

if the Court or Judge hearing the demurrer shall declare in writing on overruling the demurrer that he is satisfied that the same was intended for vexation, or delay, or is frivolous, or unfounded, the bill shall be taken *pro confesso* as against the party filing the demurrer, and the matter thereof proceeded in and decreed accordingly, as provided in these rules with respect to defendants in default.<sup>1</sup>

Where there are no exceptions to the demurrers referred to in the court below, and an "additional demurrer" states the grounds of the demurrer and challenges the petitioner's right to the relief prayed, an order was not reversed because of such defects in the original demurrers. *Continental Trust Co. v. Balto. Refrig. Co.*, 120 Md. 460.

The failure to make affidavit that pleas are not intended for delay, is a fatal defect if seasonably availed of. How such defect should be taken advantage of. *Wagoner v. Wagoner*, 76 Md. 313.

When pleas are not verified as required by this section, they cannot properly be allowed. *Turpin v. Dirickson*, 105 Md. 625.

Special grounds of demurrer will not be considered on appeal, if they were not relied upon below. *Williams v. Harlan*, 88 Md. 7.

While demurrer to bill and to each paragraph thereof is proper if causes of injury from which relief is sought are separate and distinct, this condition does not apply where conveyances complained of are all in one paragraph. *Lipskey v. Voloshen*, 155 Md. 142.

Demurrer declared frivolous and unfounded and bill order to be taken *pro confesso* and case to proceed *ex parte*. *Wilmer v. Westerman*, 144 Md. 130.

Answer may be treated as demurrer—effect of. *Hill v. Pinder*, 150 Md. 406.

Attempt of administratrix to demur, without complying with the provisions of this section as to affidavit that it was not intended for delay, was properly ignored by chancellor. *Hopkins v. Easton Nat. Bank*, 171 Md. 130.

Defendant in equity may answer and plead in abatement in single pleading. *Scarborough v. Scarborough*, 170 Md. 222.

Answer to bill asserting defense of *res judicata* not defective due to lack of affidavit; defendant entitled to have separate hearing on question of *res judicata*. *Moodhe v. Schenker*, 176 Md. 259.

See notes to sec. 226.

An. Code, 1924, sec. 174. 1912, sec. 159. 1904, sec. 150. 1888, sec. 137.

**180.** The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to be available, but no further.

An. Code, 1924, sec. 175. 1912, sec. 160. 1904, sec. 151. 1888, sec. 138.

**181.** 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, 1924, sec. 176. 1912, sec. 161. 1904, sec. 152. 1888, sec. 139. Rule 19.

**182.** 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.

An appeal does not lie from order sustaining demurrer to bill of complaint for relief by way of injunction, with leave to plaintiff to amend within prescribed time, when plaintiff does not amend, but takes appeal after expiration of prescribed time, without decree of court dismissing bill of complaint. *Mass v. Mass*, 165 Md. 344.

As to amendments in equity, see sec. 18.

See sec. 206.

An. Code, 1924, sec. 177. 1912, sec. 162. 1904, sec. 153. 1888, sec. 140.

**183.** 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,

<sup>1</sup> Thus amended by equity rule 18, November 21, 1919, adopted by the court of appeals in accordance with sec. 18 of art. 4 of the Constitution.