

Wills & Probate: their use in Family history



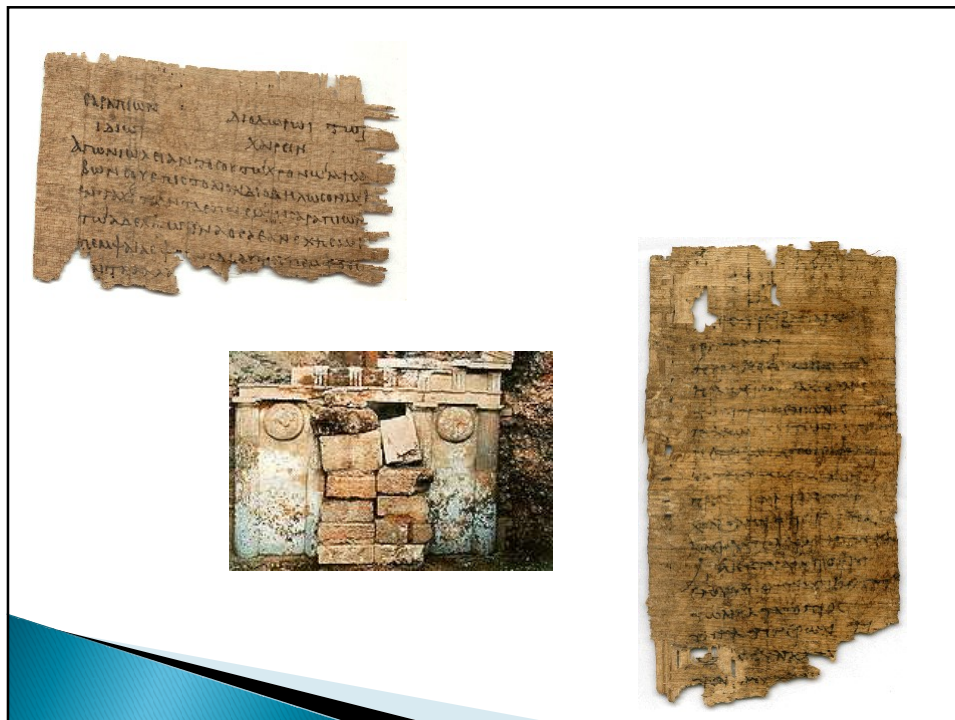
A brief history of Wills



Greece: The making of a Will was a very elaborate affair with the Will being signed by many witnesses. It did not have to be written could be declared orally.

Roman: Laws including a section on inheritance based on the Greek formula. Used "adoption" to pass onto non-family members

Strong influence of religious law, with Wills accepted by Islamic, Canonical (Christian) & Rabbinical (Jewish) by 10th century AD



Use in family history

For family historians wills can often provide a wealth of detail about family relationships, and about how people lived.

You can hope to find names of family members, their relationships and details of everyday possessions.

You may also find details of the debts that they owed at the time of their death.

It is worth remembering, however, that the eldest son in a family will often not be mentioned, because he inherited the heritable property (land and buildings) of his deceased father.

Common Terminology

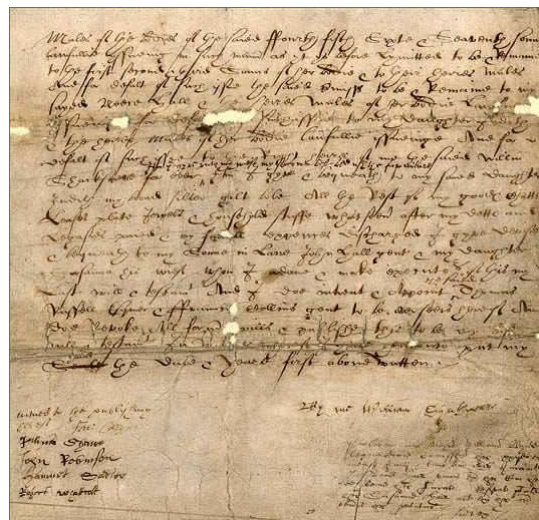
- ▶ A **Will** is the legal instrument that permits a person, the **Testator**, (**Testatrix**) to make decisions on how his estate **Will** be managed and distributed after his death.
- ▶ A **Witness** is a person not receiving benefit from the Will who witnesses the signature on the Will and the capacity of the **Testator** to make a Will
- ▶ A **Trustee** is appointed in the Will to manage the probate process or a Solicitor appointed by a Trustee
- ▶ **Codicilli** or informal Wills are the terms for a Will produced in a non-formal way or a term used since the late 18th Century for additions or conditions of a Will
- ▶ **Executor/Executrix** appointed to administer/carry out the instructions and wishes of the deceased
- ▶ **Legatee/beneficiary**: a person in receipt of a **benefice** (benefit) from a Will

