

U. S. Rep.]

COLLINS v. COLLINS.

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The respondent's account of the transaction is to the same effect. She says in her answer to the third interrogatory: "The libellant was arrested on the oath of my mother charging him with fornication and bastardy with myself. When he was brought to the alderman's office he was told that if he did not marry me he would be sent to prison. *He at first refused to marry me, but finally consented, rather than go to prison. He was threatened, of course, and put in fear. He had no bail and would have gone to prison.*" As to the falsity of the accusation upon which the libellant was arrested, he has submitted several depositions.

Mr. Bartlemas says, that since the marriage he has been informed by a member of the family that the respondent "was mistaken as to her pregnancy."

The libellant's father says: "I have seen respondent repeatedly since the marriage, and she is not in the family way, and was not to the best of my knowledge at the time of the marriage. Respondent told me she was sorry she had been so hasty in having libellant arrested, that she had made a mistake in reference to her pregnancy. I have frequently seen her on the streets with different men, and one in particular. * * At the time of the marriage my son was a minor.

Officer Spear says: "I have seen the respondent two or three times since the marriage. I believe to my knowledge she is not pregnant. I am her first cousin.

The respondent, in answer to the third interrogatory, says: "I have discovered that these proceedings were rather hasty, and I have been sorry that they were ever instituted. It was a mistake as to my condition, and I was not in the family way. I was advised by others to have him arrested, and if I had had my own way I would never have had him arrested."

Our first duty is to ascertain from these proofs what are the facts of this unfortunate case, and secondly, to apply the law to the facts thus found.

This is in conformity to the practice of the ecclesiastical courts in England. There, if the parties to a matrimonial contract are *infra annos nobiles*, the Judge passes upon the assent—his certificate is the proof required, and where he has cognizance, courts of law give the same credit to his sentence, as he is bound to yield to their judgment upon matters within their jurisdiction. 2 Lilly's Dbr., 244 c. Here then we have a libel regularly sworn to by the libellant, and wholly unanswered by the respondent. The fact of the arrest, the threat, the consequent fear, the refusal at first to marry, and the subsequent assent as the only means of escape from imprisonment, would seem to be clearly established.

Our principal difficulty has been, on the question of truth or falsity of the charge preferred against the libellant. Had he married the respondent simply of his own motion, or upon her request, the presumption would have been that he was guilty. It is possible, too, that the law would have drawn the same presumption from his act even though it had been preceded by a threat of imprisonment, but here there is no place for presumption. We have direct evidence upon this point. Passing by the statement of Mr. Bartlemas, as to the remark made by a member of the family, we have two witnesses

who have seen the respondent since, and who say that she is not pregnant. One of them adds, that she admitted "she made a mistake." And the respondent confirms all this. She, too, calls it a "mistake," and emphatically says she "was not in the family way."

It must, therefore be conceded that the libellant was arrested upon a false charge, and while operated upon by the terror of that duress and the threat of imprisonment, he married the party who had assisted in setting on foot those proceedings.

Having thus found the facts, let us endeavor to apply the law to them.

If this question were *res nova* it would appear to be of easy solution.

The familiar maxims of the law applicable to such a case would lead the mind to a speedy conclusion.

That no party shall profit by his or her wrong is a principle of universal acceptance. It would be conclusive against his respondent. To come nearer to the point, we find the elementary maxim of the civil law upon this subject, "*Consensus non concubitus faciat nuptias*," or, as it has been transposed, "*Nuptias non concubitus sed consensus faciat*. Dig. L. 50; tit. 17, s. 30.

This has been adopted by the common law. Co. Litt. 33; 1 Black Com. 434.

Applying this principle the libellant would be entitled to a decree of dissolution—for the law will not tolerate for a moment the enforcement of a contract obtained by the duress of personal arrest; putting in fear and the threat of future imprisonment. A party so operated upon cannot in any true sense of the expression be said to be a free agent. He is *in vinculis*. The Roman law avoided contracts, not only for incapacity, but for the use of force or the want of liberty. *Ad Præcor quod metus causa gestum erit, ratum non habebit*. Dig. Lib. 4, tit. 2. It is true, that it was added, that the force must be such as would overcome a firm man; *in hominem constantissimum cadat*; but Pothier deems the civil law too rigid herein, and states, that regard should be had to age, sex and condition. (Pothier on Obligations, n. 25.)

And Mr. Evans thinks, that any contract produced by actual intimidation of another ought to be held void. (1 Evans; Pothier on Oblig., n. 25, note [a] p. 18.)

The same principle has been recognized in the Chancery of England. "Courts of Equity watch with extreme jealousy all contracts made by a party while under imprisonment, and if there is the slightest ground to suspect oppression or imposition they will set the contracts aside." (See the cases cited in note 5 to 1 Story's Eq., sec. 239.)

In *Robinson v. Gould*, 11 Cush. 57, the Supreme Court of Massachusetts says, that duress by menaces which is deemed sufficient to avoid contracts includes a threat of imprisonment inducing a reasonable fear of loss of liberty.

In Louisiana, any threats will invalidate a contract if they are "such as would naturally operate on a person of ordinary firmness, and inspire a just fear of great injury to person, reputation or fortune."

(Civil Code Louisiana, Art. 1845.)