or city of Baltimore where the judgment shall be rendered; and said sheriff shall administer the same within the walls of the city or county jail.

Assault with Intent to Murder, Ravish or Rob.

1904, art. 27, sec. 17. 1888, art. 27, sec. 16. 1860, art. 30, sec. 10. 1809, ch. 138, sec. 4. 1904, ch. 76. 1908, ch. 366.

17. Every person convicted of crime of an assault with intent to rob, murder, or have carnal knowledge of a female child under age of fourteen years, shall be sentenced to confinement in the penitentiary for not less than two years, nor more than ten years; and every person convicted of the crime of an assault with intent to commit a rape shall be punished with death, or, in the discretion of the court, he shall be sentenced to confinement in the penitentiary for not less than two years nor more than twenty years; and nothing in this section shall be construed to interfere with any prosecution that has or may hereafter be commenced for any violation of the section hereby repealed, happening previous to April 6, 1908.

The allegation that an act was done with intent "feloniously" to rob does not vitiate an indictment under this section. To constitute the crimes of robbery, murder or rape, the felonious act and the felonious intent must concur. To bring an assault under this section the act must be charged and proved to have been committed with an intent to commit a crime which is a felony. The omission of the allegation of violence from the indictment is immaterial; it is sufficient to state with precision the facts requisite to constitute an assault and battery, and to aver the intent. Hollohan *v.* State, 32 Md. 399 (decided prior to the act of 1904, ch. 76).

A count charging rape may be united with one charging assault with intent to rape; a felony and a misdemeanor may be joined in the same indictment. A verdict which is a nullity is a mere mistrial; the prisoner should not be discharged, but a new trial ordered. State *v.* Sutton, 4 Gill, 494 (decided prior to the act of 1904, ch. 76).

Where an indictment charges the same offense in various forms, the prosecutor cannot be required to elect between them; *contra*, if the indictment charges distinct offenses. State *v.* Bell, 27 Md. 675 (decided prior to act of 1904, ch. 76). *Cf.* Manly *v.* State, 7 Md. 135.

The instrument or means made use of in the assault, etc., need not be stated in the indictment; it is sufficient to follow the language of the statute. State *v.* Dent, 3 G. & J. 8 (decided prior to the act of 1904, ch. 76).

Where an indictment contains two counts, one charging assault with intent to kill and the other a simple assault and battery, a general verdict of "guilty" is sufficient and a judgment for the higher offense is proper. Manly *v.* State, 7 Md. 148 (decided prior to the act 1904, ch. 76). *Cf.* State *v.* Sutton, 4 Gill, 494.

An objection to an indictment under this section on the ground that it did not state that the intent was felonious and of malice aforethought, overruled. Lewis *v.* State, 32 Md. xii (decided prior to the act of 1904, ch. 76).

Barratry.

1908, ch. 413.

18. Whoever, for his own gain, and having no existing relationship or interest in the issue, directly or indirectly, solicits another to sue at law or in equity, or to make a litigious claim, or to retain his own or another's services in so suing or making a litigious claim; or whoever knowingly prosecutes a case in which his services have been retained as