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, 1924, sec. 4. 1912, 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, 1924, sec. 5. 1912, 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 for 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. 502, *et seq.*

Arson and Burning.[1]

An. Code, 1924, sec. 6. 1912, sec. 6. 1904, sec. 6. 1888, sec. 6. 1809, ch. 138, sec. 5. 1904, ch. 267, sec. 6. 1929, ch. 255, sec. 6.

6. Any person who wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any dwelling house, or any kitchen, shop, barn, stable or other outhouse that is parcel thereof, or belonging to or adjoining thereto, whether the property of himself or of another, shall be guilty of arson, and upon conviction

[1] These decisions relate to the provisions of law prior to Act of 1929, ch. 255.

The act of burning a stack of hay is not a felony either at common law, under this section or under act of 1809, ch. 138; an indictment for a felony cannot be sustained as an indictment for a misdemeanor. Where indictment charged that traverser had "feloniously," etc., and the jury found him guilty of having "feloniously," etc., burned stack of hay, no judgment can be pronounced under this section. Black *v.* State, 2 Md. 379.

A party may be indicted for wilfully burning a school house not parcel of a dwelling house; the "wilful" burning being the offense provided against. Jones *v.* Hungerford, 4 G. & J. 402 (decided prior to act, 1904, ch. 267).

Act of 1809, ch. 138, punished the burning of a barn whether the articles of personal property mentioned in sec. 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.

Indictment which fails to describe 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.

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