

mony, this question may be passed upon on a second appeal; no inference from remand of case. *Dorsey v. Winters*, 143 Md. 410, 422.

If a prayer is objected to because it omits an essential fact, the point must be taken by special exception. *Cheney v. Eastern, etc.*, Line, 59 Md. 568; *Franklin v. Claplin*, 49 Md. 42.

The objection that a rejected prayer assumes a fact, may be raised in the court of appeals, though no special exception was reserved. *United Surety Co. v. Summers*, 110 Md. 121; *Dexter v. McDonald*, 103 Md. 398; *Mylander v. Beimschla*, 102 Md. 692; *Newman v. McComas*, 43 Md. 70; *Gent v. Ensor*, 41 Md. 24.

If a prayer is objected to on the ground that it submits a question of law to the jury, a special exception must be taken. *Rasst v. Morris*, 135 Md. 259; *Cushwa v. Williamsport*, 117 Md. 314; *Sturtevant v. Dugan*, 106 Md. 615; *New Windsor v. Stocksdale*, 95 Md. 214; *Eckenrode v. The Chemical Co.*, 55 Md. 66; *Stockham v. Stockham*, 32 Md. 209; *Higgins v. Carlton*, 28 Md. 140; *Asphalt Block and Tile Co. v. Klopper*, 152 Md. 533.

A special exception to a prayer because it "assumes certain facts," is too general. *Shriver v. State*, 65 Md. 284. See also *B. & O. R. R. Co. v. Mali*, 66 Md. 53.

A special exception to a prayer on the ground merely that there is no evidence legally sufficient to support the same, is defective. *Havens v. Reach*, 139 Md. 484.

To be considered, special exceptions must be incorporated in the Bill of Exceptions. *Albert v. State*, 66 Md. 334; *Asphalt Block and Tile Co. v. Klopper*, 152 Md. 533.

But the special exception need not be in writing nor form the subject of a separate bill of exceptions, provided it appears from the record that it was duly made and passed upon. *Moses v. Allen*, 91 Md. 53; *Davidson Co. v. Miller Co.*, 122 Md. 134.

Where there is no proof that plaintiff was qualified to engage in business, question of submission to jury of whether injury disabled her from engaging in business for which otherwise she would have been qualified, should be raised by special exception. *White v. Parks*, 154 Md. 201.

Special exceptions must be taken during progress of trial so prayer can be amended; no application to oral exceptions later reduced to writing. *Kahn v. Carl Schoen Silk Corp.*, 147 Md. 528.

In absence of special exception, objection that prayer submitted hypothesis of which there was no legal evidence, could not be considered on appeal. *A. & P. Co. v. Noppenberger*, 171 Md. 395.

Lack of evidence to sustain prayer granted at plaintiff's request not available to defendant on appeal in absence of special exception. *Mangione v. Snead*, 173 Md. 50.

Jurisdiction.

Though the question of jurisdiction is not raised below, it may be raised on appeal. *Armstrong v. Hagerstown*, 32 Md. 56; *White v. Solomonsky*, 30 Md. 588; *Horner v. O'Laughlin*, 29 Md. 470; *U. S. Express Co. v. Hurlock*, 120 Md. 111.

But in a proceeding before a justice of the peace under art. 52, sec. 9, the question of jurisdiction on the ground that title to land is involved, must be raised before the justice in order to be considered on appeal. *Shipler v. Broom*, 62 Md. 320.

If the lower court is without jurisdiction, though that question was not raised below, its action may be reviewed by the court of appeals, as this section does not apply. *Close v. So. Md. Agr. Assn.*, 134 Md. 633.

Questions not raised below, not considered on appeal.

Where no objection to a bond is made in the lower court, a motion to quash the writ of replevin on the ground that the bond is not that of the plaintiff, must be denied; cases where the court is exercising a special statutory jurisdiction, distinguished. *Burrier v. Cunningham Piano Co.*, 135 Md. 144.

Under this section and sec. 86, where no question is raised below by motion in arrest of judgment or otherwise, a new trial will not be granted because a verdict did not discriminate between the count of an indictment charging robbery and that charging receiving stolen goods. *Novak v. State*, 139 Md. 542.

Whether the failure of a prayer to leave to the jury the question of whether a party acted as the agent of another, be regarded as an assumption of fact or as the omission of a material fact, no advantage can be taken of it on appeal if no similar objection was made below. Cases reviewed. *Lewis v. Schlichter Co.*, 137 Md. 222.

The failure to file a replication may not be raised for the first time on appeal. Query, whether this question was raised by a general objection to evidence so as to call attention to the pleadings. Errors and irregularities waived. *Jenkins v. Spedden*, 136 Md. 644.

Although a prayer was defective in permitting a verdict against both defendants for the negligent act of one of them, no objection having been made to the prayer on that ground in the lower court, the question cannot be raised on appeal; judgment affirmed. *Buckey v. White*, 137 Md. 131.

Remarks of trial judge, not excepted to, not considered on appeal. *Brill v. State*, 144 Md. 74.

Instruction of trial court not objected or excepted to below, not subject to review on appeal. *Moore v. State*, 149 Md. 300; *Price v. State*, 159 Md. 496.