



ECCLESIASTICAL JURISDICTIONS & PROBATE RECORDS

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Early probate records in England can be found in ecclesiastical records. Learn about ecclesiastical jurisdictions – their history and role in the administration of probate, how they are organized, how to know where to look for records, and most useful reference sources to consult.

BACKGROUND

The current system of administering wills in England and Wales was established 11 January 1858 by the Court Probate Act of 1857. This created a centralized system of probate unlike its predecessor. Previously, ecclesiastical church courts probated wills, granted letters of administration and heard instance cases related to disputed wills, legacies and inventories from late Medieval times into early modern times. This role was disrupted in 1653-1660 when, for a few years, ecclesiastical courts were replaced by a Court of Civil Commission. There are other entities, while small in number, who conducted probate concurrently with Ecclesiastical Church Courts. These are noted in this handout and presentation. The Isle of Man and Channel Islands continued the use of Ecclesiastical Courts much later than 1857 and should be approached somewhat differently with respect to studying probate records.

Finding records probated in Ecclesiastical courts is complex. Estimates range from 250 to over 300 courts processed probate. This can be understood by learning how the court probate system within the church hierarchy was organized and functioned. Resources are also available that can give researchers insights into which courts had jurisdiction over the location where one's ancestors resided. While this presentation concentrates on England and Wales ecclesiastical probate, Scotland and Ireland are similar with respect to the use of ecclesiastical church systems for probate eventually employing more centralized civic systems.

HISTORY & ROLE *of* ECCLESIASTICAL COURTS

For hundreds of years before William the Conqueror became ruler in 1066, establishing religion and a religious infrastructure was an on-going effort at civilizing what was to become Great Britain today. In England, at the time of the Conqueror, this effort had come to fruition with ecclesiastical leadership well defined and monasteries serving as cultural centers. With physical boundaries of the ancient shires, for the most part, established and lands principally owned or meted out by the Crown, a civil infrastructure with municipal authority was to evolve. This was no easy process. Municipal and ecclesiastical jurisdictions, once combined, were separated. For a few hundred years, leaders struggled with power as civil roles and civil organizations took shape. The ecclesiastical role also changed over time, however, among other things, probate was deemed the responsibility of the religious hierarchy with its courts based on canon law. Termed "testamentary jurisdiction" the rights of the court involved (1) the validity of wills, the recovery of legacies for estates, and (2) granting probate of a will to an executor, letters of administration of the goods of an intestate to the next of kin. The latter was a point of contention particularly among feudal lord's who wanted control of the distribution of property although the Magna Carta conferred upon the Church the power of administering the personal estate of an intestate. To fulfill this power and the overall responsibility for probate, the Church developed jurisdictional controls through an ecclesiastical court system.

ORGANIZATION *of* ECCLESIASTICAL COURTS

Whether one's ancestor resided or owned land in one or more locations, there could be several jurisdictions where the will of that ancestor could be probated. Family history researchers need to familiarize themselves with the courts that could process probate. A framework to comprehend ecclesiastical organizations and the court system is presented here adapted to the topic. The application follows on the next page.

Pre-1858 Ecclesiastical Domains¹, Authority² & Court Purview³

COUNTRY ~ Papal & Crown

PROVINCE ~ Archbishop (Prerogative Courts)

DIOCESE or SEE ~ Bishop (Consistory, Commissary, Bishop's Courts)

ARCHDEACONRY ~ Archdeacon (Archdeaconry Courts)

DEANERY ~ Rural Dean (Decanal Court)

PECULIARS/EXEMPTIONS * ~ Crown, Archbishop, Bishop, Dean, Dean and Chapter, Prebendary, Chapter, Deputy or Agent, Other Appointed Officials or Dignitaries (Royals, Cathedrals, parishes, extra-parochial parishes, prebends, manors, honours, liberties, colleges, some deaneries, City of London Corporation, etc.)