Will of Aetheling Athelstan



Wills in Medieval times

- ▶ Common Law and Magna Carta
- ▶ Linking to Feudalism the main use of a Will was disposal of land: People often made a separate Will for their personal property
- ▶ If no family prior the 1540's often land passed to the church
- ▶ Statute of Uses Act 1540 became known as the Statute of Wills...followed by the Statute of Frauds
- ▶ The trustees of a Will could be liable for the debts of the deceased as late as the Wills Act in 1937



Find the Grave = Find the Will (pre 1858)

Find which church court would prove the will:

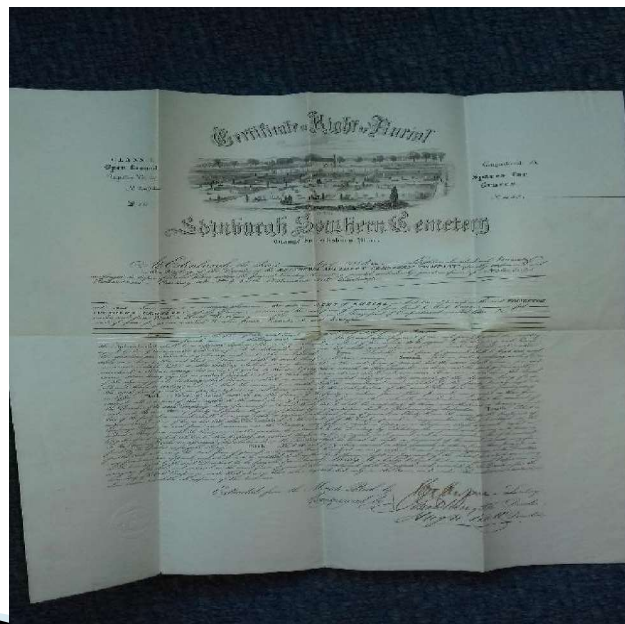
- where the person died
- the value of the goods
- how these goods were distributed geographically

In the period up to 1858 there were two courts the **Prerogative Court of Canterbury** and the **Prerogative Court of York**.

Where there is just one archdeaconry then the will would be proved in an archdeacon's court

Where there is more than one archdeaconry but the same diocese will would have been proved in a bishop's diocesan court

If the estate is valued at more than £5 (or £10 in London) then it was proved in the Prerogative Court of Canterbury or York



Search of Cemetery, Section and Plot Number

CEMETERY : GRANGE
SECTION : A

DATE OF BURIAL	PAIR NUMBER	SURNAME	FIRST NAMES	AGE	DATE OF DEATH	PLACE OF DEATH	FUNERAL FROM	DEPTH	GROUND	REMARKS
10/1860		ROBERTSON or		2/365	02/10/1860	7 NEW BROUGHTON	7 NEW BROUGHTON	5		
12/1867		CLARK or ROBERTSON	MARGARET	38	14/12/1867	9 NORTH RICHMOND ST	9 NORTH RICHMOND ST	6		
4/1898		ADAMSON or ROBERTSON	ISABELLA	68	03/04/1898	11 MELBOURNE PLACE	11 MELBOURNE PLACE	5 1/2		
2/1905		ROBERTSON or	ARCHIBALD	77	08/02/1905	10 VIEWFORTH SQUARE	10 VIEWFORTH SQUARE	4		

Country Differences

Welsh wills (pre-1858) are at online at the National Library of Wales, later ones are either at the NLW or the national Archives

Scotland Wills are called testaments

1514–1925 Testaments for this period have been digitally imaged. Copies of these images are available for purchase on the ScotlandsPeople website. The site contains a full index to these testaments.

