

# Tips and Tools for Navigating the English Probate System

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## Overview

The English probate system can appear complicated, but it is worth understanding how the system works because the probate records are a valuable primary resource for researchers. About 99% of all probate copy wills and administrations for England and Wales are available on microfilm through the Family History Library in Salt Lake City and its branches. These records are well organized and easy to use, after you have figured out which jurisdictions need to be examined. This presentation will provide tips and tools to help you navigate the system smoothly.

## Probate Process

The “Last Will and Testament” was often written when the testator was in ill health. An executor or executrix would be named. After the person died the executor took the *original will* to court to receive a *grant of probate* and a recording in the *Probate Act Book*. Prior to 1733 the probate acts were written in Latin. Two copies of the original will were made. First, the *probate copy* which was sealed to the probate act and was the executor’s authority to perform the provisions of the will. Second, a *register copy* was usually made, and recorded by the court as a *registered will*. It is the original will and the registered copy of the will that are usually available to researchers. A contemporary chronological index was kept by the court, called the *probate calendar*. This recorded the testators name arranged by the first letter of the surname and by parish.

If a person died without a will, the next of kin or the person with the greatest claim on the estate could, after 14 days, apply for a *letter of administration*. The estate would then be divided depending upon the laws at the time.

The probate process, depending upon circumstances, could generate other documents including: inventories; letters of administration with will annexed; executors’ accounts; curation bonds (guardianship); bonds (testamentary or administration); and renunciations. Disputes over the validity of the will generated

interrogatories and depositions. The FHL catalog will show if any of these records are available on film for your diocese.

1. Cox, Jane. *An introduction to ... Affection Defying the Power of Death: Will, Probate & Death Duty Records*. Birmingham, England: Federation of Family History Societies, 1993.
2. Milner, Paul and Linda Jonas *A Genealogist’s Guide to Discovering Your English Ancestors*. Betterway Books, Cincinnati, OH. 2000

## Who could make a will

Until 1837, a will could be made by any male over 14, and female over 12. After that date the person had to be 21 or over. However, for married women there were legal restrictions on what they could own, and thus leave in a will, until the Married Women’s Property Act of 1883. Prior to 1883 people writing wills were generally men, spinsters or widows.

## After 1858

All wills and administrations for England and Wales after 11 January 1858 are held by the Principal Registry of the Family Division of the High Court of Justice. They are sometimes known as the Somerset House wills, moved to First Avenue House, 42-49 High Holborn, and as of October 2013 moved to Court 38, Royal Courts of Justice, Strand, London WC2A 2LL. The indexes themselves can often provide the researcher with enough details to clearly identify the individual being sought, even with a common surname. The indexes, known as calendars are no longer available for public viewing because they are so readily available online at [www.Ancestry.com](http://www.Ancestry.com), at [www.FindMyPast.com](http://www.FindMyPast.com) and the British government website.

To do a free online search go to <https://www.gov.uk/search-will-probate>. A search for the period 1858 to 1996 is by surname and year of death only. The results are displayed as scanned images of the calendar pages. From this information you complete a template on the same page asking for: date of probate; date of death; surname; first name; registry; folio

number. You can then add to the basket and purchase the will using a credit card.

Searching the period 1996 to present provides the same simple search or more advanced options, useful if you know your facts, but you are still limited to searching one year at a time. The results are presented as a table showing: surname; first name; date of probate; probate number; date of death; document type; and registry. From the table you can select a document and pay for it online with a credit card.

Purchase of a will or administration post 1858 will cost £10 and can take up to 10 days.

The National Archives has retained a 7% sampling of disputed wills, 1858-1960, in the Court of Probate and Supreme Court of Judicature. Search the National Archives catalog by name, using series code J121.

3. Collins, Audrey. *Basic Facts About ...Using Wills After 1858 and First Avenue House*. Bury, Lancashire: Federation Of Family History Societies. 1998.

### Prior to 1858

Before 1858 there are many courts throughout England and Wales with the authority to prove wills and give grants of administrations. The majority of these were church courts.

In theory, if you had personal property in one archdeaconry, your will could be proved in the archdeacon's court

If you had property in more than one archdeaconry, but all in one diocese, your will could be proved in the bishop's court, usually called the consistory court.

If you had property in more than one diocese, but all in one province, your will could be proved in the prerogative court of the Archbishop - York or Canterbury.

If you had property in more than one province, or in foreign parts, your will could be proved in the Prerogative Court of Canterbury (PCC).

Another jurisdiction is a peculiar which is an area within an archdeaconry but outside the jurisdiction of

the local archdeacon or bishop. There are over 200 peculiar areas and courts ranging in size from a township within a parish, to a parish, to a group of parishes.