**Peculiars and some lay organizations within a jurisdiction would be exempt from a court's domain.*

1. DOMAIN a territory or sphere of influence over which religious dominion is exercised
2. AUTHORITY official designated to lead or administer religious affairs of a domain
3. PURVIEW limits or specific range of jurisdiction specific to religious courts including physical boundaries, audience served under specific conditions (ie. location of property owned, wealth accrued, status, London property ownership, Bank of England investments, property in several estates, member of clergy, where death occurred overseas or while in military service)

Note: Courts superior to another can serve as appeals courts and also fill-in for the absence of an authority in a lower court. Prerogative level appellate courts included the : Court of Arches, High Court of Delegates, Judicial Committee of the Privy Council)

The primary courts that granted probate were of the *Archbishop, Bishop, and Archdeacon* along with those designated by diverse authorities over *Peculiars* and *Exemptions*. *Papal authority* applied canon law with respect to probate and served as the appeals court for the Prerogative Courts. Papal decrees were interpreted or enforced by English provincial constitutions. Henry the VIII, as the *Crown authority* began the shift from control by the Papal authority of Rome to the Crown. Fees and some probate rules were enacted, but there does not appear to be an immediate change in the probate process that would affect how genealogists search probate records. Courts of the *Crown* are called Royal Peculiars. The Crown relied on an Ordinary to appoint judges of the Prerogative and Royal Courts. According to Bouvier's Legal Dictionary (1850) these judges, "are subject to the control of the king's courts of chancery and common law in case they exceed their jurisdiction". This serves as a reminder that there are cases in other courts for addressing disputes over wills, legacies, etc. Probate of clergy was dealt with separately, as well. The *Rural Dean* functioned to grant probate only as designated.

Probate courts of the different domains are dispersed throughout England, Wales, the Isle of Man and the Channel Islands. Courts within a domain have distinct boundaries and conditions that need to be taken into account when studying where a probate record can be found for one's ancestor. These can be likened to civil government in which each level can have jurisdiction over the same geographic location under certain circumstances. In a similar manner, a person that resides in a specific town or parish may have their will and related probate done in one of several courts within different domains that have jurisdiction over the same location.

BASIC EXAMPLE

- If an ancestor resided in Burton-upon-Trent, Derbyshire
Probate records could be in the
- ✓ Court of the Peculiar of Burton-upon-Trent,
 - ✓ Court of the Bishop of Lichfield and Coventry,
 - ✓ Court of the Archbishop of Canterbury

Note: In this case there is no applicable Archdeaconry Court.

The court structure can vary from place to place and does not always include courts from each domain in the hierarchy. Once the process of probate is understood, the key question is how does one determine the applicable courts to search for probate records of one's ancestor?

LOCATING PROBATE RECORDS

Where to seek ecclesiastical probate records depends on what is known about

- where one's ancestor resided
- when a death did or may have occurred
- the courts with domain over the place of residence (with consideration for unique circumstances)
- the court probate records that are extant, the timeframes they cover, and what repositories or other resources have original records, copies, abstracts or indexes including calendars or registers of their holdings.

Where One's Ancestor Resided

The more precisely a location of residence can be pinpointed, the fewer court records within specific domains will have to be searched. If a specific place of **residence is known** the most basic or lowest level of court that served a locality can be determined. Then any others courts that may have had jurisdiction need to be identified next, in case the record being sought is not found in the lower court. Otherwise, if the exact place of **residence is not known**, the courts will have to be determined by studying a larger geographic area covered by one or several domains. This, for example, could mean studying all the ecclesiastical jurisdictions in a shire or part of a shire. Parish and shire history will need to be taken into account.

Sources for determining the ecclesiastical jurisdiction based on place resided:

- A GENEALOGICAL GAZETTEER OF ENGLAND AND ALPHABETICAL DICTIONARY OF PLACES With Their Location, Ecclesiastical Jurisdiction, Population, and the Date of the Earliest Entry In the Registers of Every Ancient Parish in England. Frank Smith, Compiler. c.1968. Genealogical Publishing Company
- THE PHILLIMORE ATLAS & INDEX of PARISH REGISTERS. Cecil R. Humphrey-Smith. c.2003. Phillimore & Co. LTD
- TOPOGRAPHICAL DICTIONARY OF ENGLAND. Samuel Lewis. 1835. S.D. Lewis & Co. London.

Sources for studying shire and local history based on place resided:

- **British History On-line** <http://www.british-history.ac.uk/>
- **Vision of Britain** <http://www.visionofbritain.org.uk/descriptions/>

Time of Death

Unless the date of death is known from a specific and reliable source, genealogists typically assume a date or time period in which a death occurred based on one or a combination of records to develop life-span estimates and to approximate death. These can be derived from burial dates, baptismal and marriage dates, ages of children, the appearance and absence of the ancestor in records and much more. Death Duty records and Inquisitions Post Mortem are very useful. (See sources.)

