

# Guide to Divorce Records

## Chester County Archives

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The first Pennsylvania divorce law was passed in 1785. This was the first divorce law in the nation to include cruel treatment as an acceptable reason for divorce. [1] This law would be the foundation for future Pennsylvania divorce laws, outlining the divorce process, as well as the acceptable reasons for divorce.

The process began with a written petition from the libellant to the court. After reviewing the petition, the court would release a subpoena for the respondent to appear in court and contest the charges laid against him/her. If the charges held merit, a court date would be set. Both parties would choose whether to be judged by a jury or the court. Court proceedings similar to the ones seen today were also followed in the 18<sup>th</sup> and 19<sup>th</sup> century: depositions of witnesses, testimonies, etc. There were two types of divorces that could result: bed and board and annulment. A divorce from bed and board was, essentially, a legal separation. The woman would retain her dower rights and could also petition for alimony, but she could not legally marry again; an annulment was a complete dissolution of the marriage vows. With this type of divorce, both parties could legally marry again. The legal grounds for divorce also changed overtime. They began with only a few, such as desertion, adultery and cruel treatment and then expanded to also include fraud and felony convictions. The changing laws from 1785-1899 are listed in the next section: [History of Divorce Laws](#).

The first divorce case heard by the Chester County Court of Common Pleas was in 1804. Prior to that all divorce cases for Chester County were handled at the provincial or state level.

You may find within a divorce file:

- Petition from Libellant (states names of people involved and reason for divorce)
- Interrogatories
- Depositions of Witnesses
- Decree
- Court Proceedings
- Subpoenas
- Answer Petition (From Respondent denying charges against him/her)
- Petition for Payment (Usually from the wife asking the court for her husband to pay expenses during the case)

### **Divorce Records, 1804-1902**

[Online Index](#)

### **Divorce Records, Post-1902**

Contact: [Chester County Prothonotary's Office](#).

## **History of Divorce Laws**

### **1785 - An Act Concerning Divorces and Alimony [2]**

Enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly, this act gave the Supreme Court the ability to grant divorces in Pennsylvania, though the legislature still retained the right to grant divorces as well. Reasons for divorce were the inability to procreate, adultery, desertion, cruel treatment, and/or bigamy. Most divorces granted were restricted to bed and board (a legal separation) but the legislature also allowed for a complete annulment.

**Section V** - An annulment dissolved any rights each partner had to the others property. Both man and woman were also legally allowed to marry again.

**Section VII** - Divorce on the grounds of adultery restricted the adulterer/adulteress from marrying or living with the person with whom they committed the crime.

**Section VIII** - If the law in Section VII is violated then, the woman shall relinquish all her property claims. Her will and other like documents would be considered null and, at her death, she would be considered intestate.

**Section IX** - Divorces would not be granted for non-Pennsylvania citizens.

**Section X** - If a man either deserts his wife or cruelly treats her, she would be allowed a divorce from bed and board. This was essentially, a legal separation. She could not legally remarry but the women would retain her dower rights and she could also petition the court for alimony.

**Section XI** - The Assembly retained the power to set the price of alimony as they saw fit.

**Section X** - The decision of the Assembly can be appealed to the Pennsylvania Supreme Court.

### **1804 - Supplement to An Act Concerning Divorces and Alimony [3]**

**Section I** - Incestuous marriages are null and void. The parties involved will also be criminally punished.

**Section II** - Any Supreme Court, Circuit Court, or Court of Common Pleas were empowered to rule on divorce cases. This was to compel both parties, libellant and respondent, to appear in court.

### **1843**

Divorces can be obtained if the wife is considered a lunatic. The evidence must be sufficient to support the claim. [4]

Only Pennsylvania citizen can petition for divorce in Pennsylvania. In order to be considered a citizen, one must have a residence located in Pennsylvania one year prior to writing the petition for divorce. [5]

**1845**

The Prothonotary was empowered with overseeing alimony payments. Alimony was set as a lien on the man's property until his full amount is paid up every period. Failure to pay alimony results in an attachment order on his property. The property is then surveyed and if it is sufficient in covering the cost of alimony the man will be discharged, otherwise he will be imprisoned. [\[6\]](#)

**1854**

Court of Common Pleas was granted the right to rule over divorce cases where the libel claimed marriage fraud, felony conviction, and/or cruel and barbarous treatment. [\[7\]](#)

**1862**

Bed and board divorces were granted for adultery. The wife could also petition for alimony. [\[8\]](#)

**1870**

The wife and husband can give testimonies during the court proceedings. [\[9\]](#)

**1874**

The General Assembly shall not pass any law granting individual divorces. [\[10\]](#)

**1878**

Prothonotary empowered to keep a separate divorce index docket. [\[11\]](#)

**1893**

A wife was allowed to petition for divorce after six months of being deserted. The final decree of divorce would not be issued until the desertion persisted for a full two years. [\[12\]](#)

**1895**

Alimony could be received for divorces involving cruel treatment. [\[13\]](#)

**1899**

Intermediate courts were established for appeals dealing with, but not limited to divorces. [\[14\]](#)

**Other Resources Available**

- Merril D. Smith, *Breaking the Bonds: Marital Discord in Pennsylvania 1730-1830*, New York: New York University Press, 1991.
- Christina Kassabian Schaefer, *The Hidden Half of the Family*, Maryland: Genealogical Publishing Co., Inc, 1999.
- Marylynn Salmon, *Women and the Law of Property in Early America*, Chapel Hill: The University of North Carolina Press, 1986.
- Carole Shammas, Marylynn Salmon, and Michel Dahlin, *Inheritance in America: From Colonial Times to the Present*, New Brunswick: Rutgers University Press, 1987.

\* The jurisdiction for divorces changed overtime. The General Assembly was the sole authority until 1785 when the Pennsylvania Supreme Court was also granted jurisdiction. In 1804 the Assembly passed an act that empowered all the Pennsylvania courts to rule on divorce cases. The General Assembly also retained its right to rule on divorces cases until 1874.

[1] Merril D. Smith, *Breaking the Bonds: Marital Discord in Pennsylvania, 1730-1830*, New York: New York University, 1991.

[2] 1785 Statutes At Large of Pennsylvania, "An Act Concerning Divorces and Alimony," MCLXXXVII, 94-99.

[3] 1804 S.A.L.P., "Supplement to the Act, Entitled "An Act Concerning Divorces and Alimony," MMCDXCV, 834-835

[4] 1843 Laws of Pennsylvania, 113, Sec. 8.

[5] 1843 L.P., 161.

[6] 1845 L.P., 300.

[7] 1854 L.P., 629, Sec. 1-2.

[8] 1862 L.P., 430.

[9] 1870 L.P., 15.

[10] 1874 Constitution of the Commonwealth of Pennsylvania, Article III, Sec. 7.

[11] 1878 L.P., 125.

[12] 1893 L.P., 342, Sec.1-2.

[13] 1895 L.P. 226, Sec. 1-3.

[14] 1899 L.P. 144, Sec. 7