such prayer or instruction shall state specifically the points wherein it is claimed that such variance exists.

This section grew out of the decisions to the effect that notwithstanding sec. 10, 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.

Where a prayer does not specifically designate the points of variance between the pleadings and proof, the court of appeals may not consider such variance. B. & O. R. R. Co. *v.* Walsh, 142 Md. 237. See also Western Md. Ry. Co. *v.* Shatzer, 142 Md. 282.

A prayer held not sufficient to raise the question of misjoinder or variance. Art. 75, sec. 97, does not relieve the defect. Rosst *v.* Morris, 135 Md. 256; Fulton Bldg. Co. *v.* Stichel, 135 Md. 544.

Even if it could be said that a *narr.* in a replevin suit was defective because it was in *detinuit* instead of *detinet*, or on the ground of a variance, neither question was presented by defendant's prayers. Burrier *v.* Cunningham Piano Co., 135 Md. 142.

The failure to file a replication may not be raised by reference in the prayers to the pleadings, unless such reference is specific. See notes to sec. 10. Jenkins *v.* Spedden, 136 Md. 644.

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

See art. 75, sec. 96, and art. 5, sec. 20.

An. Code, sec. 10. 1904, sec. 10. 1888, sec. 10. Rule 5.

12. Bills of exception shall be so prepared as only to present to the court of appeals the rulings of the court below upon some matter of law, and shall contain only such statement of facts as may be necessary to explain the bearing of the rulings upon the issues or questions involved; and if the facts are undisputed, they shall be stated as facts, and the evidence from which they are deduced shall not be set out; and, if disputed, it shall be sufficient to state that evidence was adduced tending to prove them, instead of setting out the evidence in detail; but if a defect of proof be the ground of the ruling or exception, then the particulars in which the proof is supposed to be defective shall be briefly stated, and all the evidence offered in anywise connected with such supposed defect, shall be set out in the bill of exception. And it shall be the duty of the judges in the courts below to require exceptions to be prepared in accordance with this rule.

Though a petition, affidavit and exhibits appear in the record, since they are not set out or contained in the bill of exceptions as required by this section and sec. 86, they will not be reviewed. Cochran *v.* State, 119 Md. 548.

The insertion in the record of the entire evidence criticized under this section and secs. 38 and 39; 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 art. 93, sec. 264. White *v.* Bramble, 124 Md. 403.

Exceptions set out in the record held to disregard both the letter and spirit of rule 5 of the court of appeals; irrelevant matter; responsibility appellant's. Annarina *v.* Boland, 136 Md. 384.

There is no need of a writ of error in order to bring up for review rulings on demurrers. Kendrick *v.* Warren, 110 Md. 77.

Where the proof is supposed to be defective, the particulars of such defect must be briefly stated in the exception. B. & O. R. R. Co. *v.* Mali, 66 Md. 57.