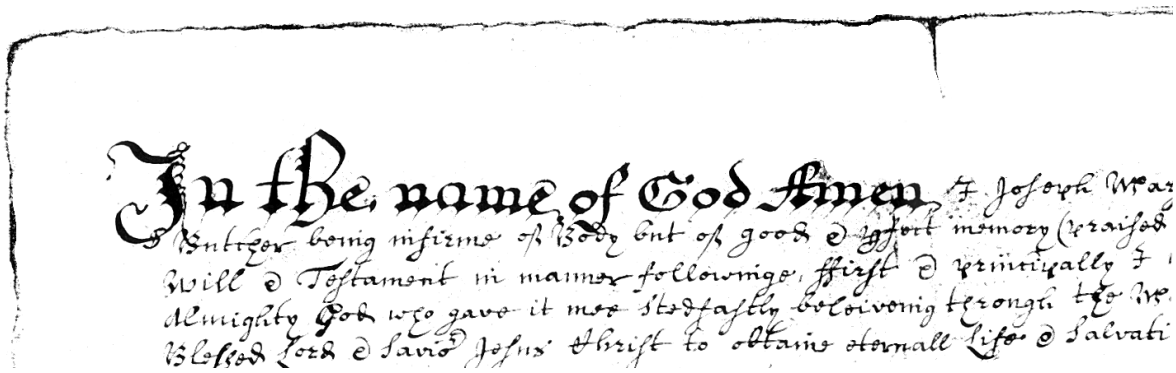

Being of Sound Mind

Understanding Probate

Don't assume your ancestors never made a will. They may not have been wealthy, but that is not a reliable guide. Sometimes people of surprisingly modest means left a detailed will and sometimes the wealthy died without having attended to this important matter.

The key thing to understand is that while wills have been around for a millennium (or longer) the process by which they were 'proved' i.e. the executors given permission to enact their provisions, changed radically in 1858. Up to 11 Jan 1858 wills were the responsibility of church courts. After this date civil courts took over and retain the responsibility to the present day.

How to Find a Will

From 1858
There are printed indexes to wills proved in the civil courts from 1858 to the present day. These can be found online on commercial databases such as ancestry.com and findmypast. These web sites have added searchable indexes linked to images of the printed indexes so that it is possible to locate a will directly using a name search. It is also possible to search the original index books at probatesearch.service.gov.uk where the indexes are both more complete and extend to wills proved up the present time. The indexing, however, only takes you to the appropriate page of the printed indexes and not directly to the individual.

The index book entry will tell you:

- the name of the deceased
- the date and place of their death
- the court which proved the will and the date probate was granted
- the name(s) and occupation(s) of the executor(s)
- The value of the estate

Before 1858
Locating a will proved by the church courts is much more complicated. There was a hierarchy of courts, with Archdeaconry courts at the lowest level, Diocesan courts above these and Provincial courts at the top level, with the Province of Canterbury being senior to the Province of York. The general principle was that if a testator's estate extended into the jurisdiction of two peer-level courts, the authority to grant probate passed to the next higher court.

This already complex structure is complicated by the right of the executors to present the will to any of the higher level courts even if the extent of estate did not require this. If this was not complicated

enough, there were many 'peculiar' jurisdictions within which other authorities could grant probate. These may include manorial courts, the Dean and Chapter of a local (or remote) Cathedral and even the direct jurisdiction of the monarch. The possible jurisdictions applicable to any parish can be found in The Phillimore Atlas and Index of Parish Registers, which contains detailed maps for each county of England and Wales.

There were some 300 courts and there is no overall index to probate grants. Some indexes and images of some wills are available online from ancestry.com and findmypast.org and on familysearch.org as well as a variety of other web sites including some record offices. These indexes invariably contain less information than the later civil indexes.

What will the Will tell me?

A will dictates how the author's estate is to be disposed of after his/her death and commonly includes bequests to their spouse, children and often wider family. Details can include the married surnames of daughters or indications of age (where beneficiaries are under 21 years old). As well as genealogically useful information, the will can tell you something about the testator's interests, perhaps from details of books or musical interests he owned.

