

its import and effect, unless the nature of the question raised and decided render it necessary that it should be inserted *in extenso*; nor shall any document be more than once inserted at large in any transcript to be sent to the Court of Appeals. And it shall be the duty of the judges of the Courts below to require exceptions to be prepared in accordance with this rule. Either party, however, shall have the right to have any or all such documentary proof inserted at length, it being stated in the exception at whose instance the same is so inserted, that costs may be awarded as the matter so incorporated may be deemed by the Appellate Court proper or not to have been set out in full.

Question must be raised and decided below.—Prior to 1825 it had been considered the duty of the Court to notice errors apparent on the face of the record, or any legal objections to evidence set out in the record, though not brought to the attention of the Court, nor indeed forming part of the bills of exception, see *Speake v. Sheppard*, 6 H. & J. 81; *Mundell v. Perry*, 2 G. & J. 193. Art. 5, sec. 12 of the Code, (1825, ch. 117, sec. 1),³⁸ provides that the Court of Appeals shall in no case decide any point or question which does not appear by the record to have been raised, or made in, and decided by the Court below. In the case of *Davis v. Leab*, 2 G. & J. 302, the Court of Appeals said, that the object of this Act was to prevent the reversal of judgments, unless upon the very question submitted to the tribunal below, and to remedy the evils flowing from raising points above which were never agitated below, and which, if they had been, could easily have been remedied by amendment or otherwise. But all questions which are necessarily raised by an instruction will be considered as having been brought to the attention of the Court below, *Bullitt v. Musgrave*, 3 Gill, 31; *Edelin v. State*, 4 G. & J. 277. So, too, when it appears that a point was presented to the Court below, on which a ruling was made, (*Graham v. Harris*, 5 G. & J. 489,) the Court of Appeals does not regard the sufficiency or otherwise of the reasons upon which the Court below based its action, but reviews the decision itself, *Sothoron v. Weems*, 3 G. & J. 435; *Parker v. Sedwick*, 4 Gill, 318; *Ellicott v. Peterson's Ex'rs*, 4 Md. 476; (*Gardner v. Hardy*, 12 G. & J. 365.) The Act does not apply to demurrers or motions in arrest of judgment,³⁹ for the objection being to the pleadings the whole record is brought to the Court's view, *Charlotte Hall School v. Greenwell*, 4 G. & J. 407, and if judgment be given generally on several issues of law, it will be presumed that the Court acted on all of them, and they will be so reviewed on appeal, *Gardner v. Miles*, 5 Gill, 94; and see *Newcomer v. Keedy*, 9 Gill, 263; *Cushwa v. Cushwa*, 9 Gill, 242, as to its operation in other motions made to the Court. On analogous principles, exceptions to the regularity of an award are not within the Act, and any defect apparent on its face may be

³⁸ It was probably the decision in the case of *Speake v. Sheppard*, *supra*, which led to the passage of the Act of 1825. The Fourth Rule is even more emphatic. Code 1911, Art. 5, sec. 9; *Ecker v. First Bank*, 62 Md. 519. See also First Rule, Code 1911, Art. 5, sec. 4; *Hearn v. Gould*, 51 Md. 319.

³⁹ *Thorne v. Fox*, 67 Md. 67; *Smith v. State*, 66 Md. 215. See also note 4, *supra*.