Testaments from 1926 to 1999

There is an annual printed or typed index of testaments, the Calendar of Confirmations. From 1901 to 1959 it has been digitised and is available on Virtual Volumes in the NRS search rooms.

The Mitchell Library, Glasgow, also holds copies of the Calendar of Confirmations volumes up to 1936.

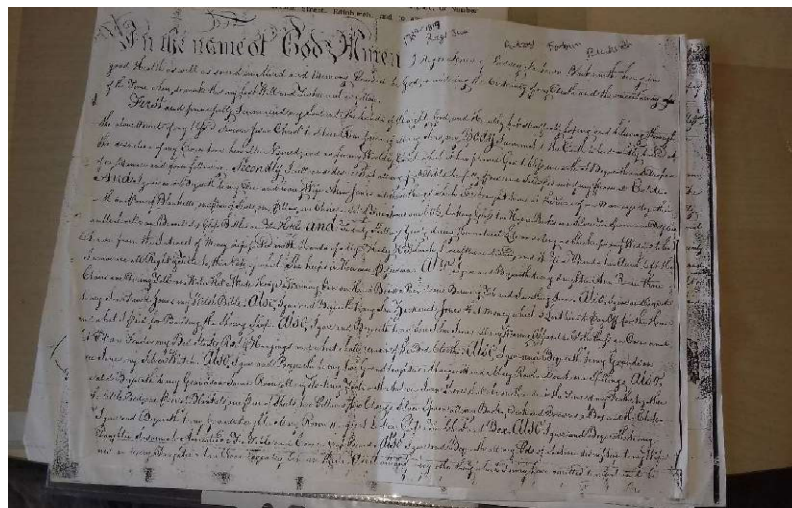
From 1960 to 1985 the Calendar of Confirmations takes the form of microfiche cards. These have also been digitised and are digitally available under the reference SC70/20/Year (for instance SC70/20/1972).

Orkney and Shetland from 1902

The testamentary papers for Orkney and Shetland have been digitised up to 1901. Plans are in hand to include those for 1902 onwards.

