"Not Made Out of Levity" Evolution of Divorce in Early Pennsylvania

"WHEREAS," read the preamble of the Commonwealth's first substantial divorce code, in its felicitous eighteenth-century phrasing,

it is the design of marriage, and the wish of parties entering into that state that it should continue during their joint lives, yet where the one party is under natural or legal incapacities of faithfully discharging the matrimonial vow, or is guilty of acts and deeds inconsistent with the nature thereof, the laws of every well regulated society ought to give relief to the innocent and injured person.[1]

The Act of September 19, 1785, exemplar among a spate of state statutes passed in the post-war pioneering period in American law and doctrine, formed the basis of all subsequent Pennsylvania divorce legislation and had its foundation in the Commonwealth's colonial and Revolutionary experiences and experiments.[2]

The earliest statutory provision in Pennsylvania pertaining to divorce, a provision nullifying bigamous marriages, appeared in the Duke of York's laws of 1664.[3] In the 1665 alterations of the laws divorce from bed and board[4] for the crime of adultery was established: "In cases of Adultery all proceedinges shall bee accordinge to

[1] *The Statutes at Large of Pennsylvania from 1682–1801* (Harrisburg, 1896–1908), XII, 94.

[2] George J. Edwards, Jr., *Divorce: Its Development in Pennsylvania and the Present Law and Practice Therein* (New York, 1930), 3–11.

[3] Abraham L. Freedman and Maurice Freedman, *Law of Marriage and Divorce in Pennsylvania* (Philadelphia, 1957), I, 248; *Charter to William Penn, and Laws of the Province of Pennsylvania, passed between the years 1682 and 1700, preceded by Duke of York's Laws in force from the year 1676 to the year 1682* (Harrisburg, 1879), 36.

[4] Pennsylvania recognized two types of divorces: a divorce from bed and board, no more than a legal separation, and divorce from the bonds of matrimony which nullified and made void the marriage.

the Lawes of England which is by Divorce . . . Corporall punishment or fine and Imprisonment."[5] No colonial tribunal, however, was empowered by statute with jurisdiction to enforce the provision, and no record exists of any judicial decree of separation granted under it. Divorce as part of the punishment of a convicted adulterer was restated in William Penn's Great Law of December 2, 1682. The Quaker code provided that "both he and the woman shall be liable to a Bill of Divorcement if required by the grieved husband or wife, within the . . . term of one whole year after Conviction,"[6] and it vested authority for receiving and acting upon the bill, not in the courts of the colony, but in the Assembly.

Reflecting, perhaps, Quaker preoccupation with legislation for the purpose of condemning and curbing all forms of sexual laxity, punishment for adultery was made increasingly severe between 1700 and 1706 and the penalty of divorce extended to other carnal offenses. The Act of November 27, 1700, delineating the punishment for sodomy and bestiality, stated that if the offender "be a married man, he shall also suffer castration, and the injured wife shall have a divorce if required. And if a married woman be legally convicted of bestiality her husband may have a divorce if requested."[7] Another statute of the same date sanctioned life imprisonment at hard labor for the crime of bigamy and provided that the "first wife or husband of the [bigamist] . . . shall have a bill of divorcement granted against her or his husband or wife so offending, if desired."[8]

These acts, disallowed by Queen and Parliament as cruel and contrary to English law, were replaced in 1705 by four new statutes which again enlarged upon the subject of divorce and which obtained until the post-Revolutionary general act of 1785. The first statute, an act for "the preventing of incestuous marriages," drew up a table of degrees of consanguinity and affinity within which marriage was proscribed and it empowered the governor, in the event of a violation, to grant a divorce from "the bonds of matrimony."

The second law stipulated that upon conviction of adultery the first offender was to suffer on his or her bare back "twenty-one lashes

[5] *Ibid.*, 63.
[6] *Ibid.*, 109–111.
[7] *Statutes at Large*, II, 8; Edwards, 6.
[8] *Statutes at Large*, II, 8–9.

well laid on, at the common whipping post and . . . [either] imprisonment at hard labor for one whole year" or a fine of fifty pounds. For a second offense the adulterer was to be given twenty-one lashes and to elect either a prison term of seven years or a fine of one hundred pounds. For every conviction from the third on, in addition to prison and the lash, the offender was to suffer branding on the forehead with the letter A. Throughout, the guilty partner was subject to divorce from bed and board awarded to the injured spouse by the "governor . . . if required within one year after conviction."

The third statute punished bigamy with thirty-nine lashes on the bare back and a life term at hard labor. It further provided that the second marriage was to be declared void and that the "first wife or husband of the person offending against this act shall have a bill of divorce from bed and board granted by the governor . . . if desired within one year after conviction."

The fourth law punished sodomy or buggery with life imprisonment at hard labor and with whipping at the discretion of the court, not to exceed thirty-nine lashes at a time, every three months during the first year after conviction. And it provided that "if a married person be . . . convicted of buggery . . . the injured husband or wife shall have a bill of divorce from bed and board; which divorce, as also all other divorces, shall be granted by the governor . . . if required, within one year after conviction."[9]

For the remedy of divorce offered by these laws no procedure was established for making application to the executive, nor was a judicial tribunal ever called into being to hear divorce proceedings.[10] The six cases filed between 1766 and 1773 were instituted as private bills in the Assembly, sent to the governor and the provincial Council for consideration and amendment, returned to the legislature for final action, and at the last, as with all laws of the provincial House, submitted to the Board of Trade and Plantations for royal approval.

From the very first the divorce provided by the law against adultery was challenged. Early in 1766, in his unsuccessful petition before the Assembly, seaman John Goggin, seeking freedom from a wife who had acquired an "extravagant Fondness for strong Liquors,"

9 *Ibid.*, 178–184.

