

This defence, a relic of primitive ideas as to the subjection of the wife, is the only instance of the doctrine in private matters "for neither a son nor a servant are excused for the commission of any crime, whether capital or otherwise, by the command or coercion of the parent or master."

VII. PARTICULAR CRIMES.

1. *Burglary.*

At common law burglary is the crime of breaking and entering the dwelling house of another in the night time with intent to commit a felony.

By the code certain changes are made in the common law, some of which are worth noting. By clause (a) of sec. 410 the old common law offence is defined and retained: "Every one is guilty of the indictable offence called burglary and liable to imprisonment for life, who (a) breaks and enters a dwelling house by night with intent to commit any indictable offence therein." But sub-sec. (b) presents two cases which were not burglary at common law. By it it is burglary (1) when a person breaks out of any dwelling house by night, either after committing an indictable offence therein, (2) after having entered such dwelling house, either by day or by night with intent to commit an indictable offence therein." In the first case there need be no criminal intent when the person enters the house. in the second, there must; but in neither case need there be any *breaking in*, which was an essential element of burglary at common law.

2. *Larceny.*

"It is stated by an able writer on the criminal law that the law of larceny is unintelligible. Many lawyers will agree with this opinion. The cases relating to larceny are conflicting. It is useless to endeavour to reconcile them": Russell (6th) II., 121. It was the difficulty of this branch of the criminal law which made an English judge say: "Our law, unfortunately, instead of being in the form of a code, is a thing of shreds and patches:" *Ex parte Belleacontre* (1891) 2 Q.B. 122, Cave J., p. 137.

And Wills, J. said: "I cannot help saying that I share a certain feeling of humiliation, which my learned brother has expressed, when one is obliged to confess formally to a neighbouring country that a great part of the atrocious things which have been done by this man are not punishable by English law": *Ib.*