

Divorce had been possible in Scotland since 1560 and the court which was responsible for cases involving legitimation, and the constitution and dissolution of marriage was, until 1830, the Commissary Court of Edinburgh. The Records of **Consistorial Processes and Decrees** are in Tay Valley FHS Library.

The index lists 6-gt. Auntie Jean under two numbers, 578 and 603.

578. **Process of Adherence** – Jean Chaplin, mantua maker in Arbroath, daughter of the deceased James Chaplin of Colliston, and spouse of William Jamieson, barber, sometime residing in Montrose, against the said William Jamieston, married December 1761. XII 5 June 1771

(**Adherence** is the legal obligation of residing with one's spouse).

More than a year later, there follows:

603. **Process of Divorce** – Jean Chaplin, mantua maker in Arbroath, spouse of William Jackson, barber, sometime residing in Montrose, daughter to the deceased James Chaplin of Colliestoun, against the said William Jackson, married 1761 XIII 18 June 1772

The Commissariat of Edinburgh Consistorial Decrees Vol. 13

Jan 1772-Aug 1773 (CC8/5/13 18 June 1772)

Decreet of Divorce

Jean Chaplin

Against

William Jamieson

“At Edinburgh the Eighteenth day of June One Thousand Seven hundred and seventy two Years Anent (*concerning*) the action and Cause for divorce raised and pursued before the Commissaries of Edinburgh at the Instance of Jean Chaplin mantuamaker (*dressmaker*) in Aberbrothick daughter of the deceased James Chaplin of Colliestoun and spouse of William Jamieson Barber sometime Residing in Montrose.”

“The Complainer and the said William Jamieson were lawfully married together in the year 1761 or 1762 and lived and cohabited together as husband and wife at Peebles in the Parish of Saint Vigeans and there owned and acknowledged themselves as such and were owned treated entertained and reputed by their acquaintances as lawfull married Persons and in a few weeks after the said marriage the said William Jamieson willfully and maliciously deserted the Complainer her Society and company and left this kingdom.”

“She upon the fifth day of June last obtained a decret from the Commissaries decerning and Ordaining the said William Jamieson to adhere to here the said Jean Chaplin his wife her Society and Company and to cohabite and converse with treat and entertain her at bed Board and otherwise as a married man should do to his wife.”

Since he did not adhere to her, she, on 21st June 1771, obtained Letters of horning against him and he was put to the horn on the 21st August and denounced “His Magesties Rebell.” (*Horning is an order requiring a debtor to pay his debt on pain of being declared a rebel. To put to the horn is to outlaw by three blasts of the horn at the Cross of Edinburgh.*). The process of putting to the horn was carried out by “George Bathgate messenger at arms upon the 11th day of September 1771 years at the market Cross of Edinburgh, pier and shore of Leith respectively and successively the one after the other and at each of the said three places” At each place he “made open proclamtation and publick reading of the said summons in his Majesties Name and authority and in the name and authority of the said Commissaries of Edinburgh lawfully summoned warned and Charged the said William Jamieson as being furth of Scotland To have compeared before the said Commissaries place and date therein mentionned.” At each of the three places where the horning took place, a copy of the citation was affixed and left for William Jamieson. William, needless to say, did not appear. Jean herself was “sorry that neither health nor circumstance will admit of her coming to Edinburgh to depone” and she was represented by a procurator (solicitor).

Jean had also appealed to the Reverend Presbytery of Aberbrothick to authorise the Reverend John Aitken minister of St Vigeans to “make Publick admonition and warning requiring the said William Jamieson to adhere to her as his lawfull married wife and in the event of William Jamieson contumacy (*the wilful refusal of a person to appear before a court or to comply with a court order*), to excommunicate the said William Jamieson.” The Presbytery, however, refused to do their duty in this respect despite the fact that an act of Parliament established in the reign of James VI (“Anent them that divertes fraie others being joyned of befor in Lawfull marriage”) required them so to do.

