

1888, art 5, sec. 9. 1860, art. 5, sec 12 1825, ch. 117, sec. 1. 1862, ch 154.
Rule 4.

9. In no case shall the court of appeals decide any point or question which does not plainly appear by the record to have been tried and decided by the court below; and no instruction actually given shall be deemed to be defective by reason of any assumption therein of any fact by the said court, or because of a question of law having been thereby submitted to the jury, unless it appear from the record that an objection thereto for such defect, was taken at the trial; nor shall any question arise in the court of appeals as to the insufficiency of evidence to support any instruction actually granted, unless it appear that such question was distinctly made to and decided by the court below.

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