



DIVORCE

First published in the Hampshire Family Historian Vol. 34 No 1 June 2007

.....LET NO MAN PUT ASSUNDER.....We think of divorce as a relatively modern phenomenon but we spend a lot of genealogical hours searching for missing spouses without success – so as David August posed the question in his article.....Did Divorce exist in the 1860's? Let us then examine the history of marital breakdown – ironic that in the week that you are reading this, my Wife, Linda and I celebrate our 30th wedding anniversary!

It is very true to say that divorce was not only difficult to obtain (adultery had to be proved and a private Act of Parliament was required) but also very expensive. (Mr P McCartney will confirm that this is still the case today!)

A committee in the House of Lords had to consider the petition. Whilst an “official” divorce gave the parties to remarry, there were only 318 up to 1857, of which only 4 were attributable to female petitioners. Many couples simply separated and literally moved on to other partners or the male joined the armed forces and started a new life.

The Addison/Campbell Divorce case in 1801 was the first case to be brought to Parliament by a woman. Jane Campbell divorced her husband Edward Addison on the grounds of adultery with her sister Jessie Campbell.

The church courts could annul a marriage by a decree that the marriage had never been valid, commonly where an allegation of bigamy had been made or that one of the parties had been under 21 and had married without parental consent – this being one of the reasons that marriage registers from 1754 to 1812 included the words “with the consent of” so as to reduce the number of potential claimants. Again an annulment gave each party the right to remarry. The church could also order a sort of half way house which whilst not allowing remarriage, legally allowed the couple to live apart.

One reason that there was active discouragement of legal separation was that a wife left to bring up the children on her own would be eligible for parish relief under the poor law and it was not in the interest of the parish coffers to condone a marriage breakdown. More information can be found on the TNA research guide which can be found at :-

<http://www.nationalarchives.gov.uk/catalogue/RdLeaflet.asp?sLeafletID=260>

There was a major change to the law, effective 1 January 1858 when it became possible to obtain a divorce from the newly set up Court for Divorce & Matrimonial Causes. The odds were stacked against the wife – a husband, for instance, merely had to prove adultery whereas, a wife had to prove cruelty in addition.

In our own family tree, we have an example of a divorce in the early 1870's when a family member is shown as a boarder in 1871 in the household of the husband (away at sea) and wife who ended their marriage in 1874 (divorce located on the index on the findmypast web site) to enable the ex-wife and our man to marry in Portsea in 1875. The marriage certificate not only describes her condition as divorced but also usefully gave her former married name.

As a result of the simpler (and cheaper) procedures, the rate of divorce increased and had risen to about 800 a year by the start of the First World War. This figure had risen to a staggering 8000 by 1939 as a result of the availability of legal aid and also increase in the number of courts at which a divorce petition could be heard.

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EDUCATION SPOT by Tony Knight

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So what sources exist for tracing Divorce? The best place to start is the National Archive fact sheet where it states that most case files 1858 to 1927 have survived and can be found in Class J77 and are indexed in J78. The index can also be searched online (chargeable) 1858 to 1903 at:-
<http://www.findmypast.com/DivorceStartSearchServlet?>

You can also contact the Principal Registry of the Family Division, Decree Absolute Section, First Avenue House, 42-49 High Holborn, London WC1V 6NP (020 7947 7015). For a fee, they will access an index to the registered court copies of decrees absolute and either provide a certified copy of the information themselves (if the divorce was granted by the Supreme Court) or arrange for a certified copy to be sent to you from the relevant county court.