

Art. 4. That the people of this State have the sole and exclusive right of regulating the internal government and police thereof, as a free, sovereign and independent State.

The act of 1812, ch. 194, was continued in force by this article—see notes to art. 8. *Baltimore v. Board of Police*, 15 Md. 483.

This article referred to in construing art. 1, secs. 1 to 5, of the Md. Constitution—see notes thereto. *Anderson v. Baker*, 23 Md. 619.

Art. 5. That the inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State. And the Inhabitants of Maryland are also entitled to all property derived to them from or under the Charter granted by His Majesty, Charles the First to Cæcilius Calvert, Baron of Baltimore.

Law of England.

This article has no reference to adjudications in England anterior to the colonization or to the judicial adoptions here of any part of the common law during the continuance of the colonial government, but to the common law in mass as it existed here either potentially or practically and as it prevailed in England at the time, except such portions of it as are inconsistent with the spirit of the Constitution and nature of our political institutions. Whether particular parts of the common law are applicable to our local circumstances, etc., is a question for the courts to decide; how what the common law of England was at time of the adoption of the Declaration of Rights is determined. *State v. Buchannon*, 5 H. & J. 358.

The pre-eminence of the state over the citizen is a necessary incident to sovereignty; it constitutes a branch of the common law adopted by this article (as it stood in the Constitution of 1776). *State v. Milburn*, 9 G. 111.

By the common law, to which under this article inhabitants of Maryland are entitled, no woman could in person take an official part in the state government except as overseer of the poor, without express statutory authority. This article referred to in deciding that a woman (independent of statute) is not entitled to practice law in Maryland. *In re Maddox*, 93 Md. 731.

This article does not support the contention that the whole common law, as it existed in Maryland at the time this article was adopted, became a part of the Constitution, and hence was beyond legislative change. *Day v. State*, 7 Gill, 325.

This article is not to be expounded according to the rule of construction applicable to declaratory laws, but as adopting the different classes of the statutes to which it relates *sub modo* only and rejecting all others; and as laying down rules by which to ascertain what statutes were so adopted—a different rule applying to each class. What statutes "by experience have been found applicable." *Dashiell v. Attorney-General*, 5 H. & J. 401.

The marriage acts were not among the "English statutes which existed on July 4th, 1776, and which by experience have been found applicable," etc.—see art. 63, sec. 1 *et seq.* of Code. *Harrison v. State*, 22 Md. 487.

The statute of 29th Char. II (statute of frauds), held to be in force in Maryland by virtue of this article. This article referred to in deciding that an agreement to marry after the expiration of three years, need not be in writing. *Lewis v. Tapman*, 90 Md. 302.

Jury trial.

Accused may waive right of trial by jury. *Rose v. State*, Daily Record, Jan. 31, 1940.

As a general rule, for any criminal offense for which a person is liable to infamous punishment, a trial by jury may not be denied; confinement in the penitentiary is infamous punishment. The right of parties charged with capital or infamous crimes is more extensive than in civil controversies or in prosecutions for misdemeanors of minor importance. Meaning of the term "law of the land." Jurisdiction cannot be conferred by consent. What does not amount to a "waiver" of the constitutional right to a jury trial. The act of 1896, ch. 128, providing that in certain counties justices of the peace should have concurrent jurisdiction with circuit courts for the trial of petit larceny, if neither the traverser nor the state's attorney when before the justice prays a jury trial, held unconstitutional in so far as it conferred jurisdiction upon justices of the peace in cases of petit larceny. *Danner v. State*, 89 Md. 225.