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Testamentary Law in England, c. 1450-1540

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ABSTRACT

In the period between approximately 1450 and 1540, testamentary law and practices within England underwent significant change. This change manifested in several aspects, the most prominent of which was the shift from national to local customs being the dominant factor in variations arising in testamentary practices. The shift to local custom is particularly visible in cases of *legitim*, children's rights to a portion of the testator's goods and chattels, which saw the custom disappear within the majority of southern England (except for the City of London) but remained for several centuries in northern England. The shift to local customs is often seen along the division of the two provinces of England under canonical administration, the Southern Province of Canterbury and the Northern Province of York. Also, within this period, archival evidence shows that the mannerisms within the content of wills were shifting, especially regarding women's abilities to write wills and act as executrix. The main question this thesis seeks to engage with is to what extent the canonical sources written by continental and English jurists reflect the daily testamentary practices found throughout England. To answer this question, a significant portion of this thesis studies primary archival documents, both wills and court cases — seen through various locations, such as York Cause Papers, London Consistory Court testimony, and several other collections. This study aims to reconsider this relationship by providing an evidential foundation upon which to base hypotheses about the relationship between canonical sources and the influence of the common law in the context of English testamentary law. The legal development of testamentary law has previously lacked a coherent effort to bridge the two schools of historical enquiry, one that focuses on legal/jurisdictional disputes and the other that focuses on the content, authorship, and administration of wills. In this thesis, I demonstrate that it is possible to engage with

both the legal issues underpinning testamentary law and provide a comparative treatment of the content of wills, particularly the authorship of wills.

LAY SUMMARY

The late medieval and early modern period in England saw many shifts in testamentary law, concerning both the nature of wills and testaments, as well as the types of court cases surrounding this area of law. From approximately 1450 to 1540, many developments occurred in the legal sphere, influenced by broader developments such as the civil wars for control of the English throne in the mid-to-late fifteenth century (known as the War of the Roses), the rise of the Tudor dynasty, the break with Rome; in this period of change, testamentary law fundamentally altered in many respects to focus on more local customs, while the common law increasingly utilised canon law in the courts and the jurisdiction of the church and common law were further solidified via the statute of uses (1536) and the statute of wills (1540). New evidence from archival material has shown that certain kinds of testamentary rights – such as legitim – further divided into areas of applicability, though seen as a local custom, while discontinuing for large portions of the country. Another intensification during this period was the theoretical conventionalisation of cases considered through the lens of impediment, which created concerns for the defuncts soul. At the same time, the textual evidence for the development of testamentary law in England demonstrates that this was also the period during which England's legal institutions were most radically developed.

There are two major divisions to consider; the authorship of wills and the content, and litigation (i.e., what came before the courts and how they were presented). Studying the authors and abilities of selected groups of individuals (such as women and clergy), provides insight into the types of bequests, and societal status of these groups. By considering litigation, this provides significant insight into the actual documents used in litigation from the fifteenth and sixteenth centuries. This work contains a large appendix of archival material, including wills, cause papers, depositions, and relevant statutes; these

specific cases have been selected as these are the more interesting of these papers. So far as possible, transcriptions and translations, where appropriate, have been provided. The documents often contain a myriad of information, including parties involved, relationship, decisions, officials (advocates and proctors, judges, offices of higher clergymen, etc.) and demonstrate how the academic and papal law were or were not being applied in practice. To supplement these documents, much has been included about how the ecclesiastical courts worked, how conflicts in jurisdiction were resolved, and the stages for administration of a will. This work provides much social information, often in unusual detail, and outlines the importance of testamentary law when considering the development of English society and law, as a whole.

AUTHOR'S DECLARATION

I declare that this thesis has been composed solely by myself and that it has not been submitted, in whole or in part, in any previous application for a degree. Except where stated otherwise by reference or acknowledgment, the work presented is entirely my own.

