

A Royal Commission had been the spur to produce the Matrimonial Causes Act of 1857. A further Royal Commission, the Gorell Commission, was appointed in 1909 to enquire into the state of divorce law. That Commission recommended that the grounds for granting divorce should be widened to include not only (i) adultery, but also (ii) wilful desertion for three years and upwards; (iii) cruelty; (iv) incurable insanity after five years of confinement; (v) habitual drunkenness found incurable after three years from the first order of separation; (vi) imprisonment under commuted death sentence. It was also recommended that the "double standard" be abolished. This latter was the first, and really the only one, of their recommendations that found early fulfilment.

#### 4. *The "Herbert Act", 1937*

Changes recommended by the Gorell Commission did not find their way into law until 1937. Then a private members bill, introduced by A.P. (later Sir Alan) Herbert was enacted. This Act, the *Matrimonial Causes Act* of 1937 provided three additional grounds for divorce: (i) wilful desertion for three years and upwards; (ii) cruelty; and (iii) insanity after five years confinement. It also made provision for the dissolution of the marriage on the presumption of death of the other spouse. The additional grounds for nullity recommended by the Gorell Commission were also introduced substantially by the 1937 Act. These were (i) wilful refusal to consummate the marriage; (ii) that either party at the time of the marriage was of unsound mind or mentally defective or subject to recurrent fits of insanity or epilepsy; (iii) that the respondent was at the time of marriage suffering from venereal disease of a communicable form; or (iv) was pregnant by some person other than the petitioner. Grounds (ii) through (iv) were restricted by the proviso that: (i) that at the time of the marriage the petitioner was ignorant of the fact alleged; (ii) that the proceedings were instituted within a year of the marriage; and (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the ground for the decree.

The relevant English statutes were consolidated in the *Matrimonial Causes Act* of 1950 and in 1965 a further consolidating statute was passed incorporating changes made in the law since 1950.

An important provision of the 1937 Statute stipulated that no divorce proceedings could be taken within the first three years of marriage without special leave. The rationale behind this requirement was that young people in many cases were not making sufficient efforts to overcome the difficulties of adjusting to married life. In case of exceptional hardship to the petitioner or in the event of exceptional depravity on the part of the respondent, special leave can be obtained from a judge to begin proceedings before the three year period has expired.

#### 5. *Bars to Divorce*

In 1963 and 1965, by the Matrimonial Causes Acts of those years, the law relating to condonation and collusion was amended. Before those Acts, the forgiveness of one spouse for an act of adultery committed by the other was conditional on the offending spouse committing no further matrimonial offences. If further offences were committed, and these could include cruelty and desertion as well as adultery, the old offence of adultery was revived. The 1963 Act,