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NORTH CAROLINA LAW REVIEW

---

Volume 35 | Number 1

Article 15

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12-1-1956

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## Recommended Citation

David S. Evans, *Criminal Law -- Presumption of Coercion -- Crimes Committed by Wife in Husband's Presence*, 35 N.C. L. REV. 104 (1956).  
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where . . . other personal property shall be . . ." in context with the corresponding extensions of the other statutory crimes, suggest that the true purpose is the protection of *property* and not the sanctity of the home.

FRANKLIN A. SNYDER

### Criminal Law—Presumption of Coercion—Crimes Committed by Wife in Husband's Presence

With the exception of certain crimes, when a wife commits a criminal offense in the presence of her husband, there arises a common-law presumption that she was acting under his threats, commands, or coercion;<sup>1</sup> thus, in the absence of any rebutting evidence, the wife must go free.<sup>2</sup> The two basic requisites to the raising of this presumption are that there must have been a marriage,<sup>3</sup> and that the criminal act must have been committed in the physical or constructive presence of the husband.<sup>4</sup> Although there is a tendency in the courts recently to hold that the presumption is a slight one and more or less easily rebuttable

<sup>1</sup> *State v. Kelly*, 74 Iowa 589, 38 N. W. 503 (1888); *Commonwealth v. Neal*, 10 Mass. 152, 6 Am. Dec. 105 (1813); *Davis v. State*, 15 Ohio 72, 45 Am. Dec. 559 (1846); 1 BURDICK, CRIME p. 210 (1946).

<sup>2</sup> This defense of marital coercion, even without the accompanying presumption, is different from the general defense of coercion. In order to obtain benefit of the general defense, "one must have acted under apprehension of imminent and impending death, or of serious and immediate bodily harm. Fears . . . of future bodily harm do not excuse an offense. . . ." 1 BURDICK, CRIME p. 262 (1946). A wife on the other hand is excused if she committed the criminal act under her husband's coercion, 1 BURDICK, CRIME p. 210 (1946), which does not require "apprehension of imminent and impending death, or of serious and immediate bodily harm." The defense has been allowed when the husband was in jail at the time of the criminal offense and therefore could have done no more than make threats of future consequences. *State v. Miller*, 162 Mo. 253, 63 S. W. 692 (1901).

*Quaere* whether or not the defense of marital coercion and the general defense of coercion had the same historical basis. The general defense seems to be based on the doctrine that: "Since every crime requires a willing or voluntary mind, it may be a defense to a criminal charge that the criminal act was not committed voluntarily but was the result of coercion, compulsion, or necessity." 1 BURDICK, CRIME p. 260 (1946). The basis for the defense of marital coercion is less certain. One theory is that it is based on the principal that a wife owes her husband the highest obedience. 1 HAWKINS, PLEAS OF THE CROWN p. 4, n. 7 (Curwood ed. 1824). Others suggest that the defense arose from the practice of granting the husband benefit of clergy and leaving the wife to bear the harsh punishments that were administered for relatively minor crimes. 1 BURDICK, CRIME p. 209 n. 84 (1946).

<sup>3</sup> *Davis v. State*, 15 Ohio 72, 45 Am. Dec. 559, 560 (1846).

<sup>4</sup> *State v. Shee*, 13 R. I. 535 (1882). Although it is agreed that the act must have been committed in the presence of the husband in order for the presumption to apply, there arises the problem of what constitutes presence within the meaning of the rule. It has been held in an extreme case that a wife was in her husband's constructive presence when he was confined in jail and she took him a revolver to aid in his escape. The court there held that the wife was entitled to the benefit of the presumption. *State v. Miller*, 162 Mo. 253, 63 S. W. 692 (1901). It is not the intention of this note to deal with the problem of presence. See Annot., 4 A. L. R. 266 (1919), 71 A. L. R. 1118 (1931).

by the state,<sup>5</sup> still the wife cannot be convicted for most offenses committed in the presence of her husband without the introduction of some rebutting evidence tending to show that she was acting voluntarily and of her own free will.<sup>6</sup> It is a jury question whether or not the presumption was rebutted by the state's evidence.<sup>7</sup>

Where the common law has not been changed by statute, this presumption of coercion has traditionally been subject to several exceptions, but it has never been agreed specifically which offenses fall within the exceptions. In each jurisdiction in which a statute has been passed approving or modifying the defense of presumed coercion arising from a wife's commission of an offense in her husband's presence, provision has been made in the statute to exclude specific offenses. Thus in those jurisdictions, all uncertainty as to the inclusion of specific offenses is removed; the problem remains only in those states still following the common-law rule. This note will first discuss the common-law exceptions to the presumption and will then deal with the legislative and judicial action taken in the various states relative to this common-law doctrine of presumed coercion.

