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 concubitas faciat nuptias*," or, as it has been transposed, "*Nuptias non concubitas 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. *Ait Prœcor quod metus causa gestum erit, ratum non habebo.* 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.)

The contract is equally invalidated "by a false report of threats, *if it were made under a belief of their truth.*" (Id., Art. 1846, 1847.)

The same principle has been recognized in *Hawes* v. *Marchant*, 1 Curt. 136; *Kelsey* v. *Hobby*, 16 Pet. 269; and in the Pennsylvania case of *Gillett* v. *Ball*, 9 Barr, 13, where the fact that a note was given under duress in settlement of a charge like that preferred against this libellant was held to be a full defence. Indeed, the authorities upon this point might be almost indefinitely multiplied, for wherever the voice of the law has been heard, no man has been held to a contract extorted from him by force.

So, too, fraud has always been deemed the equivalent of force and as equally operative in annulling a compact obtained through its agency. So sternly has this principle been applied, that it has been wisely extended to fraud arising from facts and circumstances of imposition. In *Neville* v. *Wilkinson* (1 Bro. Ch. R 546), Lord Chancellor Thurlow remarked; "It has been said, here is no evidence of actual fraud on R. but only a combination to defraud him. *A court of justice would make itself ridiculous if it permitted such a distinction.* If a man upon a treaty for any contract, will make a false representation, by means of which he puts the party bargaining under a mistake upon the terms of the bargain, it is a fraud. It misleads the parties contracting on the subject of the contract."

The rule has been applied in all its rigor even where the misrepresentation was innocently made by pure mistake. (1 Story's Eq, s. 193, cases cited, note 2.) And a contract of partnership was recently set aside in England upon this principle, although the defendant was free from fault, and the plaintiff had been guilty of laches in not examining the books for four years (*Rawlins* v. *Wickham*, 28 Law J. Rep. Chan. 188; 3 De Gex and Jones, 304; 1 Giffard, 355).

In a still more recent case, a wife having been guilty of adultery, in order the more easily to carry on the illicit intercourse, induced the husband (who was ignorant of her crime) to execute a deed of separation, whereby he covenanted to pay her an annuity and to allow her to live separate. The adulterous intercourse was continued, discovered by the husband, and a divorce was obtained. The husband then filed a bill to set aside the deed of separation. It had not been obtained by any misrepresentation, and the Vice-Chancellor dismissed the bill. But the Lord Chancellor reversed the decree below, and held, that the deed must be set aside, on the principle that none shall be permitted to take advantage of a deed which they have fraudulently induced another to execute. *Evans* v *Carrington*, 30 Law J. Rep. Chan. 864; 2 *De Gex, Fisher and Jones*, 489; 1 Johnson and Hemming, 598.

It must be plain, therefore, that if this proceeding were a bill in equity to set aside a note or bond obtained from this libellant under the circumstances presented by this record, we should be compelled to order its cancellation. It remains only to be seen whether the contract of marriage is an exception to the general principle. Mr. Bishop informs us that there is no difference in this respect between marriages and other contracts. He says, "Where a consent in form is brought about by force, menace or duress, a yielding of the lips but not of the mind, it is of no legal effect. This rule, applicable to all contracts, finds no exception in marriage." Bishop on Marriage and Divorce, s. 210. He cites in support of this a number of decisions, and amongst others the leading case of *Harford* v. *Morris*, 2 Hag. 423, where the guardian of a young school girl, having great influence and authority over her, took her to the continent, hurried her there from place to place, and married her substantially against her will. The marriage was held to be void.

So, too, in the Wakefield case, the marriage of Miss Turner was set aside by Act of Parliament. The fraud there employed was the representation of her father's bankruptcy, and that the only escape for her parent was her marriage with one of the conspirators.