

Eighteenth Century Divorce in Rhode Island

By Maureen A. Taylor

Rhode Island had one of the highest frequencies of divorce in the American colonies throughout the eighteenth century.[1] Prior to 1747, adultery was the only reason officially recognized by the General Assembly or Court of Trials for seeking a separation or divorce. After 1747, divorce petitions were examined at the quarterly sessions of the Superior Court of Judicature. While marital separation existed in Rhode Island since the mid-seventeenth century, grounds for divorce remained limited until 1798. In that year the law code for divorce was expanded to include “impotency, extreme cruelty, and gross misbehavior and wickedness in either of the parties repugnant to and in violation of the marriage covenant.”[2]

There are several reasons genealogists should consider looking for divorce documents. Each divorce record contains evidence of the marriage and provides an interesting look at your ancestors. All petitions for divorce, including unsuccessful ones, are located at the Judicial Records Center (5 Hill St., Pawtucket, RI 02860). For more information on obtaining access to these materials or for a list of their holdings see their [website](#). The records for Providence County are available and indexed. Check with the Judicial Records Center for access to the records for other counties.

Types of Divorce

Two types of actions could be granted to a divorce petitioner in eighteenth century Rhode Island: *a mensa et thoro*, which acted as a legal separation, and *a vinculo matri*, a formal divorce. The act of legally separating from a spouse generally provided “bed and board” support for the woman, but did not usually make allowances for remarriage. Augustus Babcock’s advertisement in the July 26, 1790 issue of the *Newport Mercury* stated that he would not honor his wife’s debts or “pay for her Board or maintenance, nor for the Board, Support and Maintenance, of my said Children.” Joseph Pain sought a separation from his wife Ruth and published notice in the *Providence Gazette* on September 24, 1796, that he would support her at the house of either Benoni Pain or Enos Mowry. By publishing such a notice he was publicly announcing a bed and board separation, which supports a theory that newspaper advertisements were a form of legal separation in lieu of the unwieldy legislative divorce proceedings. Ruth Pain eventually divorced Joseph after two petitions when neighbors supported her in a deposition.

While colonial newspapers published many such notices, the more common practice in Rhode Island was to seek a divorce *a vincula matrimonium*, which would allow either partner to remarry.

Contents of Divorce Petitions

Divorce cases began with the petitioner’s statement, which expressed the petitioner’s desire to fulfill the bond of marriage and placed blame for its failure on the spouse. This formula was the same regardless of whether the petitioner was male or female. Eunice Smith called “Marriage a perpetual Fountain of Domestick Sweets” and declared that she had fully expected to carry out the responsibilities of her marriage vows when she married.[3]

Divorce petitions also included such information as the date and place of marriage, and when the couple settled in a particular town, as well as the reasons for seeking the divorce. In cases where the petitioner sued for divorce because of bigamy, the petition can give valuable proof of the first and the additional marriage. Joseph Gray married Lucy Bancroft in Smithfield in 1772, then abandoned her and married again in Reading, Massachusetts, in 1780. Her divorce petition included a copy of the second marriage notice. By the end of the century, divorce cases also included a register of goods to be used for alimony. Phyllis Brazier gave the judge an inventory and asked for an iron pot and kettle.[4] Suzannah Richards’ inventory listed furniture, spinning wheels, basic household necessities such as plates and utensils, and a gun that belonged to her first husband.[5] The final element of a divorce case was the collection of depositions from friends and relatives.

Occasionally wives or husbands were asked to testify in the divorce proceedings. John Whipple accused his wife Hannah of having given birth to a bastard; the Justices of the Peace of Johnston summoned her to answer the charge. During the examination she admitted that the child was conceived through adulterous relations with John Stravens in 1763, during the time she was boarding with or working for John Fenner. Interestingly, when asked “How long ago is

it since you see your husband last?" she stated that "it is better than three years." [6] There is no information on where John Whipple had been during those years.

Other Grounds for Divorce

Cases of spousal abuse appeared in divorce petitions and in newspaper advertisements. Deborah Baker left her husband of twenty-one years because he threatened to kill her. [7] Men also left abusive relationships. Andrew Stone claimed that his wife Mary frequently beat him.[8]

Many men and women filed for divorce on grounds of adultery and named the guilty party. Prudence Austin claimed she was left with two children to support while her husband Gideon committed adultery with Mary Webb.[9] Richard Borden stated in his petition that his wife "hath most notoriously at many times quitted and absconded from his bed and board, and accompanied abroad with other, particularly in a criminal, carnal and adulterous manner with one Fisher Fiske." [10]

Desertion

The divorce petitions and newspaper notices indicated that desertion was relatively common, but it was difficult to verify the whereabouts of the missing spouses. Historian Nancy Cott suggested in her article "Divorce and the Changing Status of Women," that desertion was itself a form of self-divorce, the "poor-man's self divorce." [11] While deserting men generally left town (New York was a popular destination), most women remained in the local area.

Children

Divorce petitions generally focused on the relationship between husband and wife, but they sometimes offered examples of what happened to the children. Robert Potter's wife Sarah moved away with her father's family leaving her child behind.[12] Marcy Brown deserted her eight children, including one infant, to join the Shakers.[13] Thomas Eddy's wife Ann eloped with all of his belongings and his children.[14]

Divorce cases often offer the only tangible evidence of births, marriages, and re-settlements. In bigamy cases there may be a second family to research and the clues exist in the form of a signed slip of paper by the minister who performed the second or first marriage. Depositions state family relationships and help researchers develop a sense of the kinship networks that existed in Rhode Island's small towns and villages. Family members were often called upon to be witnesses. Occasionally the courts sought a deposition from a relative who lived in another area or state thus giving genealogists a new place to search for records.

These petitions are a way to learn about your ancestors' lives from their own words. The vast majority of these individuals left no other written record behind. Unfortunately, court documents are overlooked and underutilized because they are not always indexed. In the case of divorce petitions looking for "a needle in a haystack" may hold the answer to your genealogical brick wall.

[1] Herman R. Lantz, *Marital Incompatibility and Social Change in Early America* (Beverly Hills, CA: Sage Publications, 1976) 19.

[2] Sheldon S. Cohen, "The Broken Bond: Divorce in Providence County, 1749-1809." *Rhode Island History* 44 (August 1985) 68.

[3] Divorce petition of Eunice Smith, Superior Court, Providence County, March 1782

[4] Divorce petition of Phyllis Brazier, Superior Court, Providence County, March 1799.

[5] Divorce petition of Susannah Richards, Superior Court, Providence County, September 1794

[6] Deposition of Hannah Whipple in divorce petition of John Whipple, Superior Court, Providence County, March 1775

[7] Divorce petition of Deborah Baker, Superior Court, Providence County, March 1794

[8] Divorce petition of Andrew Stone, Superior Court, Providence County, March 1795

[9] Divorce petition of Prudence Austin, Superior Court, Providence County, March 1787

[10] Divorce petition of Richard Borden, Superior Court, Providence County, September 1782

[11] Nancy Cott, "Divorce and the Changing Status of Women in Eighteenth-Century Massachusetts," *William and Mary Quarterly* Vol. 33, No. 4 (October 1976) 593.

[12] Divorce petition of Robert Potter, Superior Court, Providence County, March 1795

[13] Divorce petition of David Brown, Superior Court, Providence County, March 1788

[14] Divorce petition of Thomas Eddy, Superior Court, Providence County, March 1794