#### COMMON-LAW EXCEPTIONS TO PRESUMPTION OF COERCION

Text writers and courts have frequently referred to crimes such as those "forbidden by the law of nature, which are *mala in se*"<sup>8</sup> as being excepted from the rule. Others prefer an affirmative rule, saying that benefit of the presumption is granted only in cases involving crimes "of minor grade."<sup>9</sup> However, since this is so indefinite that it would be of little help in a concrete case, a study of the cases themselves is needed.

When on trial for murder or treason, the wife is almost universally denied the benefit of the presumption that she was coerced.<sup>10</sup> Perjury, at least in the case of a wife's testifying at her husband's criminal trial, is generally excepted also, since a wife cannot be compelled to testify against her husband.<sup>11</sup> Likewise excluded from the favorable presumption are the domestic offenses of maintaining a brothel and maintaining

<sup>5</sup> O'Donnel v. State, 73 Okla. Crim. 1, 117 P. 2d 139 (1941).

<sup>6</sup> State v. Kelly, 74 Iowa 589, 38 N. W. 503 (1888); CLARK & MARSHALL, A TREATISE ON THE LAW OF CRIMES p. 123 (5th ed. 1952).

<sup>7</sup> State v. Carpenter, 67 Idaho 277, 176 P. 2d 919 (1947).

<sup>8</sup> Commonwealth v. Neal, 10 Mass. 152, 6 Am. Dec. 105, 106 (1813).

<sup>9</sup> State v. Shee, 13 R. I. 535, 536 (1882) (dictum) (an action for maintaining a nuisance in which the decision was based on the finding that the husband was not present at the time of the offense).

<sup>10</sup> Bibb v. State, 94 Ala. 31, 10 So. 506 (1892); Cothron v. State, 138 Md. 101, 113 Atl. 620 (1921); Martin v. Commonwealth, 143 Va. 479, 123 S. E. 348 (1925); CLARK & MARSHALL, A TREATISE ON THE LAW OF CRIMES p. 123 (5th ed. 1952). But see State v. Kelly, 74 Iowa 589, 38 N. W. 503 (1888).

<sup>11</sup> Commonwealth v. Moore, 162 Mass. 441, 38 N. E. 1120 (1894); Smith v. Meyers, 52 Neb. 1, 74 N. W. 277 (1898).

a gaming house.<sup>12</sup> This exception is based on two principles. First, these offenses are in a class considered activity normally carried on by women.<sup>13</sup> Second, these are offenses concerned with the management of the house, and it is assumed that the wife has at least an equal part in its management.<sup>14</sup> The exception for maintaining a brothel has carried over into the closely related field of transportation of a girl for the purpose of prostitution, since this too is generally considered activity more likely to be engaged in by women.<sup>15</sup>

Manslaughter remains a question mark, without direct holdings either way and with conflicting dicta on the question. It has been said that the wife gets the benefit of the presumption in a case involving murder,<sup>16</sup> which would seem to include manslaughter; on the other extreme it has also been stated that the presumption applies only to crimes "of minor grade."<sup>17</sup> No conclusion is drawn here on which view the courts are likely to accept. Another crime which is in a somewhat questionable category is robbery. Some text writers say that robbery is *probably* one of the exceptions in which the presumption does not arise.<sup>18</sup> However, all of the direct holdings found on this point are to the contrary,<sup>19</sup> and thus it would seem that benefit of the presumption is given the wife in robbery cases.

