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.

**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. Reier *v.* Straus. 54 Md. 291; Dorsey *v.* Harris, 22 Md. 88; Hatton *v.* McClish, 6 Md. 417.

Prayers held too general. Acker *v.* McGraw, 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 too 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.

A prayer instructing the jury in substance that under the pleadings and evidence the plaintiff is entitled to a verdict, held bad; such error was reversible although no special exception was taken under this section. Conowingo Land Co. *v.* McGaw, 124 Md. 649.

This section applied in Stembler *v.* Wilson, 175 Md. 676; Roach *v.* Zoning Appeals Board, 175 Md. 4; Racing Commission *v.* Jockey Club, 176 Md. 86.

When prayer wholly excluded defense of one of parties which had evidence to support it, failure to take special exception not fatal. Assumption of defendant's liability under such circumstances, not such assumption of facts as statute has in view. Buckey *v.* White, 137 Md. 131, commented on. Louis *v.* Johnson, 146 Md. 120.

Questions as to the sufficiency of the pleadings must be raised by demurrer—art. 75, sec. 97.

**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. Zell *v.* Dunaway, 115 Md. 4; Stewart Co. *v.* Roy, 127 Md. 79; Nichols *v.* Meyer, 139 Md. 460; Heim *v.* Roberts, 135 Md. 608; 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. Kent Co. *v.* Pardee, 151 Md. 72; Lansburgh *v.* Fish & Oyster Co., 153 Md. 318; Lohmuller Bldg. Co. *v.* Gamble, 160 Md. 538; Von Schlegell *v.* Ford, 167 Md. 591; O'Neill & Co. *v.* Crummitt, 172 Md. 63.

Where the record discloses no objection to the submission to the jury in certain prayers of the question of contributory negligence, and no special exception was reserved upon the ground of there being no evidence of contributory negligence, the judgment will, in view of this section, be affirmed. Mullikin *v.* Baltimore, 131 Md. 365.

Where no special exceptions are filed to prayers at the first trial, and hence the court of appeals under this section did not pass on the legal sufficiency of the tesi-