There may be information about properties he owned. This might include the names and locations of properties and the names of those occupying them. This might lead on to new lines of research in property records.

Other Probate documents

Wills are not the only probate documents you may find. If the deceased person had property to dispose of but had left no will, one of his family, or perhaps a creditor, could apply for Letters of Administration (commonly referred to as 'admons') to authorise them to distribute the estate. These documents are usually less informative than wills but as the administrators may be family members, the names and abodes of those appointed may on their own lead to new lines of research.

Wills proved up to the early 18th century may also be accompanied by an inventory of the deceased's effects. These can be very informative about the circumstances in which he lived and some will even indicate in which room each item was found and so provide an indication of the size of his house.

While the above provides an outline of how to find and use census returns, the process can be considerably more complicated. The notes below explain the system in more detail and discuss search techniques and some of the problems which you may encounter.

Looking More Closely at Probate

We are familiar with the expression "Last Will and Testament" but may not appreciate the difference between the two components of this single document. Before the Statute of Wills in 1540 it was not generally possible to bequeath land. A legal loophole had been exploited from the 15th century by which the land was conveyed during the holder's lifetime to trustees "to hold to the use of the owner's will". The document instructing the trustees was known as his "Will". The Statute of Wills made the bequeathing of land legal. Other property was transferable by means of a "Testament" and after 1540 the two documents were combined into one.

For the terms of a will to be discharged, it was usual to "prove" the will before a probate court which would try to ensure that the terms of the will were followed and proper accounts rendered. Until 1858, these courts were operated by the Church. Subsequently, their work was transferred to civil probate registries.

If a person died without leaving a will (died intestate) the estate, particularly if small, might be divided up by mutual agreement. Otherwise, one or more of the family or a substantial creditor might apply to the court for Letters of Administration (Admons) which gave permission to dispose of the estate. If the deceased's property was of more than £5 value, letters of administration were mandatory (though it might be expected that many estates of modest value went without this formality). Only a small percentage of people left wills or had Admons issued on their death but it is not safe to assume that if an ancestor was not wealthy, he would not leave a will. Before the Married Women's Property Act of 1882, a married woman could only make a will with her husband's permission and he could choose not to carry out its terms if he wished.

It was not usual practice for a person to make a will in the course of normal life. Wills were something which were attended to when death looked like a possibility or a certainty, for example, when the individual was seriously ill. Wills might also be drawn up when the person was about to undertake a lengthy sea voyage or get involved in military action. Since death could strike suddenly, there are many occasions where a person who held substantial assets died intestate, leaving the family to apply for letters of administration.

Probate Before 1858

The ecclesiastical probate courts were organised in a hierarchical structure. At the lowest level was the Archdeaconry Court (an Archdeaconry consisting of several parishes) and if a testator held all of his property in a single Archdeaconry, this court could grant probate. If, however, the property extended into another Archdeaconry in the same Diocese, the authority of the Bishop's Consistory or Commissary Court was required if the value of this property exceeded £5 (bona notabilia). Similarly, if the property extended into more than one Diocese, probate jurisdiction was again claimed by the next highest level, the Prerogative Court of the Archbishop. There were two of these courts, the Prerogative Court of York (PCY) for the northern Dioceses and the Prerogative Court of Canterbury (PCC), which confusingly was based in London, for the southern. If property extended into both Provinces, the PCC claimed jurisdiction as the senior court. The PCC also claimed jurisdiction over probate matters concerning people who died overseas while still holding property in England & Wales.

A level of complication is introduced by "Peculiar Jurisdictions" which might extend to a single parish or cover a group of parishes. Probate jurisdiction in Peculiars, for historical reasons, was claimed by a variety of bodies such as the Dean and Chapter of a Cathedral or a University College. Where property extended outside the peculiar, the hierarchical rules described above would apply. Peculiars are very common in some counties such as Yorkshire and Wiltshire yet absent entirely from others such as Durham and Cumberland.

