

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."

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.