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# Abolition of Marital Presumption of Coercion

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## COMMENTS

### ABOLITION OF MARITAL PRESUMPTION OF COERCION

At common law there existed a rebuttable presumption that a married woman committing certain crimes in the presence of her husband does so under his coercion, and thus she is completely absolved of any liability for the crime.<sup>1</sup> That such a presumption did in fact exist at common law, no one will dispute. Blackstone in his Commentaries states that the presumption existed for at least a thousand years at the time he delivered his lectures.<sup>2</sup>

As far back as 1929, the statement was made that "A married woman's status being what it is at the present time, the presumption should not and generally does not exist."<sup>3</sup> Subsequently, however, it was stated that the majority rule still applies this presumption of coercion.<sup>4</sup> It may be of interest, therefore, to investigate the presumption as it exists in its present state.

The reasons for the existence of the presumption are not quite clear, and are very seldom stated by the modern decisions applying it. However, it is evident that the presumption must have had its foundation in the peculiar relation which existed between the husband and wife in the early days. At common law, the husband had almost absolute control over the person of his wife. She was in a condition of complete dependence; could not contract in her own name; was bound to obey;<sup>5</sup> she had no will and her legal existence was merged into that of her husband, so that they were termed and regarded as one in law, the husband being that one.

Today these conditions have changed,<sup>6</sup> and even in the absence of

<sup>1</sup> 71 A.L.R. 1111, 1118 (1931).

<sup>2</sup> 4 Blackstone Commentaries 29 (3rd ed., 1769): "The doctrine is at least a thousand years old in this kingdom, being found among the laws of King Ina, the West Saxon, and it appears that among the northern nations on the continent, this privilege extended to any woman transgressing in concert with a man, and to any servant that committed a joint offense with a freeman; the male or freeman only was punished, the female or slave dismissed."

<sup>3</sup> 8 R.C.L., Criminal Law § 16 (1929).

<sup>4</sup> 71 A.L.R. 1111, 1118 (1931).

<sup>5</sup> See *People v. Statley*, 91 Calif. App. 2d 943, 206 P. 2d 76 (Super. Ct., App. Dept. 1949) where the court commented on the fact that in our society almost no bride promises to obey her husband.

<sup>6</sup> Even at a very early day courts of equity disregarded the fiction that husband and wife were one, and treated them as separate and distinct persons where it was

statute, the wife is secure in her person and property and her separate identity has been established. For the most part, it is clear that the means through which the husband exercised control and dominion over the person and property of his wife no longer exist. It would seem then that the one-person idea of the marriage relation as expounded by the common law authorities should no longer be made the touchstone of the married women's liabilities.

The courts of Missouri are among the most persistent in maintaining the presumption of coercion. In *State v. Henderson*,<sup>7</sup> a husband was convicted in the lower court of felonious assault with a deadly weapon, with malice aforethought and an intent to kill. The husband and his wife were jointly charged, but at the close of all the evidence the trial court directed a verdict for the wife on the legal presumption that she acted under the influence and coercion of her husband, and submitted the case against the husband alone, the jury finding him guilty. The Supreme Court of Missouri affirmed, stating that it was clear that the husband and wife were acting together in committing the assault, and that he was the instigator and leader of it. The court concluded that there is no doubt that he can be charged with her acts.<sup>8</sup>

The court gave no discussion as to the reasoning of the presumption, or its application to the facts of the particular case. In fact, it is especially difficult to see how the court could apply the presumption under the immediate factual circumstances. The evidence disclosed that while the husband was beating and stomping on the prostrate victim, the wife of her own volition proceeded to beat him with a broom stick.<sup>9</sup> There is no indication that her actions were in response to a call from her husband.

However, a very recent Missouri decision reveals that perhaps a leak has sprung even in the very adamant Missouri courts.<sup>10</sup> A married woman was being prosecuted for exhibiting a dangerous and deadly weapon in a rude, angry and threatening manner. She was in the presence of her husband at the time and twice, in response to a demand that she take the gun

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necessary to protect the rights of the wife; *Elliott v. Waring*, 5 T.B. Mon. 338 (Ky., 1927); *Windrinner v. Weisiger*, 3 T.B. Mon. 32 (Ky., 1925).

<sup>7</sup> 356 Mo. 1072, 204 S.W. 2d 774 (1947).