10 Edwards, 7; Freedman and Freedman, 251.

who for many years had abandoned herself to a "lewd and dissolute Course of Life," and who, in January, 1765, had been "delivered of a Bastard Mulattoe Child," protested that a divorce from bed and board offered him no real relief. Under it he remained liable, and his wife was "at Liberty to sue for Alimony or support." He prayed, therefore, the "Assistance and Interposition of the House," asking the Assembly not only to divorce him "in respect to Bed and Board, but from all Bonds of Marriage."[11]

In January, 1769, Lancaster ironmaster Curtis Grubb laid before the Assembly proof that sometime after deserting him his wife Ann had had a "Bastard-Child," and in 1763 had "married . . . a certain Archibald M'Neale." He asked for a "Bill to divorce him from the Bonds of Matrimony," permitting him to marry again, and in granting his petition the House detailed with care the license for its initial divorce law, stating that it had been enacted by the "Lieutenant-Governor . . . by and with the advice and consent of the representatives of the . . . Province in General Assembly met and by the authority of the same." On February 18, 1769, John Penn signed the bill into law in the presence of the House in full session.[12]

When the act was received in England, the Board of Trade, made wary by the bill's very nature, and suspicious of usurpation, referred it to the prominent London barrister, Richard Jackson, K. C.[13] It was Jackson's opinion that Grubb's divorce was "not repugnant to the Laws of England," and he argued that as the mother country "gave validity to Marriages celebrated according to the Rites and Ceremonies . . . not only of the Colonies . . . of Great Britain, but by the Laws of Foreign States; . . . it [seemed] as reasonable and as little inconvenient to give Faith to the Dissolution of that Contract under an Equivalent Sanction. . . ." The marriages of colonists, Jackson held, could hardly be dissolved except by their assemblies. He was inclined to believe that the colonial legislatures ought to be entrusted with the responsibility. However, "as the exercise of this Power might frequently affect other parts of [the] Dominions . . .

11 *Pennsylvania Archives*, Eighth Series, VII, 5841.

12 *Ibid.*, 6309–6310, 6317, 6331–6333, 6358, 6363, 6365, 6528; *Minutes of the Provincial Council*, IX, 564, 566, 568, 580; *Statutes at Large*, VII, 263–265, 606–607, 618.

13 William Renwick Riddell, "Legislative Divorce in Colonial Pennsylvania," *Pennsylvania Magazine of History and Biography*, LVII (1933), 175.

and [as] very important Consequences might . . . be drawn from the allowance"[14] of the Pennsylvania law, he urged its review by the attorney general and the solicitor general. Whatever their views, Sir William De Grey and Sir Edward Willis chose not to make a report, and the law was allowed in silence.

Though the Grubb divorce became law without comment, it did not pass unnoticed. In 1772 and 1773, a flurry of four divorce petitions reached the Assembly. The House took no action in the case of James Davis, Philadelphia tailor;[15] and finding no support for the charges against Mary Dicks, it dismissed the plea of tailor John Dicks of Chester.[16]

The union of the widow Rebecca Vanakin, of "insane Mind and Understanding," with John Martin, "almost an Idiot," had been arranged by Edward Milner and Jacob Hall, relatives of Martin, in order to gain control of the widow's "Bonds and Securities . . . to the Value of near *Four Thousand Pounds*," declared Rebecca's "Friends and nearest Relations," and they solicited the Assembly in January, 1772, to appoint custodians for Rebecca and John and to make "void a pretended marriage." After hearing witnesses and counsel, the legislators, convinced that the marriage of Rebecca and John Martin was a fraud and a travesty, drew up an act of dissolution which they sent to the governor in March. In September, upon the advice of the provincial Council, the governor returned the bill with the message that he could not agree to pass it into law, and the Assembly let the case rest.[17]

The fourth appeal, in which George Keehmle charged his wife, Elizabeth, with infidelity, was successful.[18] On March 21, 1772, using the same language it had in the Grubb case, the House granted Keehmle an identical bill of divorce. By December the annulment was before the Board of Trade, and though the Board conceded that legislative divorces were "not altogether without Example," it cautioned that their granting was a power that the Americans, however

[14] *Acts of the Privy Council of England: Colonial Series*, V, 365–366; *Pennsylvania Archives*, Eighth Series, VIII, 7031–7034.

[15] *Ibid.*, 6738, 6793.

[16] *Ibid.*, 6904, 6928–6929.

[17] *Ibid.*, 6759–6760, 6770, 6801, 6807, 6841–6843, 6845–6846, 6852, 6855–6856, 6891, 6893.

[18] *Ibid.*, 6742, 6774, 6796–6797, 6800, 6814, 6818, 6848, 7030–7031; *Minutes of the Provincial Council*, X, 104–105; *Statutes at Large*, VIII, 243–245.

rarely, had recently assumed. Convinced of its pernicious portent the Board felt compelled to submit the act to the Privy Council "to the end that if it shall be thought that the [colonial] Acts of Divorce . . . are either Improper or Unconstitutional . . . [it] may be advised to give such Directions as . . . to prevent the Laws passed by the Legislature of Pensilvania becoming a Precedent and Example. . . ."[19] On April 27, 1773, the Council "disallowed, revoked and rendered null and void"[20] Keehmle's decree and, close upon the disallowance, sent instructions to colonial governors to withhold their consent from any provincial bill of divorce. Until the outbreak of the Revolution, divorce legislation in Pennsylvania was effectively curtailed.

Immediately with the onset of the war, divorce petitions in unprecedented numbers began to appear in the Assembly. From 1777 to 1785 the House heard thirty-five appeals. Of these, eleven were granted, seven dismissed, and seventeen died on the floor or in committee. Nine of the twenty-three husbands to petition were given decrees. Only two wives applied with effect. Though the far greater number of appeals came from the city and county of Philadelphia, Bedford, Berks, Bucks, Lancaster, Northampton, Westmoreland, and York each sent one or more petitions to the House. In November, 1784, Henry Willis, a Virginian, prayed for, and by March, 1785, had won, a divorce from his wife "with whom he [had] contracted matrimony in [Pennsylvania] and who [was] now resident within the same."[21]

Of the eleven petitions whose legends in the Assembly journals bear no indication of the grounds for complaint, ten were before the House briefly, the majority never getting beyond simple introduction. Elizabeth Osborne's deposition was the one exception. It was read in the House August 9, 1784, and again on August 25, when it was referred to the Philadelphia members, "Mr. Calladay, Mr. Willing, and Mr. Clymer." On August 31, the committee's report was read and debated and on September 4, the House resolved "That Elizabeth Osborne have leave to bring in a bill, to dissolve her from

19 *Acts of the Privy Council*, V, 366; *Pennsylvania Archives*, Eighth Series, VIII, 7031–7033.

20 Acts of the Privy Council, V, 365; *Pennsylvania Archives*, Eighth Series, VIII, 7033; *Minutes of the . . . General Assembly of the Commonwealth of Pennsylvania, 1781–1790* (Philadelphia, 1782–1791), Feb. 8, 1783, 816.

21 *Ibid.*, Nov. 26, 1784, 35; Nov. 30, 1784, 41; Dec. 4, 1784, 47; Dec. 8, 1784, 57; Feb. 21, 1785, 149; Feb. 22, 1785, 152; Feb. 28, 1785, 163; Mar. 30, 1785, 264; *Statutes at Large*, XI, 537.

her marriage with Henry Osborne . . . lately Attorney-at-Law and Escheator-General of the state of Pennsylvania." Mrs. Osborne's divorce act was read successively on September 10, 13, and 29, when the House ordered it "engrossed for the purpose of being enacted into a law."[22] Only here, at the very point of passing, did Elizabeth Osborne's decree falter and her petition fail.

