

## Wills, Probate & Estates and Women's Rights

### [VIDEO LINK](#)

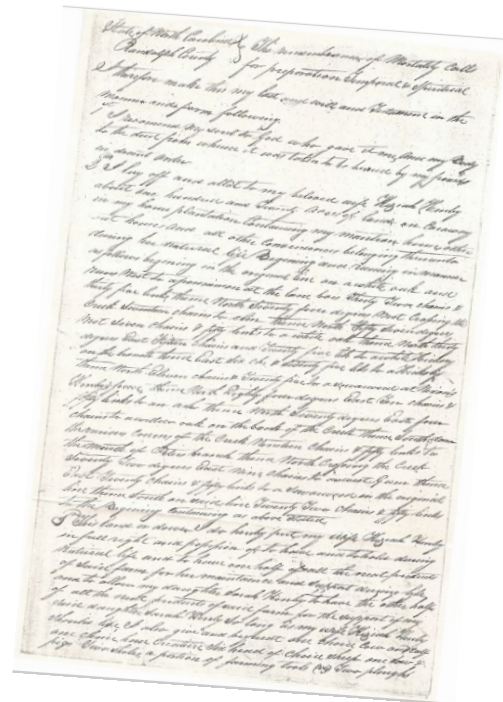
### First Things First

The first thing you need to realize is just because your ancestor may have died without a will does not mean he did not leave estate records. Wills, probate, and estate records can be incredibly valuable to a genealogist. They can be a goldmine of information.

If a person dies without a will, this is called "Intestate." If a person dies with a will that is "Testate." See more definitions on the last page.

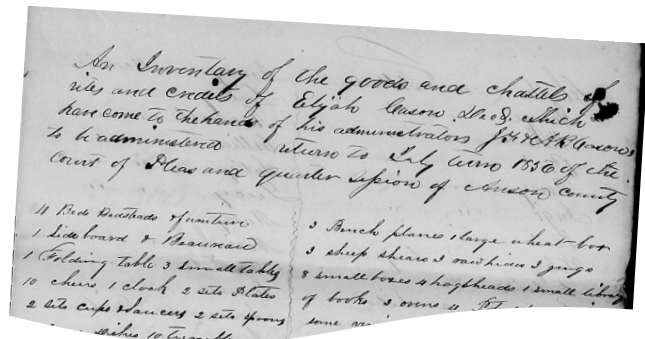
### Wills

If your ancestors had a will, this may provide a ton of details about the person's life. It can include spouse, children, location of land, what kind of property (personal and real estate) they owned, who their close relatives and friends were, where and when they lived at the time of the will, occupations, and much more.



### Estate & Probate Records

Regardless of if a person died Intestate or not, often estate records will contain an inventory and accounting of everything a person owned that became part of the estate. It may have detailed land descriptions, number of buildings on the property, number of livestock, furniture, a portion of the land allotted to the widow as her dower, tools/farming implements, and more. Probates are settled typically in the county courts where the death occurred.



Ralph Sullivan	\$56.00
John L. Mathews	119.50
John M. Brides	83.50
G. W. Schutte	42.51
W. Williams	38.95
Thomas Adams	12.00
Samuel Nixon	9.00
Duncan M. Enjar	2.95
E. B. Huntley	1.17 1/2
Oliver S. Sney	1.50
William D. Bennett	27.94 3/4
Adam Schuchert	7.50
W. H. Lillman	1.15
	<u>\$325.14</u>

Additionally, at the estate sale, there often is an accounting of every person who purchased items. Sometimes you'll find a list of creditors seeking repayment of the deceased debts from the estate. These lists can include members of the community, neighbors, and family!

Settlement of estates could last for years as the administrators worked through paying the debts, selling off the land and personal property. Therefore, there can be many pages and entries over time as the administrators returned to court (sometimes several times) to prove accountability for the estate to the court.

## Transcribe

You should make every effort to transcribe the wills and court records. Transcribing these records will help you focus on who is noted in the records and provide many details of your ancestor's life. By doing so, you will see information you may have overlooked that can provide valuable clues.