Signed:

Date: Thursday, September 1st, 2022

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LIST OF ABBREVIATIONS

CLRO …… Corporation of London Records Office

H.R.……...Husting Roll

Sharpe…….Calendar of Wills Proved and Enrolled in the Court of Husting, London, A.D. 1258-A.D.1688, ed. Reginald R. Sharpe. 2 vols. (London: Corporation of the City of London, 1889-90).

TNA…….The National Archives of the United Kingdom

General Terms

Cod. ……..*Code*

Dig. …….*Digest*

Gaius. ……...*Institutes of Gaius*

gl. …….Gloss

Inst. …….*Institutes*

Nov. ……*Novels*

Sext. ……...*Liber Sextus*

X. ……*Liber Extra*

LIST OF TERMS

- *Beneficium inventarii*: Benefit of Inventory. Emperor Justinian enactment that an heir had a right to request an inventory for the inheritance. This resulted in liability for any debts of the testator, while legacies only amounted to three quarters of the estate while the remaining fourth of the estate was reserved for the heir, which was often called *quarta Falcidia*.
- *Exheredatio*: Means disinheritance, i.e., the exclusion by the testator of their issue (children) or certain other persons from succeeding.
- *Holographic will*: a will written entirely in the hand of the testator, as opposed to the traditional will written by a cleric.
- *Impubes*: A individual under the age of puberty (twelve for girls and fourteen for boys). Due to their young age, an *impubes* lacked mental capacity and was *sui iuris* or under the authority of a guardian. An *impubes* is separate from a *minor* (term provided below).
- *Ius commune*: The general law common to all persons. This is the collective name given to combined canon and civil law.
- *Ius Naturale*: Difficult to define, often synonymous with *ius gentium* or "natural right;" laws common to all persons.
- *Legitima portio*: A fixed share of a person's estate that descends to legitimate children.
- *Lex Falcidia*: A constitution outlining that legacies should not receive any more than three quarters of the testator's estate. One fourth was reserved as a minimum part to be received by the heir (*quarta Falcidia*).
- *Libellus conventionalis*: plaintiff's libel, a written statement of the plaintiff's case and the action being brought. Originally called *libellus conventionis*.

- *Longi temporis praescriptio*: Possession by a prescriptive right, i.e., a legal basis for the acquisition of another's property.
- *Minor*: An individual over the age of puberty, therefore not an *impubes*, but under the age of twenty-five. This applied to both male and female individuals. Similar to an *impubes* and guardians, a minor could receive a curator to maintain property.
- *Nuncupative*: A will declared orally, usually when it was thought that the person might not live long enough to see their wishes set down in writing. Also known as *Testamentum per nuncupationem.*
- *Querela inofficiosi testamenti*: An action (contrary to duty) that an heir could bring as if the testator had unjustly been disinherited. Relates to issues of implied revocation in England.
- *Testamentum parentis inter liberos*: A testament in which a *pater familias* exclusively bequeathed his property to his children. This type of will could be made without witnesses, so long as the testator wrote their intentions in their own hand, specifically naming each child as heirs and outlining their exact shares.[1]
- *Testamentum ruptum*: A testament subsequently "broken" by a later event. The most common form was due to the birth of a posthumous child who was omitted in the father's testament or that was revoked by the testator through a later testament. This is important within England in regard to implied revocation concerns.
- *Ultimis voluntatibus*: Means "last will," in most instances this refers to a will as an alternative to testament. Rarely appeared in English documents.

[1] For more see Johann Philipp Streit and Rollemann Valentin Clemen, *Disputatio Inauguralis Juridica, Sistens Testamentum Quoddam Parentis Inter Liberos, Ad Normam Juris Examinatum: Pro Rectore Magnifico, Dn. Joanne Philippo Streit, J.U.D. ...* Publicae Eruditorum Disquisitioni submittit Rollemannus Valentus Clemenn, Hasso Schmalkaldensis ... Ad diem 17. Decembris, MDCCV.

