

by compulsion, and not of her own will, which doctrine is at least a thousand years old in this kingdom, being to be found among the laws of King Ina, the West Saxon." But wives nowadays, as Mr. Bumble well knew, are less obedient than they were in the golden age of King Ina : *Marriages, Regular and Irregular*, pp. 2, 3.

Blackstone says that among the northern nations of Europe the privilege extended to every woman transgressing in company with a man, the indemnity being similar to that accorded to every slave who committed a joint offence with a freeman. Its origin is thus clearly derivable from the old barbaric notions of the abject position of the wife in the matrimonial relation. See *Bl. Com. ed.*, 1809., IV., 28, 29.

At common law, therefore, in cases of felony, if a married woman commits a crime in the presence of her husband, the law presumes that she acts under his coercion, and excuses her from punishment. This doctrine is very well illustrated by the remarkable case of *Reg. v. Torrey*, 12 Cox 45. The onus in such cases is on the Crown to shew that she acted independently. This presumption does not extend to crimes of the gravest kind, such as treason, murder or manslaughter, but has been applied to burglary and larceny, to forgery, to felonious assaults, and to robbery : *Arch. Cr. Plg.*, p. 29. The presumption does not apply to misdemeanors nor to cases where from the nature of things it is reasonable to presume that the wife has a principal share and is as guilty as her husband, offences for example relating to domestic matters and the government of the house, e.g., keeping a disorderly or gaming house. See *Reg. v. McGregor*, 26 O.R. 115.

The presence of the husband when the offence is committed is necessary in order to raise this presumption; if in the absence of the husband the wife commit an offence, even though by his express orders, she will not be excused.

The Code (s. 13) abolishes this presumption; "no presumption shall be made that a married woman committing an offence does so under compulsion because she commits it in the presence of her husband."

This it will be noticed leaves untouched the common law doctrine that coercion by the husband is a good defence for the wife; but it puts the wife to the proof of the coercion, instead of presuming it in her favour from the fact of her husband's presence.