RECENT ENGLISH DECISIONS.

Court for Divorce and Matrimonial Causes.

EX PARTE CHETWYND, RE MULOCK.

A person threatening a petitioner to publish concerning her a statement of facts, unless her petition were withdrawn—Held guilty of contempt of court, and sentenced to pay a fine of 300*l.*

July 19.—*Ballantine*, Serjt. (*Hannen* with him), moved on the part of Mrs. Blanche Chetwynd, a petitioner for dissolution of marriage, for a rule nisi for an attachment against T. Mulock for contempt of court, in writing and sending to the petitioner the following letter:—

"Stafford, July 16, 1864.

"Madam,—I beg to acknowledge the receipt of your letter. I pity you from my heart; you are terribly deceived, and your crafty law advisers have fostered your deception. You seem unaware of the abyss opening before you; however, I must act as befits a Christian man, to whom an appeal has been made; and I now inform you, that if, on or before Wednesday next, the 20th inst., your suit in the Court of Divorce be not withdrawn, I will, on my own responsibility, apart from Mr. Chetwynd or any one else, publish the full truth of the case, founded upon my own various communications with your own friends, and accompanied with a statement of facts concerning yourself from before your marriage up to the present time, borne out by irrefragable documents.

"I am, Madam, your obedient servant,

"T. MULOCK

"Mrs. Blanche Chetwynd."

SIR JAMES P. WILDE, JUDGE ORDINARY.—The affidavit of Mrs. Chetwynd discloses an attempt by a third person to prevent her from laying her case before the court by threats of bringing her into disgrace and disrepute. A rule nisi will, therefore, be granted.

July 26.—Mr. Mulock appeared in person to show cause against the rule, and said he did not intend to threaten Mrs. Chetwynd, nor to treat the court with contempt; but when asked by the Judge Ordinary, whether he would promise not to publish

the statement which he had threatened to publish, he refused to give any such promise.

The Judge Ordinary suspended his judgment until the 29th July, that Mr. Mulock might have time to retract his threat; but on that day, Mr. Mulock still refusing to promise not to publish the statement,

The JUDGE ORDINARY said—Then it only remains for the court to pronounce judgment. [After reading the letter above set out, his Lordship continued:] From the pressure of this threat Mrs. Chetwynd seeks protection, and she claims the right to approach this court free from all restraint or intimidation; it is a right that belongs to all suitors. Mr. Mulock has appeared to show cause against the imputation thus made against him. He did not deny the fact that he sent the letter, and although he disclaimed all desire to threaten the petitioner, he distinctly reiterated his intention to make the publication referred to. Mr. Mulock, therefore, in the face of the court, practically adheres to the threat he has made. No one can doubt that the very offering of such a threat to a suitor in this court for such a purpose, is in itself, and quite independently of its subsequent fulfilment, a contempt of court. In *Shaw* vs. *Shaw*, 2 Swab. & T. 519, the late Sir C. Cresswell so decided, if, indeed, authority were needed. I own I was surprised, that when the legal effect of what he had done was pointed out by me to Mr. Mulock, he did not express himself prepared at once to retrace his steps, and to cease from further interference with Mrs. Chetwynd's suit; and the more so, as it appeared from his own statement in court that he had no interest whatever in the matter, and only a very recent acquaintance with Mrs. Chetwynd. Had Mr. Mulock, under these circumstances, been content to give the court an assurance that he would go no further in his endeavor to intimidate Mrs. Chetwynd, the court might properly have taken no further notice of this most improper letter. All this I intimated to him the other day, and I gave him the opportunity of considering the matter and consulting his friends. The result is, that he still adheres to the determination expressed in his letter, and refuses all assurance that he will desist from executing his menace. The court has no alternative but to adjudge him guilty of a contempt, and to order him for the same to pay a fine of 300*l*. The future is in Mr. Mulock's own hands. If he persists in the course which he says he has marked out for himself as a Christian, and by act

or deed, by writing or publishing, makes any further attempt to stand between Mrs. Chetwynd and her free access to this court, I wish him to understand that he will subject himself to further punishment by fine or imprisonment, or both. If, on the other hand, being satisfied that he is acting illegally, he should hold his hand and submit to the authority of the court, I shall be prepared to attend to any application that he may make next term for the remission of this fine; and for that purpose I shall direct the officer of the court not to estreat the fine, until the fourth day of next term.

