

An. Code, sec. 492. 1904, sec. 434. 1888, sec. 282. 1793, ch. 57. 1809, ch. 144, sec. 2.
1852, ch. 344.

549. 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 questions of law arising upon them; hence an appeal brings rulings of the court up for review. Judgment may be entered, although in 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 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.

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

Procedure—Indictments—Amendment.

An. Code, sec. 493. 1904, sec. 435. 1888, sec. 283. 1852, ch. 176, sec. 1.

550. 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 grand jury; this applies to Christian name as well as surname. This section provides for the misnomer of 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 described traverser as a free negress and at the trial it appeared that she was a slave, an appropriate amendment held not authorized under this section. *Negro Hammond v. State*, 14 Md. 147.

As to "Amendments at Law," see art. 75, sec. 39.

As to "Amendments in Equity," see art. 16, secs. 17 and 18.

Repeal of statute does not preclude actions or prosecution for penalty or liability already incurred—art. 1, sec. 3.

An. Code, sec. 494. 1904, sec. 436. 1888, sec. 284. 1852, ch. 176, sec. 2.

551. 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 indictment, it shall be lawful for the State's attorney, or other person prosecuting for the State, on application to the court, to amend the said indictment according to the proof in the said cause; and it shall be the duty of the court in which such trial shall be had to proceed with the trial of the said indictment so amended, unless oath shall be made by the party or parties so