

## Divorce Records

### Divorce Courts - Family Records Centre Factsheet

From 11 January 1858, the new London-based Court for Divorce and Matrimonial Causes heard all divorce and matrimonial cases. In 1873 it was reformed into the Probate, Divorce and Admiralty Division of the Supreme Court of Judicature. The Divorce Registry is now part of the Principal Registry of the Family Division, with records of all divorces granted in England and Wales from 1858 to the present day.

Although divorce was no longer the exclusive province of the very wealthy, it still involved some expense, so the poor were effectively excluded. The very poor could sue without payment of fees 'in forma pauperis' if they could prove their lack of means; from 1914 onwards the Poor Persons Rules, and from the 1920s the extension of legal aid, made divorce available to people of all income levels.

#### Case files

Case files for some divorces, mostly before 1938, can be found in The National Archives at Kew in record series J77. They are original documents that have not been microfilmed so they are not available at the Family Records Centre (FRC). However, microfilm copies of the indexes to them can be seen at the FRC, and also at Kew, in record series J78.

You can find details on how to use these indexes in our leaflet 'How to use...Indexes to Divorce Files from 1858'. Each file contains the petition, any relevant certificates and affidavits, and occasionally other material.

From around 1870 you will also find copies of the Decrees Nisi and Absolute. The court granted a Decree Nisi when it was satisfied that the grounds for the divorce had been proved, but the parties were not free to re-marry until the Decree Absolute was granted, usually six months after the Decree Nisi. The case files include many instances where the petition was unsuccessful, and so a divorce was not granted. Records of these cases will therefore only be found in the records held by The National Archives, and not in the Principal Registry.

#### Grounds for Divorce

Until 1971, divorces were granted on the basis of the bad behaviour of one or other party. Divorce by mutual consent was not allowed, and if the parties colluded to obtain a divorce, the court would refuse to grant it. A man could divorce his wife for adultery, and she would not be entitled to any maintenance, as a consequence of her bad behaviour. The husband might even sue the other man for damages, and for the costs of the suit.

Until 1923 a wife had to prove her husband's adultery, along with some other offence, to gain a divorce. This could be cruelty, or desertion for two years or more. She could also divorce him on the grounds of incestuous adultery; where he committed adultery with a woman that he could not legally have married, if his wife were dead. This would include his wife's sister, or half-sister.

Marriage to a deceased wife's sister was forbidden until the Deceased Wife's Sister's Marriage Act of 1907, but this Act contained wording that still expressly forbade marriage to a divorced wife's sister or half-sister while the divorced wife was still alive.

The Deceased Brother's Widow's Marriage Act of 1921 contained a similar clause, so that a man could not marry his brother's ex-wife during the brother's lifetime.

#### Judicial Separation

Some petitions were for judicial separation rather than divorce, on the grounds of adultery, cruelty or desertion. In such cases the parties were not free to re-marry, but gained some legal protection; the wife's property and earnings from the time of the separation were protected, and she could be awarded alimony; the husband would no longer be liable for any debts incurred by his wife.

A wife might gain a separation on the grounds of desertion if she had been obliged to leave the home because of her husband's misconduct, for example if he were an habitual drunkard. It did not, however, constitute desertion if a husband's occupation required him to be absent from home for long periods, for example if he was a soldier or sailor.

From 1878 local magistrates could grant separation and maintenance orders to the wives of violent husbands, and from 1886 a husband who deserted his wife and children, or refused to maintain them, could be ordered by the magistrates to pay up to £2 per week.

Some Poor Law authorities required deserted or abused wives to obtain such orders before granting them relief. A separation might be obtained where there were insufficient grounds for divorce, or the petitioner had religious or moral objections to a full divorce.

A petition might be made for Restitution of Conjugal Rights, where one party had withdrawn from cohabitation without good cause. The absent party could be served with an order to return, and if they refused, this was deemed to be

desertion, and the injured party could then petition for a Judicial Separation.

#### Annulment

Such petitions were rare, but could be granted on four grounds: Impotence, provided the condition existed before the marriage and was permanent; Absence of Consent, where consent had been obtained through fraud or coercion, or insanity of one of the parties at the time of the marriage; Breach of Statute, where the parties were within the prohibited degrees of relationship, or where one or both had not been free to marry at the time of the marriage &ndash; this would include cases where a divorced person re-married before they had obtained their Decree Absolute; Bigamy, in which case the injured party had to prove that the first marriage was valid.

If a Decree of Nullity was granted, it was as though the marriage had never taken place. This could have serious implications for any children born of such a marriage, who would be deemed illegitimate.

**Other Records** The National Archives at Kew holds a 2% random sample of divorce files from 1938 onwards, where the Official Solicitor acted for one of the parties. They are held in record series J132, and are searchable by name using the online Catalogue.

Registers giving details of cases where further investigation was made after the granting of the Decree Nisi are held in series TS 29. They cover the period 1875 to 1977, but the names of the parties do not appear in the Catalogue. Both series may be subject to closure periods of up to 100 or 75 years respectively, and are original documents that can only be viewed at Kew.

Divorces were often reported in the local or national press, particularly in the earlier years. If a divorce case appears in *The Times*, you should find the full report using *The Times Digital Archive*, available at the FRC in the Online Reference Area, and also at Kew.

We also hold a microfiche index to divorces in *The Times* 1788-1910. Please ask at the Enquiry Desk if you would like to consult this index. **Certified copies of Decrees Nisi and Absolute** If you need legal proof of a divorce in any court, from 1858 to the present day, 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 can provide a certified copy of the Decree Absolute.

If you want information on the cause of the divorce, ask for the decree nisi as well.

From the Family Records Centre Factsheet