

Where the objection of multifariousness is not raised below, it will not be entertained in the appellate court. *Ashton v. Ashton*, 35 Md. 504.

This section applies where original papers are lost and copies substituted by the court, and the defendant answers without raising any question as to the sufficiency of such copies. *McKaig v. Hebb*, 42 Md. 231.

Exceptions to an auditor's report filed before its final ratification ought to be considered, though not filed within the time limited by the order *nisi*. *Calvert v. Carter*, 18 Md. 75.

This section applied. *Engler v. Garrett*, 100 Md. 395 (testimony); *Cherbonnier v. Goodwin*, 79 Md. 61 (order for rehearing); *Loeber v. Schroeder*, 76 Md. 347 (testimony); *Baltimore, etc., R. R. Co. v. Pumphrey*, 74 Md. 113 (averments); *Citizens, etc., Co. v. Wilson*, 50 Md. 90 (auditor's account); *Ashton v. Ashton*, 35 Md. 503 (averments, evidence and auditor's report); *Andrews v. Poe*, 30 Md. 486 (evidence); *Windwart v. Allen*, 13 Md. 200 (evidence); *Cherry v. Stein*, 11 Md. 19 (evidence); *General Ins. Co. v. United States Ins. Co.*, 10 Md. 529 (auditor's account); *Long v. Long*, 9 Md. 356 (evidence); *Gibbs v. Gale*, 7 Md. 87 (evidence); *Trump v. Baltzell*, 3 Md. 304 (evidence); *Eyler v. Crabbs*, 2 Md. 154 (averments); *Thomas v. Doub*, 1 Md. 327 (averments); *Oliver v. Palmer*, 11 G. & J. 37 (auditor's account); *Harwood v. Jones*, 10 G. & J. 414 (evidence); *Fitzhugh v. McPherson*, 9 G. & J. 69 (evidence); *Key v. Knott*, 9 G. & J. 361 (evidence); *Clagett v. Hall*, 9 G. & J. 58 (evidence); *Caldwell v. Boyer*, 8 G. & J. 147 (competency); *Miller v. Allison*, 8 G. & J. 37 (auditor's account); *Berret v. Oliver*, 7 G. & J. 202 (evidence); *Cross v. Cohen*, 3 Gill, 269 (competency); *Holloway v. Safe Dep. & Tr. Co.*, 152 Md. 299 (auditor's account).

For other examples of the application of this section, see *Sentman v. Gamble*, 69 Md. 304.

Quare, whether this section would permit the court of appeals to determine a question of *res adjudicata*, although it was not raised below. *Felgner v. Slingluff*, 109 Md. 485.

Cited but not construed in *Hitch v. Davis*, 3 Md. Ch. 275.

As to appeals from courts of law, see sec. 10, and notes.

Inasmuch as no exception was taken to overruling motion to exclude evidence admitted subject to exception, such evidence must be considered. *Marden v. Scott*, 154 Md. 417.

Under this section and Section 41, the question whether the plaintiffs, licensees of the State authorized to engage in practice of optometry, could seek equitable relief against alleged illegal competition by defendant corporation, even though raised in lower Court, was waived on appeal by failure of defendant (appellee) to make a point thereof in appellate court, preferring to rest its defense on a broader ground. *Dvorine v. Castleberg Corp.*, 170 Md. 661.

An. Code, 1924, sec. 41. 1912, sec. 37. 1904, sec. 37. 1888, sec. 35. 1841, ch. 163.

41. No defendant to a suit in equity in which an appeal may be taken shall make any objections to the jurisdiction of the court below, unless it shall appear by the record that such objection was made in said court.

This section applies only to defendants in a regular chancery proceeding who submit to the jurisdiction of the lower court; it is inapplicable in a lunacy proceeding where on appeal the question is raised of the alleged lunatic not having had notice of the proceedings. *Bliss v. Bliss*, 133 Md. 75.

If no exception on the ground of jurisdiction is made below, the question cannot be considered on appeal. *Equitable Ice Co. v. Moore*, 127 Md. 325.

That the question of jurisdiction was argued will not suffice; it must have been specially taken by exception and passed on by the lower court. *Melvin v. Aldridge*, 81 Md. 657. And see *Hubbard v. Jarrell*, 23 Md. 80.

This section applies only to defendants who have been brought into a regular chancery proceeding and who submit to the jurisdiction without question. *Wicks v. Westcott*, 59 Md. 279. And see *Pierson v. Trail*, 1 Md. 143; *Carrington v. Basshor*, 121 Md. 75.

This section applies to defendants only. *Pierson v. Trail*, 1 Md. 143; *Carrington v. Basshor*, 121 Md. 75.

The lower court may *sua sponte* refuse to grant relief on the ground of lack of jurisdiction. This section is confined in its operation to the appellate court. *Dunnock v. Dunnock*, 3 Md. Ch. 149.

If the objection to the jurisdiction is not properly taken, the court will entertain the suit, unless it be in cases in which no circumstances whatever could give the court jurisdiction. *Shryock v. Morris*, 15 Md. 77.

This section applied. *Cherbonnier v. Goodwin*, 79 Md. 61; *Snowden v. Reid*, 67 Md. 135; *Biddinger v. Wiland*, 67 Md. 363; *Estep v. Mackey*, 52 Md. 596; *Williams v. Lee*, 47 Md. 324; *Edes v. Garey*, 46 Md. 36; *Loeber v. Laughar*, 45 Md. 482; *Ashton v. Ashton*, 35 Md. 503; *Gough v. Manning*, 26 Md. 361; *Stallings v. Stallings*, 22 Md. 45; *Bratt v. Bratt*, 21 Md. 583; *Knight v. Brawner*, 14 Md. 6; *Teackle v. Gibson*, 8 Md. 84; *O'Neill v. Cole*, 4 Md. 123; *Farmers, etc., Bank v. Wayman*, 5 Gill, 356; *Wissler v. Elkins*, 149 Md. 322; *Talley v. Dadds*, 161 Md. 562; *Purnell v. Ocean City*, 162 Md. 174.