

1904, art. 27, sec. 434. 1888, art. 27, sec. 282. 1860, art. 30, sec. 91. 1793, ch. 57.  
1809, ch. 144, sec. 2. 1852, ch. 344.

**492.** Any person presented or indicted may, instead of traversing the same before a jury, traverse the same before the court, who shall thereupon try the law and the facts.

If the facts are spread upon the record, it is the duty of the court to decide the questions of law arising upon them; hence an appeal brings the rulings of the court up for review. Judgment may be entered, although in the statement of facts no clause is inserted making provision for such entry. *Davidson v. State*, 77 Md. 394.

When an election is made under this section, the court is substituted for the jury and has the same duties and functions to perform; unless the traverser is determined to be guilty or not guilty, no judgment can be entered, and a mistrial, necessitating a retrial, results. *League v. State*, 36 Md. 264.

The acts of 1793, chapter 57, and 1809, chapter 144, held applicable in an indictment under a local law prohibiting the presence of slaves in stores where liquor was sold. The power of the court under this section held to be conferred for the benefit, and to be exercised at the election, of the accused. Technical joinder of issue, held unnecessary. *Rawlings v. State*, 2 Md. 214.

#### Procedure—Indictments—Amendment.

*Ibid.* sec. 435. 1888, art. 27, sec. 283. 1860, art. 30, sec. 79.  
1852, ch. 176, sec. 1.

**493.** Whenever the misnomer of any defendant or defendants is pleaded in abatement to any indictment in any of the courts of this State having criminal jurisdiction, it shall be lawful for the State's attorney prosecuting the same, or other person prosecuting for the State, on application to the court, to amend the said indictment by inserting in the place of the name or names so erroneously set forth in the said indictment the true name or names of such party or parties, as disclosed in the said plea of abatement, and it shall be the duty of the clerk of the court to endorse the amendment, and to enter the said case upon the docket of the court, according to the true name or names of the party or parties so indicted.

The name of a person in an indictment is a matter of substance, and cannot be changed without the consent of the grand jury; this applies to the Christian name as well as to the surname. This section provides for the misnomer of the defendant, and is applicable only when such misnomer is pleaded in abatement. Objection properly presented by motion to quash. *Watts v. State*, 99 Md. 33.

Where the indictment describes the traverser as a free negress and at the trial it appeared that she was a slave, an appropriate amendment held not to be authorized under this section. *Negro Hammoud v. State*, 14 Md. 147.

As to "Amendments at Law," see article 75, section 35.

As to "Amendments in Equity," see article 16, sections 17 and 18.

*Ibid.* sec. 436. 1888, art. 27, sec. 284. 1860, art. 30, sec. 80.  
1852, ch. 176, sec. 2.

**494.** Whenever it shall appear after a jury is sworn on any indictment, in any of the courts of this State having criminal jurisdiction, that the name or names of any person or persons other than the defendant and defendants has or have been erroneously set forth in the said