer had been filed before the passage of such interlocutory order or decree; but the court shall impose such terms on the defendant as the condition of permitting such answer to be filed, as such court may, in its discretion, under all the circumstances of the case, judge reasonable and proper for avoiding delay or expense, and for the attainment of justice; and the filing of such answer shall in no case affect the validity of any testimony previously taken.

This section in effect places a defendant in default in the same position as to his right to answer, whether there be merely an interlocutory decree with authority to proceed *ex parte*, or a decree *pro confesso* against him. A defendant may appeal notwithstanding a decree *pro confesso* against him, and if such defendant appears and demurs or pleads, upon appeal, the action of the court on such demurrer and pleas will be reviewed. *Turpin v. Derickson*, 105 Md. 625. And as to the defendant's right of appeal, see *Long v. Long*, 9 Md. 355; *Lippy v. Masonheimer*, 9 Md. 315.

Where a decree *pro confesso* is entered fifteen days after the defendant's appearance, but testimony is taken more than two months after the entry of said decree and upon notice to the defendant, and such testimony remained in court the required time before a final decree was passed, such decree will not be reversed on account of the irregularity in entering the decree *pro confesso* before the expiration of twenty days from the appearance. *Bailey v. Jones*, 107 Md. 405.

Action in reference to the decree *pro confesso* and the answer, held irregular and not in accordance with this section—no harm done—errors waived. *Wilmer v. Dunn*, 133 Md. 356.

A decree *pro confesso* held not to deprive a defendant of the benefit of having his testimony considered before the final decree. *Benson v. Ketchum*, 14 Md. 331.

This section does not mean that a defendant may never be let in to answer *after decree*. *Oliver v. Palmer*, 11 G. & J. 149.

The last clause of this section applied. *Brooke v. Perry*, 2 Gill, 97.

Under the act of 1799, ch. 79, sec. 2, a defendant who had appeared and then failed to answer, was entitled to notice before a decree *pro confesso* was entered (see, however, notes to sec. 164). *Wampler v. Wolfinger*, 13 Md. 345.

This section referred to in deciding that a decree could be revised after enrollment only by a bill of review, save in exceptional cases. *Thurston v. Devecman*, 30 Md. 218.

For a case involving the length of time which testimony and an auditor's report must lie in court, where a defendant avails himself of the privileges conferred by this section, see *Oliver v. Palmer*, 11 G. & J. 441.

This section construed in connection with sec. 172—see notes thereto. *Belt v. Bowie*, 65 Md. 353.

Cited but not construed in *Wagner v. Shank*, 59 Md. 327; *Neale v. Hagthorp*, 3 Bl. 573; *Buckingham v. Peddicord*, 2 Bl. 453; *Fitzhugh v. McPherson*, 9 G. & J. 74.