

## Probate Records

### Legal Records Information 23



PROB 11/1596, Court copy of a proved will

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### 1. Where to Look for a Will or Grant of Administration

While a few original wills may be found among private papers, the most reliable place to search for a will is among the records of the court where probate was granted, i.e. where the will was given official approval empowering the executor to act. In cases where no will was made, letters of administration were granted to the next-of-kin, giving him or her the authority to distribute the intestate's estate. (The word 'estate' is used here meaning the personalty, i.e. chattels, cash, debts, leases, etc., of the deceased. The ecclesiastical courts had no jurisdiction over bequests of freehold property. If such bequests were in dispute, recourse was had to Chancery or Common Law. Mixed wills, that is of personalty and realty, were nevertheless registered in the ecclesiastical courts.)

The Principal Probate Registry started functioning on 12 January 1858. From this date a copy of every will proved is to be found at the Probate Search Room, First Avenue House, 42-49 High Holborn, London WC1V 6NP (tel: 020 7947 7022). But prior to the Court of Probate Act of 1857, the proving of wills and the granting of administrations lay with ecclesiastical courts and some manorial courts. There was an elaborate network of probate courts; the factors which determined in which court a grant should be made were the place of death and the size and distribution of the estate in question. See Anthony J Camp, *Wills and their whereabouts* (private publication, 1974) for background information on wills and court hierarchy.

The searcher for a pre-1858 proved will or grant of administration has two initial problems, namely to decide in which court the grant was made, and to ascertain where the records of that court are now kept. The estate of a person of small means was usually dealt with in the lowest permissible court, that of the archdeacon. The will of a person with goods in more than one archdeaconry was proved in the diocesan court. There were also various 'peculiar' jurisdictions, such as those exercised by the deans and chapters of cathedrals. Those leaving goods in more than one diocese or peculiar to the value of £5 (£10

in London) or more were deemed to be in possession of *bona notabilia* and, as such, their estates came under the cognizance of one or other of the provincial courts, the Prerogative Court of Canterbury or the Prerogative Court of York. If goods were held in both provinces the grant could be made either solely in the court of the Archbishop of Canterbury, or in both provincial courts. The records of the minor probate courts are deposited in county record offices or other local repositories. Records of the Prerogative Court of York are held at the Borthwick Institute, University of York, Heslington, York YO10 5DD. Indexes to wills proved by the Prerogative and Exchequer Courts of York 1853-1858 are now available at [www.britishorigins.com](http://www.britishorigins.com) as part of an ongoing project to index the whole series. For more information about probate sources on the internet see Online Sources below. The location of the records is explained in Jeremy Gibson and Else Churchill, *Probate jurisdictions: where to look for wills* (Federation of Family History Societies, 2002). The problem of deciding on the right court is more complex, and it may be necessary to search the records of several.

## 2. Documents Available in The National Archives

### 2.1 Death Duty Registers

If the grant of probate or administration was made after 1796 and the court of probate is not known, the [Legacy Duty Registers](#) and their indexes may be useful (The National Archives reference: [IR 26](#) and [IR 27](#)). If legacy duty was payable on the estate in question these registers indicate in which court the grant was made. There is a Research Guide entitled [How to Interpret Death Duty Registers](#) on the contents and use of these registers.

### 2.2 Registers of the Prerogative Court of Canterbury

The only probate court records deposited in The National Archives are those of the Prerogative Court of Canterbury, 1383-1858.

The Prerogative Court of Canterbury was the metropolitan probate court for the Southern Province and, as such, was by far the busiest and most prestigious court. It sat in London, in Doctors' Commons, and had overriding jurisdiction in all England and Wales. It had sole jurisdiction where the deceased possessed *bona notabilia* in two bishoprics or two peculiars in the southern province, and also over estates of people who died at sea or abroad leaving personal property here. (During the Interregnum, 1653-60, the Prerogative Court, in the form of a civil Court of Probate of Wills and Granting Administrations, was the only court). In the early 19th century the Bank of England ruled that, for their purposes, when transfers of government stock holding were involved, only Prerogative Court of Canterbury grants of probate were valid. This meant a considerable increase in business. Many of the smaller courts were, in fact, moribund by 1858. A searcher for a 19th. century will has much more chance of finding it in the Prerogative Court of Canterbury records than a searcher for a will of an earlier date. Ledgers of Bank of England will abstracts 1717-1845, are at the Society of Genealogists, 14 Charterhouse Buildings, Goswell Road, London EC1M 7BA (tel: 020 7251 8799). There is a printed *Index to the Bank of England Will Extracts 1807-1845* (Society of Genealogists, 1991). The indexes are available online to subscribers at: [www.britishorigins.com](http://www.britishorigins.com).