However much the Assembly was willing to accord Elizabeth Osborne, it had little to give Dolly and Graft Gosse. The Gosses entered a joint petition "praying that their marriage . . . be dissolved," and the legislators, viewing this species of mutuality as collusion, at once ordered their plea dismissed.[23] Though the Gosses were the only husband and wife to file together, three couples submitted counter declarations. On November 25, 1782, the Assembly heard and dismissed two petitions—that of Catherine Summers and the petition of Peter Summers, "victualler" of Philadelphia. On November 26, the House accepted a petition from Catherine and in time it granted her a divorce on her multiple complaints that Peter "beat her in a most cruel and inhuman manner and hath estranged his affections from her and placed them on other women and hath frequently committed the heinous sin of adultery and hath boasted of such his crimes."[24]

The Reverend Nathaniel Irwin, charging his wife with adultery, presented his petition on January 24, 1783, and on February 6 the prayer of Martha Irwin "to be heard in regard" to her husband's action was admitted in the House. On February 13, the Reverend Irwin withdrew his appeal, and the Assembly discharged the committee appointed "to hear the parties" on his complaint. Late in November, reiterating his original charge, Nathaniel Irwin again entreated the legislature, and this plea he followed to its conclusion:

Whereas by authenticated copies of the records of two several courts of justice as well as by other evidence the house are fully convinced the said Martha Irwin hath been guilty of the crime with which she is charged . . .

22 *Minutes of the . . . General Assembly*, Aug. 9, 1784, 269; Aug. 25, 1784, 298; Aug. 31, 1784, 304; Sept. 4, 1784, 312; Sept. 10, 1784, 327; Sept. 13, 1784, 331; Sept. 29, 1784, 359.

23 *Journals of the House of Representatives of the Commonwealth of Pennsylvania . . . 1776 . . . 1781 . . .* (Philadelphia, 1782), I, Mar. 23, 1781, 594.

24 *Minutes of the . . . General Assembly*, Nov. 25, 1782, 750; Nov. 26, 1782, 754; Nov. 28, 1782, 757; Feb. 20, 1783, 830; Feb. 24, 1783, 835; Mar. 7, 1783, 856; Mar. 17, 1783, 869; Sept. 4, 1783, 928; Sept. 22, 1783, 960; Sept. 23, 1783, 962; Sept. 26, 1783, 968; *Statutes at Large*, XI, 174–175.

be it enacted . . . that the marriage of . . . Nathaniel Irwin with . . . Martha Irwin be dissolved . . . and declared to be null and void as fully and effectively . . . as if the same had never been. . . .[25]

The marriage of George Keehmle, surgeon-barber, dissolved by legislative decree in 1772, and restored by the disallowance of the Privy Council in 1773, came again to the attention of the Assembly in 1783. "For divers causes assigned in her petition," Elizabeth Keehmle asked the House to upset the disallowance and to ratify and make valid the divorce awarded by the provincial government. In the course of almost a year, and on the recommendation of a committee appointed and "empowered to summon and examine . . . witnesses for the ascertaining the truth," the House gave Mrs. Keehmle "leave to bring in a bill agreeably to . . . her petition, she giving notice thereof at least six weeks in three . . . news-papers . . . two of the English, and one of the German." At the point where Mrs. Keehmle's bill was to be transcribed, George Keehmle petitioned to have his wife's address dismissed so that he might apply in his own name for the reinstatement of the 1772 annulment. The Assembly responded by carrying his petition "in the negative," and it refused to take any further action in the Keehmle case.[26] If ever the Keehmles were, or might have been divorced, married they remained.

Of the twenty-four petitions brought before the House between 1777 and 1785 wherein the grievance was stated and explicit all but two charged adultery. The two exceptions complained of long standing desertions. Early in 1777, Elizabeth M'Farran Shanks "set forth" that James Shanks had left her "above seven years ago," and that in all that time she had "never since . . . seen, and very seldom heard of him."[27] In 1784 and 1785, Jane Bartram testified that her husband Alexander had "joined the British forces and departed with them without leaving a maintenance or support for her and her son, and previously to his departure [had] used her very cruelly."[28]

25 *Minutes of the . . . General Assembly*, Jan. 24, 1783, 792; Jan. 27, 1783, 797; Feb. 6, 1783, 813; Feb. 10, 1783, 817–818; Feb. 13, 1783, 823; Feb. 14, 1783, 824; Nov. 20, 1784, 29; Nov. 23, 1784, 31; Nov. 24, 1784, 32; Nov. 25, 1784, 34; Nov. 26, 1784, 35; Dec. 15, 1784, 69; Feb. 15, 1785, 140; Feb. 17, 1785, 145; *Statutes at Large*, XI, 426–427.

26 *Minutes of the . . . General Assembly*, Feb. 8, 1783, 816; Feb. 10, 1783, 817–818; Mar. 7, 1783, 856; Nov. 5, 1783, 14; Nov. 18, 1783, 33–34; Jan. 21, 1784, 91; Jan. 31, 1784, 110; Feb. 12, 1784, 127; Mar. 17, 1784, 188–189.

27 *Journals of the House*, I, May 22, 1777, 133.

28 *Minutes of the . . . General Assembly*, Aug. 31, 1784, 304; Mar. 4, 1785, 177.

Beyond hearing each woman's plea, the Assembly took no steps toward releasing either from her shattered marriage.

Though most of the charges of adultery followed one or another formula—"lewd and disorderly conduct," "infamous and unfaithful," "heinous sin of adultery," "adultery with divers persons"—a few recited their accusations in detail. According to James Martin, whose divorce was granted October 8, 1779, during his absence and while the enemy occupied Philadelphia, his wife Elizabeth had "resorted among the British soldiers." She had taken "one serjeant Havell . . . into his [Martin's] . . . house and bed, and cohabited" with him. And, insisting that Sergeant Havell was her husband, she had used his name until the British left the city, "when she went off with said Havell, taking with her the said James Martin's effects, and leaving him to pay sundry debts of her contracting."[29]

Giles Hicks, captain of the 10th Regiment of Pennsylvania, related in 1780 that in 1776, at the age of fifteen "and when intoxicated," he was "seduced by . . . Hester McDaniel and her relations to contract marriage with her contrary to the consent of his guardians and other friends." When he married Hester, expostulated Captain Hicks, she had been a "common prostitute" and since their marriage she "hath . . . lived separated from [him] in open adultery with divers other men, by means whereof she became so diseased of the lues venerea as to be declared incurable after seven months continuance in the Pennsylvania Hospital."[30]

In 1780, Jacob Billmeyer, "conveyancer" of York, testified that his wife had left him "eight years since," that early in 1778 she had "intermarried and cohabited" with a "certain William Cole," and that soon afterwards she had "eloped out of this state, and hath borne a child or children to the said William Cole."[31]

Jacob Billmeyer's divorce was awarded in eleven months, as was Catherine Summers'. Edith Kidd was divorced from Alexander Kidd,

[29] *Journals of the House*, I, Feb. 13, 1779, 312; Mar. 2, 1779, 328; Mar. 3, 1779, 331; Mar. 20, 1779, 341; Sept. 17, 1779, 369; Sept. 27, 1779, 375; Oct. 7, 1779, 385; Oct. 10, 1779, 389; *Statutes at Large*, IX, 433–434.

