

an appeal, which motion was rejected by the Court, *there being no regular proceedings to ground the same on.*

Under the Act establishing assize Courts in Maryland it was provided that in criminal cases, where the accused desired it, the justices should sign and allow bills of exception as in civil cases, see *Lord Proprietary v. King*, 1 H. & McH. 83. But in *Queen v. The State*, 5 H. & J. 232, it was determined otherwise, the Statute of Westminster evidently being intended to apply only to civil cases.¹

In *Clarke v. Ray*, 1 H. & J. 318, it was decided that a bill of exceptions could not be signed on a trial of issues from Chancery, the contrary, however, having been determined in a case of *Browne v. Pye*, cited *ibid.* 324. And in the case of *Mayhew v. Soper*, 10 G. & J. 366, it was determined that Orphans Courts, not being Courts of common law jurisdiction, were not within the Statute. The Court, however, in order to settle the case did express their opinion upon the matters argued, though dismissing the appeal. But Art. 5, sec. 5, of the Code provides that exceptions may be taken to any opinion given by the Court before whom issues *from the 128 Orphans Court or a Court of Equity may be tried, and an appeal taken, which provision was intended to confer a right of exception and appeal corresponding in its essential particulars with the right as it existed at law, *Waters v. Waters*, 26 Md. 53.² The scope of the Act in other respects appears from 2 Inst. 426. At common law a man might have had a writ of error for error in law, either in *redditione judicii*, in *redditione executionis*, or in *processu*, &c., and this error in law must be apparent on the record; or error in *fact* by alleging matter out of the record, as death of either party, &c., before judgment; now the mischief was, that when the plaintiff or defendant did offer to allege any exception, (as in those days they did *ore tenus* at the bar) praying the justices to allow it, and the justices overruling it so as it was never entered of record, this the party could not assign for error, because it neither appeared within the record nor was any error in *fact*, but in law, and so the party grieved was without remedy, &c.³

¹ But in Maryland since 1872 parties to criminal proceedings have been entitled to bills of exception in the same manner as in civil proceedings. Code 1911, Art. 5, sec. 80.

² Code 1911, Art. 5, sec. 5; *Barth v. Rosenfeld*, 36 Md. 604. As to the mode of taking exceptions to testimony taken orally in a court of equity under Code 1911, Art. 16, sec. 261, see *Lemmert v. Lemmert*, 103 Md. 57, 65; *Schnepfe v. Schnepfe*, 108 Md. 139.

³ **Necessity for bills of exception.**—Bills of exception allowed and signed and (formerly) sealed by the judge furnish the only mode by which his rulings during the trial, or his charge to the jury, can be reviewed on appeal. *Phoenix Ins. Co. v. Lanier*, 95 U. S. 171; *State v. Weiskittle*, 61 Md. 48. It is not in any sense an agreement of counsel. *State v. Jenkins*, 70 Md. 472. Nor will a mere certificate of facts by the judge answer the purpose. *National Bank v. Armstrong*, 66 Md. 114. It can be resorted to by the appellate court for no other purpose than to judge of the question presented by it for review. It is no part of the record proper to which