Butler, 2 B. & C. 434, where the indorsement of a foreign bill of exchange was said to be forged, and the question arose as to the proof of the identity of the indorser, it was observed that if the evidence was objected to as insufficient for that purpose, the proper course to take advantage of the exception would be by demurring to the evidence and not by bill of exceptions. However demurrers to evidence have fallen into almost total disuse. As to proceedings under them, see Fanshaw v. Cocksedge, 3 Bro. P. C. 690; Forbes v. Perrie, 1 H. & J. 109.

What bill of exception founded on.—With us a bill of exceptions is most commonly founded on some objection in point of law to the opinion or direction of the Court *at nisi prius*, either as to the competency of witnesses, or the admissibility of evidence, or the legal effect of the evidence.[5] But the Court of Appeals in Nesbitt v. Dallam, 7 G. & J. 207, observed, that the Statute was not either in letter or spirit confined to trials before a jury, and although the necessity of its use except in such trials is of rare occurrence, yet cases sometimes occur where the evil which the Statute designed to remedy is as strikingly exemplified as it could be on a jury trial. In that case, which was a motion to set aside a Sheriff's sale and return, and sustained by oral testimony given in open Court, it was held that the evidence given on such a motion might properly form the subject of a bill of exceptions, and see Hollingsworth v. Floyd, 2 H. & G. 87; Hollowell v. Miller, 17 Md. 305.

In Briscoe v. Ward, 1 H. & J. 165, it was held that if a Court in opposition to its own rule denies a party the right to tender a declaration, he may except; and see Union Bank v. Ridgely, 1 H. & G. 324, where an exception was taken to the allowance of an amendment in the pleadings. In later cases, (see Ellicott v. Eustice, 6 Md. 507,) it has been held, however, that no appeal lies from a refusal of the Court to allow an amendment of pleadings under the Act of 1809, ch. 153.[6] Consequently as the ruling of the Court cannot be reviewed, no bill of exceptions will lie; see also U. S. Telegraph Co. v. Gildersleeve, 29 Md. 232.

*On the other hand, it has been decided in a number of cases that **129** where the ruling which is objected to rests upon any facts which will not otherwise appear upon the record, a bill of exceptions is necessary. Thus where on a petition for freedom the record did not set out any bill of exceptions, it was held that there was nothing upon which the appellate Court could revise the judgment of the Court below, Reynolds v. Negroes Lewis and David, 14 Md. 116. So in B. & O. R. R. Co. v. Resley, 14 Md.

[5] A bill of exception may be founded on improper remarks of the trial judge made in giving his rulings on the prayers. Joseph Co. v. Schonthal Co., 99 Md. 382.

[6] Code 1911, Art. 75, sec. 35. The established rule is that no appeal lies from the action of the court in allowing, or refusing to allow, an amendment to the pleadings. Thorne v. Fox, 67 Md. 67, and numerous cases cited in Poe's Practice, sec. 190. But where an amendment to the declaration has been allowed, the refusal of the court to permit the defendant to file pleas thereto is reviewable on appeal by a bill of exception. Schulze v. Fox, 53 Md. 37.