

## WILLS AND ADMINISTRATIONS

**The Present.** The person who deals with everything owned by the deceased is known as the personal representative, known as the executor if named as such in a Will, otherwise as the administrator. Before a Will can be actioned, it usually has to be proven to be valid. This is done in a Probate Registry, which issues a Grant of Probate. If there is no valid Will, a Grant of Letters of Administration is issued. This may also occur if the executor appointed in a Will is unable or unwilling to prove it, in which case Letters of Administration with Will Annexed are issued. The deceased's property, money and possessions are known as the estate. In some cases, such as small estates or joint holdings, a Grant may not be needed whether or not there is a Will.

**The Past.** Wills usually contain the phrase "Will and Testament", and sometimes refer to "my estate both real and personal". In Norman times there was a clear distinction between "real" property, i.e. buildings, land and associated rights, which were disposed of by a Will, and "personal" property, e.g. household effects, stock, crops and cash, which were disposed of by a Testament. The passing on of real property was effected through the royal or manor courts. The disposal of personal property was the responsibility of the Church and duty was payable to the Bishop based on the value of this personal property. It is customary to use "Will" to describe what is correctly a "Will and Testament".

The passing on of real property was usually not contentious and the items were clearly defined. Personal property, apart from any specific items described in the Will, had to be identified and an inventory made. It was therefore necessary for someone to take charge of the process; this person (or persons) was called the administrator. Different words were used to describe the gift of real or personal property. A testator "devised" real property and "bequeathed" personal property.

Real property was often either passed on before death or, if copyhold, automatically passed to the eldest son (or nearest descendant). Copyhold referred to land held under tenancy from a manor "by copy of Court Roll". The contents of a Will may therefore not represent truly the original worth of the deceased. It must be remembered that the church courts dealt only with the deceased's personal property, so if there was little of value, a Will may not have been proven. Wills for married women are rare before 1882, when the Married Women's Property Act was passed. Wills of spinsters and widows are common.

Until about the late 19<sup>th</sup> century, most people only made a Will when they believed they were dying or were old by the standards of the time. When the testator could not write, it was customary for a local person familiar with Will-making to draw one up after talking to the testator about his or her wishes. The Will-maker usually added one form or another of standard sentiments about state of mind, death and religion. Before the Wills Act of 1837, it was possible for the declared wishes of someone who died before a Will had been written to be reflected in a noncupative Will, i.e. one drawn up after death. This was only accepted for probate on the sworn evidence of people present at the declaration.

There were many conventional bequests in early Wills, e.g. a sum to the high altar for any tithes inadvertently left unpaid, a bequest to the parish priest, money for the bells to be rung, etc. There were also many standard phrases to cover eventualities such as a wife re-marrying. "Wills Before 1858", by Eve McLaughlin, is a useful publication which describes the terminology and contents of Wills in detail.

Until 1858, Wills were proven or Letters of Administration ("Admons") were granted by church courts. Although not rigidly adhered to, the rule was that if personal property valued at more than £5 was in one archdeaconry only, that court would be used but if in more than one archdeaconry within one diocese, in the Bishop's court. If in two dioceses, then the Prerogative Court of either Canterbury or York (PCC or PCY) was responsible. The PCY covered Yorkshire, Durham, Northumberland, Westmorland, Cumberland, Lancashire, Cheshire, Nottinghamshire and the Isle of Man; the PCC covered the rest of England and Wales. In general, it was only the more well-off who had personal property in two dioceses, although some Wills were proved in London, where the PCC was held, for purposes of status. The estate of a person dying overseas, of whatever nationality but leaving property in England and Wales, was dealt with by the PCC. This included large numbers of seamen, until 1815 when the affairs of seamen dying with less than £20 wages owing were directed to local church courts. There were also local courts, known as Peculiars, which covered a particular parish, group of parishes or special area, under the control of a particular cleric or even a layman.

From 12th January 1858, responsibility was transferred to civil courts of probate, now known as probate registries. The location of Wills or Admons is different before and from 1858.

### **Locations of Wills and Administrations.**

**Location before 1858.** There is no single index system. Most county record offices have an index of the Wills and Admons which have been deposited with them. Some indexes are on manuscript cards and others have been computerised. Cheshire Record Office publishes its index on its website, which can be searched on line and from which copies can be ordered. PCC Wills are held by the PRO at the Family Records Centre. PCY Wills are held at the Borthwick Institute, York. Sometimes Record Societies publish collections of transcripts. The SoG has a number of indexes.

