

The first clause of this section does not apply to cases of demurrer, motions in arrest of judgment, exceptions to awards, and appeals from officers of registration. *Baltimore v. Austin*, 95 Md. 93; *Muir v. Beauchamp*, 91 Md. 658; *Cox v. Bryan*, 81 Md. 290; *Bragunier v. Penn.*, 79 Md. 246; *Shaeffer v. Gilbert*, 73 Md. 67; *Smith v. State*, 66 Md. 219; *Keller v. Stevens*, 66 Md. 134; *Grove v. Swartz*, 45 Md. 228; *Smith v. Wood*, 31 Md. 301; *Price v. Thomas*, 4 Md. 521; *State v. Greenwell*, 4 G. & J. 416.

The first clause of this section is not applicable where the case was tried below upon an agreed statement providing that the court was to give judgment for the plaintiff or defendant, according to whether it found the defendant owed the taxes claimed, the agreement reserving the right of appeal to both parties. *B., C. & A. Ry. Co. v. Wicomico County*, 93 Md. 127. And see *Keller v. State*, 12 Md. 328.

The first clause of this section is not applicable to motions to quash the *scire facias* issued upon a mechanic's lien claim, for defects apparent on its face. *Baker v. Winter*, 15 Md. 9.

### Pleadings, prayers and evidence.

If inadmissible evidence comes in without objection, the question of its admissibility cannot be raised in the court of appeals. *Sentman v. Gamble*, 69 Md. 305; *Atwell v. Grant*, 11 Md. 106; *Phelan v. Crosby*, 2 Gill, 462; *Hannon v. State*, 2 Gill, 47.

A prayer relying upon a failure of evidence must set it up specifically. *Refer v. Straus*, 54 Md. 291; *Dorsey v. Harris*, 22 Md. 88; *Hatton v. McClish*, 6 Md. 417.

Prayers held too general. *Acker v. McGaw*, 106 Md. 559; *Shipley v. Shilling*, 66 Md. 565; *Kinsey v. Minnick*, 43 Md. 119; *Casey v. Suter*, 36 Md. 5; *Fel's Point Sav's Institute v. Weedon*, 18 Md. 328; *Hatton v. McClish*, 18 Md. 416; *Kent v. Holliday*, 17 Md. 395; *Warner v. Hardy*, 6 Md. 540; *Penn v. Flock*, 3 G. & J. 376; *Cook v. Duvall*, 9 Gill, 461; *Wheeler v. State*, 7 Gill, 344; *Warfield v. Davidson*, 8 G. & J. 214; *Mitchell v. Dall*, 4 G. & J. 370.

Prayers held not to general. *Yingling v. Kohlhass*, 18 Md. 162; *Walter v. Alexander*, 2 Gill, 212. And see *Hatton v. McClish*, 6 Md. 417; *Stewart v. Spedden*, 5 Md. 444.

A prayer reading, "that so far as claim of compensation" for certain services "is concerned, the plaintiff is not entitled to recover," is against the intent of the act of 1825, ch. 117. *Chipman v. Stansbury*, 16 Md. 159.

A prayer must refer to the pleadings in order to raise a question of the pleadings. *South Baltimore Co. v. Muhlbach*, 69 Md. 406; *Baltimore Bldg. Ass'n v. Grant*, 41 Md. 569; *Dorsey v. Dashiell*, 1 Md. 207; *Western Bank v. Kyle*, 6 Gill, 352. See also, *Ward v. Schlosser*, 111 Md. 532; *Home, etc., Society, v. Roberson*, 100 Md. 88; *Baltimore, etc., Co. v. Wilkinson*, 30 Md. 230; *Stockton v. Frey*, 4 Gill, 421.

When a prayer refers to the pleadings, the sufficiency of the declaration may be inquired into. Object of this section. *Ward v. Schlosser*, 111 Md. 534.

A variance between the allegations and the proof must be set up by objections to the evidence or by a properly framed prayer. *Straus v. Young*, 36 Md. 255. See also, *Bull v. Schuberth*, 2 Md. 56; *Pennsylvania, etc., Co. v. Dandridge*, 8 G. & J. 248.

In ruling on matters of evidence, the lower court necessarily looks to the pleadings, and hence the ruling is deemed to have been made with reference to the pleadings, and the point to have been passed upon below so that the court of appeals may consider it. *B. & O. R. R. Co., v. State*, 41 Md. 297; *Marshall v. Haney*, 9 Gill, 259; *Leopard v. Chesapeake, etc., Canal Co.*, 1 Gill, 228.

### Special exceptions.

If a prayer is objected to because there is no evidence to support it, or because it assumes facts, a special exception must be reserved. *Sturtevant v. Dugan*, 106 Md. 615; *Gunther v. Dranbauer*, 86 Md. 9; *Scarlett v. Academy of Music*, 46 Md. 153; *Stillman v. Dougherty*, 44 Md. 385; *Gent v. Ensor*, 41 Md. 24; *Baltimore Bldg. Assn. v. Grant*, 41 Md. 568; *Stansbury v. Fogle*, 37 Md. 379; *Morrison v. Hammond*, 27 Md. 616.