THE REAL AND MORAL ASPECT OF ABORTION*

By MR. SIGMUND ZEISLER.

I do not claim to be a specialist on abortion. I never defended anybody in a case of abortion, and I never had anything to do with abortion, actively or passively. But having been invited to talk to you on the legal and moral aspects of the question, I have given it a little thought, and crude though my ideas may be, you are welcome to them.

The common law, which I presume you understand is the law of England as it came to us with the colonists, and as it was developed in the various states of the Union other than through statutory enactment, is radically different from the statutory law. According to the common law, for instance, up to the time of the quickening of the child, it was not criminal to produce an abortion with the consent of the mother. Even to produce a miscarriage, under any circumstances, prior to quickening of the child, was merely a misdemeanor. The statutory law in all the states of the United States, has made abortion, or the causing of miscarriage of a pregnant woman in any stage, a crime. I will confine myself to a consideration of the provisions of the Illinois statute, which reads as follows:

3. Producing. Whoever, by means of any instrument, medicine, drug or other means whatever, causes any woman, pregnant with child, to abort or miscarry, or attempts to procure or produce an abortion or miscarriage, unless the same were done as necessary for the preservation of the mother's life, shall be imprisoned in the penitentiary not less than one year nor more than ten years; or if the death of the mother results therefrom, the person procuring or causing the abortion or miscarriage shall be guilty of murder.

4. Ecboic, or abortifacient drugs. If any druggist, dealer in medicine, or other person sells to any person any drug or medicine, known or presumed to be ecboic or aborti-

facient, except on the written prescription of some well known and respectable practicing physician, or keeps on hand or advertises or exposes for sale, or sells any pills, powders, drugs or combination of drugs designed especially for the use of females, without keeping the certificate as required in the next succeeding section, he shall, for each offense, be fined not less than \$50.00 nor more than \$500.00, or be confined in the county jail not less than thirty days nor more than six months, or both. Provided, this section shall not be construed to apply to compounds known as "Official."

5. Certificate required. Before any pills, powders, drug or combination of drugs designed expressly for the use of females, shall be kept or exposed for sale or sold, the proprietor thereof shall submit, under oath, a true statement of the formula by which the same is compounded, to five well known and respectable practicing physicians, in the county where the same is proposed to be sold, and shall procure their certificate, signed and verified by the affidavit of each of them, that such a combination is not abortifacient; and every person keeping on hand, or in such manner advertising or exposing for sale or selling such combination, shall keep such certificate, or a sworn copy thereof, with the formula attached, for the inspection of any person desiring to see the same.

6. Advertising abortifacient drugs. Whoever advertises, prints, publishes, distributes or circulates, or causes to be advertised, printed, published, distributed or circulated any pamphlet, printed paper, book, newspaper, notice, advertisement or reference, containing words or language giving or conveying any notice, hints or reference to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop or office where any poison, drug, mixture, preparation,

*Read before the Chicago Gynecological Society, Feb. 18, 1910. (From *Surgery, Gynecology and Obstetrics*, May, 1910.)

medicine, or noxious thing, or any instrument or means whatever, or any advice, information, direction or knowledge may be obtained for the purpose of causing or procuring the miscarriage of any woman pregnant with child, shall be punished by imprisonment not exceeding three years, or fine not exceeding \$1,000.00.

What interests us the most is the first section of the statute. It is short but pregnant with meaning. It hardly needs interpretation.

"Whoever." That is to say the means may be employed by anybody—not necessarily a physician. The words "other means" are unimportant and without meaning. This phrase has been uniformly held to include only such means as fall within the same general class as the things specifically enumerated. The means used must be an instrument, or a medicine, or a drug. In other words, and there may be some defect in the statute in this regard, if a physician should advise a pregnant woman to ride in a poor vehicle over rough road for forty miles without stopping, with the idea that that would produce abortion, and with the intent that thereby an abortion should be produced, he would not be guilty of the crime of abortion under our statute.

The next clause in the statute is "causes any woman pregnant with child, etc.," in other words, there must be established a corpus delicti. There must be a pregnant woman, on whom somebody, by the means designated by the statute, produces an abortion or miscarriage. To you that seems quite natural, but not so to the lawyer. There are statutes in some states where there is no such provision as that the woman must be pregnant with child; it has been held that a man may be guilty of abortion, or the attempt to commit abortion, if he believes the woman is pregnant with child and does what he would do, if a woman were pregnant and he intended to produce an abortion. But under our statute, differing in that respect from the statutes of many other states, it is impossible for any one

to be guilty of abortion or the crime of attempting to commit abortion—and the punishment is the same in either case—unless the woman is pregnant.

Why say "to abort or miscarry?" Why this seeming tautology? There is meaning to this. Technically, a miscarriage exists when the fœtus is expelled during the first six weeks from the time of conception; the expulsion subsequent to that time is more technically designated as abortion. Under some statutes and under the common law the production of miscarriage, technically so-called, is not a crime, and it is required that a situation exist where abortion technically, so-called, is possible. In Illinois it would not make any difference how long the fœtus has existed or how much time has elapsed from the moment of conception to make the destruction of the fœtus and its expulsion the crime of abortion.

