

meaning a bill of Middlesex, was supposed here to mean a bill of indictment, but the General Court determined otherwise in a case about the year 1791, in consequence of which the Act of Nov. 1792, ch. 20, was passed, which enacted that all prosecutions directed to be by action of debt, bill, plaint, or information, or by bill, plaint, or information, should be had by bill of indictment or action of debt, and not by bill, plaint, or information. And now by the Code, Art. 40, sec. 1,³ where the law imposing them does not prescribe the mode of collecting or enforcing them, all fines, penalties, and forfeitures are to be collected, if not exceeding one hundred dollars, by an action of debt in the name of the State before a justice of the peace, if over one hundred dollars, by an action of debt in the name of the State in the county Courts, &c., or if over twenty dollars, by indictment in the county where the offense was committed. But by sec. 2,⁴ no person shall be liable to an action of debt and an indictment for the same offence, but whichever proceeding is first instituted shall be prosecuted and the other abandoned. And by section 3,⁵ if there be an informer he is to have one-half of the fine or penalty unless otherwise provided, &c., and see Art. 88, sec. 58.⁶ An appeal in such cases is given by Art. 5, sec. 3.⁷

Penal action may be a civil proceeding.—In England a penal action is, as it may be with us, a civil proceeding, *Atcheson v. Everett*, Cowp. 382; *Day v. the State*, 7 Gill, 326; *State v. Mace*, 5 Md. 337, where it was also decided that the abolition of imprisonment for debt did not extend to relieve a guilty party in cases of fines and penalties;⁸ and a new trial

³ This and the following section were repealed by the Act of 1880, ch. 211. In lieu of them it is enacted that when any fine or penalty is imposed by act of assembly or city ordinance for doing a forbidden act, or omitting to do a required act, the doing or omission of such act shall be a criminal offense; that such offense in Baltimore shall be prosecuted by the arrest of the offender and holding him to appear in or committing him for trial in the criminal court of Baltimore, or by indictment in such court; and that such offense in any county shall be prosecuted in the same way in the circuit court for such county; and that if the offender shall be found guilty, he shall be sentenced to said fine or penalty and costs and in default of payment committed to jail until thence discharged by due course of law. Code 1911, Art. 38, sec. 1; *Snowden v. State*, 69 Md. 207. See also sec. 3 under which a person committed to jail for non-payment of any fine and costs may be discharged after having served the proper time, dependent on the amount of the fine. See *Dean v. State*, 98 Md. 80. As to the distribution of fines and forfeiture recognizances, see Code 1911, Art. 38, sec. 4.

⁴ Repealed by Act of 1880, ch. 211. See note 3, *supra*.

⁵ Code 1911, Art. 38, sec. 2; *Sanner v. State*, 83 Md. 648.

⁶ Code 1911, Art. 87, sec. 42.

⁷ Code 1911, Art. 5, sec. 2. See also Art. 5, secs. 86, 96. And the right of appeal in such cases under sec. 2 is not affected by the Act of 1892, ch. 506, (Code 1911, Art. 5, sec. 80), regulating appeals in criminal cases. *Salfner v. State*, 84 Md. 299.

⁸ *Ordway v. Central Bank*, 47 Md. 258; *State v. Glenn*, 54 Md. 572, 604. Cf. *State v. Nicholson*, 67 Md. 1.