



Probate Records

Introduction

A will is a document which sets out a person's wishes about the disposal of his or her property. The legal process of proving a will and administering and distributing the estate in accordance with those wishes is known as probate.

Probate documents can be remarkably helpful to family historians and it would be a mistake to assume that only wealthy people made a will. If you are lucky, wills can be found from the fourteenth century up to the present day and no matter what the date, if they do exist, they can provide a tremendous amount of information. Probate records are personal and these documents might provide one of the few instances when you will 'hear' the actual wishes and words of your ancestor.

What can be found on a will?

A probate document will usually record the following:

- Name, address and occupation of the testator
- Date the will was made and signed
- Indication of the health of the testator when the will was made
- Details of the family – i.e. married daughters, sons' wives, grandchildren, in-laws. Elder children may have been provided for earlier and so might not be named
- Details of property leased and owned
- Date the will was proved and sometimes the date of death. Although the testator has died by this date, probate might not be granted for some considerable time after the death, sometimes many years later.

Terminology and procedures

The legal language used in probate documents can be formulaic and difficult to understand. A will is a document that deals with a **TESTATOR'S** wishes concerning the disposal of property after death. The testator is the person who made the will. The **WILL** deals with the person's **real** property (land and buildings) and a **TESTAMENT** provides for the **personal** property (goods and chattels). In England and Wales, the Will and Testament are usually contained in the same document and the terms gradually came to mean the same. An **EXECUTOR** (male) or **EXECUTRIX** (female) is appointed by the testator to prove the will and satisfy a court that it is a valid. Typically there would be one, two or three named executors. The court **GRANTS** probate that permits the executor to carry out the testator's wishes. This decision is recorded in the probate **ACT BOOK. REGISTERED COPIES** of wills may also be copied into the records at the time probate is granted,

although sometimes the original will is retained by the court. Should a testator change his mind after the will has been drawn up, amendments or additions might be made in the form of a **CODICIL** which is attached to the end of the will rather than the whole document being re-written. In the case of **INTESTACY**, where no will has been made, a relative or creditor can apply for letters of **ADMINISTRATION** or an **ADMN** and so will be known as the **ADMINISTRATOR** or **ADMINISTRATRIX**. An administration might also be granted if the executor of the will predeceases the testator or **renounces** (refuses to act in such a capacity). Not all wills were probated and some might take a long while to come to court. There may be documents amongst family papers that were never presented before a court. Early wills might have accompanying documents such as **INVENTORIES**, listing in detail the value of the testator's property room by room or **ACCOUNTS** rendered by executors. The court might also provide for the education/**TUITION** of children or guardianship/ **CURATION** of orphans. Where no legal will was drawn up, the last death-bed wishes of the deceased could (before 1837) be recorded as a **NUNCUPATIVE** or spoken will noted by a witness, friend or relative in attendance at the scene of death. Children, lunatics and criminals were prevented from leaving wills and, before the 1882 Married Women's Property Act, married women required the permission of their husbands to make a will.

Finding wills and admcons

Registered English and Welsh wills and administrations are public records and are broadly speaking to be found in one of three places:

1. The Principal Registry of the Family Division (PPR) at First Avenue House, 42-49 High Holborn, WC1V 6NP (from 1858)
2. The National Archives (TNA), Kew, Richmond, Surrey. TW9 4DU (before 1858):
www.nationalarchives.gov.uk
3. Local church court records in local record or diocesan offices (before 1858)
Addresses and websites can be found via TNA's Archon website:
<http://www.nationalarchives.gov.uk/archon/>

Records after 1858

From 12th January 1858, the Civil Court of Probate proved wills and granted administrations in England and Wales in the probate registry in London and local offices around the country. Copies of all wills and administrations recorded by local registries were sent to the Principal Probate Registry (PPR) where the annual indexes or **calendars** of wills for the whole of England and Wales can be searched. Original wills and office copies are now stored for the Court Service in Birmingham. If a copy of a document is required, this can be ordered via the PPR in London at a cost of £5. Scanned copies are made in Birmingham and sent electronically either for collection in person in 5 working days or for delivery by post after 7 working days. An unsealed copy can be collected within an hour if you wish to wait. If required, a copy of the original will can be produced for £15.

Post 1858 Annual indexes or calendars

The indexes are arranged annually for the year when probate was granted which is not necessarily the same year as the death. After 1870 both wills and admcons are listed together alphabetically under the name of the testator. Before that date there are two alphabetical sequences in each year, one for wills and one for admcons.