The next clause to be considered is, "unless the same were done as necessary for the preservation of the mother's life." This does not mean that anybody could produce an abortion and escape the consequences by saying he did it because it was necessary for the preservation of the life of the mother; but this much is true, that if a reputable physician, one not known to be an abortionist, should declare, under oath, that he gave medicine or performed an operation to save the mother's life, little question would arise but that his act was not a crime. But the presumption is that if anybody produce abortion it is not done for the purpose of preserving human life. Of course ultimately this is a question that must be decided by the jury in every case from all the circumstances that surround the transaction. If, for instance, the abortion has been produced by a person who advertises that he can help women in trouble, one who has been caught previously in this nefarious business, or if, perhaps, in addition to that, the victim was known to be perfectly well, no amount of swearing on the part of the one who produced the abortion that it was necessary for the preservation of the mother's life would help him

with the jury. He or she would be convicted.

In this connection an astute mind might suggest that to prevent the suicide of the mother would justify abortion in the eyes of the law. Let us suppose an unmarried woman, insane with the fear of detection of her pregnancy, threaten to commit suicide. A kind-hearted physician or a professional abortionist other than a physician, takes pity on that woman and, to save her from committing suicide, produces an abortion. This would not be a defense. It can never be told whether a woman threatening to commit suicide will do so. The law is settled that to prevent a mother from committing suicide does not fall within the clause under consideration of this and similar statutes, by which it is provided that abortion is a crime, "unless the same were done as necessary for the preservation of the mother's life."

The balance of the statute simply provides the punishment.

It is a peculiar fact, worthy of notice, that in the limited number of cases that have gone to the Supreme Court of this state wherein persons convicted of this crime have sought a review of the conviction—I do not think there are more than a dozen such cases—the prosecution was almost always for murder and not for abortion. The victim died. Of course we must not judge from this that death ensues in such an overwhelming majority of cases of abortion. What we should gather from this fact is that it is difficult to catch the fellows who are engaged in this abominable business, and that the authorities ordinarily do not wake up unless the victim dies. In reading the decision of the Supreme Court in the Hagenow case, we find that this woman had advertised in such respectable papers as the Chicago Daily News, the Record-Herald and the Examiner for years. The advertisements could not be mistaken by anybody. It was perfectly plain what was meant. Still the authorities never went for the woman, although there is a statute which makes such advertising without any act done pursuant thereto,

punishable with imprisonment up to three years.

One other thing should be noticed which is peculiar to most statutes: that is, that there must be an intent to commit abortion before any particular act can be held to be an abortion. For instance, suppose a brutal husband beats his wife and as the result of that beating she miscarries, he is guilty of assault, but not of abortion, because he did not intend that an abortion or miscarriage should ensue.

A few words more on the subject of attempt, because that is significant and important. An attempt may fail, and still it is punishable under this statute and constitutes the crime of abortion, just the same as a successful attempt. For instance, if a physician should advise a pregnant woman to take ergot in large doses and she, having a very strong constitution, would not miscarry, the man who gave this advice and induced the woman to take this drug is guilty of the crime of abortion. Of course, if some ignorant person should believe that Huyler's chocolates could produce abortion, and should advise a pregnant woman to take such, although he may intend to commit abortion thereby, still he would not be guilty, because there must be some aptitude of the means employed before a man can be guilty of the attempt to commit this crime. On the other hand, suppose a man solicits a pregnant woman to take an apt medicine for the purpose of producing abortion, though she does not do it, he is guilty of an attempt to produce abortion. He has gone as far as he can; if she has not taken the advice, having the means at hand, furnished by the adviser, the latter is guilty of abortion.

One question of interest is, Is the mother who consents guilty of abortion? I have carefully looked at all the decisions of the Supreme Court of Illinois to find any light on the subject, but have failed. The statute itself would exclude the woman from guilt though she consents. It says, "Whoever causes any woman, pregnant with child, to abort or miscarry." This language does not fit the case of a wom-

an pregnant with child consenting, because she would not "cause a woman pregnant with child to abort or miscarry." But we have in this state a very broad statute defining who shall be considered an accessory to a crime.

274. Before the fact. An accessory is ne who stands by, and aids, abets or assists, or who, not being present, aiding, abetting or assisting, hath advised, encouraged, aided or abetted the perpetration of the crime. He who thus aids, abets, assists, advises or encourages, shall be considered as principal, and punished accordingly.

It is my judgment that a woman who consents and aids the abortionist in an abortion is an accessory, hence is guilty as a principal under our statute.

There is another statute under which a woman would become guilty, the statute of conspiracy, which provides that if two or more persons combine or conspire to do an illegal act, they shall be guilty of conspiracy. If a woman and a physician or an abortionist combine together for the purpose of producing a miscarriage on her, then they are guilty of conspiracy, she just as much as he.

