

ent and injurious reproaches, accusations and "nagging". The knowledge and intentions of the respondent, the nature of his or her conduct, the character and physical and mental weaknesses of the husband and wife must all come under consideration. In the Gollins case it was held "that when reprehensible conduct or departure from the normal standards of conjugal kindness caused injury to health or an apprehension of it, it was cruelty if a reasonable person, after taking account of the temperament of the parties and all other particular circumstances would consider that the conduct complained of was such that "this spouse should not be called upon to endure it." "It is a question of fact in each case whether the conduct of this man to this woman, or vice versa, is cruelty."

It is interesting to note that in England, drunkenness, gambling and wilful neglect to maintain are not cruelty *per se*. If persisted in, however, they become so, especially if the culprit has been warned that the conduct may be injurious to the health of the other spouse.

If the petitioning spouse provoked the cruelty complained of, he or she is not entitled to relief. Nevertheless, the provocation must be such as to deprive a reasonable person of self-control. The accused party must be acting under the stress of such provocation and the mode of expressing their resentment must not be unreasonable.

7. Desertion

Desertion, like cruelty, has no statutory definition. The Royal Commission on Marriage and Divorce defined desertion as follows:

"A separation of the spouses which is against the will of one spouse and which is accompanied by an intention on the part of the other spouse without just cause permanently to end the married life together." (Cmnd. 9678, p. 4).

It was introduced into England as a ground for divorce in 1937. The physical departure of one spouse from the matrimonial house does not, however, make that spouse necessarily the deserting partner. Desertion is not so much a withdrawal from a place as from a state of things. Desertion commences from the time when the *factum* of separation coincides in point of time with the will to desert (*animus deserendi*). A separation may take place without there being an *animus*, as in a case where the separation is by mutual consent or by compulsion. If the spouses part by mutual consent without any stipulation as to the length of the separation, either of them may at any time put an end to the agreement. If this happens, the other spouse will be treated as being in desertion from that time on and the three year period would be counted as having begun at that time.

It is possible for the *animus deserendi* to arise before the actual physical separation, and this occurs when the other partner is driven from cohabitation. The mere fact of having left the matrimonial home does not make the partner who actually leaves of necessity the deserting party. If that spouse was forced out by the conduct of the other party, it may be that the other party may be the deserting partner. (*Winnan vs Winnan*, L. R. 1949, p. 174). This is the doctrine of constructive desertion.

Under the *Matrimonial Causes Act* of 1965 Section 1 (2), if the parties resume cohabitation for a period not exceeding three months with the primary purpose of attempting reconciliation, that period is not considered as interrupting the three year period for establishing desertion.