The records fall roughly into two categories: those emanating from the ordinary common form proving of a straight-forward will or the granting of a simple administration, and those records relating to the procedure in the contesting of a grant. Obviously, if there was litigation much more information will be forthcoming: the depositions of witnesses, pleadings, exhibits, and so on.

### 2.3 Wills and Administrations

The most useful and informative series are the court copies of the proved wills ([PROB 11](#)) and the original wills ([PROB 10](#)). All wills in PROB 11 are now available online at [www.nationalarchives.gov.uk/documentsonline](http://www.nationalarchives.gov.uk/documentsonline). They have been fully indexed and are searchable by name, place, occupation and date. The fifty earliest English wills, 1387-1439 have been fully transcribed online at '[Corpus of Middle English](#)'. Probate Acts Books ([PROB 8](#)) and Act Books of Limited Probate ([PROB 9](#)) identify the parish where the testator died. The Administration Act Books ([PROB 6](#)) and ([PROB 7](#)) provide more or less all the information that is obtainable in common form grants of administration. The means of reference to wills, administrations and the act books are the Register Books ([PROB 12](#)). They are arranged annually by the initial letter of the deceased, but not in strict alphabetical order. Strict alphabetical indexes for wills (1701-1800) and administrations (1701-1749 and 1853-1858) are available and also an index by Anthony Camp (1750-1800) available on the open shelves.

There are indexes to Prerogative Court of Canterbury wills (1383-1700) and administrations (1559-1660) printed by the British Record Society. In the two volumes of wills for the period 1383-1558 vacancy wills proved by the Dean and Chapter of Canterbury have been included. The wills to which they refer are now kept in Canterbury Cathedral Archives, The Precincts, Canterbury, Kent CT1 2EH (tel: 01227

865287). These volumes also include some wills entered in archbishops' registers, some belonging to peculiar jurisdictions, and some proved during the vacancies of bishoprics. These registers are kept at Lambeth Palace Library, Lambeth Palace, London, SE1 7JU (tel: 020 7898 1400). See also *Will indexes and other probate material in the Library of the Society of Genealogists*, ed N J Newington-Irving (Society of Genealogists, 1996), and the printed abstracts in *American Wills and Administrations in the Prerogative Court of Canterbury, 1610-1857*, compiled by P W Coldham (Genealogical Publishing Co. Inc. 1989).

## 2.4 Records in Litigation

Records in causes present two immediate problems. The first is simply that of ascertaining whether or not a will or administration was disputed. Secondly, there is the problem of finding the name of the case (A **con** B), as up to the mid 18th century some of the most interesting series have contemporary indexes arranged by the name of the promoter (plaintiff). To find out whether an estate was litigated, recourse should be had to the Register Books ([PROB 12](#)) . In **some** of these volumes **some** of the causes are indicated by an entry of "by sent." or "by decree" as a marginal note against the name of the deceased. If the sentence was registered, reference is given to the folio number in [PROB 11](#) . The sentence gives the name of the case. Indexes to various series are in preparation; they provide a means of cross-reference from the name of the deceased to the name of the case. Only in the Acts of Court Books ([PROB 29](#)) and the loose Acts ([PROB 30](#)) is there mention of every case that came before the court. Series containing most information are the pleadings, [PROB 18](#) and [PROB 25](#) ; depositions, [PROB 24](#) , [PROB 26](#) , [PROB 28](#) , [PROB 37](#) ; and exhibits, [PROB 31](#) , [PROB 36](#) , [PROB 42](#) .

The British Origins website ([www.britishorigins.com](http://www.britishorigins.com)) has an Inheritance Disputes Index, 1574-1714, to over 26,000 lawsuits instituted in the Court of Chancery relating to inheritance of money or real estate.

## 2.5 Inventories and the Value of Estates

Up to 1782 it was obligatory for every executor or administrator to return into the registry of the court an inventory of the deceased's goods. After this date an inventory might be called for by an interested party, but it was no longer an automatic part of common form procedure. Only about 800 pre-1660 inventories have survived; there is a list and index of names and places ([PROB 2](#)) . For the period 1660-1782 inventories are in the following series: [PROB 3](#) , [PROB 4](#) , [PROB 5](#) , [PROB 16](#) , [PROB 32](#) . For the period 1722-1858, they are mostly in [PROB 31](#) .



PROB 5/4160, Inventory for Arthur Darrell, Sussex, 1722

Inventories are lists of the personalty held by the deceased: leases, chattels, debts owed and owing, cash, crops, stocks, slaves, etc. No account of real estate is normally taken in estimates and totals. Reference may be made to freehold where it was relevant to the settling of the deceased's debts.