[30] *Journals of the House*, I, Nov. 10, 1780, 532; Nov. 17, 1780, 536; Nov. 20, 1780, 537; Nov. 21, 1780, 538; Feb. 21, 1781, 574; Feb. 26, 1781, 577; Mar. 7, 1781, 584; Mar. 9, 1781, 585; Mar. 29, 1781, 601; *Statutes at Large*, X, 267–269.

[31] *Journals of the House*, I, Nov. 23, 1780, 539; Nov. 27, 1780, 542; Feb. 27, 1781, 577; Mar. 10, 1781, 586; Sept. 26, 1781, 692; Sept. 27, 1781, 694; Sept. 29, 1781, 695; Oct. 1, 1781, 696; *Statutes at Large*, X, 368–369.

merchant, in fifteen months, and James Martin's marriage was dissolved in nine. Giles Hicks won his decree in four months, and three petitioners—Henry Willis, the Reverend Nathaniel Irwin, and Robert Steward, mariner, who charged his wife with prostitution—won theirs in three. For John Alexander the process of divorce took nineteen months; for Charles Rubey, "cordwainer," twenty-one; and for Leonard Eckstine, Westmoreland farmer who petitioned in December, 1781, and got his divorce in March, 1784, the process took a long twenty-seven months.[32]

Despite the wide range in the time involved, with minor variations the procedure for a legislative decree was standard. Initially, the aggrieved spouse would file a petition alleging the grounds for complaint and praying leave to bring in a bill of divorce. Once on the floor of the House a divorce petition would be read a second time and referred to a committee, formed, almost invariably, of three representatives from the suppliant's county. Appointed to "enquire into, and ascertain the facts," and "authorized and empowered to administer an oath or affirmation to any witness . . . that [might] . . . give evidence,"[33] the committee would bring in its findings to be read a first and a second time and "debated by paragraphs." If the committee report and its consideration in the Assembly were favorable, permission would be granted for a bill "agreeably to the prayer." The House might now require that notice of its decision be given in the "public newspapers," the requirement varying from advertising in one to three journals and for a period of from three weeks to three months.[34]

Permitted by the Assembly, a bill of divorce would be introduced by a committee member to be read twice and debated and then "ordered transcribed for the third reading, and in the meantime printed for public consideration." Read and debated a third time, a bill would be ordered "to be engrossed," and, lastly, would be "brought in engrossed" and "enacted into a law."

All the legislative decrees issued between October, 1779, and March, 1785, were *a vinculo matrimonii* (from the bonds of matri-

32 *Journals of the House*, I, 1780–1781, *passim.*; *Minutes of the . . . General Assembly*, 1782–1784, *passim.*

33 *Journals of the House*, I, Nov. 17, 1780, 537.

34 *Ibid.*, Mar. 20, 1779, 341; Nov. 21, 1780, 538; Mar. 10, 1781, 586; *Minutes of the . . . General Assembly*, Feb. 22, 1782, 569; Nov. 18, 1783, 33–34; Nov. 29, 1783, 57.

mony).[35] From the date of their enactment the marriages they affected were dissolved utterly and irrevocably terminated. Though the provincial statutes that introduced divorce as part of the punishment for adultery and other felonies of the flesh stipulated divorce from bed and board for the outraged spouse, no decree of mere separation was requested of or awarded by the legislature. In every case not a partial but a total divorce was sought and given, and with it the right of remarrying.

As in the decree of Charles and Jane Rubey, every "act for dissolving" a marriage defined categorically the nature of the divorce:

> Be it . . . enacted . . . That the marriage of . . . Charles Rubey with . . . Jane, be, and . . . is . . . declared to be dissolved and annulled to all intents, constructions and purposes whatsoever. And . . . Charles Rubey and . . . Jane shall be, and they are . . . declared to be separated, set free and totally discharged from their matrimonial contract, and from all duties and obligations to each other as husband and wife, as fully, effectually and absolutely . . . as if they had never been joined in matrimony . . . any law, usage or custom to the contrary . . . notwithstanding.[36]

James Martin's decree and Giles Hicks's made certain the implied right of remarriage: "be it further enacted . . . That . . . Giles Hicks be and . . . is freely, fully and entirely authorized and empowered to contract matrimony . . . with any . . . woman in like manner as . . . if he . . . had never been married."[37] And where it was applicable, as in the act of divorce for James and Elizabeth Martin, the provision was incorporated that "nothing herein contained shall be construed to extend to, or effect or render illegitimate any children born of the body of . . . Elizabeth during her coverture with . . . James."[38]

In assuming that the authority to grant divorces to Pennsylvanians rested with itself the Assembly was following the precedent and practice of Parliament. Originally, divorce in England was the province of the canon law and came under the exclusive jurisdiction of the ecclesiastical courts. There, two decrees were proffered, neither of

[35] *Statutes at Large*, IX, 433–434; X, 267–269, 368–369; XI, 147–148, 174–175, 265–266, 278–281, 426–427, 537.

[36] *Ibid.*, 148.

[37] *Ibid.*, X, 269.

[38] *Ibid.*, XI, 433–434.

which yielded, in keeping with the credenda that marriage was a sacrament dissoluble only by death, a true divorce. The church, admitting that under certain circumstances a wronged spouse was warranted in refusing to continue to cohabit, awarded, in such instances, a divorce *a mensa et thoro* (from bed and board), a judicial mandate by which the partners could live apart though married. Canon law also acknowledged obstructions of a particular nature to marriage. Where these existed or could be said to exist, it granted an annulment, *separatio ab initio* (unlawful from the beginning), by a divorce *a vinculo*. Thus, the church provided for the rupture of a union, leaving the partners free to marry, while it preserved its doctrine of marriage as an indissoluble sacrament. The judicial edict of nullity, rather than dissolving a marriage, instead denied it ever existed, even to the bastardization of its issue.

