

thereof, be sentenced to the penitentiary for not less than two nor more than twenty years.

One aiding or counseling another to set fire to dwelling is principal and not accessory; count charging defendant with setting fire to and burning dwelling and count charging same person with aiding and counseling the burning of dwelling can be joined in same indictment; not necessary that dwelling be occupied. *Wimpling v. State*, 171 Md. 362.

As to indictments for arson, see sec. 656.

An. Code, 1924, sec. 7. 1929, ch. 255, sec. 7.

7. 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 barn, stable, garage or other building, whether the property of himself or of another, not a parcel of a dwelling house; or any shop, storehouse, warehouse, factory, mill or other building, whether the property of himself or of another; or any church, meeting house, court house, work house, school, jail or other public building or any public bridge; shall upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than ten years.

An. Code, 1924, sec. 8. 1929, ch. 255, sec. 8.

8. 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 barrack, cock, crib, rick or stack of hay, corn, wheat, oats, barley or other grain or vegetable product of any kind; or any field of standing hay or grain of any kind; or any pile of coal, wood or other fuel; or any pile of planks, boards, posts, rails or other lumber; or any street car, railway car, ship, boat or other water craft, automobile or other motor vehicle; or any other personal property not herein specifically named (such property being of the value of twenty-five dollars and the property of another person), shall upon conviction thereof, be sentenced to the penitentiary for not less than one or more than three years.

An. Code, 1924, sec. 9. 1929, ch. 255, sec. 9.

9. Any person who wilfully and with intent to injure or defraud the insurer sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any goods, wares, merchandise or other chattels or personal property of any kind, whether the property of himself or of another, which shall at the time be insured by any person or corporation against loss or damage by fire; shall upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than five years.

An. Code, 1924, sec. 10. 1929, ch. 255, sec. 10.

10. Any person who wilfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of any of the buildings or property mentioned in the foregoing sections, or who commits

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.

If an indictment does not charge that the burning was done "maliciously," it is defective. *Kellenbeck v. State*, 10 Md. 437 (decided prior to act of 1904, ch. 267). Cf. *Gibson v. State*, 54 Md. 452.

An indictment for arson must charge that the house was burned. Act of 1809, ch. 138, only provided for punishment of arson without defining it. *Cochrane v. State*, 6 Md. 405 (decided prior to act of 1904, ch. 267).

Cited but not construed in *Hammond v. State*, 14 Md. 148.