

MIDDLETON, J., IN CHAMBERS.

OCTOBER 8TH, 1919.

## \*RE WILEY AND WILEY.

*Husband and Wife—Proceedings under Deserted Wives' Maintenance Act, R.S.O. 1914 ch. 152—Order of Justices for Payment by Husband of Alimentary Allowance Weekly—Default—Action Brought for Alimony—Dismissal upon Trial—Subsequent Order by Justices for Payment of Arrears under First Order and for Distress and Imprisonment—Abandonment of Order when Action Brought—Resumption of Cohabitation—Effect of.*

Motion by William Thomas Wiley for an order prohibiting three Justices of the Peace for the County of Bruce and a constable of the same county from enforcing a certain order dated the 2nd August, 1917, made by the Justices, and a certain order dated the 18th September, 1919, made by two of the Justices, and a seizure made by the constable on the 20th September, 1919, in proceedings under the Deserted Wives' Maintenance Act, R.S.O. 1914 ch. 152, on the ground of want of jurisdiction.

H. S. White, for the applicant.

C. S. Cameron, for Nancy Wiley, the wife of the applicant.

MIDDLETON, J., in a written judgment, said that the wife, deeming herself to have been deserted by the husband within the meaning of the Act, took proceedings before the Justices, which resulted in the order of the 2nd August, 1917, requiring the husband to pay to his wife \$8 per week for the support of herself and family, and the costs of the proceedings. Pursuant to this order (which was affirmed on appeal), the husband paid an alimentary allowance to his wife for a considerable time, but eventually made default.

The wife, instead of taking proceedings under the Act for the enforcement of her rights, brought an action in the Supreme Court of Ontario to recover alimony. That action was tried and dismissed, and the dismissal was affirmed on appeal.

On the 18th September, 1919, the wife took proceedings before the same Justices, alleging that the sum of \$720 was due to her under the order of 1917; and the Justices then made an order directing payment forthwith of the sum mentioned, together with \$235 for costs, and directing that the same should be levied by distress and sale of the goods and chattels of the husband, and adjudging that, in default of sufficient distress, the husband be imprisoned for three months.