<sup>8</sup> In support of its contentions, the court cited: *State v. Partron*, 347 Mo. 303, 147 S.W. 2d 467 (1941); *State v. Murray*, 316 Mo. 31, 292 S.W. 434 (1926); *State v. Miller*, 162 Mo. 252, 62 S.W. 692 (1901).

<sup>9</sup> In *State v. Hesselmeyer*, 343 Mo. 797, 123 S.W. 2d 90 (1938) which involved a prosecution of a husband and wife for maintaining a disorderly house, the court was discussing the different evidence as to why the wife should not be found guilty and made a one line declaration which seemed to be a mere afterthought: "Furthermore we have the presumption, be it weak or strong, that the wife acted under the coercion of the husband."

<sup>10</sup> *State v. Ready*, 251 S.W. 2d 680 (Mo., 1952).

off the prosecuting witness, her husband replied "she is only doing what I tell her to do."

In spite of these statements, which seem to have made the case a much stronger one for the application of the presumption of coercion than the preceding *Henderson* case, the court stated that the presumption is prima facie only and is rebuttable by evidence that the married woman acted independently of her husband's control. Such an application of the presumption would have seemed much more appropriate in the *Henderson* case. A further reading of the decisions in this state gives the impression that the presumption of coercion becomes increasingly weak or strong depending on the conclusion which has prior thereto been reached by the court as to the guilt or innocence of the accused married woman.<sup>11</sup> It is just such situations that lead one to conclude that it would be much better to abolish the presumption completely and treat the question of actual coercion as one of fact for the jury. To use the presumption as a means of justifying a conclusion, only serves to confuse the real issue of whether or not there was actual coercion of the married woman.

Other states, surprisingly enough, have seen fit to embody this common law doctrine within their statutes. Thus, Oklahoma has a statute with reference to the subjection inferred from coverture.<sup>12</sup> The statute requires that before the inference of coercion shall arise, the act must have been committed in the presence and with the assent of the husband. To some extent the effectiveness of the statute is weakened by the fact that eighteen crimes are excepted from the application of the statute.<sup>13</sup> Yet the Oklahoma decisions disclose that the courts do place much reliance on the inference created by the statute as a basis of exempting the wife from liability.<sup>14</sup>

Decisions of still other states, although not as recent, have not been overruled, and thus the presumption of coercion arising from coverture apparently remains in these states.<sup>15</sup> Thus the Supreme Judicial Court of

<sup>11</sup> Authorities cited note 8 supra.

<sup>12</sup> Okl. Stat. (1951) Title 21, §§ 157, 159.

<sup>13</sup> The exceptions are generally inclusive of those existing at common law: treason, murder, manslaughter, maiming, attempt to kill, rape, abduction, abortion either upon herself or upon another female, concealing the death of an infant whether her own or that of another, fraudulently producing a false child whether as her own or that of another, bigamy, incest, the crime against nature, indecent exposure, obscene exhibition of books and prints, keeping a bawdy or other disorderly house.

<sup>14</sup> O'Donnell v. State, 73 Okla. Cr. 1, 117 P. 2d 139 (1941); Sentell v. State, 61 Okla. Cr. 229, 67 P. 2d 466 (1937); Davis v. State, 53 Okla. Cr. 85, 7 P. 2d 911 (1932); Zammer v. State, 51 Okla. Cr. 125, 300 P. 325 (1931).

<sup>15</sup> State v. Asper, 35 N.M. 203, 292 Pac. 225 (1930); Tomasello v. State, 91 Ind. App. 670, 173 N.E. 235 (1930); State v. Weeden, 164 La. 714, 114 So. 604 (1927); Com. v. Helfman, 258 Mass. 410, 155 N.E. 448 (1927); State v. Burns, 133 S.C. 238,

Massachusetts in one such decision clearly intimated its dissatisfaction with the presumption and yet concluded: "But no law has abolished the presumption and it still exists for what it is worth in the light of the facts of each case."<sup>16</sup>

The courts of Kentucky have not accepted this hands-tied attitude of the Massachusetts court. They are not in acquiescence with the view that it is only the legislature that can do away with this common law presumption by means of a direct statute abolishing the presumption. Thus in the noted case of *King v. City of Owensboro*,<sup>17</sup> the court stated frankly that there is no longer such a presumption. The court reasoned that since the wife is today secure in her person and property and her separate identity has been established, the means through which the husband exercised control and dominion over the person and property of his wife no longer exist. It was concluded that since the wife had sought and obtained these new rights and privileges which have placed her upon a plane of equality with her husband, she must accept the corresponding obligations and responsibilities which these rights and privileges entail, and can no longer take shelter under the supposed dominion of her husband.<sup>18</sup>