4. Smith, Frank and David Gardner. *Genealogical Research in England and Wales, Volume 2*. Salt Lake City, UT: Bookcraft Publishers. 1959.

### Locating the jurisdiction of your parish

The first step in finding a probate is to determine the ecclesiastical jurisdiction for that parish. Smith is the clearer reference but the information is also found in Lewis.

5. Smith, Frank. *A Genealogical Gazetteer of England*. Baltimore: Genealogical Publishing Co. 1968, fourth printing 1982.
6. Lewis, Samuel. *Topographical Dictionary of England*. 1831 or 1833 editions. 1831 edition reprinted 1996 by Genealogical Publishing Co. Baltimore, MD

Maps can help to visualize the parish and jurisdictional boundaries.

7. *Pre-1858 English Probate Jurisdictions for (county)*. Salt Lake City, UT: The Genealogical Society. 1968. Contains table showing order to search the courts.
8. Humphery-Smith, Cecil R., *The Phillimore Atlas and Index of Parish Registers*. Chichester, Sussex: Phillimore, 3rd. ed. 2003.

An online search at [www.maps.familysearch.org](http://www.maps.familysearch.org) will also show probate jurisdictions for all parishes in England and Wales. Guidance can also be found at [www.familysearch.org](http://www.familysearch.org) in the Wiki - search on England Probate Records or [county] probate records.

Warning: many other probate records have not been microfilmed, e.g. inventories, accounts, bonds, etc. Carefully check the FHL catalog to see what is included for your jurisdiction.

If you find an entry in the court calenders but cannot locate the will or administration, or you feel there may be more records (e.g. inventories) then inquire with the depositories where the originals are located, this should be the Diocesan Record Office which is usually, but not always, the County Record Office.

- Gibson, Jeremy and Else Churchill. *Probate Jurisdictions: Where to Look for Wills*. England: Federation of Family History Societies, 5th ed., 2002.

### Prerogative Court of Canterbury (PCC)

The PCC was the highest church court in England and Wales, and thus was the most important. The original records are held by the National Archives at Kew, England. Scanned images of all one million plus register copy wills from 1384 to 1858 are online at [www.nationalarchives.gov.uk/help-with-your-research/research-guides/wills-1384-1858/](http://www.nationalarchives.gov.uk/help-with-your-research/research-guides/wills-1384-1858/). You can search the index free and download a specific will for £3.50. The register copy wills and indexes are also available on microfilm through the FHL.

Rules governed which wills could be proved in the PCC, but often they were ignored. In theory if you had personal property in more than one diocese of the ecclesiastical province of Canterbury worth more than £5 (£10 in the dioceses of London and Lincoln) then the estate could be proved in the PCC.

The PCC was recognized for its good record keeping system. This result was that many people intentionally sought a probate act in the PCC. This was especially true of the landed gentry and the clergy. Other special groups included soldiers, sailors and those who owned property overseas or died in foreign parts.

During the Commonwealth and Protectorate (1653-1660) all wills were proved and grants of administration issued at one central Court of Probate in London. This was in reality the PCC under a different name. All the original documents and calendars are in English during this time period.

- Grannum, Karen and Nigel Taylor. *Wills and Other Probate Records: A Practical Guide to Researching Your Ancestor's Last Documents*. Kew: The National Archives. 2004.
- Scott, Miriam. *Prerogative Court of Canterbury: Wills and Other Probate Records*. Public Record Office Reader's Guide No. 15. Kew, Surrey, England: Public Record Office Publications, 1997.
- Wills and Probate Records*. National Archives Research Guide [www.nationalarchives.gov.uk](http://www.nationalarchives.gov.uk) - online free

### Death Duty Registers and Indexes

After 1796 the death duty registers can potentially provide a guide to the court in which a will was proved or an administration was granted.

From 1796, legacy duty was payable on legacies and the residues of personal estates worth more than £20. Unfortunately for us, close relatives (spouses, children, parents and grandparents) were exempt until 1805, so only about 25% of wills and administrations were recorded in the registers. Between 1805 and 1815 the duty was extended so that people inheriting property worth over £100 became liable for taxes. The exceptions were limited to the deceased's spouse and parents in 1805, then to spouse only by 1815. This change increased recording to about 75% by 1815 and eventually to almost 100%. Until 1858 the death duty registers are a valuable finding aid to wills and administrations. The registers may also provide information not given in the will, eg. names of children or relationships of the beneficiaries to the testator.

An index to the Death Duty Registers for 1796 to 1903 can be searched at [www.FindMyPast.com](http://www.FindMyPast.com). The Death Duty Registers for the Country Courts (excludes the PCC) are available online for 1796 to 1811 at [www.nationalarchives.gov.uk/help-with-your-research/country-court-death-duty-registers-1796-1811/](http://www.nationalarchives.gov.uk/help-with-your-research/country-court-death-duty-registers-1796-1811/).