Sharing the transcription and abstracts online can be your gift to the world. Algorithms (say at Ancestry, FamilySearch and others) will pull names and information from those transcriptions and can include them in search results and provide hints for others.

Here is a VIDEO about [How to Transcribe and Abstract a Document](#).

## Abstract the Good Stuff

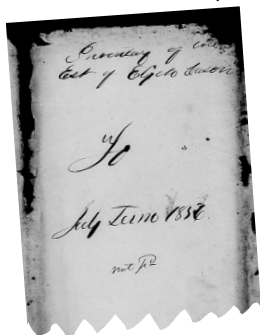
Abstracting the documents pulls out just the important information leaving the boilerplate legalese behind.

Consider making a list and cross referencing of every person noted in the record and their relationship to the deceased. This will help you tie these individuals with other records in your files. Look for dates, locations, and other relationships, such as a "son-in-law."

## Who Oversees the Estate

Someone needs to oversee the estate regardless of if someone died with or without a will.

If there is a will, then the person (typically named in the will) is the Executor (male person) or Executrix (if a female).



If someone dies without a will, the court will assign a person (often a family member, but not always) an Administrator/Administratrix.

If in the case of a widow, she often had statutory preference to the administrator the estate. In other words, if a woman did not remarry after her husband's death, then she could (in most cases) be the Executrix/Administratrix.

However, if she did remarry (which was common), the law in the common law jurisdictions (original 13 states), often her new husband or some other male would need to be involved in the administration of the estate.

## What are Dower Laws?



Typically, in Common Law states, Dower refers to a widow's entitlement to a portion of her husband's land (typically 1/3) for her to live on (not own) for the rest of her natural life. This may be referred to as a "life estate." Often in a will you will also see her husband's allotment of crops, pork, the "mansion house" (the primary residence), and other furniture and necessities for her to survive without him. Dower laws still exist today in Kentucky and Ohio.

## Common Law vs. Civil Law Areas

Common Law and Civil Law systems were different and how they handled estates were different.

Under Common Law states, a woman did not "inherit" her husband's estate but had "life estates" until later when married women's property acts began to give rights to women to inherit their husband's estates. Married Women's Property Acts in the U.S. began as early as 1839 in Mississippi. [Wikipedia has state/time specific information.](#)

Civil Law systems would apply in areas where the Dutch (i.e., Pennsylvania Dutch), Spanish (Florida), French (Louisiana), the American Southwest, or anywhere these groups settled. These groups did not have Dower as the Common Law state did.

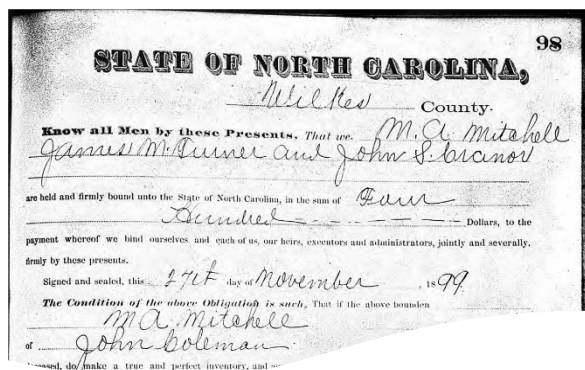
## Guardianships

Guardianships were typically confined to children of property. If there was not property involved, there typically was not a guardianship involved until the 20<sup>th</sup> century. If a minor inherited land from the death of his father, the child often was still living with the mother, but the guardian was going to be a male relative who would manage the property until the child becomes of legal age.

Children could own land but could not sell it without court or guardian approval until they were an adult.

## Bonds

Guardians and estate administrators had to file a bond where they pledged money to execute their duties outlined in the bond or face paying the price of the bond.



## Women's Right to a Divorce

Going back to British Common Law the only grounds for divorce was adultery on the part of the wife. Women had no right to seek a divorce if her husband committed adultery.

