

stated that she had complied with his advice but without producing desired effect, is also evidence. The above evidence, if found true, constitutes the crime prohibited by this section. *Jones v. State*, 70 Md. 326.

An indictment held to sufficiently negative 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 traversers to commit crime charged; however, if latter evidence comes in later, the admission of 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 traverser solicited a woman to take certain drugs for 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).

An. Code, sec. 4. 1904, sec. 4. 1888, 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.

An. Code, sec. 5. 1904, sec. 5. 1888, 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.

Adultery is not an offense at common law. Art. 38, sec. 1, applies to a conviction under this section; when improper items are included in costs, application for correction should be made to lower court—such error is no ground of reversal. *Cole v. State*, 126 Md. 240.

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 sec. 424, *et seq.*

Arson and Burning.

An. Code, sec. 6. 1904, sec. 6. 1888, sec. 6. 1809, ch. 138, sec. 5. 1904, ch. 267, sec. 6.

6. Every person convicted of the crime of arson, or as being accessory thereto, shall, at the discretion of the court, suffer death, or be sentenced to the penitentiary for not more than twenty years; and the wilful and malicious burning of any dwelling house, whether the same shall be in the possession of the offender or in the possession of any other person, with the intent thereby to injure or defraud any person, shall be deemed arson under this section.

The description of property burned held too indefinite in one count but sufficient in another count. It is proper to charge statutory offenses in the language of the statute creating them. Where a statute contains an exception so incorporated with its enacting clause that the one cannot be read without the other, the indictment must negative the exception. The burning of a barn, parcel of a dwelling house, is covered by this section. *Gibson v. State*, 54 Md. 450 (decided prior to act 1904, ch. 267). *Gibson v. State* was overruled in part in *Avirett v. State*, 76 Md. 529.