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### Why search probate records?

- Increased availability online
- Value of evidence
  - Original sources
  - Primary information
  - Direct and indirect evidence

### What is a probate record?

- A probate record is created by the local court upon an individual's death.
- The records deal with the distribution of the estate and care of dependents.
- Probate took place regardless of a will (testate) or no will (intestate).
- Various types of record are created such as: bonds, petitions, accounts, inventories, and administrations.

### What kind of information might you find in a probate record?

- An individual's exact death date
- Names of family members
- Family relationships
- Names of spouses of children
- Burial information
- Residences
- Adoption or guardianship of minor children or dependents
- Worth of the property and land holdings
- Evidence of occupation, religion, or military service

### Where can you find probate records?

- The *FamilySearch Research Wiki* is an excellent place to start learning about probate records for your locality and how to find them
  - Begin with a search for the state or country and "probate records."

- Each location had different probate laws and the names of the courts dealing with probate varied.
  - Follow the links to find online sources for viewing the probate
  - In the United States, probate records are kept on the county level.
  - Search the records of the county where the ancestor died first, then expand to the neighboring counties.
  - View the *FamilySearch Wiki* page for the county to learn where the probate records are kept and where they can be accessed online.
  - You can visit the county courthouse onsite or view digitized records online.
  - Some counties may have moved their records to the state archives. Always call ahead before planning a research trip to a repository.
- *FamilySearch* has digitized the microfilm of probate records for counties throughout the United States. Most of these are not indexed, so must be searched individually.
    - The will books are generally indexed at the beginning of the book and estate files are usually arranged alphabetically.
    - When viewing the index, take careful notes of the page numbers. Some estates are mentioned on multiple pages and you'll want to locate each one.
  - *Ancestry* has indexed probate records by state so if you're not sure about a specific county, a search in the statewide database might pull up your ancestor's case file. Probate can show up in unexpected locations so don't discount a record until you have looked at it.
    - Only the main individual is listed in the *Ancestry* index, not the many family members who are listed in a will, administration paper, or final settlement.
    - It is up to you as the researcher to dig into the case file and discover the information that may be key to your research.
  - Many state archives have digitized their probate collections. An online search or the *FamilySearch Wiki* can lead you to these valuable resources.

## Researching probate records

- Record each search in your research log, so you'll know where you've looked and what you found. Use a source citation to note exactly what microfilm you viewed, the page numbers, the image numbers, etc. Also include a link to the image in your research log for easy access later.
- When a probate record is located, download the image to your computer and file it in your electronic filing system. Rename the image to reflect the information, for example: 1867 Probate Thomas B. Royston Chambers Co. AL
- If you don't find your ancestor initially in the index, the name may have been missed or misread. You can browse the indexes at the beginning of the county will books for your ancestor.
- Examine each set of records where your ancestor might be listed. Each county organized their record books differently and you'll want to track down each entry that might apply.
- Transcribe all the probate documents. Put the image number or source citation and date of the document in bold at the beginning of each new document's transcription.
- Put the transcriptions in order by date – easy to do if you've included that at the beginning of each transcription.
- Extract key information from the documents: dates, places, individuals, relationships, associates.
- Be careful about making assumptions from a will. Not all children may be named if they received a prior inheritance. Relationship terms such as niece and nephew can be used loosely for various

extended family relationships. The wife mentioned could be the latest wife, not the mother of the children.

- Look for further research possibilities.
  - If land is mentioned, look for land records before and after the will date.
  - Married names of daughters can lead to marriage records or census records.
  - Residences of the heirs provide new localities to research.
  - Names of witnesses provide key associates that can be used to identify your ancestor and even connect him to a previous location.

### **Intestate Estates - No Will**

- If an individual dies without a will, the property becomes an intestate estate.
- According to the law, the estate will be divided among the heirs.
- A spouse or other family member may petition the court to administer the estate.

### **Testate Estates – Include a Will**

- A will is often drawn up when an individual is in ill health or aged and preparing for death. Wills vary in length and breadth. They may be long and involved, stating many heirs and much property; or they may be short and simple.
- Although a will specifically is a document that declares an individual's wishes concerning the disposition of his or her property upon decease, different circumstances can be in play. The three categories of wills are:
  - **Holographic** – Usually written and dated entirely in the handwriting of the testator and signed by him. This type of will generally doesn't require witnesses, but the laws differ from one state to another.
  - **Nuncupative** – An oral will, witnessed by two or more persons. It is usually only valid if given in a moment of danger or imminent death, often limited to soldiers on the battlefield or sailors at sea. To be valid it must be recorded within a certain time, generally six to twelve days.
  - **Formally witnessed** – In order to be valid, the will has to meet the formal requirements of the state statute. In effect, that law defined the requirements for a valid will, and holographic and nuncupative wills are specific exceptions to the general requirements for validity. Generally, a formally witnessed will had these requirements.
    - In writing, signed by the testator (or if he cannot sign his name, by another in his presence and at his direction)
    - Verbally acknowledged by the testator as his will in the presence of at least two witnesses
    - Signed by the two witnesses in each other's presence and that of the testator

### **Components of a will**

**Preamble.** The testator (the person whose will it is) identifies himself or herself (a woman is known as a testatrix) by name, usually giving a place of residence, and for testatrixes, often stating “wife of,” “widow of,” or “daughter of,” depending on her marital status. The preamble will also have language concerning the mental status of the testator—for example, “being of sound mind and judgment”—designed to show legal capacity to write a valid will.

