

## MISCELLANEOUS.

BURDEN OF PROOF AND OTHER REQUIREMENTS IN  
ABORTION CASES.

The Supreme Court of Colorado says, in *Fitch vs. People*, where it affirms a conviction of procuring an abortion, that the law of that state has wisely provided that but one fact can justify the procuring of, or attempting to procure, a miscarriage; that is, that the act is done by or under the advice of a physician or surgeon, with intent to save the life of the woman, or to prevent serious and permanent bodily injury. It is not incumbent on the state to prove beyond a reasonable doubt, or at all, that "the use of the instrument was not necessary to save life," that it was not used "to prevent serious and permanent bodily injury," or "was not done under the advice of a physician or surgeon." The exceptions contained in the statute are matters of defence which must be made to appear by the defendant from the evidence.

The crime is complete when the instrument is used with the intention of procuring a miscarriage. Whether miscarriage does or does not follow is immaterial. An instruction offered in this case appeared to have been drawn on the theory that the woman might have miscarried by reason of her own acts in the taking of drugs or the use of an instrument, and that proof in support of such a theory would warrant the acquittal of the defendants; but such is not the law.

Again, the court says that the defendant offered no justification for having used an instrument with the intention of procuring a miscarriage, and no instruction on that theory should have been given. She denied that she had used any instrument that could have produced a miscarriage. She testified that she used only a speculum, and that that instrument was used only for the purpose of making an examination, and that its use could not have produced a miscarriage. But the only question presented to the jury by her plea of not guilty and all the testimony in the case was, did she, or did she not, use an instrument with the intention of procuring a miscarriage? And not, did she, or did she not, use an instrument with the intention of procuring a miscarriage, under the advice of a physician, to save life, or to prevent serious or permanent bodily injury? Therefore, even though the instructions apparently cast on her the burden of proving facts in justification, there was no error, because under the testimony no such question should have been submitted to the jury. The burden of proving the facts necessary to conviction devolves on the state; and if, from all the evidence, a reasonable doubt exists in the mind of the jurors as to the guilt of the accused, he must be acquitted. Yet, in a case where justification is not relied on as a defence, the defendant is not harmed by an instruction which casts on him the burden of proving facts in justification.—*Jour. A. M. A.*