

Hillsborough, }  
Dec. 2, 1947. } No. 3692.

FRED O. WILMOT *v.* ARLENE C. WILMOT.

*John J. Broderick*, for the libelant, submitted no brief.

*John D. Warren*, by brief, for the libelee.

BLANDIN, J. The libelee's motion to dismiss must be granted. Under R. L., c. 339, s. 29, the causes and procedure in petitions for separate maintenance are identical, so far as material, with those in divorce proceedings. According to the libelant, all misconduct on the part of the libelee which he alleges as cause for a divorce occurred prior to the hearing upon which a decree of separate maintenance with support was rendered in her favor. This decree stating that "on or about December 10, 1945 the petitionec, without sufficient cause and without the consent of the petitioner, abandoned the petitioner, and since said abandonment has refused . . . to cohabit with her, and that said abandonment and refusal to cohabit if continued will be a cause for divorce in favor of the petitioner, . . .", is in effect a finding that the husband then had no cause for divorce, while the wife had grounds which if continued would be a cause for divorce. This adjudication upon the merits binds the libelant as to the issues which he now seeks to raise. *Poulicakos v. Poulicakos*, ante, 233, 235;

*Brown v. Brown*, 37 N. H. 536; *Chesley v. Duncklee*, 77 N. H. 263, and cases cited; *Bottomly v. Parmenter*, 85 N. H. 322. See also, *Wallace v. Wallace*, 74 N. H. 256, 257; *Lovejoy v. Ashworth*, ante, 8, 10. It follows that the order must be

*Libel dismissed.*

DUNCAN, J., did not sit: the others concurred.

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MAURICE H. DUMAS

v.

HARTFORD ACCIDENT & INDEMNITY COMPANY.