**Location from 1858.** The Principal Probate Registry in London holds originals or copies of all Wills and Admons for England and Wales from 1858. (If the application was made at one of the District Registries, that office kept the original documents and sent copies to London.) Each year since then, an annual index, the National Probate Calendar, has been produced. These give the deceased's name, date of death, where and when the Will was proved or Admon granted, the names of executors or administrators and the value of the deceased's estate. There may also be a handwritten Folio number. Before 1871, there were separate indexes for Probate and Admons, sometimes in the same volume and sometimes in different volumes. The only place where there is a complete set of calendars available for public inspection is First Avenue House in London. Most District Probate Registries have calendars covering at least the last fifty years. If you intend to visit a Registry specifically to look at the records, you are recommended to contact the Registry beforehand to check what is available. Copies of the National Probate Calendar 1853 – 1943 (PCC wills only pre 1858), usually on microfiche, can be found in most Record Offices and in some Local Studies Libraries. There are copies at Chester Record Office, Stockport Local Heritage Library and Trafford Local Studies Library.

The actual documents can be seen, on request, and copies ordered, at the Probate Search Room, First Avenue House, 42-49 High Holborn, London WC1V 6NP (tel. 020 7947 7000). District Registries hold copies of recent Wills and Admons, and County Record Offices usually have copies of older documents.

Postal requests for searches and copies can be made to: **The Postal Searches and Copies Department, The Probate Registry, Castle Chambers, Clifford St, York YO1 9RG** Tel: 01904 666777

For a fee of £6, a search is made for a period of four years and copies of the Will and/or Grant are provided if a record is found. The Probate Registry will conduct a search for a period longer than the standard four years, for an additional fee of £4 for each 4-year period after the first four. Thus, an 8-year search Will cost £10, a 12-year search £14, and so on. Applications for searches must be made in writing, and give the full name, last known address and date of death of the person concerned. A search can normally be made using less detail, but if the date of death is not known, you must state the year from which you want the search to be made, or give some other evidence that might indicate when the person died. If you have information about legal actions related to Probate or the disposition of assets, include that on your application. Many people find it convenient to order copies in this way even if they have already made a search of the Probate indexes and located a record relating to the subject of their research, but if this is the case, please include the grant type, issuing Registry and grant issue date on your application, as well as the Folio number if applicable as this can speed up the supply of copies considerably. The fee should be payable to "HMCTS".

For more information, visit:

- <http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/probate/family-history.htm> (an application form can be downloaded – look in the section headed "what does it cost?" – and addresses of local probate registries are given)

**Death Duty Registers (1796-1903).** One possible way of finding in which court a Will was proved is to look in the Death Duty Registers, held in the PRO at Kew. Various taxes were imposed on estates from 1796. They had different names but were known generally as death or estate duties. Up to 1805 only about 25% of estates were liable for tax but by 1815 about 75% were liable, increasing later to nearly all. Indexes to the Registers for the years 1796-1903 can be seen at Kew and at the FRC. (The recording system was changed in 1903 such that files were destroyed after 30 years.) The index records where Probate or Admon was granted, thus indicating which Record Office to contact. The actual Registers, which contain useful information, can only be seen at Kew and have to be ordered with three days notice.

**Documents.** In most cases, the copy of a Will which is obtained will be of the transcript made in the Court Register, so actual signatures will not be reproduced. A Will or Admon may be accompanied by an Inventory and/or other documents associated with probate, e.g. accounts and valuations. There may also be one or more codicils amending the original Will. The papers may include an Epitome, which is an extract of the relevant details, ignoring all the religious and personal statements.

**No Will?** If no Will or Admon is found within about three years of death, it is worth looking at the time when any heirs died. This is because unadministered estate is most likely to have come to light at that time. If no Will is found for an apparently wealthy person, it is possible that the estate passed by entail (common in the peerage) or under an ancestor's Will.

**Contents.** The evidence found in older Wills needs to be interpreted with caution. Descriptions of family relationships are likely to be not the same as today. "Father/mother", "brother/sister", "son/daughter" may refer to in-laws as well as blood relations. "Cousin" was used for all types of kin. The Will might make no mention of real estate. Certain types of real estate, depending on the terms of tenure, could be left by Will after 1540. From 1660 the only exception to this was land held by copyhold, which was not devisable by Will until 1815. If an eldest son was to inherit the real estate as his father's heir-at-law, his father's Will did not need to mention him or his inheritance. Married daughters may not be mentioned if they had property settled on them at marriage.