

An. Code, sec. 160. 1904, sec. 151. 1888, sec. 138.

175. If the plaintiff shall not reply to any plea filed, or shall not set down any plea or demurrer for argument, within ten days after the same filed, the defendant may set it down for argument on five days' notice.

An. Code, sec. 161. 1904, sec. 152. 1888, sec. 139. Rule 19.

176. If, upon the hearing, any demurrer shall be allowed, the court may, in its discretion, upon motion of the plaintiff, allow him to amend the bill upon such terms as it shall deem to be reasonable.

As to amendments in equity, see sec. 17.
See sec. 200.

An. Code, sec. 162. 1904, sec. 153. 1888, sec. 140.

177. If, upon the hearing, any demurrer or plea is overruled, unless the court or judge thereof hearing the same be satisfied that it was intended for vexation and delay, the defendant shall be required to answer the bill, or so much thereof as may be covered by the plea or demurrer, at such time as, consistently with justice and the rights of the defendant, the same can be reasonably done; in default whereof, the bill shall be taken, as against him *pro confesso*, and the matter thereof proceeded in and decreed accordingly; and such decree shall also be made when the court or judge thereof shall be satisfied that the plea or demurrer was interposed for vexation or delay merely, and is frivolous or unfounded.

No appeal lies from an order overruling a plea to a bill of complaint, since it decides a mere question of pleading. This section referred to in construing art. 5, sec. 30, *et seq.*—see notes thereto. *Peoples v. Ault*, 117 Md. 634.

Where a demurrer is accompanied by an affidavit that it was not intended for delay and the decree does not indicate that the truth of the statement was doubted by the court, the prayer of the bill should not be granted immediately without giving the defendants an opportunity to answer and be heard on the merits. *Didier v. Merryman*, 114 Md. 434.

Cited but not construed in *Stinson v. Ellicott City, etc., Co.*, 109 Md. 115.

An. Code, sec. 163. 1904, sec. 154. 1888, sec. 141. 1785, ch. 72, sec. 25. 1888, ch. 486.

178. Upon any plea or demurrer being overruled, upon argument or otherwise, or being withdrawn without leave of the court, the party whose demurrer or plea is so overruled or withdrawn shall pay to the opposite party the sum of ten dollars, and the costs thereof, and be in contempt until the said sum of money and costs are fully paid, unless the court shall otherwise specially order.

The uniform practice is upon overruling a plea or demurrer, to grant leave or require the defendants to answer within a limited time, and they should not be deprived of the privilege because of an unsuccessful appeal. *Trego v. Skinner*, 42 Md. 433; *Collateral, etc., Bank v. Fowler*, 42 Md. 402; *Seebold v. Lockner*, 30 Md. 137.

A defendant who is in contempt under this section, has no right to file an answer, and if he does so the same will not be considered. If, however, the fines and costs are paid before appeal taken, the answer will be considered so as to entitle the defendant to appeal from an order granting an injunction—see art. 5, sec. 31. *Gilbert v. Arnold*, 30 Md. 35.

A defendant may appeal from an order overruling a demurrer to a bill although it does not affirmatively appear that he has paid the ten dollars required by this section. *Stinson v. Ellicott City, etc., Co.*, 109 Md. 113.

An order held to be in strict conformity with this section, and the costs put upon the defendant, to be limited to those accruing on the demurrer. *Dennison v. Yost*, 61 Md. 142.