

Under the Wills Act of 1837, for a will to be legal it had to be written down and signed by two independent witnesses who could not be beneficiaries.

Before this the earliest wills date back to 1383 in London and 1297 at York. These were in the main death bed expressions and could be either written or Non Cupative (nunc.) - oral wills

During this time:

- One third of possessions went to the widow (her dower's portion)
- One third to children
- One third at the Will of the Testator

If there was no Will this third went to charity.

The Statute of Wills of 1540 allowed males from the age of 14 and females from 12 years to make wills. This was raised to 21 by the 1837 Act. Lunatics, idiots, prisoners, traitors and heretics were excluded from being able to make a Will.

Wills of unmarried women and widows were common, but until the Married Woman's Property Act of 1882 married women were not allowed to make wills. Before this they could not by law own property, which together with their possessions were deemed as those of their husband.

Non Cupative Wills became illegal in 1837 except for members of the armed forces who died in action.

Wills from 1858:

Wills came under Civil Law on 12th January 1858 and had to be proved by District Probate Registries. There are excellent in depth research guides at the [National Archives website](http://www.nationalarchives.gov.uk).

<http://www.nationalarchives.gov.uk/catalogue/researchguidesindex.asp>

Locally Wills within the last 50 years are still held at District Probate Registries and are then transferred to the Principal Probate Registry at London. Calendar indexes of these are usually to be found at County Record Offices. There is also a microfiche copy of the National Wills index at Manchester Central Library 1858-1943. These indexes often reveal significant information particularly before 1892. Up until 1871 there are separate indexes for Wills and Administrations so you would need to check for both. If Wills and Grants of Probate are ordered at the same time they cost £5, so it is worth asking for copies of both at the same time, otherwise they cost £5 each. After these dates it is possible to pay for a local search at the District Probate Registry. Executors can chose whichever District Probate Registry to use and this is not necessarily where the Testator died.

It also became law in 1926 for solicitors to place notices in local newspapers and the London Gazette before going to probate. See Gazettes on-line www.gazettes-online.co.uk/ Solicitors have often deposited their archives at County Records Office. Local Law Societies can often help to track down when various legal practices existed, but the National Law Society charges £25.00. If you are lucky enough to find your ancestor's documents in solicitors' deposits you could discover a minor treasure trove of family documents.

The Court Service Postal Copies Department at Leeds will carry out a search for 4 years after a person's death; cost £6 irrespective of the number of sheets to the will. You must know the date of death.

The Postal Searches and Copies Department
Leeds District Probate Registry
York House
York Place
LEEDS LS1 2BA Tel: 0113 389 6133

The England and Wales National Probate Calendar (Index of Wills and Administrations) 1861-1941 is now available to search at: <http://search.ancestry.co.uk/search/db.aspx?dbid=1904>

Wills before 1858:

Wills were proven through Ecclesiastical Courts; there were over 250 of these. The records for most of these are kept in local records offices. Most have been indexed and many of the indexes have been published. You will need to consult the book by Jeremy Gibson and Else Churchill, called *Probate Jurisdictions: Where to Look for Wills*. This is arranged by county, and then by church court within that.

It roughly works out like this. Property in one Diocese – Will proved in the Diocesan Court. Property in more than one Diocese – Will proved in the Bishopric's Consistory Court. Property in more than one Bishopric – Will proved by either the Prerogative Courts of York or Canterbury – with Canterbury taking precedence over York.

The PCY covered Cheshire, Cumberland, Lancashire, Northumberland, Westmorland and Yorkshire. These Wills are held at the Borthwick Institute at York and are in the process of being digitized and made available to search via the British Origins website.

The PCC covered the South of England and Wales and these wills are searchable and available to download at the [National Archives website - £3.50](#)

Until 1545 When the Bishopric of Chester was created our area fell under the jurisdiction of The Consistory Court at Litchfield (Staffordshire, Warwickshire, Derbyshire, Shropshire) in 1545 (Cheshire, Flintshire, Denbigh and Lancashire transferred to Chester).

Also until 1545 the Archdeaconry of Chester was within the Archdeaconry of Litchfield, when it transferred to become the Diocese of Chester.

For more information about Wills before 1858 read the National Archives Research Guide.

