

An assault with intent to rob, murder or rape is not a felony in Maryland; in this state only those crimes are felonies which were such at common law or have been so declared by statute. The death penalty provided by this section is not in violation of arts. 16 or 25 of the Declaration of Rights. *Dutton v. State*, 123 Md. 375.

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, felonious act and 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 indictment is immaterial; it is sufficient to state with precision facts requisite to constitute an assault and battery, and to aver the intent. *Hollohan v. State*, 32 Md. 399 (decided prior to act, 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; prisoner should not be discharged, but a new trial ordered. *State v. Sutton*, 4 Gill, 494 (decided prior to act, 1904, ch. 76).

Where an indictment charges the same offense in various forms, prosecutor cannot be required to elect between them; *contra*, if indictment charges distinct offenses. *State v. Bell*, 27 Md. 675 (decided prior to act, 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 act, 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 act, 1904, ch. 76). *Cf. State v. Sutton*, 4 Gill, 494.

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

Admissibility of evidence in a prosecution under this section. Consent is not an element of the offense. *Rau v. State*, 133 Md. 614.

Barratry.

An. Code, 1924, sec. 18. 1912, sec. 18. 1908, ch. 413.

14. 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 a result of such solicitation; or causes any case to be instituted without authority; or whoever, being an attorney at law, directly or indirectly, agrees to procure another to be employed as an expert witness, or otherwise, or procures another to be so employed in consideration of his so soliciting litigious business or undertaking to solicit it, or in any other way compensates or agrees to compensate another for so doing shall, upon conviction thereof, be punished by a fine of not more than \$500 or by imprisonment in jail for not more than three months, or by both. Any solicitation as aforesaid shall be *prima facie* evidence that the person so soliciting is doing so for gain. The term attorney at law shall include counsellor at law; provided that nothing herein contained shall impair or affect the disciplinary powers of the courts of this State over attorneys and counsellors at law appearing and practicing in the same.

An. Code, 1924, sec. 19. 1912, sec. 18A. 1916, ch. 695.

15. It shall be unlawful for any corporation or voluntary association to assume, use or advertise in any newspaper, periodical, or by use of any notice, circular, letterhead, card, or in any manner whatsoever, the title of lawyer, or attorney, attorney at law, or equivalent terms in any language in any such manner as to convey the impression that either alone or together with, or by, or through any person, whether a duly and regularly admitted