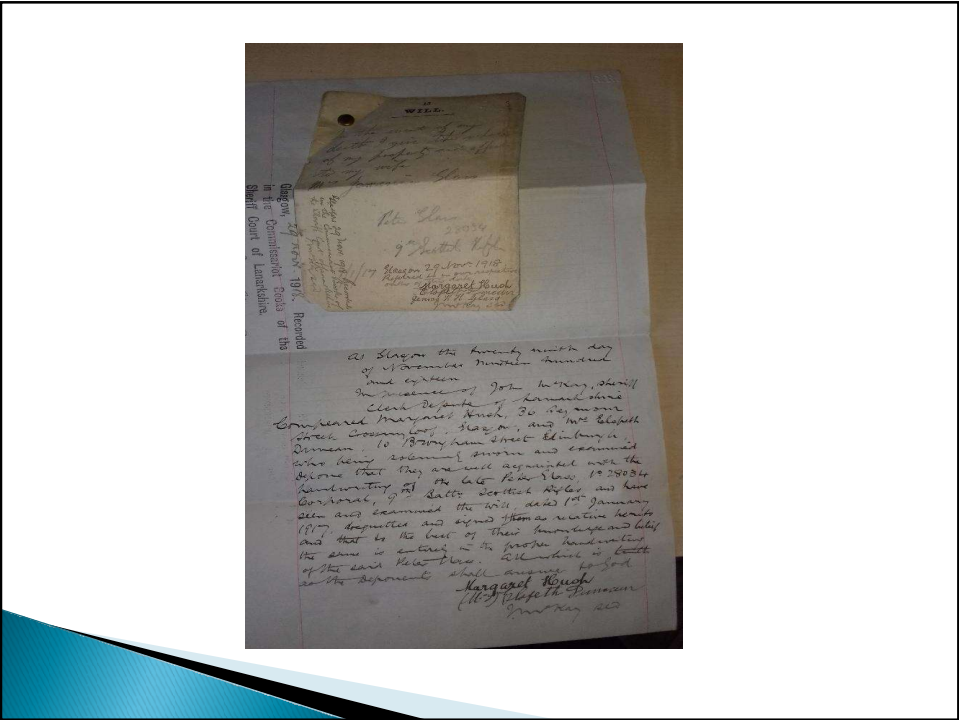
1837 Wills Act

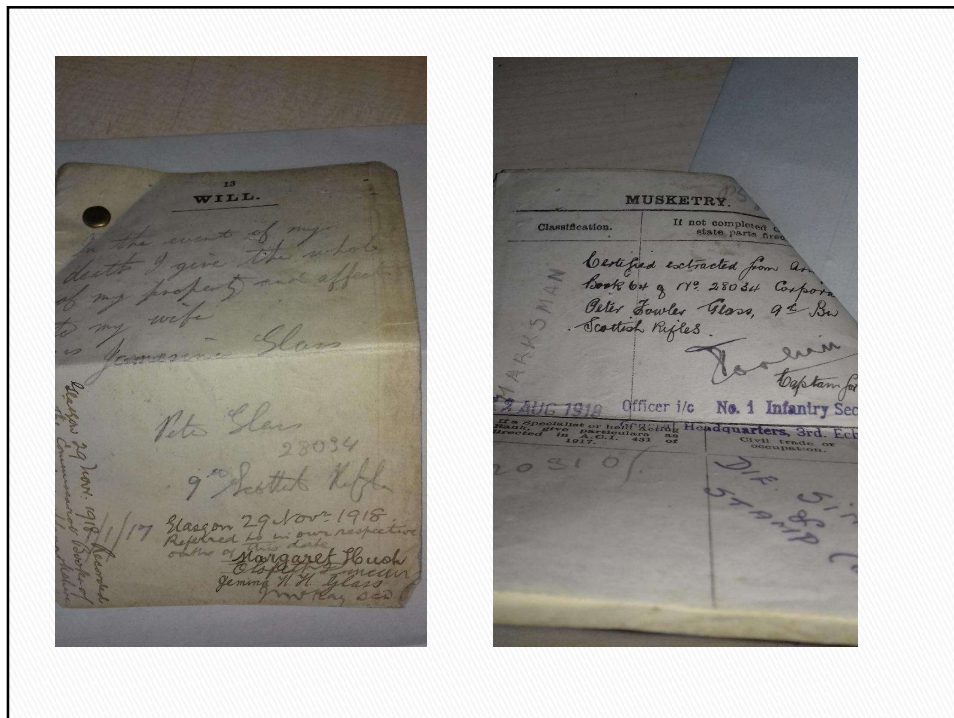
- ▶ Wills Act 1837 tried to make the system less open to fraud
- ▶ It is the basis of our current system
- ▶ It set up separate courts for the “proving” of Wills
- ▶ It formalised the process of “Intestate”



[illegible]

Armed forces had printed forms in their copy books, and diaries used to have included forms





Pre 1837 Probate

Probate is where the right to administer a Will was granted to Trustees once the "estate goods" values and had been agree and "proved" in a court. This could be an ecclesiastical, (including Perogative), Chancery, Court of Hustings (London) 1258-1688), a Court of Delegates or the Privy Council

Bona Notabilia : the estate is of low value

The record of probate is in standard form, often in Latin in earlier wills
 "This will was proved at London the sixteenth day of October in the year of our Lord one thousand seven hundred and seventy seven before the Right Worshipful Sir George Hay Knight Doctor of Laws Master Keeper on Commission of the Prerogative Court of Canterbury lawfully constituted by the Oath of Robert Turk otherwise Taylor the sole Executor named in the said Will to whom administration was granted of all and singular the Goods Chattels and Credits of the deceased having been first Sworn duly to administer".

Children, lunatics and criminals were prevented from leaving wills and, before the 1882 Married Women's Property Act, married women required the permission of their husbands to make a will.

Intestate

“**Intestacy**” first mentioned by Canute, **intestatus** from the Latin “not Testified”. This means no Will has been made

A relative or creditor can apply for letters of administration or death-bed wishes of the deceased could (before 1837) be recorded as a Nuncupative or spoken Will noted by a witness, friend or relative at the scene of death.

Only a close relative can inherit with Letters of Administration.

If no one applies the Court will appoint a solicitor to act on the deceaseds’ behalf who will publish the details in appropriate newspapers and on the Chancery lists.

“Obituaries, death cards, burials & other sources of death dates”