Of course a person who furnishes medicine or an instrument to those who are engaged in this crime, knowing that the means will be used for that purpose, though he does not advise or in any other way have anything to do with the crime, is an accessory and, under our statute, is guilty as a principal.

A word as to the moral aspect. Whenever a moral question comes up for consideration, I always like to fall back on the old Kantian categorical imperative which is about as follows: "Always act thus that the motive underlying your actions may furnish the principle for a general law." Let us apply that to the abortionist or to the woman consenting to an abortion. If the motive or principle of their action were to underlie a general law on the subject, it would mean that everybody should commit abortion and every pregnant woman should allow or consent to an abortion. What then would become of this world?

Somehow or other, we are egotistic enough to think that the solar system, or at least this planet, was made for the delectation of human beings. Whether we believe that or not, it so happens that the human race rules upon this planet. Human life, in spite of vicissitudes and many sad hours, is a very beautiful thing. For centuries man has worked to produce what we call civilization, although we have not reached what will ultimately be called civilization; we have only reached a certain degree of it. That the human race should disappear from this planet is a sad thing to contemplate. That anything should ever become a general practice which would result in the total annihilation of the human race, cannot be contemplated with any degree of ease of mind. Hence it is so self-evident that abortion is wrong, that it really needs no discussion from the moral point of view.

It is wrong also because it is a violent interference with a normal, natural physiological process, an interference which is fraught with danger to life, or at least to health. Anything of that sort deserves the condemnation of all right thinking people, and certainly deserves the condemnation of the law.

But there are still other reasons, and here we must distinguish between married and unmarried life. In the case of married people, if abortion were to be sanctioned, it would be an encouragement to race suicide. Race suicide is not only mad in itself, because it most ultimately leads to the depopulation of the earth, but it is wrong for other reasons. Encourage married women to kill off the fruit of the womb, encourage them not to have any children, and you will encourage them to lead a life given to idleness and frivolities. At least in many cases women, instead of devoting themselves to the duties of motherhood, will be sitting in rocking-chairs, reading cheap novels, or going to pink teas and Kaffee Klatches. I have the old-fashioned idea that no man's or woman's life is rounded out or becomes a complete thing, a thing beautiful to contemplate, until he or she has the responsibility for the

bringing up of children, and unless he or she has the great satisfaction and delight of seeing the child they have cared for grow up and become a useful member of society. It is the only way for us to become altruists that comes easy and natural. Other forms of altruism are difficult. This is one that nature has provided and makes us better human beings.

In case of unmarried people, to sanction abortion would be to encourage licentiousness and recklessness of conduct. Fear of detection through childbirth is most often the only deterrent. If the unmarried woman believes in free love, let her have the courage of her convictions and ignore the prejudices of the world. Let her go about carrying her head erect, proud of the condition she is in as the result of giving herself to the man she loves. If she does not believe in free love, if she has had sexual intercourse with the knowledge or feeling that it is wrong, why should she be given a chance to hide her wrong? The procreation of children out of wedlock is not a thing that agrees with our views of the needs of human society. It must not be encouraged. But the existence of the practice of abortion encourages unmarried people to indulge their passions. If pregnancy ensues, the production of abortion is not always so easy or simple, and thus this condition results in bringing children into the world out of wedlock.

Of course, the stern attitude of society is a powerful aid to abortion. Many an innocent woman is taken advantage of by a designing man, is seduced and made pregnant. In many an unmarried woman the sexual passion is a pathological condition. She is so constituted that she cannot help yield to the man she loves. Society anathematizes such women, and it is but natural that she should desire to obliterate the evidence of her so-called guilt. If I had my way about it, I would not have such a woman condemned. If I could do it, and others would help me, I would try to fight that prejudice which so generally and under all circumstances condemns an unmarried woman who gives herself to a man. And society is so hypocritical that we do not so much condemn the woman for yielding to a man as for the horrible crime of letting herself be found out. We ought to educate society not to cry anathema to every fallen woman, not to throw stones at them, and thus to drive them into the hands of the abortionist. We should rather inquire into the circumstances of each case and extend indulgence, forgiveness and helpfulness to every woman who deserves it. Unfortunately, the view of society at the present time is the reverse, and is largely responsible for the prevalence of abortion.

THE METHODS OF THE PROFESSIONAL ABORTIONIST*

By RUDOLPH WIESER HOLMES, M.D.

In general it is possible to characterize the professional abortionist by the use of three words—criminality, knavery and avarice. A man prompted to perform one transgression against the moral and civil law easily may take the downward course until his life is steeped in illegal practices. The perpetration of one criminal abortion makes the second offense less obnoxious to his ethical stamina

Fraud must be met by fraud, the rewards of crooked action must be obtained by preying upon the weaknesses of human nature, and truth must be met by perjury. So we see the man who commits an illegal abortion for some specious argument and consideration finds that he must continue his offenses, he finds soon that the rewards are uncertain, and too often inadequate to compensate for the risks of

*Read before the Chicago Gynecological Society, Feb. 18, 1910. (From *Surgery, Gynecology and Obstetrics*, May, 1910.)