

The act of 1809, ch. 138, punished the burning of a barn whether the articles of personal property mentioned in section 5 of that act, or other articles, were contained therein. Explanation of the word "empty" as used in said act. *House v. House*, 5 H. & J. 125.

An indictment which fails to describe the building as "not parcel of any dwelling house" is defective. *Kellenbeck v. State*, 10 Md. 438 (decided prior to act of 1904, ch. 267). *Cf. Gibson v. State*, 54 Md. 452.

See notes to section 6.

1904, art. 27, sec. 13. 1904, ch. 267, sec. 12A.

13. Whoever shall wilfully and maliciously set fire to or burn any school house, engine house, market house, scale house, watch house, bridge or any other building or structure not mentioned or included in the provisions of the preceding section, with intent thereby to injure or defraud any person, shall, on conviction therefor, be sentenced to the penitentiary for not exceeding seven years.

Ibid. sec. 14. 1888, art. 27, sec. 13. 1860, art. 30, sec. 9. 1809, ch. 138, sec. 5.

14. Any person who shall maliciously and wilfully attempt to burn any dwelling house, whether inhabited or not, or any mill, factory, barn, stable, storehouse, or other out house, or any stack of grain, hay, straw or fodder, upon conviction thereof, shall be sentenced to the penitentiary for not less than eighteen months nor more than ten years.

Assault on Wife.

Ibid. sec. 15. 1888, art. 27, sec. 14. 1882, ch. 120.

15. Any person who shall brutally assault and beat his wife shall be deemed guilty of a misdemeanor, and upon presentment and conviction thereof by any court of competent jurisdiction shall be sentenced to be whipped, not exceeding forty lashes, or be imprisoned for a term not exceeding one year, or both, in the discretion of the court.

On an indictment under this section, the wife is a competent witness to prove the beating and also the marriage; proof of the performance of the marriage ceremony is sufficient without proof of the authority of the officer who performed it. The marriage may be *prima facie* established by presumptive evidence. This section does not create a new offense, but simply attaches a new penalty to the common law offense when attended with circumstances of aggravation. An indictment under this section must aver the circumstances which constituted the offense or increase the punishment; it follows that the nature of the beating must be laid as characterized by the statute and the victim of the offense must be described as the wife. *Hanan v. State*, 63 Md. 124.

The word "brutally" in this section is not uncertain or indefinite and is easily understood and applied. A party may be indicted under this section or for the common law offense, or the indictment may include two counts, one embracing the statutory and the other the common law offense, and the jury must determine whether a conviction under the statutory count is warranted. This section is constitutional and valid; it sufficiently regulates the mode and manner of inflicting the punishment. *Foote v. State*, 59 Md. 266.

Ibid. sec. 16. 1888, art. 27, sec. 15. 1882, ch. 120.

16. If any court shall order or direct the punishment as aforesaid by whipping, the same shall be administered by the sheriff of the county