



Understanding Wills, Estates, & Probate

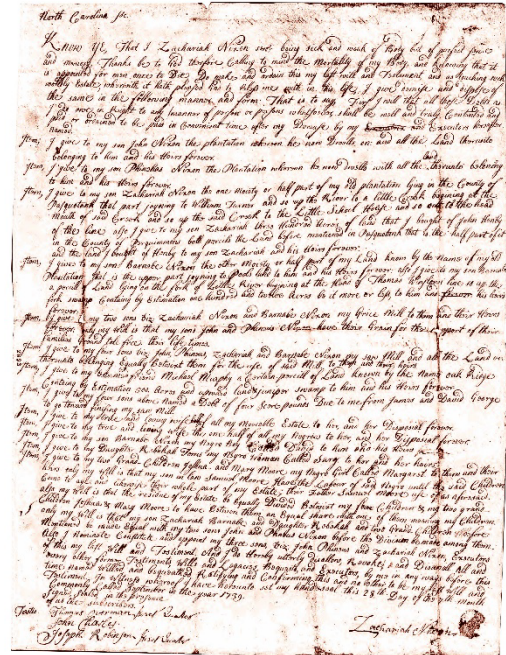
Wills, estates and probate packets can be some of the most incredible records that you can find for your family history research.

While we often talk about these as probate packages, they can contain anything about the settlement of an estate. They may or may not contain a will. These are legal documents; they are court documents. Therefore, they can be regarded as some of the most accurate and reliable documents when we are evaluating them for factual validity.

Estate packages require a little bit of research to find but can provide lots of details. They can help you to create a timeline. They can state your ancestors by name, age, and relationship of heirs of the estate.

Probate defined is *“The process of proving the validity of a will before a register of wills, surrogate, or probate court.”*¹

However, you may not find a will in a probate packet. Therefore, it is important to always look for a probate packet for all your ancestors regardless if you don't find them in a will index.



Odds of Finding a Probate Packet for Your Ancestors

Opinions differ on what percentage of ancestors created a will for their estate.

Typically, if there was land involved, there was usually a will, or a probate package created to officially settle the division of property.

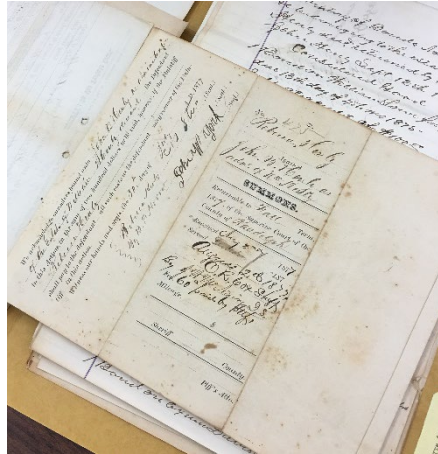
If someone died unexpectedly, you may not find a will, but you may find probate or estate records.

¹ Kay Haviland Freilich & William B. Freilich, *Genealogy and the Law*, National Genealogical Society Special Topics Series, NGS Publications No. 114, 2014), 96.



What You Might Find in Estate or Probate Packets

- Jacket or Envelope
- A Will
- Naming Executor/Executrix
- Inventory of Property
- Accounting of Property
- Deeds & Land Descriptions
- Drawn Maps of Land
- Guardianship Bonds
- Newspaper Land Sale Notices as Proof
- Multiple Years of Accounting to Courts
- Lawsuits
- Summons to Appear
- Final Disposition or Proving of the Will/Estate



Basic Components of Older Wills

This is not always the order in which items occurred. These are the typical items you will find in a will.

- Title “Will of John Doe”
- “I John Doe... Being of sound mind... Last Will...” etc. (Boilerplate Language)
- Naming Executor or Executrix (often family)
- Debts to be paid (before asset distribution)
- “Bequeath to my wife...”
 - Dower Rights (Often 1/3 of land for “her natural life,” depending on the laws of the time).
- “Bequeath to my sons...” Typically in order of birth, sometimes sons first, then daughters (regardless of actual birth order)
 - Son often inherited land and belongings.
 - Land descriptions (i.e., 100 acres along xyz creek, etc.)
- “Bequeath to my daughter...”
 - Typically, belongings and sometimes land (depending on the laws of the time.)
 - Might bequeath to daughter’s husband if women could not own land. Often names son-in-law.
 - Sometimes unmarried women could own land.
- Property might include slaves by name and age.
- Any other desires.
- “I set my hand this day...” (date signed)
- Witnesses
- Signed & Seal

Civil Law vs. Common Law

As with anything regarding laws during our ancestor's time, it is helpful to understand whether the laws of the time fell under Civil Law or Common Law. This will depend on the era and location. Sometimes you can find a treatise that explains the laws for a place and time. Google is your friend here.