In conspiracy cases the general, but not unanimous, view is that a husband and wife cannot be convicted of conspiring to commit an offense without the involvement of a third person.<sup>20</sup> This is based partially on the presumption that the wife was coerced by her husband,<sup>21</sup> but primarily on the basic assumption of the law that husband and wife are one person and thus cannot conspire.<sup>22</sup> The entry of a third person into the alleged conspiracy rebuts all such defenses, however, and both

<sup>12</sup> *State v. Gill*, 150 Iowa 210, 129 N. W. 821 (1911); *State v. Grossman*, 95 N. J. L. 497, 112 Atl. 892 (1921); *Hudson v. Jennings*, 134 Ga. 373, 67 S. E. 1037 (1910).

<sup>13</sup> *State v. Gill*, *supra* note 12; *State v. Grossman*, *supra* note 12.

<sup>14</sup> *State v. Gill*, *supra* note 12.

<sup>15</sup> *Dawson v. United States*, 10 F. 2d 106 (9th Cir. 1926), *cert. denied* 271 U. S. 687 (1926).

<sup>16</sup> *State v. Kelly*, 74 Iowa 589, 38 N. W. 503 (1888).

<sup>17</sup> *State v. Shee*, 13 R. I. 535, 536 (1882) (dictum) (action for maintaining a nuisance).

<sup>18</sup> MILLER, HANDBOOK OF CRIMINAL LAW p. 142 (1934); see BURDICK, CRIME p. 211 (1946).

<sup>19</sup> *People v. Wright*, 38 Mich. 744, 31 Am. Rep. 331 (1878); *State v. Murray*, 316 Mo. 31, 292 S. W. 434 (1927); *Davis v. State*, 15 Ohio 72, 45 Am. Dec. 559 (1846); *Miller v. State*, 53 Okla. Crim. 247, 10 P. 2d 292 (1932); *Regina v. Dykes*, 15 Cox Crim. Cas. 771 (1885); *Regina v. Torpey*, 12 Cox Crim. Cas. 45 (1871).

<sup>20</sup> *People v. Miller*, 82 Cal. 107, 22 Pac. 934 (1889); *Gros v. United States*, 138 F. 2d 261 (9th Cir. 1943); *Dawson v. United States*, 10 F. 2d 106 (9th Cir. 1926).

<sup>21</sup> *Dalton v. People*, 68 Colo. 44, 189 Pac. 37 (1920) (presumption not allowed because of statute).

<sup>22</sup> *People v. Gilbert*, 26 Cal. App. 2d 1, 78 P. 2d 770 (1938).

husband and wife may be convicted;<sup>23</sup> this is true even when the third person is not tried at the same time.<sup>24</sup>

Benefit of the presumption has also been given to the wife in cases involving arson,<sup>25</sup> battery,<sup>26</sup> larceny,<sup>27</sup> forgery,<sup>28</sup> liquor law violations,<sup>29</sup> illegal possession of narcotics,<sup>30</sup> maintaining a nuisance,<sup>31</sup> and sale of obscene cards.<sup>32</sup> In one rather unusual case, benefit of the presumption was granted to a wife charged with aiding and abetting her husband in the crime of statutory rape.<sup>33</sup>

#### TREATMENT OF THIS COMMON-LAW DOCTRINE IN THE VARIOUS STATES

There is little uniformity in the different states as to what should be done with the common-law doctrine of presumed coercion. Treatment has varied from complete abolition of the defense of marital coercion at the one extreme to recognition of it by statute at the other: four states have abolished the defense entirely; nineteen (fourteen by statute, five by court decision) have abolished the presumption but left the defense; sixteen still recognized the doctrine when the issue was last before the court; and three have specifically provided for the presumption by statute.

In one group of four states—Minnesota, New York, Washington, and Wisconsin<sup>34</sup>—"the defense of marital coercion . . . has been abrogated . . ."<sup>35</sup> by statute. Virtually the same wording is used in the statutes of Minnesota and Washington as that in the New York statute: "It is not a defense to a married woman charged with crime, that the alleged criminal act was committed by her in the presence of her husband."<sup>36</sup> The Wisconsin statute is even stronger in its wording: "It is no defense . . . that the alleged crime was committed by command of

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Davis v. State*, 15 Ohio 72, 45 Am. Dec. 559 (1846).