<http://www.nationalarchives.gov.uk/catalogue/researchguidesindex.asp>

The following indexes are searchable on a pay per view basis at the British Origins National Wills Index:

www.originsnetwork.com/NWIWelcome.aspx

- Bank of England Will Extracts Index 1717-1845 – over 61,000 names
- Prerogative Court of Canterbury Wills Index 1750-1800 – over 208,000 names
- Archdeaconry Court of London Wills Index 1700-1807 – over 5,000 names
- York Medieval Probate Index 1267-1500 over 10,000 Wills
- York Peculiars Probate Index 1383-1883 over 25,000 Wills
- Prerogative and Exchequer Courts of York Probate Index 1731-1858- 215,000 records
- Surrey and South London Will Abstracts 1470-1856 – over 500,000 names
- Oxfordshire Wills Index 1516-1857 over 56,700 names

[British Record Society Probate Collection](#) **NEW!**

- Bedfordshire Probate Records 1484-1858
- Berkshire Probate Records 1508-1710
- Bristol Probate Records 1379-1792
- Buckinghamshire Probate Records 1420-1660
- Cambridgeshire Probate Records 1449-1858
- Cumberland Probate Records 1661-1750
- Devon & Cornwall Probate Records 1532-1800
- Dorset Probate Records 1500-1801
- Essex Probate Records 1400-1858
- Gloucestershire Probate Records 1541-1800
- Huntingdonshire Probate Records 1479-1652
- Leicester Probate Records 1495-1750
- Lincoln Probate Records 1320-1660
- London Probate Records 1363-1700
- Norfolk Probate Records 1370-1603
- Northampton Probate Records 1510-1800
- Prerogative Court of Canterbury Wills & Administrations 1383-1700
- Somerset Probate Records 1537-1857
- Suffolk Probate Records 1354-1858
- Surrey Probate Records pre-1649
- Sussex Probate Records 1482-1800
- Wiltshire Probate Records 1464-1858
- Worcestershire Probate Records 1601-1652
- Yorkshire Probate Records 1389-1688

Death Duty Registers:

From 1796 everyone with disposable property worth more than £5 had to pay Death Duties ([see the National Archives research guide – 'Death Duty Registers from 1796'](#)) – This was increased to £20 in 1858. Death Duty Registers are now available to search via [Find my Past](#).

Local Wills pre 1858

For Wills pre1858 larger repositories and libraries hold volumes published by the Lancashire and Cheshire Record Society which list all the wills proved at Chester up until 1837 and held at Chester Record Office. However, when Lancashire Record Office was created the Lancashire Wills were gradually transferred to Preston.

Cheshire wills are now searchable online and copies can be ordered from Chester Record Office: apps.cheshirewestandchester.gov.uk/RecordOfficeWillEpayments/search.aspx

A fully searchable index of Lancashire wills from the mid 15th Century to 1858. This mainly redirects people to the relevant LDS Film to hire, but you can use the information to order from Lancashire Record Office. www.xmission.com/~nelsonb/lws.htm

Inventories

Between 1530 and 1750 some courts required an inventory of the deceased's movable goods to be filed with the Grant of Probate. Two or three assessors were appointed and these could either be friends of the deceased or locally appointed officials. These inventories can be very revealing in trying to work out your ancestor's social status, the tools of his trade and living standards etc. They also listed debts owing at the time to the deceased and these were added to the value of his estate and often give a whole list of names of neighbours, friends and business people your ancestor came into contact with during his day-to-day life. Locally not many inventories seem to exist after about 1720

Codicil

This is an addition to a Will and contains special clauses or last minute bequests. Again as with a Will it needs to make it clear which Will it refers to and must also be signed by two non-beneficiary witnesses. One example I found was the appointment of an additional executor to a Will, where the testator possibly felt his two original executors might need additional input to make sure they carried out his instructions effectively.

Disputed Wills

These would come before whichever court had proved the Grant of Probate and usually took the form of the name the Testator, then the person contesting the Will versus the names of the executors. There is a 7% sample of PCC (Prerogative Court of Canterbury) litigations searchable on-line via [The National Archives on-line Catalogue](#). These cases were mostly concerning the validity of wills.

Cases concerned with the inheritance of property through wills were dealt with by Chancery: [see the National Archives research guide: Chancery Proceedings: Equity Suites from 1558](#). Since the late 14th century, hundreds of thousands of disputes over inheritance and wills, lands, trusts, debts, marriage settlements, apprenticeships, and other parts of the fabric of daily life, were heard by the Lord Chancellor or his deputies. People turned to his court of Chancery because it was an equity court, promising a merciful justice not bound by the strict rules of the common law courts.

[The Bernau card index](#). Held in the [Society of Genealogist's Library](#) is a microfilm collection of about four and a half million slips (sorted by surname only) relating to unindexed material in the Public Record Office, mainly Chancery and Exchequer Court Depositions and Proceedings, compiled by C A Bernau.

Some Finding Aids:

- GENUKI: www.genuki.org.uk go to the county pages, most have advice about which church courts have jurisdiction pre 1858.
- Wills and Probate Records from the National Archives WIKI. (beta testing). http://yourarchives.nationalarchives.gov.uk/index.php?title=Online_Probate_Indexes
- *Probate Jurisdictions – Where to look for Wills* Jeremy Gibson and Else Churchill.