The difficulties inherent in this arrangement led Parliament to undertake the dissolution of marriages by private Acts of Parliament. It created a standing committee to receive applicants; it framed rules of procedure for the pursuit and issuance of special divorce laws; and it acted on the ready conviction that only in Parliament lay the power to award a decree of absolute divorce from the bonds of matrimony.[39]

In the practice of Parliamentary divorce the provincial Assembly, as the parliament of Pennsylvania, found sanction for its dominion over the dissolution of marriages in the colony; and this jurisdiction, though tentatively advanced by the provincial legislature and frustrated by the Privy Council, was fully accepted and asserted by the Commonwealth and the state Assembly. However, though in England the long delay and stunning expense of a decree from Parliament served to limit applications and severely restrict divorce, in Pennsylvania, where they were within the reach of everyone, the Assembly soon found itself with what it considered a plethora of divorce petitions. And as the number of memorials mounted, so did the Assembly's skepticism about its competency to deal with them.

In the fall of 1783, the House opened an inquiry into the matter of divorce, appointing a committee "to consider and digest the most just and proper mode of regulating divorces in this state, and if they

[39] Freedman and Freedman, 243–245; Henry Hamilton, *England: A History of the Homeland* (New York, 1948), 326.

think it expedient, to bring in a bill agreeably thereto."[40] For two years divorce legislation repeatedly occupied the House. Divorce petitions were referred not only to their respective county committees, but also to the committee engaged in reviewing and revising the divorce laws. On September 19, 1785, the House passed its prescient divorce and alimony statute. This act vested jurisdiction for the formal dissolution of marriages in the state Supreme Court with a right of appeal to the High Court of Errors and Appeals.[41] It approved a liberal number of causes for divorce from the bonds of matrimony: adultery, bigamy, desertion for the "space of four years," and, in the case of second marriages, foreknowledge of impotency or sterility.[42] An *a vinculo* divorce was obtainable also in the peculiar circumstance "that if any husband or wife, upon false rumor in appearance well founded, of the death of the other . . . hath married . . . it shall be in the election [of the first spouse] . . . at his or her return . . . to have his or her former wife or husband restored, or to have his or her own marriage dissolved, and the other party to remain with the second husband or wife."[43]

The grounds for divorce from the bonds of matrimony, except remarriage on false rumor of death, were applicable for divorce from bed and board. In addition, a wife could get a divorce *a mensa et thoro* with an allowance of alimony should a husband "maliciously . . . [either] abandon his family or turn his wife out of doors, or by cruel and barbarous treatment endanger her life or offer such indignities to her person as to render her condition intolerable . . . and thereby force her to withdraw from his house and family."[44]

[40] *Minutes of the . . . General Assembly*, Nov. 11, 1785, 25.

[41] In 1804 divorce jurisdiction was extended to the circuit courts and to the court of common pleas with an appeal to the Supreme Court or the High Court of Errors and Appeals respectively. Though the Act of 1785 gave the authority to grant divorces to the Supreme Court, it did not end legislative decrees. Between 1785 and 1874 the house dissolved 291 marriages, in most cases for grounds not recognized in the courts. The Constitution of 1874 terminated Assembly dissolutions by absolutely proscribing legislative divorces. Edwards, 13–15; Paul H. Jacobson, *American Marriage and Divorce* (New York, 1959), 87.

[42] Though in advance of the divorce legislation of England and that of her sister states in the union, Pennsylvania's divorce law was by no means revolutionary. Much of it was derived: "In Boyd's *Judicial Proceedings in Scotland* . . . published six years prior to the Act of 1785, the causes for divorce in Scotland are stated in language incorporated bodily in some instances in the Pennsylvania statute." Freedman and Freedman, 252.

[43] *Statutes at Large*, XII, 96.

[44] *Ibid.*, 98.

Surprisingly, the divorce statute was silent on consanguinity and affinity. Until the Act of April 2, 1804, providing for the dissolution of incestuous marriages, correction resided with the governor under an act of January 12, 1705/6.

The law of 1785 somewhat circumscribed the grounds of adultery. It held for the dismissal of a suit when the defendant could prove that the libellant had been "guilty of the like crime or [had] admitted the defendant into conjugal society or embraces after he or she knew of the criminal fact." In the same way, when a wife could show that a husband had "allowed of the wife's prostitutions, and received hire for them, or exposed his wife to lewd company whereby she became ensnared" in adultery, it served as a "good defence and a perpetual bar" against divorce.[45]

The law provided that where an adultery charge succeeded, the guilty partner could not "marry the person with whom the [adultery had been] committed during the life of the former husband or wife." Nor could any woman divorced because of infidelity "openly cohabit . . . with . . . the partaker in her crimes" without being declared to be "incapable to alienate, directly or indirectly, any of her lands, tenements, or hereditaments, but that all deeds, wills, appointments, and conveyances thereof, shall be absolutely void and of none effect, and after her death, the same shall descend and be subject to distribution . . . as if she had died seized thereof intestate."[46]

The "Act Concerning Divorces and Alimony" restricted divorces to citizens of Pennsylvania who, previous to filing, had resided "therein at least one whole year." A libellant was required to file with one or more of the justices of the Supreme Court at least thirty days before trial. Petitions were to contain "particularly and specially the causes" of complaint, and they were to be tendered with an affidavit taken before a Supreme Court justice, a judge of the common pleas, or a justice of the peace of the libellant's county. A suitor attested to the truth of his libel and swore it was "not made out of levity" or by collusion.

With the filing of a libel, a justice of the Supreme Court signed a subpoena for the appearance of the defendant, to be served at least fifteen days before court session. Where the defendant neglected or

[45] *Ibid.*, 97.
[46] *Idem.*

refused to appear, an alias subpoena was issued, returnable the first day of the following court term. Where the defendant could not be found, a proclamation calling upon the defendant to answer the subpoena was "publicly made by the sheriff . . . of Philadelphia on three several market-days at the court house . . . and by the sheriff of the proper county on three several days in term time" at the county courthouse. Notice was given also in the "public newspapers . . . for four successive weeks previous to the return day of the . . . process." Where the defendant failed to respond, the justices prepared to hear the suit and to determine it "*ex parte*, if necessary." Where the defendant came into court, however, and where either party desired "any matter of fact that [was] affirmed by the one and denied by the other to be tried by jury the same [was] tried accordingly. . . ."[47]