CHAPTER 1

INTRODUCTION

> The church courts in England traditionally had jurisdiction over testaments and the litigation arising from testaments. In the fifteenth century, however, Chancery also took jurisdiction over testamentary cases. This article surveys the testamentary litigation in fifteenth-century English Chancery.[2]

When Joseph Biancalana wrote those words in 2008, he was focused specifically on his recently uncovered Chancery records; however, he inadvertently highlighted a central thread in this dissertation, namely that within the fifteenth century significant changes were occurring in testamentary law, specifically in regard to the areas which the canon law and common law were administering. Within a century, two statutes would be enacted that altered their respective testamentary aspects: the Statute of Uses (1536) and the Statute of Wills (1540). While these statutes occur at the very end of this thesis' period, they nevertheless contextualise the developments shown throughout these chapters. Fifteenth and sixteenth century testamentary law in England was gradually evolving and developing in new understanding. One of these understandings was in regard to the prevalence of local customs.[3]

This dissertation examines the strategies and decisions made by English testators, as well as their rights and challenges pertaining to administration or disposing of property. Some testators used their estates to provide for their spouses and children, friends and colleagues. Married and unmarried individuals alike were an integral part of testamentary law in England. From this analysis, several links to the type of bequests emerged that provide insight into a testators' gender and marital and

[2] Joseph Biancalana, "Testamentary Cases in Fifteenth-Century Chancery," *Tijdschrift voor Rechtsgeschiedenis/Legal History Review* 76, n. 3/4 (2008): 283.
[3] See for example, Richard H. Helmholz, "The English Law of Wills and the *ius commune*, 1450 – 1640," in *Marriage, Property and Succession*, ed. Lloyd Bonfield (Berlin: Duncker & Humblot, 2013), pp. 309-29.

social status.[4] By considering wills, historians are able to gain access into a larger portion of English society than is typical when considering other areas of law. Men and women, married, widowed, ill or healthy, rich or poor, appear in the testamentary records. These more common individuals are abundantly present in probate documents, seen through their wills—which survive by the thousands.

The immediate context of this study is that, in England during the lead up to the Reformation period, considerable changes were occurring in testamentary law. The overarching focus of this work is to study the extent to which national custom shifted into local custom. While there was considerable ebb and flow, the broader trend towards the focus on local custom will be highlighted throughout. To consider these developments, this project approaches the period of c.1450-1540 with a view to engaging with the gap in our historical knowledge. It is unclear how actively canon law and common law testamentary practices were influenced by and accurately reflected in the canonical literature – both within England and from the wider *ius commune*. Testamentary law during the late fifteenth century and early sixteenth centuries is a complex mixture of civil, canon, and common law, often this fact was acknowledged by the canon authors that frequently sought to align English practices with civil and canon law. To do so, sometimes great feats of academic flourish were required to maintain that England adhered to the practices and teachings of the *ius commune*. Within this period, a large number of wills survive, thereby providing a vantage point into the lives of several groups or categories of people, such as married women, canons, and local clergy. Furthermore, the relative survival of many court cases – brought about due to increasing requirements for the storage of documents – outlines several trends in the challenges testators, executors, and the courts were facing. It is important to note that this thesis is focused on the canonical jurisdiction of testamentary law, i.e., on movable property. For immovable property, the secular courts held authority over

[4] Sharon Teague, *Patterns of Bequest within the Family: Testamentary Evidence from the Ecclesiastical Registers of Canterbury and York c. 1340-1440* (Ph.D. Thesis, University of Toronto, 2013), p. ii.

concerns pertaining to the transfer of land, particularly as it garnered feudal revenue.

This thesis is divided into five sections, excluding the introduction (chapter one) and conclusion (chapter seven). Firstly, chapter two presents the stages of administration of wills, the timeline, and potential for legal matters to arise – as well as how the ecclesiastical authorities sought to mitigate any concerns. Ultimately, any disruptions or challenges could mean that the testator's soul was in jeopardy, though the church went to considerable effort to avoid such occurrences.

