

“forsaking and an abandonment”? See, for example, *Edwards v Edwards*, (1948), p. 268; *Kinname v Kinnane*, (1954), p. 41; *Ingram v Ingram*, (1956), 390, 411; *Phair v Phair*, (1963), 107 Sol Jo. 554.

In calculating the period for which the respondent has deserted the petitioner without cause, and in considering whether such desertion has been continuous, no account shall be taken of any one period, not exceeding three months, during which the parties resumed cohabitation with a view to reconciliation. Desertion as a ground for divorce differs from adultery and cruelty in that the offence of desertion is inchoate until the action is instituted. Desertion is a continuing offence. See, inter alia, *Jordan v Jordan*, (1939) 2 All E.R., 29, 33, 34; *Perry v Perry*, (1952), p. 203, 211, 212; *W. V W.* (No. 2), (1954), p. 486, 502.

Where a petitioner for divorce has at anytime been granted a decree of judicial separation or an order having that effect, and the petition for divorce is based on substantially the same facts, a period of desertion immediately preceding such decree or order must, if the parties have not resumed cohabitation and the decree or order has been continuously in force, be deemed immediately to precede the presentation of the petition for divorce. See *Turses v Turses*, (1958), p. 54.

Desertion commences from the time when the *factum* of separation and the *animus deserendi* coincide in point of time. But a *de facto* separation may take place without the necessary *animus*, as where the separation is by mutual consent or is compulsory—such as being stationed in South Vietnam or something like that. On the other hand, the *animus deserendi* may arise first and the *factum* only when the other spouse is in fact driven out of cohabitation. It is immaterial that the other spouse has ostensibly consented to the separation on the fraudulent misrepresentation that it is only for a limited time: if the respondent intended at the time of the withdrawal that it should be permanent, desertion arises at the moment of withdrawal. See, inter alia, *Harrison v Harrison*, (1910) 54 Sol. Jo. 619; *Legere v Legere*, (1963) 2 All E.R., 49, 58; *Beaken v Beaken*, (1948), p. 302; *Ingram v Ingram*, (1956), 1 All E.R., 875, 797.

Desertion, like other matrimonial offences, must be clearly proved. Corroborative evidence is not required as an absolute rule of law, but is usually insisted on, particularly as to the circumstances and terms of the parting. See *Stone v Stone* (1949), p. 165, 167, 168; *Lawson v Lawson*, (1955), All E.R. 341; *Barron v Barron*, (1950), 1 All E.R., 215.

Desertion is not established merely by ascertaining which party left the matrimonial home first. If one spouse is forced by the conduct of the other to leave home, it may be that the spouse responsible for the “driving out” is guilty of desertion. This is the doctrine known as “constructive desertion”. See *Lawrence v Lawrence* (1950), p. 84, 86; *Gollins v Gollins*, above cited.

As to the relation between constructive desertion and cruelty, see *King v King*, (1953) A.C. 124; also *Gollins v Gollins*, above cited.

For further refinements and defences against charges of desertion, see *Rayden on Divorce*, pp: 183, 212.

Mr. PETERS: With respect to desertion, your wording indicated that it might be voluntary or involuntary. For instance, if a person becomes insane he has, in fact, deserted his spouse, but he has done so involuntarily. Would the same be true in respect of extreme alcoholism or drug addiction?

Mr. HOPKINS: Yes, that is correct.

Mr. PETERS: Have the courts in England decided any cases of that nature? Are there any cases that involve what I would call involuntary desertion?

Mr. HOPKINS: Yes, there have been such cases. The cases I have cited on that page of my submission are all cases of that type. The judgments I have