*In the name of God Amen I Thomas B. Royston of the County of Chamber state of Alabama considering the uncertainty of this mortal life & being of sound & disposing mind & memory blessed by Almighty God for the Same do make this my last will & Testament in manner & form following*

**Disposition of body and soul.** This clause gives directions concerning funeral, burial, and/or cremation. Wills before and during the nineteenth century often give statements of religious belief and comments as to the disposition of the soul. (no clause was included in Thomas B. Royston's will)

**Payment of debts.** Most wills generally direct that all just debts be paid before any distributions are made, as required by law.

*to wit That is to say after all my just debts are paid*

**Specific gifts:** bequests and devises. These are gifts of specific property or amounts of cash given to specific individuals. This part of a will often provides us with names of specific relatives and friends.

- *I give & bequeath unto my beloved wife Cynthia Royston all my Real Estate known as the home place lying next of the Chickaseknocksee Creek & that part also of my home place lying East of the Chickaseknocksee Creek adjoining the Lee's & Heath & also all my personal Estate which I may be possessed of at the time of my decease unto my wife Cynthia Royston during her life time or widowhood to manage & control as she may think best & proper*
- *I also give & Bequeath unto my sons Joseph Royston & Robert C Royston that part of my Dozier place lying East of the Chickaseknocksee Creek & that part of my Parker place lying South of the Vernon Road to go into possession of the said lands at any time after the present year 1867*
- *I also give & Bequeath unto my Daughter Sarah Parker all that part of my Parker place lying North of the Vernon Road to her sole & separate use her lifetime & to her children after her death to go into possession of said lands after my decease*
- *I also give & bequeath unto my grand son Franklin Royston my place lying on High Pine Creek containing One hundred acres to be under the control & direction of my wife Cynthia Royston until he is Twenty one years of age or such age as she may think proper to give it up to him the proceeds from bank or otherwise to go to his use during minority*

**Residuary distribution.** This clause specifies to whom the residue (what is left of the estate after paying costs of probate court administration, debts, and specific gifts) is distributed. In most cases, this residue will be given to the spouse (if still living), then to the children, although the final beneficiaries might be other relatives or friends. Often sons-in-law are listed in place of their wives, which can be a significant clue when looking for the family of a woman. Often the residue (called a life estate) will be given to the spouse only during her lifetime, and then given to one or more children. In that case, look for probate court action or transfers of real property when the surviving spouse dies.

- *I also will & order that after the death of my wife Cynthia Royston all my Estate both real & personal be equally divided between my several children share & Share alike after my children which are now unmarried & minors be made equal with my children which are married*
- *I have bestowed benefits on my children which are married which I have not done on my other children*
- *I also will & order that the portion going to my daughters go to their sole & separate use their life time & to their children each if any at their death*

**Naming executor(s).** The executor (executrix if female) is the person appointed and authorized by the court to handle the affairs of the decedent. The person named is usually a son, brother, or trusted friend. A wife or her brother might be named to serve if she or her family has assets and interests to protect. Often in this clause, the legal requirement of the executor posting a bond during court administration is waived.

*I also appoint my wife Cynthia Royston sole Executrix of this my last Will & Testament. . . I also will & direct that the probate Court before whom this may be probated grant my wife Cynthia Royston the privilege of administering as my Executrix this my last will & Testament without making Bond and Securing for the performance of the same*

**Guardian for minors.** Most states do not allow distribution of property to minor children. Since a guardian must be appointed, the testator would name the person he wanted to serve in that capacity. Often the language does not specifically say “guardian” but provides that all decisions are to be made by an older child or brother for a specific child who is a minor.

*I also leave in charge unto my wife Cynthia Royston the schooling educating & raising my minor children during minority*

**Revocation of previous wills and codicils.** It is standard language to revoke all prior wills and codicils. This does not necessarily mean there are any, but the procedure is precautionary in nature. Often this concept is incorporated into the preamble.

*hereof revoking all former wills by me made*

**Execution Clause.** This contains the signature of the testator and those of the witnesses, usually with language to state the circumstances surrounding the signing of the will to establish its validity.

*In witness whereof I the Said Thomas B. Royston have this day set my hand & seal this 18th day of Sept 1867*

*Signed Sealed & acknowledged to be my last will & Testament in the presence of the subscribing witnesses who subscribed their names in the presence of the Testator*

*Thos. B. Royston (Seal)*

*Brayton Johnson, John W Magbee, A.J. Dozier*

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