To add a further level of complication, executors were not constrained to present the will to the lowest competent court in the hierarchy and could (and did) seek a grant of probate in any of the higher courts. They might do this for convenience (i.e. the executor(s) lived closer to the Bishop's court than to the Archdeacon's), in the belief that a higher court might deal more competently, or simply as a matter of status. You will consequently have to check each court in the hierarchy to be

certain that a will was not proved. In some Dioceses, Archdeaconry Courts did not operate and all probate matters were handled by the Consistory or Commissary Court.

There was a disruption of this system during the Commonwealth period 1653-1660. During this time all wills were required to be proved in a single civil registry in London (this was to all intents and purposes the PCC). Some provincial courts, particularly peculiars, continued to grant probate during some or all of this period and so should not be ignored.

Finding a Will Before 1858

Finding a grant of probate under this system can be difficult since one first has to decide in which of the 300 or so courts the grant might have been made and then indexes or calendars for each of those courts must be searched for the required entry. The quality of indexing varies considerably between courts. Some are well indexed and the indexes have been published. An example is the Diocese of Chester for which indexes have been published in book form up to 1837. For testators resident in Cheshire, these, together with the remainder up to 1858, have been published on the Internet. For Lancashire, there are typed indexes 1838-1858 at Lancashire Record Office, Preston. For York (Diocese and PCY), however, the indexes have only been published up to around 1660. After this year, there are manuscript "Calendars" available only at the Borthwick Institute of Historical Research in York. A calendar is an annual list of grants sorted into alphabetical order of the first letter of the surname but not further sorted.

In each case, the index or calendar will identify the testator by name and residence, with the possible addition of occupation and indicate the location of the will within the court's records. The reference system may vary according to the court involved. That for the PCC is particularly complex.

Although the majority of wills were proved within a few months of the testator's death, there was no pressure to do so within any particular time limit. It is not uncommon to find a will proved several years after the death of the testator and a 20 year or longer delay is not unknown. Bear this in mind and do not limit your search to the year of death and possibly the year following.

The standard reference works to identify probate jurisdictions are The Phillimore Atlas and Index of Parish Registers and Jeremy Gibson's guide "Probate Jurisdictions - Where to Look for Wills". The former is easier to use since it contains maps to a considerably larger scale but the latter is required to identify the location of the records once the jurisdiction is established. Anthony Camp's "Wills and Where to Find Them" contains somewhat more detail than Gibson but is now rather out of date. You should also consult record office catalogues which may provide more details, particularly in relation to records of unproved and disputed wills.

Probate After 1858

Responsibility for probate matters was transferred to a network of civil probate registries on 11 January 1858. These operated out of cities and large towns and had authority to grant probate regardless of the disposition of the deceased's assets. Finding a will or Admon within this system is considerably simpler than under the system it replaced since there is a single consolidated national index for probates granted by all of the registries. Copies of the indexes will be found in many record offices and in some local studies libraries. Wills and Admons are indexed separately in some years but together in others. Be aware of the scope of the index when searching. The index is very informative containing dates of both death and probate, the address and occupation of the testator and the names and addresses of the executors and their relationship, if any, to the deceased. The

earlier comment about wills possibly being proved several years after the testator's death applies equally here. The probate index, though with some gaps, is available a

The Form and Content of a Will

There is no rigid or legally required format for a will. The law simply requires it to record the freely expressed wishes of a mentally competent testator and to be signed by him in the presence of at least two witnesses who must sign it in his and each other's presence and who may not be beneficiaries. There is, however, particularly with wills written in the 19th century and earlier, a general pattern. A will usually commences with the words "In the Name of God Amen..." followed by the name, occupation and residence of the testator. The testator will then assert his mental competence "... being weak in body but of sound and disposing memory..." or similar wording. It was common to leave the writing of a will until death seemed imminent so this wording is frequently more than simply a formula. There may then be instructions as to the disposal of the body and erection of a memorial and possibly a request for gifts to mourners or local residents. There will then be a list of bequests. This will frequently begin "Imprimis I give and bequeath..." and subsequent bequests will be identified by "Item...". There may be many of these and some may be complicated, particularly if property is to be held in trust. An executor or executors (female = executrix) will then be named (the executors may occasionally be named before the list of bequests or within the first or a subsequent bequest). Finally, there will be a declaration that all former wills are to be revoked and the date is given (the date may sometimes appear at the beginning after the identification of the testator). The signatures or marks of the testator and witnesses (who may be the attorney and his clerk) will then be appended.

