

error for the purpose of prosecuting the same; provided such appeal or writ of error be prayed within the time prescribed in this article.

This section apparently grew out of the decision in *Goldschmid v. Melne*, 86 Md. 373.

Appeals in Criminal Cases.

1904, art. 5, sec. 80. 1888, art. 5, sec. 77. 1872, ch. 316. 1884, ch. 132.
1886, ch. 169. 1892, ch. 506.

80. The parties to criminal proceedings shall be entitled to bills of exceptions in the same manner as in civil proceedings, and appeals from judgments in criminal cases may be taken in the same manner as in civil cases; but no appeal in a criminal case shall stay execution of sentence unless the counsel for the accused shall make oath that the appeal is not taken for delay; and such appeal shall be heard at the earliest convenient day after the same shall have been transmitted to the court of appeals; and the accused, upon taking such appeal, shall, in all cases not punishable by death, or imprisonment in the penitentiary, be entitled to remain on bail, and in other cases not capital, the court from which the appeal is taken shall have the discretionary power to admit to bail; provided that nothing herein contained shall be construed to prohibit the court from requiring additional or greater bail, pending an appeal, than the accused may already have given before conviction.

Method of bringing up appeal.

Since the act of 1892, ch. 506, appeals in civil and criminal cases may be taken in the same manner. On appeal from the granting of a motion to quash an indictment, the facts upon which the defendant relies should be spread upon the record by an agreed statement or by a special finding by the court. In the absence of the facts upon which the judgment below was founded, that judgment will be affirmed. *State v. Williams*, 85 Md. 233. And see *State v. Floto*, 81 Md. 602.

No appeal lies when no exceptions were taken, and there is no motion in arrest or petition designating the points by the decision of which the appellant is aggrieved. *Mitchell v. State*, 82 Md. 531.

No bill of exceptions is necessary to bring up for review the action of the court upon demurrers. An appeal brings up the whole record. *Kendrick v. Warren*, 110 Md. 76; *State v. Mercer*, 101 Md. 537; *Rasch v. State*, 89 Md. 759; *Fox v. State*, 89 Md. 384; *State v. Floto*, 81 Md. 602; *Taylor v. State*, 79 Md. 136; *Avirett v. State*, 76 Md. 515.

The act of 1886, ch. 169, held inapplicable, there being no bill of exceptions or affidavit. *Stevens v. State*, 66 Md. 205.

The affidavit.

The record should show that the affidavit prescribed by this section was made by counsel for the accused, naming him. *Neff v. State*, 57 Md. 393. And see *Stevens v. State*, 66 Md. 205.

As to the purpose and intent of the affidavit prescribed by the act of 1872, ch. 316, see *Deckard v. State*, 38 Md. 200. And see *Weir v. State*, 39 Md. 434; *Rhinehardt v. State*, 45 Md. 456.

Generally.

On the state's appeal, the appellate court only notices exceptions by the state in cases where the accused has been convicted and has also taken exceptions and appealed. If there be error in the rulings excepted to by the accused, the court will determine all questions raised by the state, for the purposes of the new trial. *Birkenfeld v. State*, 104 Md. 257; *State v. Shields*, 49 Md. 306.