

of that. It is as easy to lie about cruelty as it is to lie about adultery. A petitioner can say that her husband has beaten her up four or five times and she may not be telling the truth. In the case of desertion, a wife may have left her husband for good and sufficient cause. Would this be a ground then for proceedings by him for desertion? There will still be some people, no matter what the law is, who will try to get around it. I don't think that would be a main reason for changing it. I think there are many things that can go wrong with a marriage that are as bad as if not worse than adultery. Constant physical cruelty can be as damaging to a marriage as adultery. But I am very much afraid of the undefined ground of cruelty. I do not like the idea of mental cruelty as a ground. If I were called to interpret cruelty I would interpret it very strictly. When you admit the ground of mental cruelty, you get into a situation where a wife sues for divorce because the husband forgot to get her flowers for her birthday and he did not take her out to dinner. We do not wish to go as far as the American courts have gone in that direction.

I recognize there can be such a thing as mental cruelty, but it would have to be extreme to be allowed as a ground for divorce.

The CO-CHAIRMAN (*Senator Roebuck*): You think it could be excluded entirely from cruelty?

Mr. JUSTICE WALSH: I think it is something the committee might consider. The committee might consider whether to define cruelty as something of a repeated and continuous physical nature.

The CO-CHAIRMAN (*Senator Roebuck*): That is injurious to health?

Mr. JUSTICE WALSH: Yes.

The CO-CHAIRMAN (*Senator Roebuck*): Would you exclude injury to mental health? For instance I heard of one case recently where a woman persistently called her husband up on the telephone at two, three or four o'clock in the morning and worried him to the extent that he became insane. This is the story as it was told to me, at all events. He was confined to a mental hospital. Would that be within your idea of cruelty?

Mr. JUSTICE WALSH: I would think in a case like that where there is corroborating evidence from a doctor to say that the cruelty had been injurious to health it would be acceptable. But you would have to make evidence other than that of the petitioner himself.

The CO-CHAIRMAN (*Senator Roebuck*): You would not exclude mental cruelty?

Mr. JUSTICE WALSH: No, I would not exclude it 100 per cent, but how would you define the nature of mental cruelty? Would you add the words "which has injured or tended to injure the health"?

The CO-CHAIRMAN (*Senator Roebuck*): Do you think we could leave a discretion in these matters to the common sense of Canadian judges?

An Hon. MEMBER: Or to commissioners?

Mr. JUSTICE WALSH: I would like to hope so, certainly. But it is a difficult matter to draw a dividing line in what gradually gets eroded away, and when it comes to a question as to what is mental cruelty I am afraid you reach the stage where witnesses who are quite prepared to embellish their story with perjury would get relief while those who are honest would not. Cruelty unless it is corroborated can very easily be fabricated in an uncontested action.

The CO-CHAIRMAN (*Senator Roebuck*): But you would leave the question of corroboration to the judge, would you not?

Mr. JUSTICE WALSH: Yes, definitely. One of the other grounds that have been suggested is that bona fide desertion would serve as a ground for divorce. I think it is up to the courts to try and separate out the cases of genuine desertion