trial, notwithstanding the lapse of a considerable time, Benett v. Pen. and O. Steamboat Co. 32 Eng. L. & Eq. 318; Newton v. Boodle, 3 C. B. 795; Nind v. Arthur, 7 Dowl. & L. 252.[31] Another judge of the same Court cannot seal the bill of exceptions except, as it seems, by the written consent of both parties, as in Dakin v. Pomeroy, 9 Gill, 1.[32] And if two judges on the Bench are divided in opinion the bill of exceptions is signed by one judge only, Catrop v. Dougherty, 2 H. & McH. 383.

Effect of motion for new trial.—In England the rule seems to be that where a bill of exceptions has been tendered, the party cannot afterwards move for a new trial upon a point which might have been but was not included in the bill of exceptions; otherwise if the point could not have been included in the exception, Adams v. Andrews, 15 Q. B. 1001. With us, where a party moves for a new trial on grounds presented by the bill of exceptions, he will in general be required to waive his exceptions; but if it do not appear that he was required to do so, the appeal will be entertained, Lee v. Tinges, 7 Md. 215; see also Mitchell v. Mitchell, 11 G. & J. 388; Townsend v. Townsend, 9 Gill, 506. Where, however, the questions are altogether different, the inferior Court will not require a party to elect between his exceptions and his motion for a new trial, Waters v. Waters, 26 Md. 53, and the action of that Court on the motion is not subject to review.[33]

134 **Trial by court without jury.**—*By sec. 8 of Art. 4 of the Constitution, the parties to any cause may submit the same to the Court for determination without the aid of a jury. A bill of exceptions may be taken in this case as in others, and the practice of the Court of Appeals thereon was settled in Tinges v. Moale, 25 Md. 480,[34] that it would not examine the facts in evidence with a view to decide whether the finding of the Court as to them was right, for in this respect no appeal will be entertained, but if a question of law is raised and appears on the record, in deciding it the Court can look to the character of the facts only so far as may be necessary to understand and apply the law; and some care and precision ought to be adopted in raising questions of law for the decision of the inferior Court, see Sheppard v. Willis, 28 Md. 631.

Exception not equivalent to appeal.—It may be observed, also, that filing exceptions is not equivalent to an appeal, State v. Marshall, 11 G. & J. 456. And it appears, too, from Ringgold v. Barley, 5 Md. 186, that though a defendant may have taken exceptions, yet if the verdict and judgment below be for him, and he is not aggrieved by the decision, he cannot sustain an appeal upon his exceptions.

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[31] State v. Weiskittle, 61 Md. 48; Preston v. McCann, 77 Md. 30.

[32] Signing a bill of exception by a judge after the end of his term of office is a void act and no agreement of counsel can give it validity. State v. Weiskittle, 61 Md. 48.

[33] Cf. Whitcomb v. Mason, 102 Md. 275; Attrill v. Patterson, 58 Md. 226, 260.

[34] New v. Taylor, 82 Md. 40; Tyson v. Western Bank, 77 Md. 412; McCullough v. Biedler, 66 Md. 283; Jackson v. Salisbury, 66 Md. 459; Wehr v. German Cong., 47 Md. 177; Trustees v. Browne, 39 Md. 160; Hooper v. Turnpike Co., 34 Md. 521; Taylor v. Turley, 33 Md. 501.