

consist of a course of conduct, and the more grave the original offence the less grave need be the subsequent acts complained of. But mere incompatibility of temperament does not constitute cruelty. See, *inter alia*, *Frombold v Frombold*, (1952) 1 T.L.R. 1522; *King v King*, (1953) A.C., 124, 130.

It has been held to be cruelty for one spouse to infect the other with a venereal disease, and a successful attempt by a husband, who knows he is suffering from venereal disease, to have intercourse against her will with his wife, who knows that he is so suffering, may amount to cruelty although in fact the disease is not communicated. See, e.g., *Browning v Browning*, (1911) p. 161.

Moreover, refusal of sexual intercourse without good reason, or insistence on inordinate sexual demands or malpractices may be cruelty where injury results to the spouse by reason of the refusal or practice. See, *inter alia*, *Walsham v Walsham*. (1949) p. 350, 352. Any unnatural or perverted practices by a wife with another woman may constitute cruelty and may certainly be taken into account as part of a course of conduct amounting to cruelty. See *Gardner v Gardner*, (1947) 1 All E.R. 630.

Cruelty to the children of the marriage may be cruelty to the other spouse. See *Wright v Wright*, (1960) 1 All E.R., 678; *Cooper v Cooper*, (1955) p. 99.

Threats of personal violence, the use of offensive language, false accusations of adultery or of unnatural practices, if persistence therein gives rise to injury to health or reasonable apprehension thereof, constitute cruelty. See *Nevill v Nevill*, (1959) 1 All E.R., 619.

I think this is interesting and important. Drunkenness, gambling and wilful neglect to maintain are not cruelty *per se*, but may become so if persisted in, particularly after warnings that such conduct may be injurious to the health of the other spouse. See *Hall v Hall*, (1962) 3 All E.R., 518.

A spouse who provokes the cruelty complained of is not entitled to relief, but the provocation must be such as to deprive a reasonable person of self-control; the party must be acting under the stress of such provocation and the mode of expressing resentment must not be unreasonable. See *King v King*, (1955) A.C. 124, 129; *Robinson v Robinson*, (1961), 105 Sol. Jo. 950.

Desertion was not an offence known to the ecclesiastical law or the common law as founding a decree of separation from bed and board (*a mensa et thoro*) but section 19(b) of the Matrimonial Causes Act, 1857, made "desertion without cause for two years and upwards" a ground whereon a husband or wife might obtain such a decree. Moreover, by section 27 of the same act, such desertion if coupled with adultery was made a ground whereon a wife might obtain a divorce *a vinculo matrimonii*. By the Matrimonial Causes Act, 1937, desertion without cause for a period of at least three years, immediately preceding the presentation of the petition, was made a ground for divorce *a vinculo matrimonii*. The Act of 1937 is now consolidated in the Matrimonial Causes Act, 1950, as modified by the Divorce (Insanity and Desertion) Act, (1958, c. 54) and the Matrimonial Causes Act, 1963 (1963, c. 45). Copies of these statutes are annexed hereto as Appendix 4.)

The English courts have been strangely reluctant to define desertion, but in its essence it is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse. However, the physical act of departure by one spouse does not necessarily make that spouse the deserting party. Desertion is not a withdrawal from a place, but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state: that state of things may be termed, for short, "the home". There can be desertion without previous cohabitation, or without the marriage having been consummated, and the fact that a husband makes an allowance to a wife he has abandoned is no answer to a charge of desertion. The question is, as one judge said: Has there been a