Various other series give information as to the value of estates. The bonds entered into by all administrators and some executors of estates with will annexed give a rough idea [PROB 46](#), (1713-1858). In the 16th and 17th centuries the amount of the bond appears to have approximated to the

value of the personalty. In the 18th and 19th centuries the situation is not clear: the bond was either double the value or roughly equivalent. From 1796 the value of the estate was entered into the Probate and Administration Act Books. Estimates of servicemen's estates and those under £40, £20 and £5, respectively, are noted on some of the 17th century warrants and most of the 18th and 19th century warrants ([PROB 14](#)). Pauper estates are noted in some of the Register Books ([PROB 12](#)). Orders for the distribution of some intestates' goods specify the sums available for distribution ([PROB 16](#)). Orders for the revaluation of some 19th century estates are entered in the Orders of Court Books, 1816-1857 ([PROB 38](#)).

Estate values can be found also in the Death Duty Registers, 1796-1903 (see above).

Until 1533 the final appeal from the church courts in England and Wales was to the Papal Court in Rome. These have been calendared and can be consulted at The National Archives. From 1534 appeal lay from the PCC to the Court of Arches (the records of which are now in Lambeth Palace Library), or to the High Court of Delegates (now in The National Archives). The functions of the latter were transferred to the Judicial Committee of the Privy Council in 1834. There is a printed *Index of Cases in the Court of Arches at Lambeth Palace Library 1660-1913*, ed Jane Houston (British Record Society, vol. 85, 1972) and an index of cases in the High Court of Delegates, 1651-1857 in *The Genealogist* vols. 11 and 12.

### 3. Locations

- Death Duty Registers ([IR 26](#)) up to part of 1861 are on microfilm at The National Archives.
- Thereafter they are available as original documents at The National Archives.
- Death Duty Register Indexes ([IR 27](#)) are on microfilm. These indexes are also available as a charged service on [www.findmypast.com](http://www.findmypast.com). Free access is available at The National Archives.
- Administrations ([PROB 6](#)) are on microfilm at The National Archives.
- Wills ([PROB 11](#)) are available online at [Documentsonline](#).
- Indexes to Administrations (published lists) up to 1661 are on the open shelves at The National Archives.
- Indexes to Wills (published lists) up to 1700 are on the open shelves at The National Archives.
- Indexes to Administrations ([PROB 12](#)) 1661-1700 are on microfilm at The National Archives.
- Indexes to Wills and Administrations (published lists) 1701-1800 are on the open shelves The National Archives.
- Indexes to Wills and Administrations ([PROB 12](#)) 1801-1858 are on microfilm and on the open shelves at The National Archives.
- Original Wills ([PROB 10](#)) are available as original documents at The National Archives.
- The National Probate Calendar (Indexes to Wills and Administrations, 1858-1943) are on microfiche at The National Archives.

### 4. Online Sources

Wills make good indexing projects due to their popularity with family and social historians. Many local archives and family history centres are placing their indexes online. A selection of websites can be found on [YourArchives](#).

### 5. Other Sources

There are various testamentary oddments scattered in other groups, a selection of which are listed in *A list of wills, administrations, etc in the Public Record Office, London, England: 12th-19th century* (Baltimore, 1968), a copy of which is available at The National Archives. Search the [Catalogue](#) for wills among the Chancery Masters' Exhibits ([C 103](#)). The National Archives have copies of many indexes to wills proved in other local courts.

*Readers should note that some of the records mentioned in this research guide are not yet available for inspection because editorial and conservation work on them is still in progress.*

### 6. The National Archives' Library Bibliography

The following recommended publications are available in the [The National Archives' Library](#). Where indicated a publication is also available to buy at [The National Archives' Bookshop](#).

- *When death us do part: understanding and interpreting the probate records of early modern England*, ed Tom Arkell, Nesta Evans and Nigel Goose (Oxford, 2000) - [Available to buy](#)

- Amanda Bevan, *Tracing Your Ancestors in the The National Archives* (7th edn, Kew, 2006) - [Available to buy](#)
- Anthony J Camp, *Wills and their whereabouts* (4th edn, London, 1974)
- Colin R Chapman, *Ecclesiastical courts, their officials and records* (Dursley, 1997)
- Jane Cox, *An introduction to... affection defying the power of death: wills, probate and death duty records* (Birmingham, 1993)
- Jeremy Gibson and Else Churchill, *Probate jurisdictions: where to look for wills* (5th edn, Bury, 2002) - [Available to buy](#)
- Karen Grannum and Nigel Taylor, *Wills and Probate Records* (The National Archives, 2009) - [Available to buy](#)
- Stuart A Raymond, *Words from wills and other probate records, 1500-1800: a glossary* (Bury, 2004) - [Available to buy](#)
- Michael McMahon Sheehan, *The will in medieval England, from the conversion of the Anglo-Saxons to the end of the thirteenth century* (Pontifical Institute of Mediaeval Studies, Studies and texts VI, 1963)

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