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## Probate Records

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### INTRODUCTION

Probate records are documents concerned with the proving of wills. Genealogists and historians can use these records to gain information about individuals, their families and their way of life.

### THE PROCESS OF MAKING A WILL

Wills were not restricted to wealthy people. They were often made by those who were quite poor, but a person generally had to have goods worth more than £5 for the will to go to probate. A man making a will was called the testator, a woman the testatrix. Married women could not make wills until 1883. A member of the legal profession usually wrote the will, although people could write their own will if they wished. The testator was legally obliged to name an executor who would administer the will after probate. The testator was required to sign, or make his mark on the document and the signatures of two witnesses were also required. The testator kept the will until it was proved.

A nuncupative will was a deathbed will. This had to be declared in the presence of witnesses. It could not cover freehold land and it could not revoke a former will. The declaration could be written down after the testator died. Such wills often began with the words 'memorandum quod'.

### PROVING A WILL

The will would name one or more people as executors. These would usually be trusted family members, friends or associates. They could renounce this duty if they thought it would be a burden (e.g. if the testator was in debt).

The executors would exhibit the will in the probate court and if it was found valid, a grant of probate would be made. This grant was recorded in the court's Act book, and also on the original will. A copy of the will was made and kept in the court's Register of wills. The executors were given a probate copy of the will with letters of probate attached.

Before 1858, wills were proved in ecclesiastical courts. There were three levels of courts:

**The Archdeacon's Court:** this was used if the testator's property lay entirely within the Archdeaconry.

**The Bishop's Consistory Court:** this was used if the testator's property lay within more than one archdeaconry but within a single diocese.

**The Archbishop's Court:** this was used if a testator's property lay in more than one diocese. In the south of England, this was the Prerogative Court of Canterbury (PCC). In the north of England, this was the Prerogative Court of York (PCY).

Occasionally another court could be used, the **Peculiar or Local Court**. This was only used for probate if the property of the deceased lay totally within the Peculiar. A Peculiar is a parish, which lies within a Diocese but is exempt from the Bishop's jurisdiction.

**Commonwealth period:** from April 1653 to May 1660, the Court for Probate based in Westminster, London, covered the whole country, assuming the probate function of the ecclesiastical courts. Its records are held in The National Archives. The old system for probate was restored in 1660.

**After 1858:** all wills have been proved in civil courts, either in the Principal Probate Registry in London, or in District Probate Registries.

If a person died intestate (i.e. without making a will), the court would grant Letters of Administration (often abbreviated to 'admon'), usually to the next of kin. This would be recorded in the Act book. The Administrator had to take out a bond to make a list of the deceased's goods and their value (an inventory).

## **WHERE ARE PROBATE RECORDS FOUND?**

**Pre-1858 records** are usually found in Diocesan Record Offices. You need to work out which parish(es) the person lived or owned property in, and establish in which Archdeaconry or Diocesan court the will would have been proved. The pre-1858 records for the Archdeaconry of Sudbury are held in Bury Record Office, and those for the Archdeaconry of Suffolk are held in Ipswich Record Office. Ipswich Record Office also holds the wills proved in the Lothingland Deanery up to 1914. Norfolk Record Office holds pre-1858 records for the Consistory Court of Norwich, and those for the Prerogative Court of Canterbury are at The National Archives.

The records of the Peculiar of Hadleigh, Monks Eleigh and Moulton are at Essex Record Office, and those of the Peculiar of Isleham and Freckenham are in Bury Record Office.

### **Post 1858 records:**

1858 to 1941 Ipswich District Probate Registry copies are held at Ipswich Record Office. 1858 to 1928 Bury District Probate Registry copies are held in Bury Record Office.

**Copies of wills 1858 onwards** can be obtained from the Postal Searches and Copies Department, The Probate Registry, Duncombe Place, York YO1 2EA

**Other wills:** many archive collections contain wills. These may be drafts, probate copies, or other copies made for various reasons. In addition, extracts of wills were often copied into entries in manorial court records.

## **Indexes to probate records**

All three branches of Suffolk Record Office have comprehensive indexes to the wills proved in Suffolk. In addition, they also hold printed indexes to wills proved in the Consistory Court at Norwich from 1370 to 1857, and the Prerogative Court of Canterbury from 1701 to 1800.

## **Death and Estate duties**

These were introduced in 1796 and the Registers of Death Duty abstracts to 1903 are available in the National Archive. The Society of Genealogists also holds copies of the indexes to 1858. These records can be very useful as they sometimes name people not mentioned in the will, and occasionally give the relationship between the beneficiaries and the testator, which may not be obvious from reading the will.

**Bury Record Office**, 77 Raingate Street, Bury St Edmunds, IP33 2AR

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Suffolk Record Office web site: <http://www.suffolk.gov.uk/sro>

Suffolk Heritage Direct website: <http://www.suffolkheritagedirect.org.uk>