The indexes from 1858 are quite full noting the name and address of the testator; dates of death and grant of probate; the name of the executor and the value of the estate. Before 1892 the relationship of the executor to the testator is often noted. The indexes are not yet available on line and while TNA, SoG, some local record offices and local probate registries may have copies of the indexes from 1858 up to about 1930 or 1943 on microfilm, microfiche or in books, these do not contain any marginal notes or amendments that are to be found in indexes in the London search room. The annual indexes at the PPR are in book form up to 1992, on microfiche from 1993-1998 and on a computer index from 1996 to date. From 1968 to 1995, the name of the executor(s) is not included in the indexes. There is a further computer index under construction called 'Willfinder'. At present this can be searched in four-year periods from 1920-2008 at PPR and in some probate registries.

If you cannot get to London to order a copy, the York Probate Sub-Registry will take postal requests and arrange for searches to be made and copies of the wills or administrations to be posted on from the Birmingham repository.

York Probate Sub-Registry
Castle Chambers
Clifford Street
York
YO1 9RG
Tel: 01904 666777

The York Registry does not allow searches to be made in person at its offices.

Originally in 1858 there were over 40 local registries but now there are only 11 registries and 18 sub registries plus the PPR in London. Copies of wills probated locally are sent to PPR and stored at the Courts Service Birmingham repository. Each local registry has a set of indexes but those from the defunct registries or indexes over 50 years old are often transferred to local CROs and libraries and hence partial sets of indexes exist elsewhere. Local probate registries can order wills for you, but you need to contact them in advance to establish how searches can be made and have a pretty good idea of when the will would have been probated if you want the staff to search for you. Addresses of local probate registries can be obtained from the Courts service website: <http://www.hmcourts-service.gov.uk/infoabout/civil/probate/registries.htm>

Records before 1858

To find wills and administrations before 1858, it is necessary to have some understanding of the hierarchy of the various church courts in which a will might have been proved or an administration granted. Ecclesiastical courts came under the control of the following church officials:

1. An Archbishop

The Archbishop's chancellor or registrar presided over the Prerogative Courts. The North of England (Northumberland, Westmorland, Cheshire, Cumberland, Durham, Yorkshire, Lancashire and Nottinghamshire) fell within the Province of York and hence the Prerogative Court of York (PCY). The remainder of the South of England and Wales fell within the Province of Canterbury and hence the Prerogative Court of Canterbury (PCC).

2. **A Bishop**

Presided over a diocese. The diocese may cover several counties such as the Diocese of Lichfield (Derbyshire, Staffordshire and Shropshire) or the Diocese of Norwich (Norfolk and Suffolk). Alternatively a diocese may cover only part of a county such as the Diocese of Rochester that covered West Kent. The Bishop's Diocesan Court was known as a Consistory Court (or in some instances as a Commissary Court).

3. **An Archdeacon**

Presided over a part of a diocese known as an Archdeaconry. The archdeaconry may form part of a county, a whole county or indeed cross county boundaries.

4. **Peculiars (sometimes written as Peculier)**

For historical reasons certain parishes or groups of parishes were independent of the formal control of a local church court. These areas were known as Peculiars and their probate activities were governed by a different official from those outlined above - perhaps by a Rector of another parish; the Dean and Chapter of a local cathedral; a Bishop or Archdeacon of another diocese or archdeaconry; the Lord of the Manor; a University; the Crown.

Each Church Court or Peculiar that operated a probate practice reserved the rights to grant probate on wills or letters of administrations in return for charging court fees.

Which Ecclesiastical Court?

The jurisdiction of a church court depended on where the testator held property and the value of that property, not necessarily where he lived or died. While there were rules governing which courts might have jurisdiction in a particular case, in practice it is sensible to search all the potential courts.

1. Land/property all in one archdeaconry
= ARCHDEACONRY COURT
2. Land/Property in more than one archdeaconry but within one diocese
= CONSISTORY/COMMISSARY COURT
3. Land/Property in more than one diocese but all in Province of York
= PCY
4. Land/Property in more than one diocese but all in Province of Canterbury
= PCC
5. Land/Property in both Provinces
= PCC (senior to PCY)
6. Outside archdeaconry but still in jurisdiction of Consistory or Province
= PECULIAR

The following titles may help to establish which were the relevant courts:

- *Probate Jurisdictions: Where to look for Wills* by Jeremy Gibson & Else Churchill
- *Phillimore Atlas & Index of Parish Registers*
- Maps of local courts jurisdictions including peculiars are published by the Institute of Heraldic and Genealogical Studies, Canterbury.

How to use wills

Wills can often be very long and difficult to read. You may have to undertake a palaeography course to learn to identify certain forms of handwriting and to recognise common forms of letters, words and phrases. A will before 1858 will almost always begin with the phrase *In the name of God Amen*. Use this common phrase to learn to recognise how the clerk wrote certain letters. Look for each new instruction or bequest to begin with the word *Item*. Rather than transcribe the whole document, make an abstract of the document noting the following salient details:

- Name, address and occupation of the testator
- Date the will was made
- Details of executors
- Details of the family – i.e. married daughters, sons' wives, dead brother's children. Remember elder children may have been provided for earlier and so might not be included.
- Draw up a rough pedigree of the family mentioned within, making notes if anyone was described as deceased or living elsewhere
- Details of any other names mentioned in the will such as witnesses, business partners etc
- Details of bequests
- Details of property leased and owned
- Date the will was proved, by this time the testator had died
- Date of death if it is given

Often the testator might express a preference for his place of burial. He may mention several places where he owns property and this might be a clue when looking for records of baptisms, marriages or burials. You might even discover whether the testator got on with his family. Extra information, especially about executor, may sometimes be found in the grant of probate or letters of administration.

