



Newsletter # 9
April 2007

Adelaide Northern Districts Family History Group

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Meetings are held on the third Thursday
of each month at 7pm at
The Old Police Station, Ann Street, Salisbury.

\$2 entry fee for non-members

YOUR COMMITTEE

President:	Peter Applebee
Vice President:	Bev Burke
Secretary:	Margaret Flaiban
Treasurer:	Tammy Martin
Membership Coordinator:	Helen Stein
Committee	Jacqui Dennis Sandie Francis

RAFFLE

Congratulations to Bert, Tammy & Kay who won our last raffle.
Thank you to all who supported us.

MEETINGS

Our last meeting was our second Help Night where we introduced everyone to our new computer research room and our resources. The meeting was held in the downstairs area, when everyone broke into various groups depending on their areas of research. A great night was had by all.

Tonight's meeting will be Suzanne Maiden from the Public Trustee giving us an insight on how to hire a Professional Genealogist.

The guest speaker at our May Meeting will be James Potter of the Salisbury and District Historical Society. He will share with us his extensive knowledge about the early families of Salisbury.

Our June Meeting will be another Family History Help Night. These informal sessions can be a great help in furthering your research.

*** If you would like a lift to a meeting please call Margaret on 8281 8431
or Bert on 8254 7950***

*The group will not be held responsible for any statements or opinions expressed in this Newsletter.
All submitted articles and advertised offers of services are printed in good faith of accuracy.
The Editor reserves the right to edit articles for grammatical purposes if necessary.*

***** **SPECIAL EVENT** *****

On Saturday 31st March we conducted our first Cemetery Walk, starting at 1.00 pm sharp at our rooms at Ann Street Salisbury. The weather was perfect for such an outing. We were pleasantly surprised to count 35 people who walked through the door, eager to start the tour, including our International visitor Detlef Papsdorf from Germany.

Mr James Potter from the Salisbury Historical Society started the tour off by giving useful and informative facts regarding the graves at St Johns Anglican Cemetery in Salisbury.

It was then a short drive to the Zoar Bible Christian Cemetery in Argent Street Penfield where Janet Castle (nee Broster) met up with the Group. Mrs Castle's family of Broster ancestors are buried at Zoar and she was very keen to share her information. Our President, Peter Applebee gave us a very informative speech on the very early Bible Christian people who are buried at Zoar.

The Group then drove to the Willaston General Cemetery where our good friend Bev Burke kept everyone informed of the important graves, which included John McKinley the famous explorer, as well as the May Brothers who were important Engineers of the area. Bev went on to show us where James Martin, another famous Engineer of the area was buried as well as the Dawson Memorial. There are quite a number of early Gawler settlers buried in Willaston from the 1860's including John Smith who founded the village of Smithfield.

The afternoon was finished off by everyone enjoying the pleasant sunshine and a cup of tea or coffee together with sandwiches, fruit and cake.

What could be nicer !!

NEW MEMBERS

We welcome Anne Mellon, Jean Wood and Alison Morgan to our group as new members.

Also a very big welcome to our first international member, Detlev Papsdorf from Germany.

Detlev has researched and photographed many Lutheran Cemeteries around Australia, and was here for several weeks during Febraury and March to continue his work. He attended our Cemetery tour on 31st March, which he enjoyed immensely.

He is willing to act as our official translator for the Old German Language. Also, he is happy to operate as our agent in Germany to research free of charge, families with a Saxon origin, within reason. He will do research free of charge, but of course any costs will be passed on.

GENEALOGY SEMINAR

26th May 2007 ~ 10am – 4pm

at Uniting Church Hall, William Road, Chrisites Beach

Seapers: Di Belamy, Graham Jaunay & Cora Nunn

Tickets \$25

Includes light lunch morning & afternoon teas

Limited places see Margaret if you would like to attend



A Brief History of Divorce

Under early Catholic Church law there was no such thing as divorce. Death was the only agent for the permanent dissolution of a valid marriage. Marriages that were found on investigation to be invalid could be put aside (as was the case with Henry VIII). By the end of the sixteenth century, England was the only European Protestant country to have no divorce law as such. There was no legal change in the law of divorce before 1857. Fundamental changes in practice and attitudes came only in the twentieth century.

