

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; *Cochran v. State*, 119 Md. 542.

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.

Defects in record.

Where in a criminal case there is no demurrer or formal exception taken to any ruling of the trial court, there is nothing for the court of appeals to review; objection interposed by counsel to a statement of opposing counsel not equivalent to a bill of exceptions. Appeal dismissed. *Dunn v. State*, 140 Md. 164.

Though a petition, affidavit and exhibits appear in the record, since they are not set out or contained in the bill of exceptions as required by this section and sec. 12, they will not be reviewed. *Cochran v. State*, 119 Md. 548.

The proceedings on appeal in criminal cases are the same as in civil cases. Unless the record discloses the facts upon which the traverser relies in support of a motion to quash, the rulings of the lower court cannot be reviewed. *Hamilton v. State*, 127 Md. 313.

Generally.

Under this section an appeal brings up for review both the exceptions and the judgment upon the demurrers. After an acquittal upon a regular trial, the verdict cannot, on the application of the prosecutor in any form of proceeding, be set aside and a new trial granted. The court of appeals notices exceptions by the state on the state's appeal only where the accused has been convicted and has also taken exceptions and appeals; where, however, defendant has not been tried upon the indictment, or upon one or more of the counts therein charging different offenses, the appeal by the state brings up for review the judgment of the lower court on the demurrers. *State v. King*, 124 Md. 496. And see *Birkenfeld v. State*, 104 Md. 257; *State v. Shields*, 49 Md. 306.

There is no inconsistency between this section and rule 23 of the court of appeals, providing that an appeal or writ of error in criminal cases shall be taken within thirty days from date of judgment or sentence. This section refers specifically to the manner and not to the time of taking appeals. *State v. Hardesty*, 132 Md. 177.

Under this section and sec. 10, where no question is raised below by motion in arrest of judgment or otherwise, a new trial will not be granted because a verdict did not discriminate between the count of an indictment charging robbery and that charging receiving stolen goods. *Novak v. State*, 139 Md. 542.

If this section could be held to authorize appeals in cases of criminal contempt, the present appeal would have to be dismissed, there being no bill of exceptions; distinction between criminal and civil contempt. *Kelly v. Montebello Park Co.*, 141 Md. 204.

A sentence could have been stayed either by a new trial or by an appeal in conformity with this section. *Backus v. State*, 118 Md. 538.