

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; *Gerding 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.

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); *Claggett 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).

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. Shingluff*, 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.

An. Code, 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.