There are six essential stages, and various substages, that a will underwent from the moment it was written or orally stated, to when the estate had been disposed of and the executorship was complete. Those stages were as follows; 1) the writing of the will, 2) proving the will, 3) appointment of executors and their relevant concerns, 4) inventory of the goods, 5) the actual administration of the testament and enforcement, and 6) rendering of the account. As with all medieval legal topics, there is considerable disagreements over the order and necessity of all or some of the stages. Indeed, the most prominent problem pertaining to the ordering of the inventory and rendering of the account, as well as the number of witnesses required for the initial writing of a will in order for it to be valid. While this will be discussed in more detail, the canonists disagreed and had a variety of sources to support their various points. Following the administration stages, the next chapter moves to consider the content and authorship of various groups of wills; this approach is utilised in the following two chapters (three and four).

The third chapter considers the capacity for married woman to write wills, own property, and act as executrixes. The scope of chapter three is focused on married women, rather than all women, as the topic is too broad to be sufficiently encompassed and studied in a single chapter.[5] This chapter is

[5] Much work has been done on married women's wills and this chapter adds to this growing literature. For example, see Michael M. Sheehan, "The Influence of Canon Law on the Property Rights of Married Women in England," *Mediaeval Studies* 25 (1963): 109–24; Mary Prior, "Wives and Wills 1558–1700," in *English Rural Society, 1500–1800: Essays in Honour of Joan Thirsk*, ed. John Chartres and David Hey (Cambridge: Cambridge

further subdivided into sections considering married and widowed women, with some relevant remarks pertaining to unmarried women as well as daughters. Within this chapter, one trend identified is that while a larger portion of married women made wills pre-1450, during this period there was considerable reduction of the number of married women making wills. With various regional variation, this trend holds true throughout England – this chapter considers why this occurred and the changing nature of testamentary rights for women into the late fifteenth century. A subsection within chapter three focuses on depositions, or witness testimony, found within the London Consistory Courts. These cases highlight a significant point worth acknowledging in the general introduction, notably the significance of witness depositions when considered independently from the Act books and other records that pertain to the actual litigation in which the depositions serve as only one piece of evidence. In these cases, the Act books and other related documents for these cases no longer exist, leaving only the depositions. In such cases, it is essential to explicitly acknowledge for the reader the limited value of the remaining source material and this has been reflected in the analysis relying on the depositions (primarily in chapter 3). While these depositions provide insight into many areas of law, they also have their limitations. The persistent hurdle of conducting research based on incomplete archival documents poses a general and ever-present obstacle that readers should be mindful of.

The fourth chapter studies the wills and property rights of ecclesiastical individuals, particularly focusing on canons and local clergy, with some discussion of higher officials. Chapter four looks in detail at the city and minster clergy of York, the canons of St. Stephen's College in Westminster, as well as a few select cases from the London Consistory Court. The fourth chapter

University Press, 1990); Richard Helmholz, "Married Women's Wills in Later Medieval England," in *Wife & Widow in Medieval England*, ed. Sue S. Walker (University of Michigan Press, 1993); and Cordelia Beattie, "Married women's wills: Probate, property and piety in Later Medieval England," *Law and History Review*, 37 (1) (2019): 29-60.

provides case studies of localities, highlighting the value of further studies into the wills and testamentary patterns of church clergymen.

Following chapters three and four, the thesis shifts to consider testamentary law from a more doctrinal perspective, particularly looking to the courts and the various matters arising. While all the chapters outline the challenges and issues frequently faced by heirs, executors, etc., it is in chapters five and six that considerable archival focus is predominately focused on these legal disputes. The fifth chapter looks at children and the right of *legitim*. *Legitim* is a portion of an inheritance of the testator's estate children and wives are entitled to, even if not written as such in the will. Chapter five provides a synthesis of existing knowledge regarding the English practice of *legitim*, providing some useful updates to Helmholz's 1984 article as well as some practical remarks as to possible future studies allowing additional insight into the broader practice of legitim across the centuries, as well as a more wholistic perspective on the treatment of children through the lens of testamentary law and the courts.