In the U.S. colonies, women could seek a divorce if her husband deserted or abandoned her and had to be represented by a male (typically a family member).

Men typically had the right to “absolute divorce” whereas women typically had only the right to “divorce from bed and board”. Divorce from bed and board is known as a legal separation today. The difference is that an “absolute divorce” allowed the man to remarry, whereas “divorce from bed & board” a woman could not remarry.



## Where to Find Court Records

Judy Russell suggests you start with FamilySearch.org. Search the FamilySearch.org/Wiki for the location first, then filter to court records. Court records may be found under the County Courthouse, Probate, Vital Records, Taxation, or other headings at FamilySearch.

Check with local libraries, genealogical or historical societies, etc. and ask who holds those records today. Some may have been moved to the state archives or other locations.

## Locating Estate Records



### Original Wills and Estate Records

Probate records typically originated in the county courthouse where the death occurred. However, in some areas, older probate records may have been moved to the state archives or a library. Whenever possible, look for the original records as online images can be challenging to read.

## Online Resources

Many of the older wills and probate records have been or are being microfilmed and or digitized and available online. FamilySearch, Ancestry, MyHeritage, FindMyPast and more genealogical services have some of these records available. In some cases, there may be a subscription fee to access the records.

Search the digital archives in the state or province. Many of these records are now available for free online at the state archives, but may not be indexed by name.

## Searching on Ancestry

Here is an example of how you can search for estate records and associated records on Ancestry.



1. Go to the Search Tab and drop down to Card Catalog.
2. On the left side filter by "Court, Land, Wills, Financial."
3. On the left side, scroll down and filter by location.
4. On the left side, scroll down:
  - a. Option 1 - Add the filter "Wills, Estates & Guardian Records."
  - b. Option 2 - Add the filter "Court, Government & Criminal Records" because some estate records may be listed in court records.
  - c. Option 3 - Add the filter "Land Records." Because there may be land records associated with the estate.
5. On the left side, add a filter for the decade the deceased died.
6. Note the number of record sets. Further filtering may be needed.
7. Right click and Open in a New Tab each record set you wish to research, preserving the original filtered list on the left tab.
8. Search for your ancestor in each record set that is logical. Remember to search a woman's married name first (if she was married at the time of her death). Use variations in names such as Wm. for William.
9. If you are not finding the estate papers, try alternating the filters for different search results. For example, remove the decade the ancestor died and update the search.

### Microfilm

You may find that wills, probate, court, or general estate papers were microfilmed by FamilySearch, Ancestry, state, or local governments, but have yet to be digitized for online viewing. Check with the county courthouse, state archives, local libraries, and Family History Centers to see if they have microfilm of the time and place for your ancestor... if they are not already available online.

### Indexes

In some cases, you may only find an index of wills, court documents, estate records, and more. Some indexes may be just for individuals that had a will and others may be any probate record. If you find your ancestor in an index, make note of the will book, page and or any details about the record.

Look to the front matter of the index, to learn where these records were indexed, as that is the likely location of the original record. You can then contact the repository to learn what you need to do to get a copy of that record.

Always seek out the original record for more unindexed clues.

## Once You Have Found the Estate Records

### Cite Your Source

IMPORTANT - Make sure you take note of where you found these documents. Make note of: Who, What, Where, When it happened, When you found it, Why it matters to you, and How someone can find it again with exact details... in addition to a hyperlink (if found online).

Please take the time to figure out where this document came from, where the original document is located, and not just a hyperlink. Here is a video called "[Easy Breezy Source Citations](#)" about the basic details you need to gather for the foundation of a good source citation.

### Confirming What You Have Found

Once you have located the will and or probate records, look to the other persons, dates, and places within the documents to determine if you have the right ancestors' records.

## Tips for Researchers

### Dower

If a woman had dower rights (land of her husbands for the rest of her life), search the land records after her death because her children likely then inherited the land of her dower. This may be listed under her estate or the estate of herself, her husbands, or children, so be sure to research all of them.

