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ANCESTRAL TRAILS - The Complete Guide to British Genealogy and Family History by Mark D. Herber (1997)

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Breakdown of Marriage

Until 1857 divorce as we understand it (giving each party the right to remarry) could only be obtained by a private act of Parliament. Copies of these acts are held at the House of Lords Record Office. A bill had to pass through the House of Lords (a committee of which heard the evidence) and then through the House of Commons. By 1857 there had been only 318 such divorces. Adultery had to be proved and a husband often took separate proceedings in the civil courts for damages against the wife's lover, for trespass and criminal conversation. Divorce was particularly difficult for women to obtain (there were only four successful petitions before 1857).

Until 1857 only the ecclesiastical courts had jurisdiction to assist spouses who could not use the parliamentary procedure. The church courts could annul a marriage (by a decree of nullity) declaring that the marriage had never been valid. This allowed one or both spouses to marry again. A common ground of these applications was that one of the spouses had entered into a prior contract of marriage with a third party (thus making the second marriage bigamous). From 1754 another ground for applications was that one or both spouses had been under 21 at the time of the marriage and that parental consent had not been given. Before 1857 the church courts could also grant a decree of separation *a mensa et thoro* (from bed and board). This decree did not allow the parties to remarry, but it released them from the obligation to cohabit as man and wife. A spouse had to prove that the other had been guilty of adultery or life-threatening cruelty. Even by the 1840s only about 40 cases of separation or annulment came before the church courts of England each year.

The most common remedy for an unhappy marriage was desertion by one party or separation by agreement. However, the church did not recognise the right of a spouse to leave the other. In particular, if a husband deserted, his wife and children were likely to become dependent on parish relief. The church courts therefore prosecuted many deserting husbands (and sometimes a wife). However, in most cases, a deserting husband was soon far away and starting a new life (often in the army or navy). Remarriage constituted the offence of bigamy (punishable as a felony by civil courts), but it no doubt happened anyway. In some cases, if a spouse left home and was not heard of for 7 years, he or she was presumed dead and the other spouse could remarry (at least church courts in practice rarely prosecuted for bigamy after a 7 year absence).