extracted were based on facts of that nature, and which called for such judgment.

Senator FERGUSSON: Are there any cases involving desertion which have to do with the fact that one of the spouses was sent to prison?

Mr. HOPKINS: That would not be desertion.

Senator FERGUSSON: Is there not any case where such was the fact?

Mr. HOPKINS: There might be states in the union where imprisonment itself, *per se,* is a ground for divorce. I have not gone through the laws of all the states in respect to this.

I have just one page left on unsoundness of mind, and that is my last contribution.

Unsoundness of Mind: Since the Matrimonial Causes Act, 1937, either the husband or the wife may petition for divorce (or judicial separation) on the ground that the respondent is incurably of unsound mind and has been continuously under care and treatment for a period of a least five years immediately preceding the presentation of the petition, but if the neglect—and here is something somebody raised—or other conduct of the petitioner has conducted to the insanity, a decree may be refused. See *Chapman v Chapman,* (1961) 3 All E.R., 1105. That is, if the other spouse caused the insanity by actions, reproaches, *et cetera.*

As to continuity of care and treatment, the satutory requirements relating to the detention of persons of unsound mind must have been strictly fulfilled and non-compliance may have the effect of breaking the continuity of the detention. It is not provided—and I think this might be noted—by statute (in s. 1(2) of the Divorce (Insanity and Desertion) Act, 1958) that any break in the continuity of detention for a period of less than 28 days may be disregarded. Even before that statutory qualification, continuity of detention was not broken by a removal of a patient from one mental hospital to another, or to a general hospital for needed physical treatment where mental care is continued. See *Murray v Murray,* (1941) p. 1, 8; *Sevyner v Sevyner,* (1955), p. 11.

The court is not concerned with the degree of insanity: the phrase "incurably of unsound mind" describes a mental state which, despite five years' treatment, makes it impossible for the spouses to live a normal married life, with no prospect of improvement which would make it possible in the future. See *Whysall v Whysall,* (1960), p. 52; *Greer v Greer,* (1961) 605 Sol. Jo. 1011.

I thank you for your kind attention, and I apologize for going on for so long.

Senator CROLL: I have one question to ask. In Nova Scotia, where they have had a long tradition of divorce on the ground of cruelty, have they no case law of their own?

Mr. HOPKINS: Yes, but it is not very extensive or particularly helpful. There are a few cases, I think.

Senator CROLL: Have they followed the British precedent?

Mr. HOPKINS: Of course, they were ahead of the British.

The CO-CHAIRMAN (*Senator Roebuck*): Their reporting has been poor, has it not?

Mr. HOPKINS: Yes. If the committee would like me to provide it with such jurisprudence as I can dig up on cruelty as a ground in cases decided by the courts in Nova Scotia then I would be delighted to do so.

Mr. BREWIN: I was thinking of the fact that cruelty and desertion are both grounds recognized in other Canadian jurisdictions as a basis for granting alimony. In a study of divorce I think that those cases might well be looked at to see what they mean. Therefore, Messrs. Chairmen, it seems to me that it would be very helpful to have a few of the leading Canadian cases so that we