

This section is applicable to criminal as well as civil cases; this section prevents the decision on appeal of any question which does not certainly appear to have been tried and decided by the lower court. *Hamilton v. State*, 127 Md. 313.

Cited but not construed in *M. & C. C. of Havre de Grace v. Harlow*, 129 Md. 267.

## 9A.

This section grew out of the decisions to the effect that notwithstanding section 9, if a prayer referred to the pleadings, the appellate court was called upon to examine them, and if there was a variance, it could be thus taken advantage of; hence judgments were sometimes reversed when the lower court had not really passed on the question. This section should be liberally construed to accomplish its purposes; a prayer held not sufficiently specific. *Western Union Tel. Co. v. Bloede*, 127 Md. 352.

Cited but not construed in *Tippett v. Myers*, 127 Md. 539.

## 10.

The insertion in the record of the entire evidence criticized under this section and sections 34 and 35; costs of record divided between appellant and appellee. *Oxweld Acetylene Co. v. Hughes*, 126 Md. 444.

The insertion in the record of the entire evidence criticized under this section; disposition of costs left to orphans' court under article 93, section 255. *White v. Bramble*, 124 Md. 403.

## 22.

This section does not authorize the Court of Appeals to review the action of the lower court upon a motion for a new trial. *Produce Exchange v. N. Y., P. & N. R. R. Co.*, 130 Md. 113.

Judgment reversed without awarding a new trial but with leave to appellees to apply for a new trial; such application to be then determined. *Nat. Life Ins. Co. of U. S. v. Fleming*, 127 Md. 188.

Case remanded under this section in order that by proper amendment, it may be tried upon its merits. *McCurdy v. Jessop*, 126 Md. 327.

Case remanded under this section, so that *narr.* may be amended; appellant to pay costs. *Rieger & Co. v. Knight*, 128 Md. 201.

## 22A.

A judgment reversed and a new trial awarded as to the interest item and affirmed as to the remaining amount, under this section. *Bucher v. Federal B. B. Club*, 130 Md. 644.

### Appeals from Courts of Equity.

## 26.

No appeal may be taken from an order sustaining a demurrer to one of three distinct grounds of relief set out in one paragraph of a bill of complaint; this section and section 31 only give a right of appeal when the order of court goes to the whole bill. *Reynolds v. Russler*, 128 Md. 608.

An appeal lies under this section from an order sustaining a demurrer to a part of a bill of complaint; in this case no leave to amend was granted (as the objections could not be remedied by amendment), and the case proceeded as to the allegations upon which the demurrer was overruled. *Hendrickson v. Standard Oil Co.*, 126 Md. 581.

There is no appeal from an order overruling a plea to a bill, since such order is not final; such ruling may be reviewed under section 28. *Wilmer v. Placide*, 128 Md. 171.