

time when he goes through the form of marriage, unless he knew that his spouse was alive at any time during those seven years.

If the remarrying spouse did not hear directly or indirectly from the missing partner for the full seven years, he or she cannot be convicted of bigamy but this exemption from the prosecution does not affect the validity of the first marriage.

Should the missing spouse reappear the first marriage is still valid. The second marriage is a nullity and the children of that marriage are illegitimate. Such an eventuality is terrifying and the very possibility hangs like the Sword of Damocles over the spouses of the second marriage and their family perhaps for years. If desertion for the three years is sufficient to afford ground for divorce, disappearance for a similar period, whatever the cause, or for unknown cause, should be sufficient to release the remaining spouse from its sterile bonds. If the missing spouse is in fact alive he or she should realize that failure to communicate may end the marriage. Three years absence should be a sufficient length of neglect in this age of world-wide communication and widely scattered and diversified facilities.

#### RECOMMENDATION

Your Committee recommends that absence of either the wife or husband without knowledge by the other spouse of or from the missing partner for a period of three years be made a ground for the dissolution of the marriage, thus enabling the deserted spouse to remarry in legal security.

#### THE SEPARATION GROUND

The introduction of the ground of separation for a specified period would be the most practical way to solve the problems of simple marriage breakdown. There can be no better evidence that a marriage has failed than the termination of cohabitation and the failure to resume it after a substantial period of time. If there is no likelihood of reconciliation there is little point in retaining the empty legal shell of the marriage.

There is little doubt that the concept of marriage breakdown envisaged in the separation ground seems to have won wide acceptance. The majority of witnesses appearing before the Committee have advocated it in one form or another, usually in the form of a separation ground. It has been introduced into numerous jurisdictions whose legal and social structure are not dissimilar to our own, Australia and New Zealand, and various American states—and it has existed for a long time in most European countries, notably Scandinavia. Undoubtedly, as practical legislation in all of these countries, it does work.

Certain safeguards would need to be introduced along with the separation ground:

- (i) the court should have the power to adjourn for a specified period if there seems to be a possibility of reconciliation;
- (ii) provision should be made for the financially weaker party, usually the wife, before a decree is granted;
- (iii) no decree should be issued until satisfactory arrangements have been made for the care and custody of the children;
- (iv) the court should have discretion to refuse the decree on the ground of public interest.

Your Committee is consequently of the opinion that a period of separation of three years immediately prior to the institution of proceedings would be suffi-