

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. *Yinglung 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.

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.

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 testimony, 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. Sum-*