<sup>26</sup> *Commonwealth v. Neal*, 10 Mass. 152, 6 Am. Dec. 105 (1813).

<sup>27</sup> *State v. Buchanan*, 111 W. Va. 142, 160 S. E. 920 (1931); *State v. Hollis*, 163 La. 952, 113 So. 159 (1927).

<sup>28</sup> *State v. Palton*, 347 Mo. 303, 147 S. W. 2d 467 (1941); *Zammer v. State*, 51 Okla. Crim. 125, 300 Pac. 325 (1931).

<sup>29</sup> *Kelso v. State*, 255 P. 2d 284 (Okla. Crim. 1953); *Paris v. State*, 60 Okla. Crim. 236, 90 P. 2d 1078 (1939). However, when the illegally possessed liquor is found in the home, some courts tend to consider the act as one of the domestic offenses and therefore do not allow the presumption. See *Crocker v. State*, 148 Tenn. 106, 251 S. W. 914 (1923).

<sup>30</sup> *Winer v. State*, 36 Okla. Crim. 316, 253 Pac. 1025 (1927).

<sup>31</sup> *State v. McMillan*, 144 S. C. 121, 142 S. E. 236 (1928).

<sup>32</sup> *State v. Martini*, 80 N. J. L. 685, 78 Atl. 12 (1910).

<sup>33</sup> *Commonwealth v. Balles*, 62 Montg. 293 (Pa. Quar. Sess. 1946).

<sup>34</sup> MIN. STAT. ANN. § 610.06 (1947); N. Y. PEN. LAW § 1092 (1944), *United States v. Swierzbenski*, 18 F. 2d 685 (W. D. N. Y. 1927); WASH. REV. STAT. § 10.46.150 (1952); WIS. STAT. § 939.46 (1955).

<sup>35</sup> *United States v. Swierzbenski*, *supra* note 34, at 685.

<sup>36</sup> N. Y. PEN. LAW § 1092 (1944).

her husband. . . ."<sup>37</sup> Thus the legislatures of four states have said that a married woman will not be excused from criminal acts even though she could prove that she was acting under the command of her husband, unless she could also prove the elements of the general defense of coercion.<sup>38</sup> These legislatures apparently feel that married women today are not under the control of their husbands to the extent of committing criminal offenses under their orders.

Fourteen other states have taken legislative action to modify the common-law rule by statute without abolishing the defense entirely. These include Arizona, Arkansas, California, Colorado, Georgia, Idaho, Illinois, Maryland, Michigan, Montana, Nevada, New Jersey, Texas, and Utah.<sup>39</sup> In these jurisdictions, statutes have been passed abolishing the presumption of coercion which arose from the fact of coverture when the crime was committed in the husband's presence. The defense itself continues to be available to the accused, but the burden is on her to prove that she was acting in her husband's presence and under his coercion, rather than leaving the burden on the state to rebut the presumption. Thus, in these states, a married woman could be convicted for an offense committed in the presence of her husband without the state's offering any proof to show that she acted of her own free will. It would seem, then, a rebuttable presumption would exist that she was acting of her own free will and not under the coercion of her husband.

These fourteen states have used several different approaches in abolishing the old presumption. Of these states, five<sup>40</sup> have enacted statutes listing various classes of people who under certain circumstances cannot be punished for their acts. Included in the typical statute are "married women . . . acting under the threats, command or coercion of their husbands. . . ."<sup>41</sup> The Arkansas statute says much the same thing but uses the words it must "appear from the facts that"<sup>42</sup> she was coerced. Colorado, Georgia, Illinois, and Nevada go a little farther than the others in this group by requiring that *violent* threats, command, or coercion be used in order to relieve the liability for an offense. This approaches but does not go so far as the position taken by the first group

<sup>37</sup> WIS. STAT. § 939.46 (1955). This statute then goes on to say that married women will be judged under the standards of the general defense of coercion.

<sup>38</sup> See note 2 *supra* for the requirements of the general defense of coercion.