Despite this setback, Jean’s procurator claimed that “...the said William Jamieson Defender ought and should be divorced and sepparated from the said Jean Chaplin complainer and she from him and it ought and should be found and declared that the said Jean Chaplin Complainer is lawfully loosed and free of the Contracted and Solemnised marriage betwixt her and the said William Jamieson Defender and that it is lawfull for her to marry any other free Person whom she pleases alwise in the Lord Sicklike (*likewise*) and in the same manner as if the defender was naturally dead and as if they had never been married together.”

“Mr William Nairne principle Clerk stated to the Court that he had within these few days received a letter by the post addressed to him as principle Clerk of the Commissary Court ...wrote by Mr. Alexander Chaplin minister of Kinnell and Dated Kinnell the 20th day of December 1771 which he supposed to be containing information of Certain particulars relative to their cause which Letter being wrote to him Officially and for the declared purpose of being Communicated to the Commissaries he thought it his duty to lay the same before the Court that the Commissaries might Judge whether they would take any notice or what notice it might be proper for them to take of the information therein contained To which it was answered by the said Charles Leslie that the Defender Jamieson a Barber in Montrose in the year 1761 imposed on the whole Town of Montrose by giving out that a large succession had opened to him by the death of a friend in the south Country (*England*) and the better to carry on this deceit he forged Letters from a man of business in Edinburgh informing that his service as heir to this imaginary friend had been placed before the Court of Session and wishing him Joy of his large fortune. Jamieson having so far succeeded on this piece of deceit he got most extensive Credit from the merchants in Montrose for fine Clothes and all at once became a very fine Gentleman in so much that he visited the best families in the Town of montrose and was entertained there and in the neighbourhood upon the supposition that he was what he really protended. Jamieson now thought it high time to look for a wife and unluckely for the Pusuer he made his addresses to her then a very young Girl (*she was nineteen*) living with her mother at Colliestown a few miles from Montrose. The pursuers friends gave him encouragement and at last prevailed on her contrary to her own incination to agree to his proposalls and accordingly in the month of December 1761 the Pursuer and Jamieson were married in her mothers house in the presence of her friends and in a week or 2 after this marriage Jamieson concious of his guilt and dreading a discovery thought proper to make his eloptment and the Pusuer heard that he had gone for England where he changed his name forged a Bull – (*An edict of the pope? with seals attached*) and had been tried and transported thus was the pursuer rendered a laughing stock to the whole country her name spread abroad in Pamphlets, Ballads and all the publick Fairs and markets and (*she was*) reduced to a miserable and unhappy situation by taking the advice of her friends some of whom are people of the most respectable Character and Judgement in the Country and she was at last obliged to retire to Arbroath, where by her own Industry as a manua maker she has ever since Earned a lively hood. That about a year ago a man in Arbroath made the pursuer proposalls of marriage which was agreed to on her part but as there was no Certainty of the death of Jamieson it was Judged proper to procure a divorce at the Pursuers instance.”

Proceedings were therefore started and on 13th December 1771 the Commisaries (*Judges of the Commissary Court*) pronounced an Interlocutor (*an intermediate decree before the final decision*) commissioning the Commissary of Brechin to take the Pursuers Oath of Calumny (*An oath required from the pursuer in a divorce action to the effect that his/her averments were true and that there had been no agreement to advance a false charge or withhold a proper defence. The purpose was to prevent collusion.*) and the depositions of such witnesses as would be adduced (*cited or quoted*).

When the court met again on 3rd January 1772, the taking of the oath was reported and, in addition, the clerk reported that the Rev Chaplin had taken it upon himself to write to the Clerk again to further inform the Court:

“Sir Several months ago I granted an attestation to the marriage between William Jamieson late in Montrose Barber and Jean Chaplin of Collieston as a preparatory for obtaining a divorce against her said husband on the ground of willful desertion but from some particular Circumstances and in particular that it now appears she has now been married to another man previous to her seeking a divorce and that she was with child to that man of which she is now delivered. I judge it impracticable to let the divorce out of which I thought it my duty to advise you as it seems you are kept Ignorant of Particulars I am Sir your most humble Servant. Al Chaplin.”