The conclusions of the court appear to be entirely sound. Today with the progress of civilization and the changes by wise, modern legislation, such as the Married Women's Acts, of the relation between husband and wife as to the right of property and personal control by the husband, it seems absurd to regard the wife as a mere machine, made to labor and to act as the husband directs.<sup>19</sup>

In a much cited Iowa decision, a married woman was being prosecuted for receiving and aiding in concealing stolen goods and property.<sup>20</sup> The Iowa court, overruling a prior decision to the effect that the presumption of coercion still exists,<sup>21</sup> stated succinctly that a wife who commits a crime in the presence of her husband will not be presumed to have acted

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130 S.E. 641 (1926); *State v. McDonie*, 96 W.Va. 219, 123 S.E. 405 (1924); *Mosley v. State*, 19 Ala. App. 335, 97 So. 247 (1923); *Brown v. Com.*, 135 Va. 480, 115 S.E. 542 (1923).

<sup>16</sup> *Com. v. Helfman*, 258 Mass. 410, 155 N.E. 448 (1927).

<sup>17</sup> 187 Ky. 21, 218 S.W. 297 (1920).

<sup>18</sup> See also *Bevins v. Commonwealth*, 204 Ky. 444, 264 S.W. 1063 (1924); *Lane v. Bryant*, 100 Ky. 138, 37 S.W. 584 (1896).

<sup>19</sup> This is the view taken by the Supreme Court of Tennessee in the case of *Morton v. State*, 141 Tenn. 357, 209 S.W. 644 (1919), where it was held that the supposed duress of a woman by reason of marriage which relieves her of liability for crimes committed in the presence of her husband, depends upon her disability by virtue of the marriage and is destroyed by statutes emancipating her from disability.

<sup>20</sup> *State v. Renslow*, 211 Iowa 642, 230 N.W. 316 (1930).

<sup>21</sup> *State v. Stoner*, 189 Iowa 304, 179 N.W. 867 (1920).

under his coercion in a state in which practically all the disabilities of coverture are removed and the woman stands in the eyes of the law with practically all the rights, duties and privileges of a *feme sole*. No quarrel can be taken with the court's conclusions.

Granted that it is the marital duty of both spouses to lend the use of their property to the support and maintenance of their children, the fact remains that today the control and use of the wife's property by her is independent of the husband, and neither her person nor her property are prima facie subject to his control. The presumption of coercion arising from coverture leaned heavily on the familiar doctrine that the legal existence of the wife is merged in that of her husband. This unity of person has been destroyed. To say that it still exists even after the passage of the Married Women's Acts would be opposed to the plain legislative intent, and would result in enforcing a doctrine that has neither wisdom nor justice in it.<sup>22</sup>

In a recent California decision,<sup>23</sup> the court described the presumption of coercion arising from coverture as an ancient presumption which had lost its reason and must be confined to a museum. The situation presented in the case readily discloses how absurd the attempted application of the doctrine may become. A married woman, who was operating a motor vehicle, neglected to make boulevard stops, failed to signal before she turned, and committed other traffic violations. She was accompanied by her husband at the time, and in reliance on this fact she asserted in defense the marital presumption of coercion. The court stated that it could not square the ancient presumption with the facts of modern life. It was concluded that in our society where almost no bride promises to obey her husband, and where it is not accepted as the usual that a wife does what her husband wishes by way of yielding obedience to a dominant will, the basis for the presumption has disappeared.

In contrasting this with the common law notion of the husband's absolute control of the wife's person, there naturally follows the conclusion that where the reason for a rule of the common law, which is the spirit and soul of that law, fails, the rule itself fails. It is a well-settled rule that the law varies with the reasons on which it is founded. This is expressed by the maxim *Cessante ratione, cessat ipsa lex*.<sup>24</sup> No law can survive the reasons on which it is founded. It needs no statute to change it as was suggested by the Massachusetts court.<sup>25</sup> It abrogates itself.

<sup>22</sup> Authorities cited note 18 supra.

<sup>23</sup> *People v. Statley*, 91 Calif. App. 2d 943, 206 P. 2d 76 (Super. Ct., App. Dept., 1949).

<sup>24</sup> *Banfield v. Addington*, 104 Fla. 661, 140 So. 893 (1932); *Beardsley v. City of Hartford*, 50 Conn. 529 (1883).

