

the fact, that the judgment was for a larger sum than the penalty of the bond, that objection not being stated as one of the grounds of the motion to strike out the judgment, *Stansbury v. Keady*, 29 Md. 361. In *Hatton v. McClish*, 6 Md. 407, issues had been joined on pleas of *non assumpsit* and *no assets*, the jury by their verdict found for the plaintiff on the first issue but said nothing as to the second, though the verdict was bad, the Court of Appeals could not notice the defect, as there was no motion in arrest of judgment. So a misjoinder of causes of action in the declaration cannot be relied on in the Court of Appeals, unless the question was directly presented below, *Grahame v. Harris*, 5 G. & J. 489. And in *Carter v. Cross*, 7 Gill, 43, where in an action brought by an administratrix it was objected on appeal, that the declaration contained no count on a promise to her in that character, but the point did not appear to have been raised by the defendant below, it was not allowed to be urged. In *the State v. Turner*, 8 G. & J. 125, costs had been given against the State. The Court, holding that this was no objection to the validity of the judgment, (see *Charlotte Hall School v. Greenwell supra*), though if it were, it was a clerical error which might be amended above, said that as it was not a point decided by the Court below it was not reviewable on appeal. If either party desire to raise any question on the pleadings, his prayer must be framed with direct reference to them, for it will not be assumed that the lower Court, in its action on a prayer based on the facts, inspected the pleadings, and adjudged their sufficiency to sustain the prayer, *Stockton v. Frey*, 4 Gill, 406; *Giles v. Fauntleroy*, 13 Md. 126; *Birney v. N. Y. & W. Tel. Co.* 18 Md. 341;⁴⁵ and if it does not appear that any question was raised below as to their form or sufficiency, the Appellate Court will not act on them, *Hardey v. Coe*, 5 Gill, 189; *Dorsey v. Dashiell*, 1 Md. 207, and generally, irregularity in the proceedings not questioned in the Court below will not be examined into in the Court of Appeals, *Tuck v. Boone*, 8 Gill, 187. In like manner if a party suffers evidence not on oath to be taken, he is bound by it in the Appellate Court, *Nesbitt v. Dallah supra*, and if no question is made below as to the admissibility of a paper as evidence, the objection will not be allowed on appeal, *Hannon v. State*, 2 Gill, 42.⁴⁶ In *Wolfe v. Hauver*, 1 Gill, 85, the question determined below respected the admissibility of parol evidence, and it was held that the Appellate Court would not decide whether the action would lie for want

⁴⁵ **Prayers raising questions on pleadings.**—The rule is the same whether the prayer is granted or rejected in the court below. *Dunham v. Clogg*, 30 Md. 284; *Balto. Ry. Co. v. Wilkinson*, 30 Md. 224; *Straus v. Young*, 36 Md. 246; *Walsh v. Taylor*, 39 Md. 592; *N. Y. R. R. Co. v. Bates*, 68 Md. 184; *South Balto. Co. v. Muhlbach*, 69 Md. 395; *Mallonee v. Duff*, 72 Md. 283; *Smith v. Heldman*, 93 Md. 343; *Home Soc. v. Roberson*, 100 Md. 85; *Fletcher v. Dixon*, 107 Md. 428; *Merchants Co. v. Hazelton*, 108 Md. 564; *Rosenkovitz v. United Rys. Co.*, 108 Md. 306; *Ward v. Schlosser*, 111 Md. 528; *Commercial Realty Co. v. Dorsey*, 114 Md. 172; *Firor v. Taylor*, 115 Md. —. A reference in a prayer to the proceedings cannot be regarded as having been made to the pleadings. *Monumental Co. v. Larrimore*, 109 Md. 682.

⁴⁶ *Keene v. Van Reuth*, 48 Md. 184; *Gunby v. Sluter*, 44 Md. 237.