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of the proof to establish the existence of the alleged agreement. It cannot be inferred from the sale of the good will of the business, and it is expressly denied in the answer. The sealed agreement between the parties, given in evidence by the plaintiff, contains no stipulation or covenant on the part of the defendant, either to retire from the business, or not to resume it again in the city of Philadelphia; and in this respect it fully corroborates and sustains the answer. Nor is there any sufficient evidence that such a stipulation was omitted through the fraud of the defendant, or the mistake of the parties. The only evidence from which such an inference could possibly arise is the testimony of Joseph R. and Alexander Black, but neither of these witnesses proves that it was one of the express terms and conditions of the sale that the defendant was to retire from the business, and not to resume it again in the city of Philadelphia. On the contrary, their testimony amounts to no more than a declaration of the defendant's intention not to go into the business again in Philadelphia, on account of the state of his health, which had compelled him to give it up. The fair inference from their testimony, in connection with the blank left in the agreement, is that while the defendant declared it to be his intention and purpose not to resume the business, he was unwilling and refused to bind himself by a positive stipulation not to resume it at any time thereafter. This inference is greatly strengthened by the plaintiff's admissions to Balderston and Fogg after the defendant had resumed the business, and by the fact that he furnished him, without remonstrance or objection, goods to carry on the business for two or three months after he had resumed it. As the alleged agreement is in restraint of trade, its existence should be established by clear and satisfactory evidence, in order to justify the court in restraining its breach by injunction. There should be no doubt or uncertainty in regard to its terms, or the consideration upon which it was founded. Here the parties have put their contract in writing, and it must be allowed to speak for itself, unless it is clearly shown that the stipulation in question was omitted through fraud or mistake. Under the proofs in this case a court of equity would not reform the agreement as written and sealed by the parties; and if they had not reduced their contract to writing, the evidence would be wholly insufficient to establish it as alleged by the plaintiff.

But there is more of substance in the complaint as to the manner in which the defendant is carrying on the business of an undertaker. He sold the good-will of his business to the plaintiff for a valuable consideration, and good faith requires that he should do nothing which directly tends to deprive him of its benefits and advantages. The bill charges and the evidence shows that he is holding himself out to the public by advertisements, as having removed from his former place of business—No. 1313 Vine Street to his present place of business No. 1539 Vine Street—where he will continue his former business. It is clear that he has no right to hold himself out as *continuing* the business which he sold to the plaintiff, or as carrying on his former business at another place to which he has removed. *Hogg v. Kirby*, 8 Ves. Ch. Rep.

214; *Churton v. Douglas*, 1 Johns. Eng. Ch. Rep. 174. While, therefore, the appellant is entitled to have the decree of the court below, restraining him from conducting or carrying on his business of undertaking, &c., within the limits of the city of Philadelphia, reversed, it must be so modified as to restrain him from holding himself out to the public by advertisements or otherwise, as continuing his former business, or as carrying it on at another place.

Let the decree be drawn up under the rule.

COLLINS V. COLLINS

(From the Legal Intelligencer.)

1. Duress may avoid a marriage.
2. Arrest under void process or under a warrant issued upon a false charge, will avoid a marriage which is constrained by the duress of the imprisonment.

Opinion by BREWSTER, J.

The record in this case was handed to us some weeks since upon the usual rule to show cause why a divorce should not be decreed. We then ordered it upon the argument list, and after hearing from the libellant's counsel we suggested the propriety of taking further proof. The libellant has, accordingly, subpoenaed and examined the respondent, and her deposition along with the other proofs have been carefully considered.

The libel prays for a divorce upon the ground that the marriage was procured by fraud, force and coercion. It alleges this fact, and that the marriage has not been confirmed by the acts of the petitioner. Jurisdiction in such cases was conferred by the Act of May, 8, 1854 (P. L. 644; Br. Dig. 346. s. 7.)

The facts as developed by the record appear to be, that on the fifth day of December, 1868, the libellant was arrested and taken before Alderman Pancoast, of this city, upon a charge (preferred against him by the mother of the respondent) of fornication with the respondent, and begetting her with a child with which she then alleged herself to be pregnant. The libellant declared his innocence, but was unable to give the required bail, and to save himself from imprisonment he married the respondent. They then separated and have never lived together as man and wife. It would seem that the prosecution was set on foot to secure this marriage, and the libellant argues that the evidence shows that the charge made against him was false.

A number of witnesses testify to these different matters.

Mr. Bartlemas, who made the arrest, says that they told libellant at the alderman's office, "he must either marry respondent or go to prison, and to avoid imprisonment he married her. I know he was compelled to marry her or go to prison. He was *intimidated and in fear at the time of the marriage, and it was done to save himself from imprisonment.*" * * * He told me he was not guilty."

The libellant's father testifies to the same facts. He says the respondent threatened imprisonment if libellant did not comply with their demand. "They told him he would be sent to prison forthwith if he refused to marry her. I was not able to go his bail, and he was *compelled to marry her to save himself from imprisonment.*"