In practice, however, various ways were found to separate partners in unsatisfactory marriages, through custom, the church courts, the common law courts and parliament. There were five main methods:

- Private Separation
- Desertion and Elopment
- Wife Sale
- Judicial Separation by the Ecclesiastical Courts
- Full Divorce by Act of Parliament
- Criminal Conversation

Private Separation

The conditions of separation were drawn up in a private deed between the husband and the trustee of the wife, the latter having no legal personality in common law. They settled into a common form by c.1730, and included provision for children, and some legal safeguards for the wife, the husband giving a bond to provide a maintenance allowance. Deeds of separation may be found enrolled in the Close Rolls in C 54, although you will need the names of the parties to find them in the contemporary 'indexes' at the PRO. By the late seventeenth century (and perhaps before) cases were brought in Chancery in an attempt to enforce the deeds against defaulting parties. You will need the names of the parties and the approximate date, to trace cases before Chancery in the various C series.

There may also be records of the deed, and family correspondence, amongst family or estate records. These collections are usually held locally.

The passing of the divorce act in 1857 did not affect the use of these deeds as the law made no provision for the ending of marriages on the grounds of incompatibility.

Desertion

When little or no property was involved this was the simplest solution. However neither party was free to legally marry again, although bigamous marriages took place. There are occasionally applications for relief by the deserted wife among the Quarter Sessions records held locally, as under statute law a deserted wife became chargeable to the parish.

Wife Sale

This was a form of public separation, which took place on market day, usually with pre-arranged bidding. Since many of these marriages were based on informal contract, this was a wholly different type of 'marriage' and 'divorce'. It fulfilled the function of providing a symbolic transfer of person, property and responsibility. There could even be a deed of sale, though survival of these is extremely rare. Reports of wife sales may occasionally be found in Quarter Sessions records held locally, and in local newspapers.

Judicial Separation by the Church Courts

Judicial separations were authorised through the church courts, usually in a suit between the husband and wife before the local consistory court. The cases so started were rarely fought to a finish, as they were often started in order to bring one of the parties to agree to terms. There were several different types of judicial separation, the most common being separation from bed and board, (a mensa et thoro) which was granted for adultery and/or life threatening cruelty.

Many people chose to enrol judicial separations in the decree rolls of the Court of Chancery (C 78): this made them a matter of legal record in the common law. Ecclesiastical court orders directing payment of money could also be enrolled up to six months after being made.

Records of the consistory courts are held locally. There was a right of appeal to the archbishop's court. The records of the Province of Canterbury's Court of Arches are available at the Lambeth Palace Library, and those of the Consistory court of York at the Borthwick Institute of Historical Research. Further appeal was to the High Court of Delegates (DEL) until 1834, and to the Judicial Committee of the Privy Council (PCAP) from 1834 to 1858. On appeal, the case would be suspended in the lower court, and transcripts of all the records transferred upwards.

Thus the PRO holds various divorce records from some local church courts, in DEL 1, DEL 2, PCAP 1 and PCAP 3. Some of the early material, from the 17th century, is in Latin. The accounts of proceedings can sometimes run to hundreds of pages. The Case Books in DEL 7, 1796-1834, and PCAP 3, from 1834, contain bound volumes of printed proceedings and also may contain manuscript records of the judgement given.

Full Divorce by Act of Parliament

Acts of Parliament were used for centuries to regulate difficult situations among the nobility and gentry, caused by bigamy, adultery, pre-contract of marriage, etc. However, the first true parliamentary divorce did not come until 1670, between John Manners, Lord Roos, and Lady Anne Pierpont, which created a precedent for parliamentary divorces on the grounds of the wife's adultery. Divorce acts are held by the Parliamentary Archives: there are a very few examples in the PRO, in C 89 and in C 204. For the Roos case, see C 89/15/20 and C 89/15/21.