Having considered the above letter, “wrote by a minister of the Gospell charging the Pursuer with Bigammy and adultery”, the Commisaries, on 8th January 1772, issued an Interlocutor requiring answers from Jean regarding these allegations.

In his reply, Jean’s, procurator reiterated all that had been said previously on Jean’s behalf, stated that William had not compeared and added that Mr. Chaplin the minister had no mandate from William Jamieson and that the letter should be withdrawn. The records state:

“The pursuer was a good deal surprised at the foregoing representation by the Clerk of Court founded on a Letter received by him from Mr Alexander Chaplin minister at Kinnel in which Mr Chaplin (*had*) taken it upon him to desire the Clerk to inform the Court about some Particulars from which he judged it impracticable to let the divorce out that the pursuer apprehends were a procurator to appear for the defender in this cause before he would be allowd to open his mouth or state defences it would be incumbent on him to produce a mandate from the defender authorising him so to do and as this is the invariable Rule the pursuer thinks she is not bound to enter the lists with Mr Chaplin or to obviate any obstacles he may endeavour to throw in the way of her Obtaining the divorce she is pursuing for and as it is the first instance the Pursuer knows wherein an attempt was made by third parties to state defences by Letters to Judges The pursuer Craves that the Clerk of Court may be ordained to withdraw said Letter and that the Commisaries would authorise the Commissary to proceed in the further execution of the act and Commission and the pursuer hopes

the Commisaries will have no difficulty of doing so as it is believed no person ever appeared before them in more favourable Circumstances.”

Jean’s procurator then put in a petition which again repeated all that had been said previously on her behalf and added that William Jamieson had “not been worth a sixpence” when he forged the letters about his supposed inheritance of an estate worth £500 a year. He continued:

“As to the fact itself with which the minister has been pleased to charge her the petitioner does say that it is not true as stated by him for although she will not disown that she has an intention to marry the person hinted at in the Letter in case she can prevail in obtaining her sentence of divorce. Yet it is certain that no marriage has as yet taken place. And it is most Officious an improper in any 3rd person not connected with the present process to charge her with Crimes of which she is not Guilty Mr Chaplin has accused her of Bigamy and adultery and the Commisaries have called upon her to say whether she has committed these crimes or not But with great Submission the Commisaries cannot expect that she should acknowledge herself Guilty of Crimes or at all answer to the Charge before she is legally brought to trial. If any prosecution is brought against her in proper form she will stand in her defence and being fully conscious of her Innocence she has no doubt of Obtaining an acquittal. But in the mean time she must beg leave to insist that the matter stated in the Letter of information to the Commisaries comes in a most Incompetent shape before them because whether true or false the writer of the Letter who is not so much as minister of the Parish where the Pursuer resides cannot pretend to have mandate or authority of any kind from the Defender has no Earthly right to State any Defence against the action of divorce or to demand any proof facts nor is it usual for the Commisaries to interpose *ex proprio motu* (*of their own volition*) or upon the Suggestion of third Parties not having an Interest to go into enquiries or proofs which are not demanded by the parties in the cause. If indeed there was any suspicion of the action being Collusive i.e. that the parties in the action having privately agreed that the Divorce should be obtained The Commisaries would think it their duty *ex proprio motu* to enquire into that matter and to stop further proceedings ...the fact is certain that the Defender has run off the Country and remained willfully absent for nine years before the person hinted at in the letter made the least offer of Courtship or addresses to the Pursuer and consequently before the facts alleged could have the presence of foundation Neither is it at this day known whether the Defender is dead or alive and when the whole Circumstances are taken together even if it were proved that the Pursuer was already married to another person she apprehends that she would have a relevant Defence against any trial upon the head of Bigamy and adultery. It was understood in the Civil Law that if a husband was absent for the space of 5 years and the fact

uncertain whether he was dead or alive the wife having no information about him and no Just cause for his absence the wife was at liberty to marry again without any danger of being punished for adultery and the only consequence was that if the husband should ever return he had it in his power either to reclaim his wife or not as he thought proper But is unnecessary to enlarge further on these Topics as with Submission it is altogether incompetent to go into any discussion or enquiry concerning the matter contained it may please the Commisaries to alter their Interlocutor of the 8th of January last and to authorise the Commissioner to proceed in the further Execution of the Act and Commission already extracted.”