Search strategy

Generally it is sensible to search the records of the local church court and work up through the higher church courts. However it may be easier to start with the records of the highest church court - the Prerogative Court of Canterbury (PCC) when searching for wills as these records in series PROB 11 are indexed online through The National Archives (TNA) Documents Online website:

www.nationalarchives.gov.uk/documentsonline/.

By the early 19th century, many people went straight to the Prerogative Court of Canterbury for probate matters and the business of the lower courts declined. If found on the Documents Online index, PCC wills can be downloaded from the site (£3.50 per document in 2009). Alternatively they can be viewed, free of charge, through Documents Online at TNA and SoG, where copies can be made.

The Society of Genealogists holds all published and some unpublished indexes that will tell you if a will exists. Many of these indexes are published by the British Record Society or by local record societies. The wills themselves, found in the records of the Consistory Courts, Archdeaconry Courts and Peculiar Courts are located in county or diocesan record offices. Some record offices (Chester, Essex, Gloucester, London Metropolitan Archives and Truro) have published indexes to their wills on the Internet.

Wiltshire Record Office has made both the probate indexes and images of the original documents available online.

The Borthwick Institute in York holds the records of the Prerogative Court of York (PCY) and other courts for Yorkshire. The Origins website www.originsnetwork.com indexes the Medieval probate documents held at the Borthwick Institute from 1267-1500 along with records for the Prerogative and Exchequer Court 1731-1858 and Peculiars in the Diocese and Archdiocese of York from 1383-1858.

Often, however, the only finding aid that might tell you if a will exists is an unpublished card index at a record office or a nineteenth century manuscript calendar (a partial index that is arranged more by date and initial letter rather than strictly alphabetical). Sadly, some wills for the counties of Devon and Somerset were destroyed during the Second World War. Wills recorded in the records of the lesser London church courts (below the level of the PCC) can be difficult to find as they may be held in various record offices, LMA, Guildhall Library, Lambeth Palace etc. A private index to these courts exists for the period 1750-1858 with the first part covering testators with surnames A-D having been published on CD-ROM and held in the SoG library. Details about the indexes for the above can be found in *Probate Jurisdictions: Where to look for Wills* by Jeremy Gibson & Else Churchill. A website updating this book, including any online indexes to wills or administrations, can be found at:

<http://www.dur.ac.uk/a.r.millard/genealogy/probate.php>.

Supplementary records

The records of the Inland Revenue or Estate Duty tax on estates 1796-1903 can be found at TNA. These accounts might be useful in discovering extra information about the beneficiaries of wills or for supplementary information about the property of the testator.

Indexes to the accounts are on film (IR 27) at TNA and SoG. Images of the indexes are on line at: www.findmypast.com.

Note the indexes are arranged as follows:

1796-1811 annual index volumes to;

- **PCC wills**
- **PCC admcons**
- Separate listings for each of the other courts' wills & admcons. These are now indexed and can be searched for both wills and admcon at:
<http://www.nationalarchives.gov.uk/documentsonline/death-duty.asp>

1812-1903 annual index volumes for:

- wills of PCC & other courts grouped together;
- PCC administrations;
- administrations of other courts grouped together

The accounts themselves are to be found at TNA in IR 26 to 1857. The post-1857 accounts require three days notice for production.

The Society of Genealogists holds the following:

- 1858-1930 Will indexes on film
- IR 27 Estate Duty Indexes 1796-1858
- All published indexes pre 1858
- British Record Society Index Library Vols (BRS)
- MS calendars on film
- Abstracts – e.g. Bank of England Wills 1717-1845
- (abstracts of wills referring to government stock)
- Copies of probate documents and index listings in its various Document Collections. An index to those copies and abstracts deposited with the SoG since 1992 is shortly to be published on the members area of the SoG website

Scotland and Ireland

While the legal system in Scotland is significantly different, finding Scottish testaments is a lot easier. All documents proved in the Commissariat and Sheriffs Courts up to 1901 are to be found through a free index at www.scotlandspeople.gov.uk.

Ireland had a hierarchy of church courts similar to that of England. Sadly, many original Irish records were destroyed in 1922 but some had been indexed or abstracted before this destruction. The following may be of interest.

- Prerogative Court of Armagh - indexed
- Lesser church courts – some indexed
- Private collections at National Archives, National Library, Genealogical Office

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