The sixth chapter approaches York cause papers or cases that came before the ecclesiastical courts of York. It considers embezzlement, removal of executor, disputed administration and disputed legacy, disputed validity of the will, perjury by arbitrator, as well as unpaid due to the estate that hinder the executor from administering the estate. These cases are as follows; CP.G.212 (Slater c. Donbigynge, 1476), CP.G.894 (Lidyerd c. West, 1500-50), CP.G.18 (Pollington c. Pollington, 1503-04), CP.G.95 (Willingham c. Cawton, 1520), and CP.G.967 (Thwing c. Beckinsale, 1500-50). Discussion surrounding impediment is a focal point throughout many of the analyses of these cases. The final and seventh chapter provides a synthesis of all of the chapters with a view to relating to the overarching theme of the relationship between national and local customs. The overarching focus of these chapters is to outline the nature of testamentary practices and law

demonstrating the change that occurred in this period, setting the stage for the early modern English testamentary law.

This period was selected specifically. In his discussion related to Krakow, Wysmulek explains that generally throughout Europe the late medieval and early modern period was an era when:

> The rediscovery of the will in the broad social consciousness of both the clergy and laity of that time was directly caused by the initiation of scholarly studies on Roman law led by a group of clerics and subsequently the creation of canon law based on it. Roman law carried with it an existing body of theory on the nature of the testament, its form and the types of goods which could be legally transferred in this way. It also provided the courts with tools to uphold and enforce testamentary dispositions.[6]

The intention of this study: to listen to these various voices, recording verbatim their own words so that a clearer picture of the individual testators, as well as the ways in which they shaped their wills to serve their needs—the salvation of their souls and the wellbeing of certain individuals (spouses, children, siblings) or the maintenance of property (such as upkeep of churches and provision of stained-glass windows). All dates are given in the Gregorian style.

There are two main results. Firstly, the thesis follows standard institutional approaches by providing a detailed breakdown of the administrative components of wills, before considering content, authors, and disputes. Such a treatment of the administrative stages has not before been attempted, although is surely needed due to the significant debate and confusion surrounding the exact step-by-step process.[7] Secondly, it intends to integrate the everyday testamentary practice of mid-to-late fifteenth and early sixteenth century England, within the prevailing trends of English political and religious life. In so doing, it presents an expansive history of wills, authors, and their

[6] Jakub Wysmułek, *History of Wills, Testators and Their Families in Late Medieval Krakow* (Leiden: Brill, 2021), p. 30.
[7] Brian Ferme, *Canon Law in Late Medieval England: A Study of William Lyndwood's Provinciale with particular reference to Testamentary Law* (Rome: Libreria Ateneo Salesiano, 1996), pp. 55-77 [hereafter referred to as Ferme].

rights, which is concerned with the connections between individuals, institutions, and the relationship between common and canon law.

1.1 Sources:

This dissertation utilises a variety of archival sources including York cause papers, London Consistory Court testimony, P.C.C. wills, York city and minster clergy wills. This is in addition to the large focus on canonical material which provides the basis for English ecclesiastical testamentary understanding. The wealth of canonical texts, both on the continent and in England, provide a vantagepoint to consider central legal questions. In studying the canon lawyers' position, it allows for engagement with the civilian position on several testamentary matters. Material consulted throughout includes the following: *Decretales Gregorii IX*, Lyndwood's *Provinciale*, Swinburne's treatise of *Testaments and Last Wills*, many texts of Bartolus, as well as English statutes such as the Statute of Uses (1536) and Wills (1540).

