

Divorce in Britain

When looking for our ancestors, we always strive to find birth, marriage and death certificates to help verify that we are following the correct lines. However, sometimes we cannot find a marriage record or a death record of one spouse if the other remarried. It is possible that they divorced, but because of the high cost and the rules surrounding it, bigamy was more common than one might think.

A Bit of History

Prior to the 1857 Matrimonial Causes Act, divorce was largely open only to men – and rich men at that, as it had to be granted by an Act of Parliament. However, the church and society as a whole made strenuous efforts to keep the couple together. In the 16th and early 17th centuries episcopal visitation enquiries always asked the churchwardens for a list of married couples in the parish who lived separately. This was probably due to the parish bearing the burden of maintenance. Examples of presentments run until at least 1660. Although from 1857 women could now divorce their husbands, they could do so only on the grounds of adultery - but also had to prove additional reasons such as rape and cruelty.

In England prior to the 20th century divorce was by and large only for adultery or desertion for a period of seven years or more. However, adultery was really only available to men, as even a single act of adultery by a woman was considered to be a breach of the law of property and hereditary descent.

The Court of Arches was the appeal court for cases heard in ecclesiastical courts (consistory courts) in the Province of Canterbury (these included matrimonial cases). Matrimonial cases were also heard at the Quarter Sessions.

Between 1690 and 1857 there were 5 distinct ways to end a marriage.

1. Separation from bed and board - obtained by adultery and/or life threatening cruelty
2. Full divorce by Act of Parliament - obtainable by husbands who could afford it and whose wife had committed adultery.
3. "Private Separation - negotiated between the spouses and embodied a Deed of Separation drawn up by a solicitor. These appeared in the Interregnum.
4. Desertion - After seven years the deserted partner was free to re-marry.
5. Wife Sale - Although this was opposed by church courts which prosecuted the offenders the practice lingered on. It seems the practice relied on the effect of maximum publicity guaranteeing the local community concurred with the action. It reflected as closely as possible the sale of a cow at market in an effort to make the sale appear legally binding.

As you can imagine, this was not always easy and was still very expensive but remained the status quo until 1923. A Private Member's Bill, which became part of the Matrimonial Causes Act, made adultery by either husband or wife the sole grounds for divorce, which meant that the wife no longer had to prove the additional reasons against her husband, but both spouses still had to prove the adultery.

A further amendment to the Matrimonial Causes Act came along in 1937 when, in addition to adultery, grounds could also be cruelty, desertion and incurable insanity. As before, each

allegation needed to be proved. Also, at this time, Parliament introduced a bar to divorcing in the first three years of marriage.

In 1969, the Divorce Reform Act was passed, which allowed couples to divorce after they had been separated for two years if mutually requested or five years if only one of them wanted a divorce. A marriage could be ended if it had irretrievably broken down, and neither spouse had to prove the allegation any longer.

Although there have been more recent amendments to the Matrimonial Causes Act, for today's family historian, this article should help to give some background to what was happening in our ancestors' lives a hundred years ago.

Where are the records?

England and Wales

Divorce Case Files from 1858 to 1937 may be seen at The National Archives, Kew in department/code J77. For Decrees Absolute from 1858 to the present day, you will need to contact the Principal Registry of the Family Division, London.

Scotland

Divorce in Scotland has been permitted since the mid-sixteenth century for adultery or desertion with the innocent party being free to re-marry, but surprisingly the divorce rate was negligible until the 20th century. Scottish divorce records from 1563 to 1984 may be found at the National Archives for Scotland, Edinburgh and from 1984 at the General Register Office for Scotland, Edinburgh.

Northern Ireland

For Northern Ireland divorce records, you will need to contact the court where the divorce was granted.

~~~~~

If you are having problems in finding out about divorces, someone else might be able to help you. Register for FREE at <http://www.genealogy-specialists.com/> and post details. However, please be aware that you will not be allowed to post details of living – or potentially living – people.

If you would like to discover more about Divorce in Britain, listed below are some products that will certainly help you to understand, and all of them are available from [www.paritychest.com](http://www.paritychest.com). Just pop the reference number in the website search box to see the details:

- Family History on the Net 2015/16 Ref: CSB-3252
- Notes of Cases 1913 Ref: ANG-ARA 200