

*Reasons for the Report of the Lords of the  
Judicial Committee of the Privy Council on  
the Appeal of Annie Brown v. The Attorney-  
General for New Zealand, from the Court of  
Appeal of New Zealand; delivered 19th  
November 1897.*

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Present :

THE LORD CHANCELLOR.

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by The Lord Chancellor.*]

Their Lordships intimated at the hearing of this appeal that they would humbly recommend to Her Majesty that it should be dismissed. They think it right to add now that if the facts had been understood at the time application was made for leave to appeal that leave would not have been granted.

It is a little difficult to understand why even at the original trial any question was reserved for the Court of Appeal in the Colony.

In the Case stated by the Chief Justice it is said that at the request of the prisoner's Counsel he reserved the question whether the fact that the offence had been committed under the control or by the command of the husband was a defence. And further on the learned Judge states that the doubt was whether, since the passing of the 24th Section of the Criminal Code

marital control or command was a defence. That Section is as follows :—

Section 24.—(1.) “ Except as hereinafter provided compulsion by threats of immediate death or grievous bodily harm from a person actually present at the commission of the offence, shall be an excuse for the commission by a person subject to such threats and who believes such threats will be executed (and who is not a party to any association or conspiracy the being a party to which rendered him subject to compulsion) of any offence other than treason, murder, piracy, offences deemed to be piracy, attempting to murder, assisting in rape, forcible abduction, robbery, causing grievous bodily harm and arson. (2.) No presumption shall be made that a married woman committing an offence does so under compulsion only because she commits it in the presence of her husband.”

Whatever may be the proper solution of these questions their Lordships are of opinion that none of them arise upon the evidence set out in the Case.

There was no evidence, as the Chief Justice himself states in the Case reserved, of any such compulsion as is referred to in the Section in question. The offence charged was not committed by one in the presence of the other at all. The evidence upon which the prisoner was apparently convicted, and properly convicted, was the procuring and contriving the commission of the offence committed by the husband in her absence and under circumstances wherein the Section above set out could have had no application at all.

The Chief Justice states that the jury at the trial found that the prisoner was married to the other Defendant and that she acted under his control.

For the latter proposition there is not a scintilla of evidence and no such question should have been left to the jury. The mere fact that the parties are married never even formed a presumption of compulsion by the husband. Even as early as Bracton's time if the wife was voluntarily a party to the commission of a crime

her coverture furnished no defence (*see* Bracton, Book 3, c. 32, who says) :—

“ Quid erit si uxor cum viro conjuncta fuerit, vel confessa fuerit quod viro suo consilium præstiterit et auxilium? Numquid tenebuntur ambo? imo ut videtur,” and he goes on to add, “ sic ut sunt participes in crimine, ita debent esse participes in pœna.”

Questions have from time to time arisen how far the mere presence of the husband at the time of the commission of the offence should furnish a presumption of marital control and the decisions on that subject have not been entirely uniform. But their lordships are of opinion that here even that question does not arise. The acts attributed to the prisoner were acts done by herself in the absence of her husband, conclusively establishing that she was voluntarily acting and aiding and assisting in arrangements leading up to and intended to assist the commission of the offence which was afterwards consummated.

Their Lordships are therefore of opinion that no such question was open upon the facts as detailed and the finding of the jury is only intelligible on the ground that they supposed that the mere fact of coverture itself furnished legal evidence of compulsion within the rule of law which view their Lordships are of opinion was entirely erroneous.

It is for these reasons that their Lordships have thought it right humbly to advise Her Majesty that this appeal should be dismissed.

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