<sup>39</sup> ARIZ. PEN. CODE § 43-114 (1939); ARK. STAT. ANN. § 41-114 (1947); CAL. PEN. CODE ANN. § 26 (1956); COLO. REV. STAT. ANN. § 40-1-8 (1953); GA. CODE ANN. § 26-401 (1953); IDAHO CODE § 18-201 (1948); ILL. ANN. STAT. § 38-596 (1935); MD. ANN. CODE art. 35-6 (1951); MICH. STAT. ANN. § 28.1071 (1954); MONT. REV. CODE § 94-201 (1947); NEV. COMP. LAWS § 9952 (1929); N. J. STAT. ANN. § 2:103-3 (1939); TEX. PEN. CODE ANN. art. 32 (1952); UTAH CODE ANN. § 76-1-41 (1953).

<sup>40</sup> Arizona, California, Montana, Utah, and Idaho.

<sup>41</sup> ARIZ. PEN. CODE § 43-114 (1939).

<sup>42</sup> ARK. STAT. ANN. § 41-114 (1947).

of states mentioned above, where it must appear that the act was committed under fear of "imminent and impending death, or of serious and immediate bodily harm."<sup>43</sup> "A married woman acting under the threats, command or coercion of her husband shall not be found guilty . . . provided it appears from all the facts and circumstances of the case that *violent* threats, command or coercion were used. . . ."<sup>44</sup> (Emphasis added.) Maryland, Michigan, and New Jersey simply make statements to the effect that the presumption will no longer be indulged. Maryland goes on to say that "it shall be a good defense for her to prove"<sup>45</sup> that she was coerced. Texas takes an unusual position by abolishing the presumption and then providing that if a wife were so acting under her husband's coercion, she would, in non-capital cases, receive only one-half the punishment that would otherwise be administered, and in capital cases, be punished only by imprisonment.<sup>46</sup> Thus, Texas has modified the common law rule to such an extent that coercion, when proved, does not excuse the crime, but only serves to mitigate the punishment.

England has also abolished by statute the presumption of coercion, but preserved the defense with the burden of proof on the wife. The statute, after abolishing the presumption, provides that "it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband."<sup>47</sup>

The question has arisen as to what effect the Married Woman's Acts in the various jurisdictions have had on the presumption of coercion. Four state courts which have passed directly on this point are evenly split. Kentucky and Tennessee have held that the acts giving married women equal property and political rights have, by implication, abolished the presumption,<sup>48</sup> since the husband no longer has control over the wife's person and property. On the other hand, Alabama and Missouri have held that the presumption was not affected by these statutes giving equal rights to women.<sup>49</sup> In the Alabama case, the court said: "These rules of the common law are adapted to and are necessary for the well-being of society, and the various statutes of this state relative to married women and their rights to property do not change this rule."<sup>50</sup>

Courts in other states have gone ahead without relying on legisla-

<sup>43</sup> 1 BURDICK, CRIME p. 262 (1946).

<sup>44</sup> COLO. REV. STAT. ANN. § 40-1-8 (1953).

<sup>45</sup> MD. ANN. CODE art. 35-6 (1951).

<sup>46</sup> TEX. PEN. CODE ANN. art. 32 (1952).

<sup>47</sup> CRIMINAL JUSTICE ACT, 1925, 15 & 16 GEO. 5, c. 86, § 47.

<sup>48</sup> King v. City of Owensboro, 187 Ky. 21, 218 S. W. 297 (1920); Morton v. State, 141 Tenn. 357, 209 S. W. 644 (1919).

<sup>49</sup> Braxton v. State, 17 Ala. App. 167, 82 So. 657 (1919); State v. Murray, 319 Mo. 31, 292 S. W. 434 (1927).