It lay with the court to award the costs of the suit either for one of the parties or by ruling that each should "pay his or her own costs as [should] appear to be reasonable and just." When granting a divorce *a mensa et thoro*, the court could allow a wife such alimony as her husband's "circumstances [would] admit of, so as [it did] not exceed the third part of the annual profits or income of his estate, or of his occupation of labor." The court's divorce *a vinculo* was as emphatic as the legislative decree. It freed the husband and wife from the "nuptial ties or bonds," and, declaring their marriage "null and void," it stipulated that "all and every duties, rights and claims accruing to either . . . [were] to cease and determine, and the parties . . . [were] . . . to be at liberty to marry again in like manner as if they never had been married."[48]

Though only two wives won legislative decrees between 1777 and 1785, more women than men were awarded judicial divorces in the years from 1785 to 1801. Of the one hundred and four divorces to appear in the Supreme Court docket only forty went to husbands, and of these mariner William Keith claimed two. In January, 1791, after six years of marriage, Keith sued for divorce, charging his wife Ann with prostitution. Before Chief Justice Thomas McKean, Keith claimed proof of Ann's "incontinancy during his absence," even though he never failed to arrange an "order with the Merchants in

[47] *Ibid.*, 96.
[48] *Ibid.*, 97.

whose Employ he sailed to pay his wife such Sums of Money out of his Wages, as would be necessary for her support and Maintenance." On his return from a voyage to Lisbon in 1790, Keith explained, he found that his wife had "disposed of all his Property . . . amounting in value to one Hundred Pounds" and that she had "removed to the house of a . . . Woman of bad fame in the District of Southwark and there lived in adultery." Represented by William Lewis, Ann Keith appeared at the April, 1791, term of the Supreme Court, and the case continued from "term to term" until September, when Ann "freely confessed in Open Court" that the "Charges made . . . against her [were] true."[49]

In the spring of 1793, William Keith remarried, and in November, 1796, he sued for a second divorce, again charging adultery. Once more before Chief Justice McKean, and this time himself represented by Lewis, Keith swore that his wife Margaret had "at divers times . . . committed adultery with a Certain Elfry and other persons unknown." Mrs. Keith denied "all and every other matter, cause or thing" of which she was accused, and the suit was tried before a jury at the March, 1797, term of the Philadelphia Court of Nisi Prius with Justices McKean, Edward Shippen, and Thomas Smith presiding. The jury found for William Keith and the court "adjudged and decreed" accordingly.[50]

Though Margaret McCrea, like William Keith, underwent two trials of divorce, her suits, unlike Keith's, were toward the dissolution of the same marriage. In the fall of 1796, asking for a divorce from bed and board, Mrs. McCrea exhibited her libel in court through her "next friend," charging her husband with cruelty and with making her life insupportable. When William Archibald McCrea failed to answer at either the December, 1796, or the September, 1797, terms of the court, the court issued an alias subpoena and granted Margaret McCrea a divorce in December, 1798, "agreeably to [her] prayer."[51] In November, 1800, Mrs. McCrea returned to court for a divorce *a vinculo*. She was married in 1785, she testified, and "lived and cohabited" with her husband until 1795 when he "deserted and ab-

[49] William Keith v. Ann Keith, Decrees of Divorce in the Supreme Court of Pennsylvania 1785–1799, 15, Historical Society of Pennsylvania.

[50] William Keith v. Margaret Keith, *ibid.*, 205.

[51] Margaret McCrea v. William Archibald McCrea, *ibid.*, 214.

sented himself" from her. He had persisted in this desertion "four years and more" and he continued "so to absent himself." In March, 1801, "no person appearing to shew cause to the contrary," the court pronounced the marriage of William Archibald McCrea and Margaret McCrea "henceforth null and void."[52]

Rosanna McKarraher's divorce also entailed a number of suits. After twelve years of marriage, Mrs. McKarraher sued for a divorce *a mensa et thoro* with an allowance of alimony, charging her husband with barbarity and desertion. Daniel McKarraher replied that Rosanna was not his wife, nor had she been "at any . . . time lawfully joined in marriage with him." He had never been "cruel and barbarous," he protested, and if he had "ever offered any indignities to [her] person . . . the same were occasioned by her violent temper and disposition and by [her] indecent and provoking conduct." The court awarded Mrs. McKarraher a divorce in the spring of 1793, and Mrs. McKarraher temporarily waived her demand for support. When in 1800, in a new case, the court ordered McKarraher to pay "one hundred and twenty dollars per annum" in alimony, he appealed to the High Court.[53]

The bitterly fought McKarraher divorce was not representative. Most suits went uncontested. In only thirty of the more than a hundred cases tried between 1785 and 1801 did the defendants come into court, and for many of these it was a formal rather than a contending appearance. Nevertheless, a coterie of legal lights served the court. William Lewis, Sampson Levy, Jared Ingersoll, and Jonathan Dickinson Sergeant were all regulars, as were, among others, William Rawle, Joseph Reed, Joseph Hopkinson, Joseph B. McKean, William Ross, and Edward Tilghman.

Steele v. Steele, one of the two precedent setting cases of the early divorce court, established a pattern in divorce practice. Charging inveterate drunkenness and repeated attempts on her life with "knives, clubs, and other dangerous Weapons," Mary Steele sued for a separation from William Steele. Steele called for a jury trial, and he complained to the court that his wife's nephew had cut off the "Sinews of his Hand . . . so that he [was] unable to earn his livelihood, and [was] in Danger of suffering the most extreme Want . . . unless

[52] *Ibid.*, 216.

[53] Rosanna McKarraher v. Daniel McKarraher, *ibid.*, 181.

relieved by the Township . . . altho his . . . Wife [had] . . . Two houses, and other property . . . sufficient to . . . [his] Necessities."[54] In granting Mary Steele her divorce from bed and board, Chief Justice McKean observed that petitions for divorce ought to contain "notice of the facts intended to be proved under the general allegation of the libel." Associate Justice Jacob Rush commented that it would be "most convenient to give notice, that between two specific dates, acts of cruelty, &c., were intended to be proved." The court adopted the rule, and "recommended it for the future practice of the bar."[55]

Like Mary Steele, Sarah Thompson brought her husband to court because of his "habits of Intoxication" and his "cruel beatings." For assaulting her with his "Fist in her Face, pulling her on the floor, and committing other Outrages," Sarah explained, her husband had been "duly convicted" and compelled to "give Security for his Behaviour for one year." His sentence completed, he now threatened her life and his conduct toward her gave every evidence of stemming from "Malice and rooted Hatred" so that she could no longer "safely cohabit" with him. Furthermore, she wished "humbly" to show that "at her . . . Marriage, she was seized of a considerable Estate, a large part of which [had] been sold . . . to pay the Debts" contracted by her husband. Through her lawyer, Alexander Wilcocks, she prayed the court would take these "premises into their consideration," and "be pleased to grant her a Decree from Bed and Board and to allow her such alimony as in their Discretion [should] be deemed just."