Problems with the Interpretation of Wills

It should be noted that, particularly in early wills, bequests will include brassware and bedlinen which were then prized and valuable items. There may also be names of household and trade items and tools which are today unfamiliar. Caution should also be exercised with the interpretation of stated relationships. As with the census, terms such as "cousin", "nephew", "stepson/daughter" and "-in-law" may not be interpreted as they are today.

You should not assume, because a child, particularly the eldest son, is given a small bequest such as "one shilling" that this signifies disapproval and disinheritance. It may signify that he has already received his portion of the estate and the small bequest may simply be included to ensure that there is no subsequent argument that he has been forgotten. If someone is "cut off with a shilling" as a disinheritance, this will usually be made clear.

With wills written before 1800 and particularly before 1700, the handwriting may be in an archaic style and difficult to read. There may also be a tendency to use some unusual abbreviations and symbols to indicate the omission of one or more letters from a word. One can either practice reading this script until proficient or seek a transcription from a specialist in this work. Sometimes, one can get a start by looking for the standard phrases discussed earlier from which you can get some feeling for the letter and word forms used. You will, however, not usually encounter Latin in wills unless they are very early in date. The condition of some wills is less than ideal and you will usually find yourself dealing with a microfilm or photocopy. Photocopies and microfilms may be difficult to read and the edges of the original document may be frayed with consequent loss of text. Parchment occasionally develops holes (lacunae) into which a vital name may be lost for ever.

Administrations

In the event that no will was left and authority was needed to dispose of the deceased's estate, a grant of Letters of Administration (Admon) would be obtained from the court or registry. In general, Admons usually contain very limited information and this usually consists of the name, residence and possibly the occupation of the administrator appointed. This will frequently be a family member. Very occasionally, however, an Admon may name several family members and be of considerable value but there is seldom any way to determine this from the index entries. It is wise to obtain a copy of any Admon for a deceased ancestor "just in case".

You will also occasionally find an "Admon with Will Attached". This is usually found when either the executors have died or they have refused to execute the will. In these circumstances an administrator would be appointed by the court to discharge the terms of the will. The admon may indicate the reasons for its issue.

Other Probate Documents

Although you will chiefly encounter wills and Admons, there is a variety of other probate material which you may find associated with probate records. These can be useful both genealogically and to assist in building a fuller picture of the deceased's life. Such documents may be filed with the will of admon but may also be filed and indexed separately. Record office guides and staff should clarify for any particular court.

Codicils - A codicil is an additional document to extend or modify the terms of a will. Codicils will usually be filed with the will and may, for example, have been written to amend the will in the light of the subsequent death of one of the beneficiaries or other changed circumstances. Since they will be dated, they can sometimes be useful as a means of identifying when one of the original beneficiaries died.

Inventories - Up to about 1700 it was the practice to require executors to compile an inventory of all of the deceased's possessions together with their monetary value. Inventories will give some idea of the deceased's material possessions, particularly tools of his trade and may indicate his interests through titles of books, inclusion of musical instruments and so forth. It is also common to find the items listed under the rooms in which they were found. This can give some idea of the size of the deceased's house and occasionally of the layout of the rooms. Inventories are often stored in archives and indexed separately from the wills to which they relate.

Tuition Bonds - When the testator had young children, he might nominate a person (often a relative) to ensure that the children were properly educated and set aside funds for the purpose. The appointed guardian could be asked to enter into a bond to guarantee his proper discharge of these responsibilities. Tuition would generally apply to children under the age of 14 (12 for girls) and so is of help in narrowing down the possible birthdates for a child named in the will.

