The point that the complainants have failed to establish a material allegation of the bill, may be made on appeal without exceptions being filed below. Dugan *v.* Gittings, 3 Gill, 165.

Where an assignee does not assert his claim by petition, but by exceptions to an auditor's account, no exceptions are required to be filed to bring the matter up on appeal. Brown *v.* Thomas, 46 Md. 641.

The objection to a trustee's sale, that the trustee was not present, does not come under this section. Wicks *v.* Westcott, 59 Md. 280.

This section does not apply where the account is stated in accordance with the instructions of the appellee in order to present his views, and not in accordance with the views of the auditor. Anderson *v.* Tuck, 33 Md. 234; Dennis *v.* Dennis, 15 Md. 76.

This section has no application to an objection to a petition on the ground that the matters alleged should have been set up by bill. Boteler *v.* Beall, 7 G. & J. 398.

This section has no application to depositions taken without notice, and filed after the evidence has been taken, and after a decree for an account and an account taken. Stockett *v.* Jones, 10 G. & J. 279.

Generally.

This section is not in conflict with any provision of the Federal Constitution or of any law of congress passed in pursuance thereof. This section relates to a matter of state practice alone, and its construction rests with the state courts. Loeber *v.* Schroeder, 149 U. S. 580.

This section will not be construed so as to permit parol evidence, not excepted to below, to make or revoke a will, particularly in the light of art. 93, secs. 336 and 337. Lowe *v.* Whitridge, 105 Md. 184.

Where the contention is that while the plaintiff's proper remedy is in equity, he has been given a decree which is different from the one to which he may be entitled, or that while the bill is adequate to secure the plaintiff's interests, it is an insufficient basis for the particular relief decreed, this section applies, and if the bill was not objected to below, no question as to its sufficiency can arise on appeal. A clause in the answer reserving all lawful objections to errors in the form and substance of the bill, does not meet the requirements of this section. Equitable Ice Co. *v.* Moore, 127 Md. 324.

Where a plaintiff files a petition against administrators *pendente lite* for the appointment of a receiver, an order being passed accordingly, and some six weeks later files a petition asking that the order be rescinded, but then abandons the petition last mentioned and enters an appeal from the order, such appeal is, in view of art. 16, sec. 4, and of this section, premature. Warfield *v.* Valentine, 130 Md. 595.

Under this section and sec. 41, where a receiver is appointed upon bill and answer (consenting thereto), and one who is not an original defendant is subsequently made a defendant upon his own petition, he cannot in the court of appeals raise the question of the sufficiency of the bill; he should have first applied to the lower court for a rescission of the order appointing a receiver. Under sec. 31, when a receiver is appointed upon *bill alone*, the court of appeals in reviewing the order is confined to the case made by the bill and exhibits. Carrington *v.* Basshor Co., 121 Md. 75; Warfield *v.* Valentine, 130 Md. 595.

While, if no exceptions are filed or the evidence is not in some proper way objected to at the hearing, a decree may be based on the evidence alone and the defendant cannot upon appeal rely on the inadmissibility of the evidence under the bill, the plaintiff cannot rely on the silence of the defendant for any material allegation as an admission of its truth, but must prove it. Effect of an answer; if insufficient it should be excepted to. Pennsylvania R. R. Co. *v.* Minis, 120 Md. 504.

Claims not mentioned in a bill in equity, even though the plaintiffs did not know of them until informed by the answer and the evidence, will not be passed on, upon appeal, unless the bill was amended. Minis *v.* Pennsylvania R. R. Co., 120 Md. 513.

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

Where the plaintiff fails to make out a case both in his bill and on the proof, the case will not be affirmed, though no exceptions were filed below. Evans *v.* Iglehart, 6 G. & J. 199.

This section requires the court of appeals to decide upon the evidence in the record without reference to the allegations of the bill—whether a variance exists or not, is immaterial unless exceptions are filed. Reed *v.* Reed, 109 Md. 695; Shugers *v.* Shugers, 105 Md. 344; Gerting *v.* Wells, 103 Md. 637; Schroeder *v.* Loeber, 75 Md. 202; Braecklein *v.* Braecklein, 139 Md. 351. And see Loeber *v.* Schroeder, 76 Md. 349.

Whatever may be the proof, if the allegations of the bill are insufficient and properly excepted to, no decree can be entered. Berry *v.* Pierson, 1 Gill, 247.

If no exceptions are filed to inadmissible evidence, it is in the case for all purposes. Sentman *v.* Gamble, 69 Md. 304.

If the record does not show that exceptions were filed to inadmissible evidence, the court of appeals will not reverse. Mondell *v.* Shafer, 49 Md. 492; Keene *v.* Van Reuth, 48 Md. 193.