Represented by Edward Tilghman, James Thompson not only remonstrated against his wife's allegations, he also entered a countercharge, claiming his wife was in violation of her marriage vows. Prior to filing her libel, he asserted, she had withdrawn herself from him, and although he had offered to "receive and cohabit with . . . [her] . . . and to use her as a good "Husband ought to do," she had refused and she continued to refuse him. Moreover, "under Color of an illegal Order of the Court of Sessions for the county of Chester" she retained "for her sole and separate use," and thereby "utterly pre-

54 Mary Steele v. William Steele, *ibid.*, 20.

55 Alexander James Dallas, *Reports of Cases Ruled and Adjudged in the Courts of Pennsylvania Before and Since the Revolution* (Philadelphia, 1830), I, 424.

venting [his] enjoying and possessing" real estate which belonged to him.[56]

In support of his client, Tilghman contended that under the divorce law of 1785 the court "were obliged either to suspend or discharge" a bed and board decree, separating husband and wife, whenever the husband sought reconciliation. And, he argued, if this was a valid reason for annulling a decree of separation, *a fortiori* (all the more reason), it was "a sufficient answer" to Sarah Thompson's libel. Tilghman added that this practice was in keeping with the "spiritual court in England."

Pleading for Mrs. Thompson, Jonathan Dickinson Sergeant insisted that no such mandate rested upon the court. On the contrary, he declared, under Pennsylvania law, whenever a husband offered to reconcile, the court had the option "to suspend or annul" a separation or "to refuse to do either," as conditions warranted. In any event, James Thompson's offer, said Sergeant, "made before sentence, could not prevent the jurisdiction of the court, nor a separation, where such extreme cruelty was stated to have been used."

The court agreed Thompson's answer to his wife's libel was insufficient and it decreed a divorce from bed and board. On the issue of the reading of the divorce act, the justices were of the opinion, setting the precedent, that the mere offer of a husband to receive his wife "would not, in all cases, be a cause for suspending" a decree *a mensa et thoro*. The law left the court a discretion, "upon the offer being made, to hear the wife, and to continue the sentence in full force, if circumstances required it."[57]

A couple in contention in the divorce court, in addition to the opinion of the judges and the decision of a jury, had at their disposal the judgment of referees. In 1786, Susanna Brauer, accusing Jacob Brauer of being a "tyrant and tormentor," appealed for a separation and for a settlement of alimony. Jacob, Susanna said, had "frequently assaulted and beaten" her and her four children. In particular, he had "several times taken a large club to bed, declaring he would beat out her brains, whereby . . . fearing for her life," she had left her husband "who [refused] to support her or her children in any manner."

[56] Sarah Thompson v. James Thompson, Decrees of Divorce, 73.
[57] Dallas, II, 128.

In the course of the suit, on the consent of both parties, and with the acquiescence of their respective attorneys, the court turned the case over to three referees who were ordered "to inform the conscience of the court what sum the circumstances of the defendant [would] admit to be decreed to the libellant for alimony." The referees reported that one third of the "clear profits" of Brauer's estate would "admit of . . . nine pounds annum . . . exclusive of goods amounting in value to about forty-six pounds which the libellant has had in her possession since the separation and maintained four small children." In levying the assessment, the justices specified that Brauer was to pay it quarterly, and they added the costs of court.[58]

The marriages severed by the Supreme Court varied in duration from a brief seven months to a full twenty-seven years. However, though several unions of twenty years or more were broken, most of the judicial decrees dissolved marriages that had endured anywhere from one to twelve years. As with legislative decrees, the time entailed in getting a judicial divorce differed from case to case. While most separations took from five months to a year, one divorce was won in six weeks and another required three years to complete. Adultery alone, or adultery compounded by cruelty or desertion or by both, was the stated cause for more than half the divorces allowed between 1785 and 1801. Desertion accounted for another third of the decrees, and some thirteen were issued for the grounds of cruelty.

Sixteen of the more than fifty divorces granted for adultery carried, in their libels, the implication or indictment of bigamy, reflecting a problem that was of continuing and considerable public as well as private concern. Evidently, bigamous marriages, especially when contracted in frontier counties or outside of Pennsylvania, could be entered into with relative ease; and the laws against bigamy, it would seem, were less than relentlessly enforced. In 1791, Elizabeth Beans testified that soon after deserting her in 1765, her husband "went to a place called Red Stone where he . . . married a Woman . . . by whom he [had] several children."[59] Susanna Evans told the court in 1792 that two months after her marriage in 1784 her husband left for New Jersey and "then and there was married to Ann Heare on the tenth day of March one thousand seven hundred and ninety."[60]

58 Susanna Brauer v. Jacob Brauer, Decrees of Divorce, 171.
59 Elizabeth Beans v. John Beans, *ibid.*, 106.
60 Susanna Evans v. William Evans, *ibid.*, 185.

In his petition of June, 1794, Philip Shriner recounted that he and Elizabeth Singhaas were married in Lancaster county in 1786, and that he had had "by the said Elizabeth his wife three children to wit Catherine, Michael and Elizabeth all of whom [were] since dead." During the past year, Shriner continued, his wife had "voluntarily and perversely . . . abandoned [his] Bed," and in April, 1794, she had "eloped" with Joseph Watkins with whom she engaged in "adultrous intercourse." In May, concluded Shriner, his wife had "entered into a second marriage," and she now lived in Northumberland county "in open and known violation of [her] primitive marriage vows."[61]

In her suit Mary Lloyd explained that she and John Lloyd were married in April, 1794, that in February, 1795, her husband had "knowingly entered into a second marriage," and that he had been "legally prosecuted and convicted of the crime of bigamy in the Court of Quarter Sessions for the County of Philadelphia."[62] In 1795, Elizabeth Bishopberger testified that after eleven years of marriage her husband had abandoned her and remarried;[63] and William Adair attested that his wife had left him and married Fusan Lopez with whom she lived "as his wife, being called by his name, dwelling in his house, and sleeping in the same bed with him."[64] Similarly, George Rose, who, because of her "unfaithfulness" had left his wife Catherine in 1793, in 1796 supplied the court with proof that his wife and Peter Kearer had "lately been married together" and lived "as man and wife."[65]

Possibly, Mary Dicks, whose husband John had failed in his appeal to the Assembly for a divorce in 1773, was Pennsylvania's most persistent "bigamist." "Joined together in the Holy Estate of Matrimony" with John Dicks in 1763, Mary left him in 1764 to live with William Ford "in a state of Adultery for a Number of Years having by him . . . Six Children." In 1780, "well knowing" her husband to be alive, she married William Pearce "with whom she actually lived as his Wife." When Pearce was lost at sea in 1781, Mary, "giving out that she had intermarried with him . . . cohabited with William

61 Philip Shriner v. Elizabeth Shriner, *ibid.*, 145.
62 Mary Lloyd v. John Lloyd, *ibid.*, 193.
63 Elizabeth Bishopberger v. Jacob Bishopberger, *ibid.*, 257.
64 William Adair v. Ann Adair, *ibid.*, 200.
65 George Rose v. Catherine Rose, *ibid.*, 275.