Dower Rights

In many cases, a woman was not allowed to own land, therefore when her husband died, she was given Dower.

A Dower was typically one third of her husband's estate that he acquired during their marriage. In some cases, it may be 1/3 of his estate that he acquired during his lifetime. The end Dower varies by state.

[Read more about Dower at The Legal Genealogist.](#) Once there, keyword search "Dower."

Organizing Loose Records

Often when we acquire records, they come in a loose format and completely out of order. It is important to make a copy of these records before organizing them. Pictured below is where the images on the left were copied and organized in chronological order in a new folder on the right.

Organizing Loose Records

69 Pages Out of Order



Copied in Chronological Order

Name

- 0 COLEMAN John Henry Probate Records Cover Sheet.docx
- 1 COLEMAN John Probate Parts - Court Acknowledges Heirs 7 Nov 1899 - Images 32-33.pdf
- 2 COLEMAN John Probate Parts - Mitchell Coleman Intestate 27 Nov 1899 - Imgs 36-38.pdf
- 3 COLEMAN John Probate Parts - COLEMAN Admto Mitchell 27 Nov 1899 - Images 27-28.pdf
- 4 COLEMAN John Probate Parts - Court Ordrs Mitchell Sell 27 Nov 1899 - Imgs 34-35.pdf
- 5 COLEMAN John Probate Parts - App Mitchell Guardianship 20 Dec 1899 - Imgs 25-26.pdf
- 6 COLEMAN John Probate Parts - Mitchell Granted Guard 20 Dec 1899 - Image 29-31.pdf
- 7 COLEMAN John Probate Parts - Freeholder Letter Mitchell 13 Mar 1900 - Imgs 14-15.pdf
- 8 COLEMAN John Probate Parts - Court Order Rent Lands 17 Mar 1900 - Images 17-18.pdf
- 9 COLEMAN John Probate Parts - Letter to Court From Mitchell 13 Apr 1900 - Img 16.pdf
- 10 COLEMAN John Probate Parts - Inv Report Sold Mitchell 9 June 1900 Imgs 42-53.pdf
- 11 COLEMAN John Probate Parts - Petition License Sell Prop 4 Mar 1901 - Images 1-2.pdf
- 12 COLEMAN John Probate Parts - Mitchell Use Corn Farm 3 Aug 1903 - Images 65-66.pdf
- 13 COLEMAN John Probate Parts - Mitchell 13 Oct 1903 - Images 39-41 Rev.pdf
- 14 COLEMAN John Probate Parts - Mitchell from Sale 11 May 1904 - Images 10-13.pdf
- 15 COLEMAN John Probate Parts - Mitchell 1904 - Imgs 6-9.pdf
- 16 COLEMAN John Probate Parts - Mitchell Guardianship 22 Oct 1904 - Imgs 61-64.pdf
- 17 COLEMAN John Probate Parts - Mitchell Guardianship 22 Oct 1904 - Imgs 23-24.pdf
- 18 COLEMAN John Probate Parts - Mitchell 22 Oct 1904 - Image 19.pdf
- 19 COLEMAN John Probate Parts - Mitchell 22 Oct 1904 - Image 20-22.pdf
- 20 COLEMAN John Probate Parts - Mitchell Prop 3 Jun 1905 - Images 59-60.pdf
- 21 COLEMAN John Probate Parts - Mitchell Carter 15 Oct 1909 - Imgs 54-58.pdf
- 22 COLEMAN John Probate Parts - Mitchell 5 Oct 1910 - Images 67-69.pdf
- 23 COLEMAN John Probate Parts - McCarter - Grdn Rep Exp 30 June 1912 - Imgs 3-5.pdf

Transcribing & Abstracting

Probably the most important thing you can do is to transcribe your documents and then abstract the information out of the estate packet.

You first want to transcribe everything exactly as it is written, including the line breaks. Use [sic] for any unusual spellings. By using [sic], this lets the reader know that this was not a typo and that the word is spelled the way it is typed.

Transcribe Exactly

Mary J. Booth Administratrix Bond.

Know, all men by these presents that we Mary J. Booth William Shannon & H.F. Bowen are held in firmly bound unto the state of West Virginia in the sum of Five Hundred Dollars for the true payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly and severally firmly by these presents sealed with our seals and date this 26th day of August 1884.

Cross Out Boilerplate

Mary J. Booth Administratrix Bond.