<sup>50</sup> Braxton v. State, 17 Ala. App. 167, 82 So. 657, 659 (1919).

tive implication and have declared that the presumption no longer exists because of the changing times. Such is the case in Iowa, Kansas, and Nebraska.<sup>51</sup> The Iowa court held that since the reason for the rule had long since ceased to exist, it followed that the rule itself should be discarded.<sup>52</sup> In Kansas it was said that the law presumes "that all persons of mature age and sound mind act upon their own volition,"<sup>53</sup> and that they should thereby be responsible for their acts. Nebraska added: "Such a presumption runs . . . counter to the reason of men, in view of the domestic relations as they now exist. . . . A wife is no longer a marionette, moved at will by the husband, either in fact or in law."<sup>54</sup>

In a majority of jurisdictions in which the legislature has not taken action, the presumption apparently is still the law, having been recognized the last time the issue came before the courts. This largest single group includes Alabama, Delaware, Florida, Indiana, Louisiana, Maine, Massachusetts, Missouri, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, and West Virginia.<sup>55</sup> The courts of many of these states, however, have not had occasion to pass on the question for some years,<sup>56</sup> nevertheless, very few states have abolished the presumption without legislative action, and the assumption can be made that most of these courts will continue to apply the doctrine in the absence of statutory change.

The North Carolina Supreme Court first passed on the question in *State v. Williams*,<sup>57</sup> a case in which a man and wife had been convicted of assault and battery without instructions on the question of coercion. Reversing the wife's conviction, the court said: "if a wife commit any felony (with certain exceptions not material now to consider) in the presence of her husband, it shall be presumed, in the absence of evidence to the contrary, that she did it under constraint by him, and she is there-

<sup>51</sup> *State v. Renslow*, 211 Iowa 642, 230 N.W. 316, 71 A.L.R. 1111 (1930); *State v. Hendricks*, 32 Kan. 559, 4 Pac. 1050 (1884); *Smith v. Meyers*, 54 Neb. 1, 74 N. W. 277 (1898).

<sup>52</sup> *State v. Renslow*, *supra* note 51.

<sup>53</sup> *State v. Hendricks*, 32 Kan. 559, 564, 4 Pac. 1050, 1053 (1884).

<sup>54</sup> *Smith v. Meyers*, 54 Neb. 1, 7, 74 N. W. 277, 278 (1898).

<sup>55</sup> *Braxton v. State*, 17 Ala. App. 167, 82 So. 657 (1919); *State v. Clark*, 9 Houst. 536, 33 Atl. 310 (Del. Gen. Sess. 1891); *Conner v. State*, 95 Fla. 765, 117 So. 852 (1928); *Tomasello v. State*, 91 Ind. App. 670, 173 N. E. 235 (1930); *State v. Hollis*, 163 La. 952, 113 So. 159 (1927); *State v. Cleaves*, 59 Me. 298, 8 Am. Rep. 422 (1871); *Commonwealth v. Helfman*, 258 Mass. 410, 155 N. E. 448 (1927); *State v. Ready*, 251 S. W. 2d 680 (Mo. 1952); *State v. Asper*, 35 N. M. 203, 292 Pac. 225 (1930); *State v. Cauley*, 244 N. C. 701, — S.E. 2d — (1956); *Tabler v. State*, 34 Ohio St. 127 (1877); *Commonwealth v. Hand*, 59 Pa. Super. Ct. 286 (1915); *State v. Boyle*, 13 R. I. 537 (1882); *State v. Minor*, 171 S. C. 120, 171 S. E. 737 (1934); *Martin v. Commonwealth*, 143 Va. 479, 129 S. E. 348 (1925); *State v. Buchanan*, 111 W. Va. 142, 160 S. E. 920 (1931).

<sup>56</sup> Dates of cases cited note 55 *supra* represent most recent decisions found for each state.

<sup>57</sup> 65 N. C. 398 (1871).

fore excused."<sup>58</sup> In *State v. Nowell*<sup>59</sup> the court approved a charge to the jury which included the same doctrine as presented in the *Williams* case. In *State v. Seahorn*<sup>60</sup> the majority upheld the conviction of husband and wife for liquor law violation on the grounds that the charge to the jury had substantially complied with the doctrine as set forth in the previous North Carolina cases. Chief Justice Clark wrote a concurring opinion<sup>61</sup> in which he strongly advocated abolishing the presumption by court decision without waiting for legislation, in order to bring the rule in accordance with Twentieth Century conditions. These three cases, all of which recognized the presumption, are the only ones found in which the North Carolina Supreme Court has been called upon to decide the issue.\*

