of evidence in writing under the Statute of Frauds, and see Burgess v. the State, 12 G. & J. 65; *Bullitt v. Musgrave *supra;* Coates v. Sang- **137** ston, 5 Md. 121, where it was held that a general reservation of the right to object to evidence will not avail in the Court of Appeals, but special exceptions must be taken to the parts considered inadmissible; Manning v. Hays, 6 Md. 5, and a number of other cases to the same effect.[47]

**Prayer too general.**—In the case of Penn v. Flack, 3 G. & J. 369, it was said, that an instruction "that the plaintiff upon the evidence is not entitled to recover" is too general under the Act, and its refusal not the subject for appeal, and the law has always since so been held; see the cases collected in the several digests. And, in like manner, a prayer that the jury must or may upon the evidence find for the defendant is too general, Cook v. Duvall, 9 Gill, 460, and other cases. Where, however, such a prayer assigns one or more points or reasons, as a variance between the count and the contract offered in evidence, or the like, it has been determined not to be too general, Bull v. Schubert, 2 Md. 38; Yingling v. Kohlhass, 18 Md. 148. Where no evidence is offered in support of a case, or that offered has been rejected as incompetent, a general prayer that there is "no evidence, &c.," is proper; but where testimony has been offered and received, which is *legally* insufficient to establish the issue, or if there is no evidence to establish a material fact involved in the issue, the prayer must point out specifically the defect or omission in the proof, Davis v. Davis, 7 H. & J. 36; Davis v. Barney, 2 G. & J. 404; McElderry v. Flannigain, 1 H. & G. 308; Hatton v. McClish *supra,* and other cases, and generally, a prayer failing to point out ony particular omission or error in the proof or to raise any definite question as to its sufficiency is bad, Dorsey v. Harris, 22 Md. 85.[48]

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[47] **Evidence admitted subject to exception.**—Where evidence is admitted subject to exception and there is no subsequent motion or prayer to strike it out, followed by an exception to the denial of such motion or prayer, the exceptant cannot on appeal get any benefit from his original exception. Moneyweight Co. v. McCormick, 109 Md. 170; Knickerbocker Co. v. Gardiner Co., 107 Md. 556; Walker v. Baldwin, 106 Md. 619; Flach v. Gottschalk Co., 88 Md. 368; Grand Order v. Murray, 88 Md. 422; Roberts v. Bonaparte, 73 Md. 191; Gunby v. Sluter, 44 Md. 237; Basshor v. Forbes, 36 Md. 154; Goodman v. Saperstein, 116 Md. —.

[48] There was much conflict in the earlier cases, but in Parr v. City Trust Co., 95 Md. 291, it was definitely settled that a prayer that there is no evidence in the case *legally sufficient* to entitle the plaintiff to recover is not too general, as it is a demurrer to the evidence. See also Mallette v. British Co., 91 Md. 471; Grand Order v. Murray, 88 Md. 422; State v. Kent Co., 83 Md. 377; Harford Co. v. Wise, 75 Md. 38. Cf. Norris v. Ins. Co., 115 Md. —. For examples of prayers which have been held too general, see Pearre v. Smith, 110 Md. 531; Acker Co. v. McGaw, 106 Md. 536; Western Md. R. R. Co. v. Shirk, 95 Md. 637; Robey v. State, 94 Md. 61; Hobbs v. Batory, 86 Md. 68; Owens v. Owens, 81 Md. 518; Shipley v. Shilling, 66 Md. 558; Western Md. R. R. Co. v. Carter, 59 Md. 306; Gill