

To entitle a party to answer, plead or demur after a decree *pro confesso*, he must assign some satisfactory reason under oath for his delay. The sufficiency of such reasons, and the terms upon which the defendant may be allowed to answer, etc., are not reviewable on appeal. This section does not repeal or change the requirements of sec. 167, but enlarges them. *Belt v. Bowie*, 65 Md. 353.

The defendant cannot plead or demur to the whole bill, and at the same time file an answer to it, nor can he at the same time demur and plead to the whole bill, or to the same part of it. *Frederick County v. Frederick City*, 88 Md. 662.

An. Code, sec. 158. 1904, sec. 149. 1888, sec. 136. Rule 18.

173. Pleas are hereby abolished. Every defense in point of law arising upon the face of the bill or petition, whether from misjoinder, nonjoinder or insufficiency of fact to constitute a valid cause of action in equity, which might heretofore have been made by demurrer or plea, shall be made by demurrer or by answer; and every point of law, raised by demurrer, may be made to the whole or a material part of the cause or causes of action stated in the bill. No demurrer shall be allowed to be filed to any bill, or part thereof, unless it be supported by affidavit that it is not intended for delay. The form of demurrers shall be substantially as follows: "The defendant demurs to the whole," or "to so much of the bill, or petition, or discovery, or relief," stating the particular part or parts demurred to, and the special grounds of demurrer. Every defense heretofore presentable by plea in bar or abatement shall be made in the answer, and may be separately heard and disposed of before the trial of the principal case in the discretion of the Court. If any defendant demur to the bill, or any part thereof, the demurrer may be set down for hearing by either party upon five days' notice, and if overruled the defendant shall answer within five days thereafter, unless a longer time be allowed by the Court. In any case, however, 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.¹

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.

An. Code, sec. 159. 1904, sec. 150. 1888, sec. 137.

174. 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.

¹ 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.