

Dorset History Centre - Guide to Sources

Probate Records – Wills, Letters of Administration and Inventories

What is a Will?

- A statement of how one wished to dispose of property after death
- Wills have been made since medieval times but the earliest to survive in Dorset usually date from the end of the 14th century
- The **Statute of Wills**, 1540, laid down that a will should deal with real estate (i.e. land and buildings) this is a 'devise' and a testament should deal with personal property (e.g. goods, money), this is a legacy. The two became combined and hence the phrase 'last will and testament'

Who made Wills?

- In theory, with a few exceptions, **anyone could make a will**
- The minimum age for making a will was fourteen and over for men and twelve and over for women
- Those who couldn't make a will included criminals, outlaws, lunatics, excommunicants and usurers
- Before the **Married Women's Property Act, 1882**, married women could not make a will in their own right – their property was deemed to be owned by their husband. As a result before 1882 only widows, spinsters and women who had had their property rights protected in a marriage settlement made wills
- Only a small proportion of the adult male population actually made a will which went through the process of being authorised or 'proved' or registered in a probate court
- It was not until 1815 that there was any statutory requirement for any legal proceeding to be gone through when a person died as regards their estate. Even after this date the law was never rigorously applied
- **The poor rarely made wills.** The wishes of a poor person were usually well known within the family, and their personal estate, such as it was, was usually divided up amongst the deceased family without the need of a written will

What information can they provide?

- Will usually start in a very similar way:

In the name of God Amen. The sixth day of August in the year of our Lord God one thousand six hundred and fifty six, I, John Jones of Cerne Abbas in the County of Dorset gentleman being sick of body but sound of mind and memory (Praised be Almighty God) do make this my last will and testament in manner and form following: First I commend my soul into the hands of Almighty God my Creator and my body to the earth to be buried in the parish church of Cerne Abbas And for my worldly goods that God hath been pleased to bestow upon me my will and mind is: First I give unto...

- This opening statement gives the identity of the testator and confirms that they are capable of making a will
- It often includes information on how/where the person (the testator/testatrix) wished to be buried
- The names of beneficiaries, executors/executrices and witnesses can provide valuable information on family relationships
- Wills were sometimes made many years before a person died. However it is more usual to find that they were made shortly before the person died
- If they were made some time before the person died amendments or additions may have been made subsequently and these are recorded at the end of the main will in the **codicil**
- If the person was very ill and unable to write or have a will written by a lawyer, oral statements of intention could be legally binding provided that three witnesses could swear that they had been made. Such a will is called a **nuncupative will**. From 1837 nuncupative wills were no longer permitted except for members of the armed forces
- After someone's death the will has to be **proved** by a probate court. This is to ensure that the authorities believe the will to be genuine and ensure some supervision of the administration of the will by the executors
- The original will is then filed by the court and a **probate copy** is given to the executors, another copy may be registered in a volume
- When looking for a will remember that the date it is recorded will be the date it was proved. Since proving wills could take some time – even years – you should start looking from the date of death. The date the will was made (recorded on the original) obviously could be many years before death

What if no Will was made?

- If someone died without making a will (**intestate**), where there was considerable property or some dispute within the family it would be necessary to obtain legal right to administer the estate. The document is called a **Letter of Administration (or Admon)** and appoints an executor(trix), who is usually the next-of-kin or widow
- Any claimant had to wait 14 days after the death of the person before applying to the court and took an oath to act as the executor(trix). No proof of kinship (or even death) was normally required, although the claimant was usually a widow or the next of kin. The whole process usually took about two months
- In 1670 the Statute of Distributions came into effect which dictated how a person's estate should be divided if no will was made: the widow received one third, the remainder was divided equally between the children or whatever relatives stood as next-of-kin. A woman's estate went entirely to her husband if she had one
- If no relatives could be found the estate would in theory, after the payment of any creditors, pass to the Crown
- Letters of Administration provide only very limited information – the names and possibly addresses of the deceased, the next of kin and the person appointed as executor(trix) and a date

Inventories

- Many wills and Letters of Administration also contain an **inventory** of all the goods and chattels of the deceased. This is a list and valuation of personal property; it includes furniture, household equipment and animals
- Inventories provide an insight into the lifestyle and wealth of the individual
- A grant of Letters of Administration required that an inventory be taken

Where are probate records held?