<sup>25</sup> Note 16 supra.

It is quite clear also that the doctrine of presumption of coercion of married women does not apply to offenses against the United States.<sup>26</sup> It is reasoned that since the common law is no part of the Federal law, this common law rule has no application to crimes committed against the United States.

In England, the rebuttable presumption, that criminal acts committed by a wife in her husband's presence are committed under his coercion, was clearly abolished by statute.<sup>27</sup> The Illinois statute in point is not quite so clear.<sup>28</sup> Although the Illinois statute does not directly state that it is abrogating the common law presumption, it seems to contemplate that *actual* coercion by the husband must be shown from all the surrounding facts and circumstances of the case, and it is only in the event of showing such *actual* coercion that the husband shall be prosecuted as principal.<sup>29</sup>

The New York statute in point leaves no doubt as to the intention of the legislature:

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>30</sup>

The statute has been interpreted as definitely abrogating the presumption.<sup>31</sup>

It must be concluded then that this common law antique still remains a part of the law of our country, even though its reason and basis has long since vanished. Although it must be conceded that it exists today in a much weakened state, yet its mere existence can only serve as a means of confusion. The reign of the thousand year old presumption should come to an end. A presumption which has lost its reason has no

<sup>26</sup> *United States v. Swierzbenski*, 18 F. 2d 685 (W.D. N.Y., 1927); *United States v. Hinson*, 3 F. 2d 200 (S.D. Fla., 1925).

<sup>27</sup> Criminal Justice Act of England (1925) § 47.

<sup>28</sup> Ill. Rev. Stat. (1951) c. 38, § 596: "A married woman acting under the threats, command or coercion of her husband, shall not be found guilty of any crime or misdemeanor not punishable with death: Provided it appears from all the facts and circumstances of the case, that violent threats, command, or coercion were used; and in such case the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife if she had been found guilty."

<sup>29</sup> The next section of the Illinois act deals generally with crimes committed under compulsion, and seems to definitely require that actual compulsion or coercion must be shown. "A person committing a crime or misdemeanor not punishable with death, under threats or menaces which sufficiently show that his life or member was in danger, or that he had reasonable cause to believe and did believe, that his life or member was in danger, shall not be found guilty; and such threats and menaces being proved and established, the person compelling by such threats or menaces the commission of the offense, shall be considered as principal, and suffer the same punishment as if had perpetrated the offense."

<sup>30</sup> Consolidated Laws of New York Annotated (1944) Penal Law, Art. 100, § 1092.

<sup>31</sup> *United States v. Swierzbenski*, 18 F. 2d 685 (W.D. N.Y., 1927).

place in the administration of justice.

It is suggested that there be enacted throughout the states a uniform statute patterned after the New York act. Such an act would remove all doubt as to the intention of the legislature. The presumption being abrogated, the question of actual coercion by the husband would properly be a question of fact for the jury.

### DEDUCTIBILITY OF CONTINGENT REMAINDERS TO CHARITY

A problem in the field of Federal Estate Tax law upon which the courts are seemingly in disagreement is that of the deductibility of charitable remainders in instances where a contingency exists which might defeat charity's taking.

The differences stem from conflicting interpretations of Sec. 812 (d) of the Internal Revenue Code<sup>1</sup> and Reg. 105, Sec. 81.46.<sup>2</sup>

The yardstick to which the courts first turn in the determination of the deductibility of any charitable remainder is "the certainty of charity's taking and the measureability of its interest by reliable actuarial data and methods."

If charity's interest is a vested remainder after a life estate to an individual, it is of course always deductible because there is no doubt that

<sup>1</sup> 26 U.S.C.A. § 812(d). For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the U.S. by deducting from the value of the gross estate:

(d) Transfers for public, charitable and religious uses. The amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer or power, if the disclaimer is made prior to the date prescribed for the filing of the estate tax return or, in the case of a decedent dying on or before Oct. 21, 1942, if the disclaimer is made prior to Sept. 1, 1944) to or for the use of the United States, any state, territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes. . . .

<sup>2</sup> 26 C.F.R. c. 1 § 81.46.

(a) If as of the date of decedent's death the transfer to charity is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that charity will not take is so remote as to be negligible. If an estate or interest has passed to or is vested in charity at the time of decedent's death and such right or interest would be defeated by the performance of some act or the happening of some event which appeared to have been highly improbable at the time of decedent's death, the deduction is allowable.

(b) If the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given by the decedent, deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of such power.