- Death Duty Records from 1796*. National Archives Research Guide - online free
- Death Duty Registers: How to Interpret*. National Archives Research Guide - online free

### Bank of England Indexes

When a person died holding government stock the Bank of England recorded an abstract of the will, or note of administration, giving details of the stock and the beneficiary. These registers date from 1717 to 1845 and are held by the Society of Genealogists in London. An index is available for 1807 to 1845, containing about 31,000 abstracts. A legal ruling resulted in most stockholders after 1819 having their wills probated in the PCC. An index to the full period 1717 to 1845, with 60,549 names is online at [www.findmypast.com](http://www.findmypast.com)

- An Index to the Bank of England Will Extracts: 1807-1845*. London, England: Society of Genealogists, 1991 (book and microfiche).

## Inventories

The inventory is a listing of all the moveable effects of a deceased person and was often requested by the probate court, especially for intestate persons. Inventories were drawn up and signed by two reputable neighbors of the deceased. Inventories are very common between 1529 and 1750. They provide fascinating details about a persons lifestyle. All the household goods are listed, generally by room, with a listed value.

16. Milward, Rosemary. *A Glossary of Household, Farming and Trade Terms from Probate Inventories*. Derbyshire Record Society Occasional Papers No. 1. Chesterfield, England: Derbyshire Record Society, 3rd ed., 1991.
17. Twinning, Andrew & Sandra. *Dictionary of Old Trades & Occupations*. Woodcroft, SA, Australia: Twinning's Secretarial, 2nd ed., 1995.
18. West, John. *Village Records*. Chichester, England: Phillimore, 3rd ed. 1997.

## Probate Accounts

Final stage in administering an estate, listing disbursements of estate including funeral costs, debts owed, court costs, rents, taxes, tithes, property settlements, wages, apprenticeships, etc.

Earliest known surviving account is 1521 and last is from 1855, but strong from 1585 with numbers falling rapidly after 1685. Those surviving after 1685 generally involve disputes.

19. Spufford, Peter. *Index to the Probate Accounts of England and Wales*. London: British Record Society. 2 vols. 1999.

## Online Indexes

There is a growing online collection of indexes to various probate jurisdictions. Currently the best way to identify online indexes is to look up Probate jurisdictions in the appropriate county on the Wiki at [www.familysearch.org](http://www.familysearch.org).

The commercial vendors are making indexes available online, often from OCR scans of older published volumes, many of which are available individually as part of [www.archive.org](http://www.archive.org).

## Reasons for Not Finding Your Ancestors Will

Your ancestor did not make a will  
You're looking in the wrong court  
Your ancestor is not mentioned in a potential will  
The will was not proven  
The will was proven many years after the death of your ancestor  
Wills are poorly indexed  
You are looking in the wrong section of the index  
The will has been lost  
You haven't read what you found correctly.

## Further Reading

20. Arkell, Tom; Nesta Evans and Nigel Goose. *When Death Do Us Part: Understanding and Interpreting the Probate Records of Early Modern England*. Oxford: Leopard's Head Press. 2000
21. Bevan, Amanda. *Tracing Your Ancestors in the National Archives: The Website and Beyond*. Kew, Surrey, England: The National Archives. 7th ed. 2006.
22. Blake, Paul. *British Probate Records: An Introduction*. London: Paul Blake. 2003.
23. Bonfield, Lloyd. "Testamentary Causes in the Prerogative Court of Canterbury, 1660-96", Chapter 9, p.133-154, in *Communities and Courts in Britain 1150-1900* edited by Christopher W. Brooks and Michael Lobban. London: Hambledon Press. 1997. Explains what happens when wills are contested and the litigation records they create.
24. Cox, Jane. *Hatred Pursued Beyond the Grave: Tales of our Ancestors from the London Church Courts*. London, England: HMSO, 1993.
25. Chapman, Colin. *Ecclesiastical Courts, Officials & Records: Sin, Sex and Probate*. Dursley, England: Lochin Publishing, 2nd ed., 1997.
26. Herber, Mark D. *Ancestral Trails: The Complete Guide to British Genealogy and Family History*. Stroud, Gloucestershire: Sutton Publishing, 2nd ed. 2004.
27. Marshall, Hilary. *Paleography for Family and Local Historians*. Chichester, England: Phillimore. 2004.
28. Pratt, David H. *Researching British Probates 1354-1858: Vol.1, Northern England / Province of York*. Wilmington DE: Scholarly Resources, 1992.
29. Tarver, Anne. *Church Court Records: An Introduction for Family and Local Historians*. Chichester, England: Phillimore. 1995.