

For a case construing the act of 1884, ch. 132, see *Baltimore, etc., Co. v. State*, 63 Md. 580.

For cases construing the act of 1872, ch. 316, see *Swan v. State*, 64 Md. 424; *Baltimore, etc., Co. v. State*, 63 Md. 580; *Crouse v. State*, 57 Md. 327; *Munshower v. State*, 56 Md. 518; *Johns v. State*, 55 Md. 353; *Forwood v. State*, 49 Md. 539; *State v. Carter*, 49 Md. 9; *Forwood v. State*, 49 Md. 537; *State v. Shields*, 49 Md. 303; *Kearney v. State*, 46 Md. 424; *Broll v. State*, 45 Md. 360; *Dulany v. State*, 45 Md. 101; *Smith v. State*, 44 Md. 533; *Wheeler v. State*, 42 Md. 570; *Deckard v. State*, 38 Md. 200.

This section does not repeal art. 5, sec. 2. *Bramble v. State*, 88 Md. 687; *Salfner v. State*, 84 Md. 301; *State v. Williams*, 85 Md. 233.

Cited but not construed in *Izer v. State*, 77 Md. 111; *Stout v. State*, 76 Md. 319; *State v. Bowers*, 65 Md. 364; *Chesapeake Club v. State*, 63 Md. 450; *Maguire v. State*, 47 Md. 493; *Davis v. State*, 38 Md. 35.

This section does not authorize appeals in cases of criminal contempt; no such appeal lies. *Ex parte Sturm*, 152 Md. 125. See sec. 107.

Cited but not construed in *Crout v. State*, 157 Md. 388.

This section cited but not construed in separate opinion in *Heyward v. State*, 161 Md. 699.

The fact that this section permits the use of bills of exceptions in criminal cases does not prohibit the use of methods previously used for bringing facts up to appellate court. *Lee v. State*, 163 Md. 56.

Order of court overruling State's demurrer to special pleas of defendant, not being final judgment, appeal of State held premature and ordered dismissed. *State v. Amick*, 171 Md. 536.

Cited in *Cohen v. State*, 173 Md. 220; *Callahan v. State*, 174 Md. 50.

See sec. 4.

An. Code, 1924, sec. 87. 1912, sec. 81. 1904, sec. 81. 1888, sec. 78. 1878, ch. 40.

87. Whenever any writ of error or appeal shall be brought upon any judgment, or any indictment, information, presentment, inquisition or conviction in any criminal case, and the court of appeals shall reverse the judgment for error in the judgment, or sentence itself, it shall be the duty of the court of appeals to remit the record to the court below, in order that such court may pronounce the proper judgment upon such indictment, information, presentment, inquisition, or conviction; provided, however, that it shall be the duty of the court in passing any sentence under the provisions of this section to deduct from the term of sentence the time already served by the prisoner under the previous sentence from the date of his conviction.

This section grew out of the decision in *McDonald v. State*, 45 Md. 90. *Lynn v. State*, 84 Md. 83.

This section referred to in deciding that it is not reversible error, even in capital cases, not to ask the prisoner if he has any reason to give why sentence should not be imposed, unless it appears that he was, or may have been, injured by the omission; this practice, however, recommended. *Dutton v. State*, 123 Md. 382.

Case remanded for the entry of a proper judgment, as for a first offense, as provided in this section. *Goeller v. State*, 119 Md. 68. *Kelly v. State*, 151 Md. 101; *Klein v. State*, 151 Md. 494.

A remand of the record under this section where an erroneous punishment was imposed, held proper. *Cochran v. State*, 119 Md. 557.

Cited but not construed in *Kenny v. State*, 121 Md. 123.

This section referred to in *Heyward v. State*, 161 Md. 699.

An Code, 1924, sec. 87A. 1933 (Special Sess.), ch. 98.

88. Whenever any writ of error or appeal shall be brought upon any judgment, or any indictment, information, presentment, inquisition or conviction in any criminal case, the Court of Appeals shall give judgment without regard to technical errors, defects or exceptions, which do not affect the substantial rights of the parties.

This section referred to in sustaining indictment under art. 27, sec. 184. *State v. Coblenz*, 167 Md. 530.