The Commisaries had meantime caused their Clerk write a Letter to Mr. Chaplin the minister at Kinnell “...desireing to know if he would sist (*summons*) himself as a party and Establish the facts Contained in this Supposed Letter by proof. The Pursuer still apprehended this method of procedure Irregular yet she waited the issue and she at length understood that Mr Chaplin wrote an answer to their Clerks Letter importing that the Letter was a forgery that he always thought the Pursurer well entitled to a divorce and desiring the forged letter might be sent him that he might endeavor to discover the author and bring him to Punishment The Pursuer imagined that this real Letter wrote by a minister of the Gospell would have moved the Commisaries to have rejected the forged Letter with that disdain it merited she therefor...Craved the Clerk should be appointed to withdraw the forged Letter and representation thereon out of this process...”

On the 11th of March 1772 the Commisaries considered the petition which Jean’s procurator had put forward and “They by their Interlocutor of 11th March 1772 altered their Interlocutor of the 8th Jan last ordaining the Pursuers Procurator to give special answers to the facts contained in the Letters therein referred to and refused the Request of the same in so far as relates to the withdrawing of the Letter therein mentioned.” At the same time the Commisaries withdrew authorisation for the Commisary of Brechin to take the Oath of Calumny and statements from those who would give evidence. This meant that Jean and all witnesses would have to travel to Edinburgh, a considerable hardship in those days.

At the next meeting, Jean’s prosecutor argued for a review of this decision saying:

“The Petitioner cannot help thinking it extremely hard that the procedure in her cause should not be governed by the Commisaries Practice in every similar Case that have Occurred and as she Observes no Particular Circumstances in her case that ought to move the Commisaries to adopt a method of proceeedure hither to unknown she must be forgiven for submitting some of their Interlocutor to the Review...It does not therefore occur why the Commisaries should lay such hardship on the Pursuer or the

witnesses to the protest who are all people of Business in Arbroath as to bring them to Edinburgh to be examined on such simple facts...Though she cannot help Observing that she owes all the misfortune that ever happened to her to forged Letters she was betrayed into marriage by means of forged Letters as stated in her former Petition and it is very probable that some of his Confederates in that forgery may be concerned in the present and Therefore pray it might please the Commisaries to alter their Interlocutor of the 11th Current and Premo To give Judgement on the Pursuers Oath of Calumny Reported to the Commisaries on the 3rd of January last Second To appoint your Clerk to withdraw the forged Letter before mentionned and Tertro To allow the witnesses to be adduced by the Petitioner for proving the facts in her Protest To be Examined by the Commisary of Brechin in Terms of the Commission granted to him for that Effect already extracted according to Justice as the said Petitions signed by the said Charles Leslie Extract in process bears.”

“Which Petition having been considered by the said Commisaries They by their Interlocutor of date the 20th day of the said month of march and year foresaid Refused the desire of the Petitioner and adhered to the former Interlocutor.”

Jean’s procurator then promoted a “Bill of advocation to the Lords of Council and Session complaining of the foresaid Interlocutor and the same having come before Lord Gordonstoun ordinary for the time on the Bills His Lordship Having Considered the Bill and very particular Circumstances of the Case by his Interlocutor dated the 24th day of April 1772 Remitted to the Commisaries with this Instruction That they entirely disregard the Letter as a manifest forgery and that they proceed in the usual form when there is no appearance of the Defender and ordered the Commission as granted by the Interlocutor of the 13th of December 1771 to be Carried into Execution.”

The Commisariat of Brechin then resumed collecting evidence and remitted it to the Commisariat of Edinburgh.

Finally, on 18th June, 1772 “The Commisaries gave and pronounced their sentence and Decreet on the forsaid matter Divorcing Separating finding declaring and decerning in manner at length before written and ordain all execution needfull to pass and be direct hereon in form as Effiers (*appropriate*) and Extracted.”