Criminal Conversation

This was a civil suit in the court of King's Bench, for the recovery of damages against the lover of the adulterous wife. Many reports of sensational trials found their way to the newspapers, both national and local, from the late eighteenth century. Many trials were covered in some detail by The Times. In 1809 the House of Lords ordered that the transcript of a preliminary trial for criminal conversation should accompany every divorce bill brought before it. This suit was illegal in Scotland.

The Matrimonial Causes Act 1857 led to the creation on 1 January 1858 of a Court for Divorce and Matrimonial Causes. This took over the jurisdiction for matrimonial affairs from the church courts and was empowered to deal with child custody, maintenance and alimony. Appeal was to the House of Lords. The procedures and remedies of the church courts were still applied. The action of criminal conversation was abolished, but the husband was still allowed to claim compensation.

The 1857 act offered no radical changes in procedure or in the legal basis of the grounds for divorce. Husbands could sue on the grounds of the wife's adultery, while the wife could sue for divorce on the grounds of adultery only if combined with a further offence: bigamy, bestiality, incest, rape, sodomy, cruelty or desertion for two years. The passing of the act did not affect the use of deeds of private separation, as the law made no provision for the ending of marriages on the grounds of incompatibility. Many reports of sensational trials found their way to the newspapers, both national and local. Many trials were covered in some detail by The Times.

In 1858 the Legitimacy Declaration Act empowered the Court to hear and determine petitions for declarations of legitimacy or validity of marriage. In 1873 the jurisdiction of the Court for Divorce and Matrimonial causes was transferred to the new High Court of Judicature, where it was joined to the probate and admiralty courts to form the Probate, Divorce and Admiralty Division. The Court of Appeal now heard appeals.

In 1878 the Matrimonial Causes Act conferred jurisdiction on the justices of the peace in cases of marital violence. Such records that survive may be available locally. In 1925 divorce was allowed to be granted to wives on grounds of the husband's adultery. The causes for divorce were extended in 1937.

Divorce Records, 1858-1943

Divorce became the business of the secular courts only in 1858. Divorce files from 1858 to 1943 exist in the PRO. They include papers arising from petitions for divorce and judicial separation, court minutes, and declarations of legitimacy. They may also include a copy of the petition giving the grounds for the divorce and copies of the original marriage certificate. All divorce files of the Central Court before 1938 were kept, although unfortunately there are some gaps: for example, some 5000 files for 1936 are not there. After 1938 only a sample was kept. All these divorce files are in J 77. The indexes are in J78, and cover 1858 to 1958.

After 1943, the decrees nisi and absolute have been extracted from the files. (This was also done from 1938, for the files not selected for preservation.) The decrees are held by the Principal Registry of the Family Division, who is prepared to search them for a fee.

From 1938 onwards, there is also a 2% random sample of divorce files in J 132, for cases where the Official Solicitor acted for one of the parties, usually a child or person of unsound mind. These are subject to a 75 year closure.

The Procurator General had an interest in regulating divorce cases. There are epitomes of cases in which he showed why a decree nisi should not be made absolute, in TS 29. Most are closed for 75 years. Case papers of the Procurator General, 1852-1937, are in TS 22. These are closed for 100 years. Divorces between British and foreign nationals are also mentioned in the Foreign Office records where a precedent was involved.

Divorce Records After 1943

Divorce became widely available after the Second World War, when the extension of legal aid to divorce suits brought it within the financial reach of all citizens. Records are still held by

the Principal Registry of the Family Division, who will search them for a fee. The files have been stripped of the case papers, and now contain only the decrees nisi and absolute. Contact The Principal Registry of the Family Division, First Avenue House, 42-49 High Holborn, London WC1V 6NP.

At the PRO, there is a 2% random sample of divorce files in J 132, for cases where the Official Solicitor acted for one of the parties, usually a child or person of unsound mind. These are subject to a 75 year closure. Reports on divorce reform submitted to Parliament by the Law Commission, 1974 to 1981, are in BC 1. These are already open.