Curation Bonds - For children over the qualifying age for a tuition bond, a curation bond would apply. The difference to a tuition bond is, for all practical purposes, academic though it indicates a narrower possible range of ages for the children named.

Act Books, Probate Copies and Registered Copies

When you view a will at a record office, you will not necessarily see the original will. When a will was presented to the court, a probate copy was made. Up to about 1600 the copy would be filed and the original given to the executors. Later, it was the original which was kept and the copy given out.

Registered copies were additional copies made by the court for office use and public reference. They are usually easier to read than original wills but the possibility of transcription errors is ever-present. Original wills can be easily recognised by the signatures, and occasionally the seals, of the testator and witnesses. The Probate Act Book contains a summary record of each grant including the names of the testator and executor(s) and the date of the grant. In some cases, all of the original documents have been lost and the Act Book holds the only surviving record of a will.

Nuncupative Wills

The imminence of death may have made it impracticable to obtain an attorney in time and a dying man may have been illiterate or incapable of writing a will himself (a so-called holographic will). In such circumstances, he could dictate his wishes in front of witnesses who would see to it that these were written down at the first opportunity and would witness their validity. Such wills are termed Nuncupative and may be indicated as such in indexes, calendars and Act Books. A nuncupative will was of equal validity to a written one if accepted by the court and is of equal genealogical value.

The Genealogical Value of Wills

Wills are in most cases the only written record (even if as is often the case they were penned by an attorney) left by our ancestors. They can contain vital information to establish or confirm relationships. The most obvious value is in the bequests which may list the names of the testator's wife, children and other family members. This is invaluable both to confirm the relationships and to confirm that these people were still alive at the time the will was written. Daughters may be identified by their married names (and often their husbands will also be named) so their marriages and subsequent descendants may be identified in parish registers.

Another value of wills, particularly for farmers, is that they will often name a residence quite precisely, for example the name of a farm or the street in which a testator lived. This can be of considerable value when there are two people of the same name in an area as a means of determining which is which. They may also mention other properties he owned which may help us in tracing his movements during his life. Place names may help you to identify the property in other records such as deeds and this may lead to new avenues of research.

Wills may often include clues to assist us in finding dates for births, marriages and deaths in the family, even if they do not provide explicit information. Bequests to children "...when they reach the age of 21..." tell us that the children at the date the will was written were under this age. A reference to "...my present wife..." may suggest that the testator was previously married (and probably widowed) before marriage to his current wife. Note, however, that a testator may not differentiate between the children of his two (or more) wives unless they are his step-children and even this is not certain. Other clues to the deaths of family members may be given by phrases such as "...children of my late sister...". Remember that all of these clues relate to the date when the will was written and not to the date it was proved.

It is worth noting that the civil probate indexes from 1858 onwards contain far more information than the civil registration death indexes and may be valuable as a way to identify an ancestor if the indexes are inconclusive, possibly where the name is common.

Probate on the Internet

The indexes to civil probate grants after 1858 are available on the internet at www.ancestry.com Some indexes of grants before 1858 are available. The most substantial collection is over 1 million grants of the Prerogative Court of Canterbury for which a free index is available at The National

Archives Documents Online. Copies of the wills concerned can be ordered on line with payment by credit card. Other indexes include probate grants by the Chester Consistory Court and Chester Probate Registry (from 1858) which appear on the Cheshire Record Office web site. Copies can be ordered on line for delivery by mail.

References

The Phillimore Atlas and Index of Parish Registers, Cecil Humphery Smith

Probate Jurisdictions, Where to Look for Wills, Jeremy Gibson, FFHS (essential!)

Wills and Where to Find Them, Anthony Camp (rather out of date but still useful)

Wills Before 1858, Eve McLaughlin (inexpensive concise summary)

Wills from 1858, Eve McLaughlin (inexpensive concise summary)

Prerogative Court of Canterbury Wills, Miriam Scott, PRO Reader Guide 15 (clear & useful)

Amended 12 June 2020 - John Marsden