

See notes to article 4, section 42; article 2, section 11; article 6, section 1. and article 7, section 3.

Sec. 4. If at any election directed by this Constitution, any two or more candidates shall have the highest and an equal number of votes, a new election shall be ordered by the Governor, except in cases specially provided for by this Constitution.

Sec. 5. In the trial of all criminal cases, the jury shall be the Judges of Law, as well as of fact.

In view of this section, any instructions given the jury are but advisory and in no manner binding except as to questions as to what shall be considered evidence. The court can not be required by counsel or jury to give instructions either on the law, or on the legal effect of evidence. *Bloomer v. State*, 48 Md. 538; *Broll v. State*, 45 Md. 359; *Wheeler v. State*, 42 Md. 570; *Esterline v. State*, 105 Md. 636; *Jules v. State*, 85 Md. 313; *Ridgely v. State*, 75 Md. 513; *Goldman v. State*, 75 Md. 623; *Beard v. State*, 71 Md. 279; *Baltimore, etc., Co. v. State*, 63 Md. 532.

The court has the right to advise the jury in a criminal case, although it can not be required to do so. If the instruction given, however, is erroneous and the jury has followed it to the plain injury of the traverser, the case may be reversed on this ground. *Cochran v. State*, 119 Md. 552; *Ridgeley v. State*, 75 Md. 513; *Beard v. State*, 71 Md. 281.

The jury has no power in criminal cases to pass on the constitutionality of a law; hence that question may not be argued to the jury. This section is merely declaratory and does not alter the pre-existing law regulating the powers of the court and jury in criminal cases. *Franklin v. State*, 12 Md. 249 and 245; *Sparf v. United States*, 156 U. S. 152 (dissenting opinion); *Bell v. State*, 57 Md. 120.

Where a party elects to be tried by a court without a jury, the court is substituted for the jury, and has the same duties and functions in passing upon the guilt of the accused. *League v. State*, 36 Md. 264.

The act of 1878, chapter 415, section 10, conferring jurisdiction upon justices of the peace to try and commit to the house of correction vagrants and disorderly persons, is constitutional. *State v. Glenn*, 54 Md. 599.

The court in criminal cases, as in civil cases, determines the admissibility of testimony and the competency of witnesses. *Jules v. State*, 85 Md. 313.

The court may state to the jury the legal effect of evidence. *Bell v. State*, 57 Md. 120.

The legal effect of evidence is a question for the jury under this section. *World v. State*, 50 Md. 55.

See article 21 of the declaration of rights.

Sec. 6. The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of five dollars, shall be inviolably preserved.

Article 75, section 70, of the Annotated Code, providing that when a new trial was ordered it might be stayed until the costs already incurred were paid, held not to violate this section or article 19 of the declaration of rights. This section must receive a reasonable construction. Article 75, section 70, may be invoked either by the plaintiff or by the defendant. The "jury trial" meant by this section is the historical jury trial as it existed when the constitution was adopted. *Kuee v. City Passenger Ry. Co.*, 87 Md. 624.

Section 224 of article 16 of the Annotated Code providing that where property is resold at the risk of a defaulting purchaser, the court may direct any deficit to be paid by such purchaser, held not to violate this section. There is no reference in this section to a trial of an issue of fact