Nov. 3.—Mr. Mulock appeared in person, and said he had come to the conclusion that he had been wrong, &c.; he had not published, and would not publish, a syllable respecting the case.

The JUDGE ORDINARY directed that the fine should not be estreated, but that the costs of the application for an attachment must be paid by Mr. Mulock.

Dec. 13.—Mr. Mulock came into court, and made a long statement, the purport of which was that he declined to pay the costs as taxed.

The JUDGE ORDINARY, referring to his judgment as given above, said, that as Mr. Mulock refused to pay the costs incurred by his conduct, he had no course but to order that the fine of 300*l.* be estreated.

We have inserted the foregoing case here because we apprehend the profession in this country may not be entirely aware of the extent of the shield which is thrown around courts of justice by the common law of England by the way of punishment of any infringement of its inviolable freedom and independence, and that of all its officers, ministers, and suitors. The common impression, as well among the profession as elsewhere, in this country, seems to be, that power to punish for contempt of a court of justice extends only to the protection of the court, its process, and officers. It is not generally supposed that the suitors in a court of justice can claim any immunity or privilege by reason of being suitors there. If any of their rights are violated by threats or slanders, or in any other mode, the courts are open, they may implead the offenders.

We believe very few persons, even professional men, ever dream of resisting a threat to publish the proceedings of a trial, or of the facts connected with the transaction out of which the suit arose, by an appeal to the summary jurisdiction of the court to punish for contempt, although it has been done here. And it seems that Mr. Mulock, in the principal case before Mr. Justice WILDE, the Judge Ordinary for Divorce and Matrimonial causes, was of the same opinion, after being admonished by the court that he was in error, and that judgment must be rendered against him unless he gave some assurance that he would stay his hand and

not execute his threat. He seems to have supposed that a disclaimer of all intention of conducting himself disrespectfully towards the court, or to publish anything in regard to the subject-matter of the suit pending before the court, beyond the mere facts, without extenuation, and "without setting down aught in malice," was a course which he might with the utmost propriety, in the language of the learned judge, "mark out for himself as a Christian." And very possibly the majority of the profession here would be inclined to agree with the learned counsellor in his sense of duty, and in regard to the propriety of allowing himself to be shaken from his firm purpose by any counter intimations which he might regard in the nature of threats by the court. But we beg all such, if any there be, to consider that the shield which the law throws around the suitors in a court of justice, for the time bringing them under the same broad canopy of perfect freedom and liberty, even as regards just accusation, with the court itself, is a part of the inestimable birthright of English and American liberty, whose palladium may be said to reside rather in the courts of justice than in a free press or in any other one thing, since all other safeguards of liberty are of little value, after we have ceased to maintain the inviolability of a free and pure and independent judiciary.

What is the privilege of applying to a court of justice for the redress of wrongs worth to any man if his antagonist is at liberty to threaten the destruction of his life or property, or the bringing his character in scandal before the public, or himself before a military commission to answer for political offences, or before the ecclesiastical courts exposed to spiritual censures, unless he will desist from the prosecution of his suit?

We have always felt an invincible repugnance to all summary proceedings before courts of justice to punish counsel, or others, for personal offences against the magistrates presiding there. If their own conduct and character will not effectually shield them from such personal insults, nothing which they could do by way of punishment for the contempt would be likely to have any greater effect. The judge, in all such cases, stands too much in the light of hearing and deciding his own cause, to give the decision much moral weight. The public sympathy in such cases is sure to be with the offender, however justly condemned. We have always regarded the rule of forbearance in such cases as the wisest, and in the end the most successful.

But where the judge is called to punish an intermeddling suitor, or other person, for attempting to tamper with witnesses, jurymen, or any of the protégés of the court, whether by way of influence, bribery, or intimidation, he need feel no such reluctance. Let him be firm, but forbearing. Let him give fair opportunity for explanation and exculpation, but not be drawn from his purpose by sham excuses or hollow pretences. The case before us seems to have been conducted in excellent spirit, and in all respects to have been worthy of imitation.

We had occasion to discuss the question of the mode of procedure in such cases, and need not repeat it here, in Ex parte Langdon, 25 Vermont Rep. 680, where the authorities are examined with some care upon the point of convictions for contempt, when the offence is not committed in the presence of the court. It was there held that the proceeding for contempt must be regarded