Walter Humphries." She was still living with Humphries "as his Wife" when, after twenty-three years of "marriage," the patient Dicks again sued for and won a divorce in 1786.[66]

In some suits where bigamy was a matter before the court the fault lay not with a reluctant or erring partner, but in misunderstanding of and confusion about the marriage and divorce laws. Chances are that Matthias Conrad was telling the truth when he testified that because he had signed articles of separation with Catherine Conrad in March, 1785, and delivered the "household and kitchen furniture of which [they] were possessed . . . in trust for the use of . . . Catherine and her assigns forever," he believed he was fully divorced and entirely free to contract the marriage he celebrated in October, 1786.[67]

In her libel of September, 1787, Mary Pfeiffer claimed that her husband had prevailed upon her to agree to a separation from bed and board in February, 1783, after he had entered into a bigamous marriage in June, 1782. "By mutual consent," answered Peter Pfeiffer, and as a result of "divers unhappy differences" which "soon arose" in their marriage, he and Mary Pfeiffer, in June, 1781, executed articles of separation by which he restored to Mary "all the property which belonged to her before [their] intermarriage." Mary had then left the state, said Pfeiffer, and, "conceiving himself separated fully," he had consulted with "ministers of the gospel" who had assured him he "might lawfully marry again." In consequence, he had had the "bans of matrimony between [himself] and Anna Maria Bauer . . . published from the pulpit of the church in Germantown three several Sundays and no objection thereto [was] made." Afterwards, however, he was prosecuted by Mary Pfeiffer for bigamy, "but the Supreme Executive Council . . . were graciously pleased to permit a *Nol[l]e prosequi* [statement of no further prosecution] . . . the said Mary also thereto consenting." Thereupon, ended Pfeiffer, new articles of separation were drawn between himself and Mary, and it was these articles, rather than the original, that she now laid before the court.[68]

The muddled marital status of William Kenly came under judicial scrutiny in the fall of 1796. He married Catherine Cummins, the

[66] John Dicks v. Mary Dicks, *ibid.*, 26.
[67] Catherine Conrad v. Matthias Conrad, *ibid.*, 173.
[68] Mary Pfeiffer v. Peter Pfeiffer, *ibid.*, 160.

wife of William Cummins, in 1795, related Kenly, in the persuasion that he was making a "lawful connection on account of the absence of the said William Cummins for the space of seven years and upwards." Now he understood his marriage was not "lawful and obligatory," and he prayed the court to award him "a sentence of divorce from the bonds of matrimony." Catherine Kenly responded by asking the opinion of the court on the legality of her marriage. She recited that in 1777, she had married William Cummins and borne him a son, and that "some years afterwards" he had "removed to South Carolina" where he now resided. Following Cummins' desertion she had married Casper Iserloan, but as it developed that Iserloan already had a wife, this marriage"was considered as void." When she married William Kenly, who was informed of all the circumstances, they both believed and "were advised that their marriage was lawful." At the time of this marriage, William Cummins had been gone from Pennsylvania for nine years, but he returned briefly to Philadelphia in 1796 to apply to "Council concerning his property in the possession of William Kenly." The court ruled that the Kenly marriage was "illegally contracted and void."[69]

The year 1795 brought two unique actions to the divorce court: the first had as defendant an American Indian, and the second concerned a Catholic marriage celebrated at Port au Prince. The December term saw the case of Lucy Bryant who, by her father and "next friend," John Ansley, applied for a divorce from her husband of seventeen years, Prince Bryant, "late of Wallerjajich settlement in the county of Northampton." Mrs. Bryant affirmed that her husband, who had left her in 1790, and by whom she had "now living six children," had inflicted the "most inhuman personal abuse," had failed to contribute anything "to support either her or his children," and had "at different times . . . by violence taken . . . her most valuable articles of household goods and cloathing and what little money the charity of her friends or her own industry had procured." The court called in vain for Prince Bryant's appearance. The sheriff of Northampton reported that he "was not found in his bailiwick," and that he had not answered the proclamation made "at a Court of Common Pleas held at Easton." Nor had he responded, according to the sheriff of the county of Philadelphia, to the proclamations made

[69] William Kenly v. Catherine Kenly, *ibid.*, 158.

"at the old court house in the city," and also "at the City Hall and State House . . . in open Court of common pleas . . . and in Andrew Brown's public newspaper." Finally, on an alias subpoena, the court "separated and divorced" Prince Bryant and Lucy Bryant in March, 1797.[70]

Jane Corvaisier's libel, drawn by William Bradford and presented in July, 1795, carefully noted that she was a resident "for upwards of one year now last past within Pennsylvania," and that she was "now a citizen and inhabitant thereof." However technically and legally correct, there can be little doubt that Mrs. Corvaisier's Commonwealth residence and citizenship were more convenient than permanent, and that she had come to Pennsylvania to take advantage of its divorce law. She and Bartholemew Corvaisier had been married in Charleston, South Carolina, in 1780, Mrs. Corvaisier explained to the court, and their marriage had been confirmed and ratified in 1786, at Port au Prince, Santo Domingo, "according to the rites of the Catholic Church in order to render the . . . marriage valid . . . according to the laws then and there in force." Despite these double vows and the strictures of his church, declared Mrs. Corvaisier, her husband had "lived and cohabited for a considerable time in a public open and notorious state of adultery with a certain woman of the name of Duvall." Bartholemew Corvaisier, traveling from Burlington, New Jersey, to appear in his "proper person," did not "gainsay" that he was "joined in lawful wedlock to Jane," nor that his marriage had been confirmed as stated, nor that he had "violated the duties of the marriage state and the vows thereof in manner and form as aforesaid to wit in the state of New Jersey."[71]

With the coming of Jane Corvaisier to Pennsylvania for the purpose of divorce, and with Bartholemew Corvaisier's cavalier confession, the modern age, implicit in the divorce law of 1785, had arrived.

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[70] Lucy Bryant v. Prince Bryant, *ibid.*, 271.
[71] Jane Corvaisier v. Bartholemew Corvaisier, *ibid.*, 197.