

An. Code, 1924, sec. 35. 1912, sec. 31. 1904, sec. 31. 1888, sec. 29. 1832, ch. 197. 1843, ch. 73. 1868, ch. 102.

35. Whenever any court having equity jurisdiction shall refuse to grant an injunction according to the prayer of the bill or petition filed in the cause, an appeal may be taken from such refusal by any party aggrieved thereby, and such right of appeal shall not be prejudiced by the filing of an answer to the said bill or petition on behalf of any opposing party, nor by the taking of depositions in reference to the allegations of the bill or petition to be read on the hearing of the application for an injunction; and the said appeal shall be heard on a transcript of the said bill or petition, with such other papers or proceedings in the cause as may be necessary for the purposes of the appeal, and so soon as conveniently may be after such transcript shall have been filed in the court of appeals.

An appeal from an order refusing a preliminary injunction on an *ex parte* application, upheld under this section. *Safe Dep. & Tr. Co. v. Baltimore*, 121 Md. 533.

This section has no application to an appeal from an order *granting* an injunction. *B. & O. R. R. Co. v. Gilmor*, 125 Md. 618.

An appeal taken and the record transmitted in due time, inasmuch as such appeal was under sec. 30 and not under this section. *Powell v. Mackenzie*, 137 Md. 275.

Where the court instead of hearing an application for an injunction immediately, sets a subsequent date for the hearing meanwhile issuing a restraining order, and at the hearing refuses the injunction, an appeal lies under this section. *Bonaparte v. Baltimore, etc., R. R. Co.*, 75 Md. 343.

The history of this section, traced. An appeal lies from an order refusing to grant an injunction *ex parte*. *Chesapeake Telephone Co. v. Baltimore*, 89 Md. 707. And see *Webster v. Susquehanna Pole Line Co.*, 112 Md. 423.

Prior to the act of 1868, ch. 102, no appeal lay from an order refusing an injunction after answer filed. *Barnum v. Gordon*, 28 Md. 97; *Krone v. Krone*, 27 Md. 81; *Steigerwald v. Winans*, 17 Md. 65.

Cited but not construed in *Susquehanna Co. v. St. Clair*, 113 Md. 668; *Smith v. Annapolis*, 97 Md. 736; *Willis v. Jones*, 57 Md. 365; *State v. Northern Central Ry. Co.*, 18 Md. 210; *Stockett v. Bird*, 18 Md. 487; *Moreland v. Moreland*, 175 Md. 148.

The action of court in sustaining demurrer to bill of complaint with right to amend is not a refusal to grant injunction according to prayer of bill of complaint within meaning of this section. *Maas v. Maas*, 165 Md. 344.

See sec. 31 and notes to sec. 30.

An. Code, 1924, sec. 36. 1912, sec. 32. 1904, sec. 32. 1888, sec. 30. Rule 9.

36. All appeals allowed from decrees or orders of courts of equity shall be taken and entered within two months from the date of the decree or order appealed from, and not afterwards; unless it shall be alleged on oath that such decree or order was obtained by fraud or mistake, in which case the appeal shall be entered within two months from the time of the discovery of the fraud or mistake, and not afterwards.

Time of appeal.

An appeal must be actually entered within the two months, and the fact that an appeal bond is filed within the two months does not affect the matter. *Humphreys v. Slemmons*, 78 Md. 607. See also *Miller v. Murray*, 71 Md. 62.

Where an appeal from a final order taken in due time brings up a previous order for review in accordance with sec. 32, the appeal need not be taken within two months from the passage of such previous order. *Emory v. Faith*, 113 Md. 256.

In computing the time within which an appeal should be taken, the day of the date of the decree should be excluded. *Calvert v. Williams*, 34 Md. 672.

The time during which a decree is suspended is to be excluded in determining the time within which the appeal must be taken. *Herbert v. Rowles*, 30 Md. 271; *Bennett v. Bennett*, 5 Gill, 467.

The operation of the first clause of this section is not stayed, because the law regulating the time for appeal was not in effect at the time the judgment was entered, provided the appeal was not taken within two months after the law went into effect. *Stephen v. Lewis*, 62 Md. 229.

Where a verdict and judgment regarded by the court as for the plaintiff, were entered in February, 1887, and upon a reversal by the appellate court, judgment is entered in January, 1888, for the defendants, and the plaintiff enters an appeal on the same day, the appeal is taken in time. *Sentman v. Gamble*, 69 Md. 307.