Divorce in Ireland

The 1857 act did not apply to Ireland. Inhabitants of Ireland who sought a divorce still had to submit a private bill to Parliament in London. All matrimonial suits short of full divorce passed through the church courts until they were disestablished in 1869. In Ireland the separation from bed and board was termed a *divortium a mensa et tor* and was available on the grounds of adultery, unnatural practices and cruelty. After 1869 the church courts' jurisdiction passed to the civil courts. These records of the Irish courts have not survived. After 1921, Westminster's jurisdiction was transferred to the parliament of Northern Ireland. Divorce in the Irish Free State was not technically illegal until the constitution of 1937, but no bills of divorce were accepted by the southern Irish authorities.



'Owing to his Lordship's recent acrimonious divorce, the hall is now open at half price.'



"Thanks to separations, divorces and remarriages, I've got 20 grandparents."

Did I read that right?

Another article from the Scribe.

Beginners often make two common mistakes when reading handwritten documents. They create spelling errors when non-exists, because they do not know that some letters used to be written differently. For example the word we usually read as “ye” as in “*Ye Olde Shoppe*” is not a strange outdated word at all, the letter appearing to be a “y ” is actually a character known as a thorn that stood for the letters “*th.*” “*Ye*” is actually the very modern “*the*” using an outdated symbol. Often appearing in documents of the 16 and 17th Centuries will be the surnames of Fox and Francis these appear as being “*ffox* ” and “*ffrancis* ” and could be overlooked by the person researching the respective families.

Another anomaly that appears in both type set and the hand written documents is the double “*s* “ that appears to be “*fs*” but was the accepted way of writing the first *s* and is often referred to as being a long “*s.*” Incidentally there are no English words that interpret as “*Olde = Oldee*” and “*Shoppe = Shoppee*” they are “*Old*” and “*Shop*” the “*e*” at the end of the word was silent and was common, even today in words that end with a “*e*” like “*come*” we do not say “*commee*” and so it was back then. There is no difference between the word “*Kyngge*” of the 17th Century and the word King. The letter “*y*” was an old form for the modern “*i* ” hence the surnames Smith and Smyth are the same, it is just that one branch retained the old fashioned “*y*” in the name and what difference is “*Ye Olde Village Smythe*” and the old village Smithy ?

Some words that appear in Wills for example, could be difficult at first to decipher, because of the use of what was called “*Law hand*” writing, often words do not mesh and what appears to be a wiggle at the end of a line is in fact an abbreviation mark for a comma. What appears to be a “*c*” is in fact an “*r*” whilst what appears to be an “*e*” is in fact a “*c*”. Thomas may appear as “*Thoms*” or “*Thos*” John as “*Jno*” Charles as “*Chrls.*” Found in one will document dated 1770; the family surname spelt four different ways by the recording solicitor.

Some words may seem to be right because some licence has been given to the way they were spelt in a document. For example, the term “*lyckerd butts*” you might assume that the recorded meant Liquor Butts meaning liquor Casks, when in fact the recorder was referring to the tanning of leather used for the soles of shoes. If you assume that the mention of a “*cressett*” was referring to a Family Crest, or was a half moon shaped item, then you would be disappointed to learn that neither was correct, for it is a small iron vessel to hold oil burned as a torch. The term “*sack*” does not mean a large bag or to dismiss someone from your employ, but means a dry white Spanish wine, carried back to England between the 16th and 18th Century in Sack Ships. “*Noggin*” or “*Nogging*” is not a head but a small drinking vessel; the latter refers to a small quantity of liquor. A “*Maunde*” also “*Mande, mawnde*” was a wicker basket, and a “*Joynt table*” was not a place for carving up the Sunday roast, but a piece of furniture made by a Joiner.

When dealing with unusual terms and spellings, it might be a good idea to consult someone more experienced in the Family History Centre, to make sure that you are not travelling along the wrong path that could result in you wasting time and money.

Bring any hand written documents such as old wills or other hard to read items to the Playford Family History Centre and they will try to assist, or if you cannot call in, then write to the ANDFHG Newsletter, I would be pleased to answer any query. After all that is what we are here for.

The Scribe.