

inquired into, *Price v. Thomas*, 4 Md. 514.⁴⁰ And when an exception is taken to the admissibility of evidence *generally*, the Court may examine the pleadings, because the admissibility of the evidence is entirely dependent on them, *Leopard v. C. & O. Canal Co.*, 1 Gill, 222; *Marshall v. Haney*, 9 Gill, 251. Nor does the Act apply to cases of agreed statements of facts, for they present the facts as on demurrer, *Keller v. the State*, 12 Md. 322, and cases there cited;⁴¹ nor to objections to the regularity of attachment proceedings, or of any other proceedings under a special limited jurisdiction, *Boardman v. Peters' Ex'rs.* 1 Gill, 272,⁴² and error in such proceedings, by reason of which the jurisdiction of the Court does not appear, it is *said in *Bruce v. Cook*, 6 G. & J. 348, would be fatal after verdict **136** on motion in arrest of judgment, and see *McCoy v. Boyle*, 10 Md. 391; nor to motions to quash a *sci fa.* on mechanic's lien where the defects are apparent on its face, *Baker v. Winter*, 15 Md. 1. And in *Cover v. Stockdale*, 16 Md. 1, it was held that it did not apply to appeals from the Orphans Court. It seems, however, that it does apply in cases of appeals from the Land Office, *Patterson v. Gelston*, 23 Md. 432; and see Code, Art. 5, sec. 46,⁴³ requiring the appellant in appeals from the Land Office at the time of taking the appeal to file his reasons therefor.

In other cases the Act of 1825 has been strictly applied.⁴⁴ Thus in *Sasser v. Walker's Ex'rs.* 5 G. & J. 102, the judgment would have been reversed had any point or question involved in it been presented (as by motion in arrest) to, and decided by the Court below. In *Morgan v. Clark*, 4 Md. 271, no declaration had been filed, and the cause of action was not stamped, yet as the judgment in that case was by confession, and there was and indeed could have been no motion in arrest, it was affirmed, and see *Baker v. Ayres*, 5 Md. 202. In *Cushwa v. Cushwa*, 5 Md. 44, the jury in a verdict in ejectment gave \$500 damages, and judgment thereon was affirmed for a like reason, but see 9 Gill, 242. So upon a motion to strike out a judgment upon a replevin bond, the Court is prohibited from noticing

⁴⁰ Nor does it apply to an appeal from officers of registration, *Shaeffer v. Gilbert*, 73 Md. 66; nor in a contested election case where the question is only with regard to the action of the lower court in dismissing a petition as insufficient in its allegations, *Bragunier v. Penn.*, 79 Md. 244. See also note 44 *infra*.

⁴¹ But where the agreed statement of facts does not refer to the pleadings and consequently no question on the pleadings is raised below, none such can be decided above. *American Coal Co. v. Alleghany Co.*, 59 Md. 185.

⁴² *White v. Solomonsky*, 30 Md. 585.

⁴³ Code 1911, Art. 5, sec. 82.

⁴⁴ It is applied to appeals under sec. 170 of the Balto. City Code relating to the assessment of property for the purposes of taxation, *Hamburger v. Baltimore*, 106 Md. 479; *Baltimore v. Austin*, 95 Md. 90; also to appeals from an order overruling a motion to set aside a judgment and quash an execution thereon, *Cockey v. Ensor*, 43 Md. 266; *Palmenberg v. Turk*, 116 Md.—; also to appeals in contested election cases, *Leonard v. Woolford*, 91 Md. 626; *Muir v. Beauchamp*, 91 Md. 650. But cf. *Bragunier v. Penn.*, note 40 *supra*.