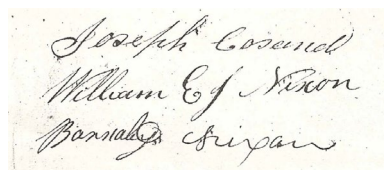
### Putting Papers in Chronological Order

Most probate packets have many loose unorganized documents. It is extremely helpful to organize your copies of them into chronological order so that you can see the progression of how the estate was handled. Add them into your research notes in chronological order too.

Search for wills, probate records, bonds, and other estate records and put them in chronological order to help tell the story of your ancestors.

### Witnesses & Cosigners Are Clues

Look for cosigners, bondsmen, and witnesses on any record, as they are likely family members or very close friends. Then research the witnesses and cosigners as they often provide more clues and insight into your ancestors.



*1 Witnesses to John Henley's 1834 Will are Family Members.*

### Child Come of Age

Settling an estate could last for years beyond a person's death. During that time minors could reach adulthood and may not always be listed as minors in guardianship papers.

Look for children, when they turned 21, they may have come into control of their inheritance. There may be additional records as a result in the form of land records, additional notations in the estate of his/her parents. Search both the deceased parent and the child's name.

## Finding Women Before 1850

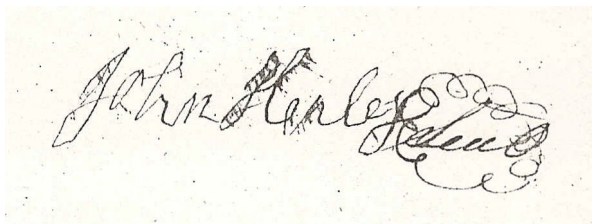
Finding women prior to 1850 can be challenging because women (unless they were single and the head of the household) were not named in the U.S. census prior to 1850. Thus, making it harder to find their names and especially maiden names.

Look for privy examinations in land records and deeds of the husband, as they may show her full name and where she gave up her dower rights, if her husband wanted to sell the family land.

Church records are some of the best records for finding women prior to 1850.

## Signatures

Look for original wills and look for signatures. Often signatures can provide clues about a person's condition at the time they signed the will. Capturing a good signature can be compared to other documents to help verify them.



*2 Signature of John Henley {Seal} in his 1834 Will*

If you only see an "X" in a signature, it might mean he/she was too ill to write their name, or they did not know how to read or write. Census records may give additional insight to their ability to write.

## Definitions

**Abstract** – Are the details typically pulled from a transcription or just abstracted from a document. All boilerplate language is removed. See video [How to Transcribe and Abstract a Document](#).

**[Administrator / Administratrix](#)** - Person who oversees the estate of a deceased person without a will.

**[Dower](#)** – A widows share of her husband's estate.

**[Dower Rights](#)** – Usually, when a man dies, his wife would get on third of the land to live on for her natural life. This often included the “mansion house” or primary residence. Depending on the location will determine the timeframe of when Dower Rights Laws were in effect. Dower Rights were only in Common Law States.

**Estate** - Is the money and property belonging to the deceased.

**[Executor](#)** – A male person who oversees the payment of debts and distribution the deceased assets at the direction of the court. The Executor duties can be shared by more than one person.

**[Executrix](#)** - A female person who oversees the payment of debts and distribution the deceased assets at the direction of the court.

**Feme Sole** - A single female

**Intestate** - Means a person died without a will.

**Privy Examination** - Was where she was separated from her husband and asked if she was okay with selling the land. This was to keep her husband from intimidating his wife into answering as he may have wanted.

**Probate** - Is a term used when a court decides how the assets will be distributed. Probate means to prove a will.

**Transcription** – Is an exact typed copy of the original document including line breaks, marks, misspellings, as close to the original as possible. See video [How to Transcribe and Abstract a Document](#).

**Testate** - Means a person died with a will.

More [Glossary of Terms at FamilySearch](#)