Pre 1858

- On or before 11 January 1858 wills were proved by church courts. This will usually be the Archdeaconry Court for the area of the diocese in which the person lived
- If the individual held land and property in more than one archdeaconry but in the same diocese the will would be proved by the Bishops Court called the **Consistory Court**
- Wills proved in the Archdeaconry and Bishop's courts will usually be held in the Diocesan Record Office – usually the County Record Office
- However there are some exceptions to this rule. Particularly the '**peculiars**' which were areas outside the authority of the archdeaconry, which had the power to grant probate. These were usually made up from a small number of parishes, perhaps even only one parish, and were usually a hangover from the pre-Reformation period when the local monastery had held a court
- It is therefore best to refer to one of the published guides (e.g. the *Gibson Guide, Probate jurisdictions: where to look for wills*) for details of where wills of a particular parish are to be found
- If land and property were held in more than one diocese the will would be proved either at the Prerogative Court of Canterbury (PCC) (for southern counties) or of York (for northern counties)
- The will was proved in the Prerogative Court of Canterbury if a person died with personal estate in England and Wales as well as Scotland or Ireland, or anyone who died abroad, including soldiers and sailors
- The Prerogative Court of Canterbury, which was actually based in London, had a reputation of being more competent and professional than any other probate court
- Quakers too preferred the PCC, as they did not wish to have any dealings with any local church authorities
- As a result many ordinary people chose to have wills proved at the Prerogative Court of Canterbury rather than a local court. The Prerogative Court of Canterbury is therefore not just for the wealthy or the landed gentry to prove their wills

- The Prerogative Court of Canterbury wills and Letters of Administration are held at The National Archives in Kew, but many are available on microfilm at the Family Records Centre in Myddleton Street, London. A useful guide is the book by Jane Cox, *Affection Defying the Power of Death: Wills, Probate and Death Duty Records*
- The Prerogative Court of Canterbury wills are now available over the Internet through The National Archives Documents Online service at: www.documentsonline.nationalarchives.gov.uk
- The wills of the Prerogative Court of York are held in the Borthwick Institute of Archives, University of York, Heslington, York, YO10 5DD Tel: 01904 321166 Website: www.york.ac.uk/inst/bihr The wills of the Prerogative Court of York are not available over the Internet
- Indexes are available for many of these wills. The British Record Society, Index Library has produced printed and indexed calendars of PCC wills and Admons. Other local Record Societies have also printed indexes

Post 1858

- From 12 January 1858 the responsibility for proving and recording wills was taken over by the state and the Principal Probate Registry was established. This was based in Somerset House in London with District Registries around England and Wales
- The probate was granted at the District Probate Registry, which kept their own registered copy and sent copies to the Principal Probate Registry. The originals were either kept at the registry or sent to the National Archives
- There are national indexes to the wills and administrations (**Calendars of Probate**), arranged annually they show date and place of death as well as the names (and relationships) of the executors
- Between 1858 and 1870 the wills and Admons appear in the same volume but in separate series. After 1870 they are combined into one sequence
- Copies of the indexes are available in major libraries and some record offices. Some may also be available at the District Probate Registry although the series is now so bulky that the earlier volumes have been offered to local record offices
- The address for the Principal Probate Registry is now: Probate Department, Principal Registry of the Family Division, First Avenue House, 42-49 High Holborn, London WC1V 6NP Tel: 0207 947 7000 Website: www.hmcourts-service.gov.uk/infoabout/civil/probate/index.htm

- Application for a copy of a will can be made by post from: The Postal Searches and Copies Department, The Probate Registry, 1st Floor, Castle Chambers, Clifford Street, York YO1 9RG Tel: (1904) 666777 Website: www.hmcourts-service.gov.uk/cms/1226.htm#details
- The Dorset History Centre also holds a microfiche copy of the National Probate Calendars. These are calendars of wills and administrations proved between 1858 and 1935. They are arranged alphabetically by surname and by years and provide the date and place of death, the name of the executor and the value of the estate