

Upon this application for prohibition the wife filed an affidavit in which she stated that in July, 1919, she went with her children to her husband's house and lived with him for more than a month; that her husband then so misconducted himself as to justify her in leaving him; and that thereupon she left him.

The husband contended that, the wife having resorted to this Court for the purpose of having her rights determined, and it having been adjudged that she was not entitled to alimony, the proceedings before the Justices must be deemed to have been abandoned or to be superseded, and that the Justices had no jurisdiction to make the order for the issue of the distress warrant and the committal of the husband to goal.

The contention of the husband must prevail.

Reference to *Craxton v. Craxton* (1907), 23 Times L.R. 527.

The wife, having chosen to submit her status and rights to the determination of this Court, must be taken to have abandoned any rights that she had acquired under the earlier order of the Justices; and, when once this Court was seised of the matter, the Justices had no right to interfere in any way.

The wife, according to her own statement, returned to her husband in July, 1919. This put an end to the earlier order made by the Justices. If she was justified by the husband's misconduct in leaving him in July, 1919, there might be a foundation for new proceedings before the Justices or in this Court, but the earlier proceedings had ceased to have any operative effect: *Haddon v. Haddon* (1887), 18 Q.B.D. 778.

Order made for prohibition as asked; no costs.

MIDDLETON, J.

OCTOBER 10TH, 1919.

*MALCOLM v. MALCOLM.

Husband and Wife—Alimony—Report of Master Fixing Amount of Permanent Allowance—Ascertainment of Income of Husband—Interest in Industrial Company as Principal Shareholder—Salary as Manager—Earnings of Company—Absence of Fixed Rule as to Proportion of Income to be Allowed as Alimony—Circumstances of Case—Discretion.

Appeal by the defendant from a report of the Master at Guelph fixing the amount payable to the plaintiff for alimony at \$1,080 per annum.

The appeal was heard in the Weekly Court, Toronto.

C. L. Dunbar, for the defendant.

R. T. Harding, for the plaintiff.