~~Know, all men by these presents that we~~ Mary J. Booth William Shannon & H.F. Bowen are held in firmly ~~bound unto the state of West Virginia in the~~ sum of Five Hundred Dollars ~~for the true payment~~ of which well and truly to be made we bind ourselves our heirs executors and administrators jointly and severally firmly by these presents sealed with our seals and date this 26th day of August 1884.

Abstract

Mary J. Booth Administratrix Bond.

Mary J. Booth, William Shannon, & H.F. Bowen are bound unto the state of West Virginia in the sum of Five Hundred Dollars this 26th day of August 1884.

Add to
Research
Notes!

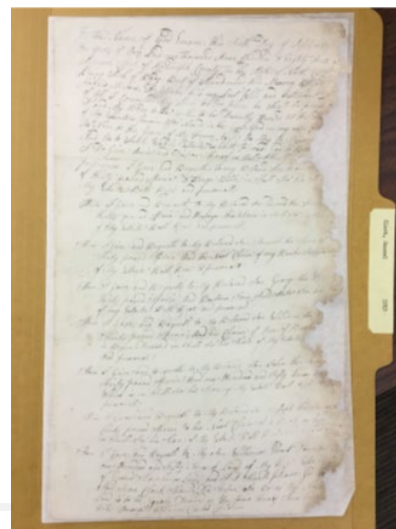
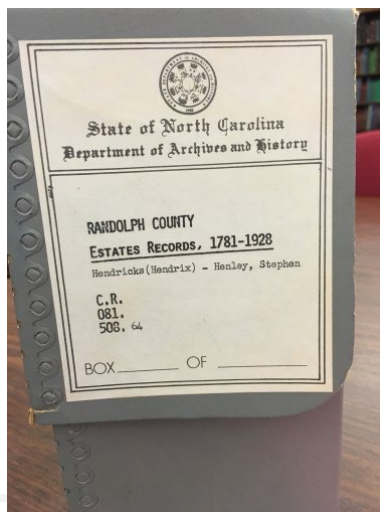
Visiting On Location

When visiting archives and libraries, make sure that you scan and photograph your documents, especially the boxes and folders from which you obtained the records.

This will help you with your source citations.

F.A.N. Club Research

Once you've organized your documents and abstracted the information out of the transcription, you want to then research the F.A.N. club members. Those are the Friends, Associates and Neighbors that are found inside your documents. The F.A.N. Club is often the family members and those in the community living around your ancestor. They likely knew your ancestor.



Terms

Intestate – Died without a Will.

Testate – Died with a Will.

“A Copy Teste” – A copy of an original document.

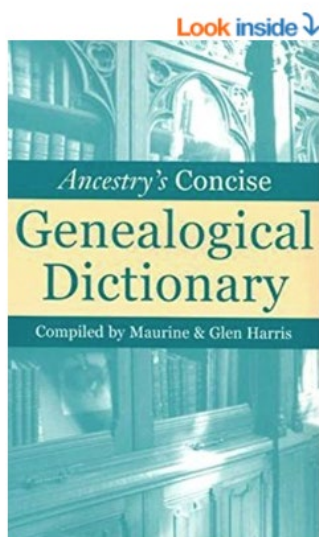
“Prest.” - “In old English law. A duty in money to be paid by the sheriff upon his account in the exchequer, or for money left or remaining in his hands.” ¹

Dower Rights – Typically 1/3 of her husband’s estate when he died.

Dec^d – Deceased

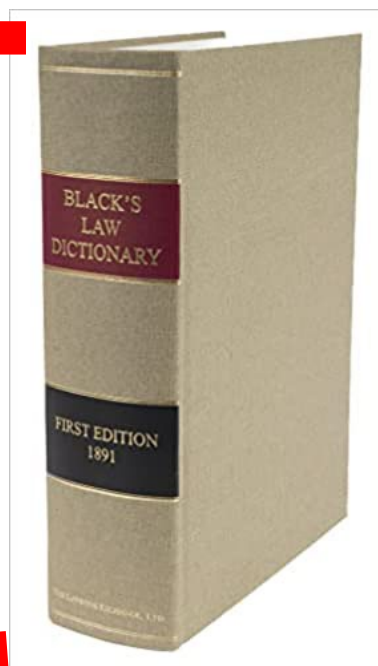
Testis – Latin for Witnesses

Black’s Law Dictionary <https://amzn.to/3jdVArW> (affiliate)



Ancestry’s Concise Genealogical Dictionary <https://amzn.to/3jdVArW> (affiliate)

Online “The Law Dictionary” (Free) <https://TheLawDictionary.org/>



Recommend finding the oldest edition you can or a reprint.

This is a reprint of the First Edition from 1891 Black’s Law Dictionary.

It is currently \$95 on Amazon.