

more respectable physicians he shall be satisfied that the fœtus is dead, or that no other method will secure the safety of the mother.

The crime of abortion is a misdemeanor at common law when there is no intent to kill, and this section does not change the rule. Causing the death of a woman by means of an abortion is manslaughter and not murder. An indictment held not to be for the statutory offense of abortion but for manslaughter as a consequence of an abortion. In prosecutions for abortion the death of the woman is no part of the facts which go to constitute the crime. Dying declarations. *Worthington v. State*, 92 Md. 240.

In an indictment under this section, letters written by the traverser to the woman containing directions as to how a certain drug should be taken, and proof by the woman that she took the drug and in other respects followed the traverser's instructions, is competent evidence, although the traverser was not present when the drug was taken and his directions complied with. A conversation between the traverser and the woman in which she stated that she had complied with his advice but without producing the desired effect, is also evidence. The above evidence, if found to be true, constitutes the crime prohibited by this section. *Jones v. State*, 70 Md. 326.

An indictment held to sufficiently negative the proviso at the end of this section. When two traversers are jointly indicted under this section, declarations of one of them are not evidence against the other unless first there has been some evidence of a conspiracy or combination between the traversers to commit the crime charged; however, if the latter evidence comes in later, the admission of the declarations, though error at the time, is harmless. The character of the house where the abortion is alleged to have been committed may be proven. While what the deceased said as to her then condition and pain, feelings and disease, is admissible, a mere narrative by her of what took place at a certain time is inadmissible. *Hays v. State*, 40 Md. 646.

A charge that the traverser solicited a woman to take certain drugs for the purpose of causing an abortion does not constitute the crime prohibited by this section, there being no statement that the drugs were actually taken. There must be an unlawful purpose and an act committed which would carry it into immediate effect, unless it be prevented by some counteracting force or circumstance which intervenes at the time. *Lamb v. State*, 67 Md. 532 (*cf.* dissenting opinion, p. 536).

1904, art. 27, sec. 4. 1888, art. 27, sec. 4. 1868, ch. 179, sec. 3.

4. It shall be the duty of the judges of the several circuit courts of this State and of the criminal court of Baltimore to give the preceding section in charge of the grand jury of their respective courts at each term of said courts.

Adultery.

Ibid. sec. 5. 1888, art. 27, sec. 5. 1860, ch. 30, sec. 1. 1749, ch. 12. 1815, ch. 27, sec. 3.

5. Any person who shall commit adultery shall upon conviction thereof in any of the circuit courts for the counties in this State or the criminal court of Baltimore be fined ten dollars.

Since the penalty prescribed by this section is a pecuniary fine, charging a person with adultery does not amount *per se* to slander. *Wagaman v. Byers*, 17 Md. 187. And see *Shafer v. Ahalt*, 48 Md. 173; *Griffin v. Moore*, 43 Md. 246.

As to pandering, see section 379. *et seq.*