Sources that cite the death date and name the court where a will was proved or landholding:

- ✓ ESTATE or DEATH DUTY REGISTER INDEXES covering legacy duty paid on an estate 1796 to 1903 gives the death date and court where a will was proved. These are available thru the National Archives and the LDS Family History Library. The National Archives, Kew. See also:
 - **Death Duty Registers 1796-1811** (overview and searchable index)
<http://www.nationalarchives.gov.uk/documentsonline/death-duty.asp>

- **Death Duty Registers 1796-1903**
<http://www.nationalarchives.gov.uk/records/research-guides/death-duty-records-1796-to-1903.htm>
- ✓ INQUISITIONS POST MORTEM, Henry III-Chas.I, 1236-1640, are an inquiry into income and rights due to the Crown by people of status considered to have held land of the Crown. The National Archives, Kew. See:
 - **Inquisitions Post Mortem** Henry III-Charles.I: landholders and heirs , 1236-1640 . <http://www.nationalarchives.gov.uk/records/research-guides/inquisitions-post-mortem.html>

Courts & Domains

Once the geographic area is isolated and the lowest level court where you want to begin the probate search is determined, then you can proceed to figure out the superior courts. These have been studied and a suggested order of researching records from court to court is available through the LDS Family History Library and wiki.familysearch.org. Courts in adjacent domains that have no jurisdiction should also be examined. In addition to the unique court jurisdictions for specific locations, there can be circumstances that make a difference in which courts probate will be granted.

Sources for determining courts and their jurisdictions:

- **Wiki.familysearch.org** is dynamic and will be updated as needed particularly for new resources that can assist researchers in accessing records. https://wiki.familysearch.org/en/Main_Page
- **Hand List of English Probate Jurisdictions** of filmed and printed probate records including shire Probate Jurisdiction Tables. LDS Family History Library. FHL book 942 S2ha vols. Book version, not film or fiche, shows color coding necessary to read jurisdictional maps. Maps show adjacent domains where a researcher may want to look for records not always evident in other sources.

Existing Probate Records, Their Timeframes & Accessing Them

Probate records consist of --

- wills (originals and registered copies)
- administrations (act books)
- administration bonds (filed with original wills)
- tuition or curation bonds re:guardians and orphans (originals and registered copies can be in the act books or exist separately in books)
- inventories
- probate or administrator accounts
- appeals (assignation books, caveat books)
- cause papers (depositions, exhibits, etc.)
- sentences
- renunciations

Related records include –

- Orphan's Recognizance
- Inquisitions Post Mortem
- Death Duties
- Chancery Proceedings
- Equity Proceedings in the Court of Exchequer
- Court of Ward and Liveries
- Manorial records

General Record Access can be accomplished with –

- Finding Aids - Calendars, Registers, Catalogues, Indexes, Lists

Specific Document Details can be learned thru --

- Original Documents – Copy, Facsimile in Microfilm or Digital versions, Transcript, Extraction, Abstract, Summary
- Transcriptions or abstracts and indexes -- name the deceased person with a citation that includes the record type, timeframes, locality of the deceased, folios, volumes, page numbers, etc.

Sources for locating probate records –

- CHURCH COURT RECORDS An Introduction For Family and Local Historians. Anne Tarver. Phillimore & Co. c. 1995.
- THE PRACTICE OF ECCLESIASTICAL COURTS. Henry Charles Coote. 1847. Butterworth Pub.
- PROBATE JURISDICTIONS: WHERE TO LOOK FOR WILLS. Jeremy Gibson and Else Churchill. Federation of Family History Societies. c.2002
- WILL INDEXES AND OTHER PROBATE MATERIAL IN THE LIBRARY OF THE SOCIETY OF GENEALOGISTS. Nicholas Newington-Irving. Society of Genealogists. 1996.
- WILLS AND WHERE TO FIND THEM. J.S.W. Gibson. Genealogical Publishing Co. 1974.
- WILLS AND PROBATE RECORDS. Karen Grannum and Nigel Taylor. 2nd ed. The National Archives. 2009.
- OTHER
 - COUNTY RECORD OFFICES on-line will indexes (CRO's)
 - Wiki.familysearch
 - In-Depth Research Guides. The National Archives, Kew TNA