In addition to those states which have continued to apply the common-law presumption, three others—Oklahoma, Oregon, and South Dakota—have enacted statutes which specifically provide that the law will presume coercion when the wife commits an offense in the presence of her husband.<sup>62</sup> The Oregon statute lists various presumptions which the law of that state recognizes; among them: "A wife acting with her husband in the commission of a felony, other than murder, acted by coercion and without guilty intent."<sup>63</sup> Thus it would seem Oregon requires not only that the act charged must have been committed in the presence of her husband, but also that she must have been acting in concert *with* him. Oklahoma and South Dakota have similar statutes saying that subjection will be inferred when the offense was committed "in the presence and with the assent of her husband,"<sup>64</sup> followed by a list of crimes which are specifically exempt from the presumption. Oklahoma lists eighteen such exceptions; South Dakota, even though it lists twenty-three exceptions, provides that in the event duress is shown the wife will be excused from punishment even for those crimes.

The remaining six states—Connecticut, Mississippi, New Hampshire, North Dakota, Vermont, and Wyoming—so far as could be determined

<sup>58</sup> *State v. Williams*, 65 N. C. 398, 399 (1871).

<sup>59</sup> 156 N. C. 648, 72 S. E. 590 (1911).

<sup>60</sup> 166 N. C. 376, 81 S. E. 687 (1914).

<sup>61</sup> *State v. Seahorn*, 166 N. C. 376, 378, 81 S. E. 687, 689 (1914).

\* In a recent decision handed down since this material first went to press, the North Carolina Supreme Court reaffirmed the doctrine of presumed coercion in the much publicized child-beating case of *State v. Cauley*, 244 N. C. 701, — S. E. 2d — (1956). Here the husband was charged under N. C. GEN. STAT. § 14-32 (1953) with assault with a deadly weapon with intent to kill inflicting serious injuries; and the wife was charged with aiding an abetting in the assault. Both were convicted, and both appealed. The court held that the presumption did exist, and granted the wife a new trial on the judge's failure to instruct the jury accordingly.

<sup>62</sup> OKLA. STAT. ANN. tit. 21, § 157 (1951); ORE. REV. STAT. § 41.360 (1955); S. D. CODE § 13.0503 (1939).

<sup>63</sup> ORE. REV. STAT. § 41.360 (1955).

<sup>64</sup> OKLA. STAT. ANN. tit. 21, § 157 (1951); S. D. CODE § 13.0503 (1939).

have not passed on this question either by court decision or by legislative action.

It is the conviction of this writer that the presumption should be abolished. At the time of its creation the presumption was in keeping with the then prevailing domestic relations; today it has no sound basis. However, the doctrine should not be abrogated in its entirety. Even now there still may be a few women who, either because of a marriage vow to obey their husbands or for other reasons, would follow their husband's orders—even to the extreme of violating the law. These women should be entitled to prove coercion as a defense. It is therefore suggested that a statute on the order of the English act<sup>05</sup> should be passed placing the burden of proof on the wife, yet allowing her the opportunity to prove actual coercion and be excused.

DAVID S. EVANS

### Criminal Law—Sentences to Different Places of Confinement—Concurrent or Consecutive under North Carolina Law

A new statute<sup>1</sup> was enacted during the 1955 session of the North Carolina General Assembly which provides as follows:

“When by a judgment of any court or by operation of law a prison sentence runs concurrently with any other sentence a prisoner shall not be required to serve any additional time in prison solely because the concurrent sentences are for different grades of offenses or that it is required that they be served in different places of confinement.”

This note is an attempt to analyze the effect of this statute on the law of North Carolina. The determination of this question necessitates a review of the North Carolina case law governing the imposition of concurrent and consecutive sentences prior to the enactment of the 1955 legislation.

The great weight of authority in this country takes the view that a court has power derived from the common law to impose consecutive or cumulative sentences on the conviction of separate offenses charged in separate indictments or separate counts of the same indictment.<sup>2</sup> North

<sup>05</sup> CRIMINAL JUSTICE ACT, 1925, 15 & 16 GEO. 5, c. 86, § 47: “Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is hereby abolished, but on a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.”

<sup>1</sup> N. C. GEN. STAT. § 15-6.2 (1955).

<sup>2</sup> 15 AM. JUR., *Criminal Law* § 464 (1938).