An. Code, sec. 8. 1904, sec. 8. 1888, sec. 8. 1849, ch. 88, sec. 4. 1854, ch. 193, sec. 20.

9. The court from whose judgment or order under the insolvent laws an appeal shall be taken shall immediately, upon the entry of such appeal, certify and state the questions in and decided by such court; and no question which shall not appear by such certificate to have been raised in said court, shall be considered by the court of appeals.

A bill of exceptions, taken and signed in the regular way, is a certificate within the meaning of this section. Castleburg *v.* Wheeler, 68 Md. 271. See also, Bradford *v.* Jones, 1 Md. 372.

If the opinion of the court clearly shows what was decided and the grounds of the rulings, it amounts to a sufficient certificate. McHenry *v.* McVeigh, 56 Md. 580.

If there be no certificate (or its equivalent), the appeal will be dismissed. Waters *v.* Momenthy, 68 Md. 172; Geary *v.* Hignutt, 32 Md. 556; Wright *v.* Kuhn, 20 Md. 424.

The court of appeals has no power to pass an order directing the lower court to issue the certificate. Waters *v.* Momenthy, 68 Md. 172.

Cited but not construed in Gable *v.* Scott, 56 Md. 180; Jaeger *v.* Requardt, 25 Md. 240.

See notes to sec. 8.

An. Code, sec. 9. 1904, sec. 9. 1888, sec. 9. 1825, ch. 117, sec. 1. 1862, ch. 154. Rule 4.

10. In no case shall the court of appeals decide any point or question which does not plainly appear by the record to have been tried and decided by the court below; and no instruction actually given, shall be deemed to be defective by reason of any assumption therein of any fact by the said court, or because of a question of law having been thereby submitted to the jury, unless it appear, from the record, that an objection thereto for such defect was taken at the trial; nor shall any question arise in the court of appeals as to the insufficiency of evidence to support any instruction actually granted, unless it appear that such question was distinctly made to and decided by the court below.

Application of this section.

This section applies to appeals at law and not in equity. Wicks *v.* Westcott, 59 Md. 279. And see Davis *v.* Leaf, 2 G. & J. 306.

This section has no application to an appeal from a judgment of condemnation in attachment. Mears *v.* Adreon, 31 Md. 235; McCoy *v.* Boyle, 10 Md. 396.

This section does not apply to appeals from orphans' courts. Hendrickson *v.* Attick, 136 Md. 7. And see Cover *v.* Stockdale, 16 Md. 1.

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.

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.

The act of 1862, ch. 154, held inapplicable to a case originating before the passage of said act. Cecil Bank *v.* Barry, 20 Md. 297.