CHAPTER TWO

WILL ADMINISTRATION STAGES

2.1 Introduction - Outlining the Process:

Succession and inheritance, in general, is often the most written upon subject in law, owing much to the Roman fascination with the subject. Roman jurists spent considerable time clarifying and elaborating the formal requirements needed for a will to be legally valid, as well as what could be contained within the will, including legacies, bequests, manumission of slaves, and a great many other dispositions.[8] The same is true in the English context in the late medieval period; despite the wealth of discussion on freehold land, church and common law legal approaches, and what was permissible to be transferred by will, the practical administration stages remain unclear. This is partially due to changes in the administration and the relative reluctance for many common lawyers to write on this topic. Unlike Roman society, with its rigid family structures centred around a singular powerful male ascendant (*pater familias*) that ruled over his household including children, wife, and slaves,[9] English society was not as highly structured within the microcosm of the household – at least legally. Without this rigid structure, more avenues of testamentary freedom where possible for other members, including children and women. There will be further discussion of the ability of women and children to make, execute, and administer wills; but the first point requiring clarity relates to the more general question of administration – how was a valid will administered? To answer this question, this chapter outlines the six stages that a testament underwent before its conclusion. The stages are as follows: 1)

[8] David Johnston, "Succession," in *The Cambridge Companion to Roman Law*, ed. David Johnston (Cambridge: Cambridge University Press, 2015), p. 199.
[9] Éva Jakab, "Inheritance," in *The Oxford Handbook of Roman Law and Society*, ed. Paul J. du Plessis, Clifford Ando, and Kaius Tuori (Oxford: Oxford University Press, 2016), pp. 498-99.

the writing of the will; 2) proving the will; 3) appointment of executors and surrounding concerns such as refusal; 4) inventory of the goods; 5) the actual administration of the testament and enforcement; and 6) rendering of the account. This is followed by outlining the role of the ordinary and other relevant church offices, as they undertook essential components within the will administration process. As David Johnson once noted, one "could attempt to give a short account of these detailed technical rules, but there is a risk that that might not be very interesting."[10] However, by presenting a survey on a more general level of will administration, this provides a foundation on which to consider the law of succession and inheritance in the broader context of English social and legal history. Furthermore, Brian Ferme incidentally engaged with the technicalities and difficulties of delineating the stages of administration in his monograph *Canon Law in Late Medieval England: A Study of William Lyndwood's Provinciale with particular reference to Testamentary Law*. While Ferme was not attempting to categorise the phases in which a will goes through from writing to conclusion, it outlined the difficulty in presenting a coherent step-by-step outline. It was from this point, that this chapter was developed with a view to providing a general survey from which to build a critical view of English inheritance practices discussed in later chapters.

2.2 - Writing of the Will

The canon law required at least two witnesses during the writing of the will, while the civil law required seven. It was often assumed that the presence of a priest while a testator wrote their last will was required; however, English canonist and bishop, William Lyndwood (c. 1375 – 1446) notes how this "never became the general law though it may have been required by particular [local] custom."[11]

[10] David Johnston, "Succession," p. 199.
[11] Ferme, p. 65; For more information see Lyndwood's *Provinciale*, 1679 edition, p. 174a, a.v. *Probatis*.; The 1679

Some of the examples where the incorrect assumption regarding the presence of a priest derived from the reported general principle stated by Pope Alexander III (1159-81). Alexander III wrote a letter in 1171-72 to the Bishop of Ostia,[12] wherein the Pope affirmed that it was the general law and custom of the Church to allow people to make wills with an imminent prospect of death (i.e., end of life due to age, illness, injury) and that the will would be valid if made before the parish priest and two or three witnesses.[13] Pope Alexander III made considerable general reforms on the canon law of testaments when maintaining, with the threat of the harshest church sanctions, that a will created in the presence of two or three witnesses was valid. This in affect helped cement the superiority of canon law over civil law, which required seven witnesses.[14]

It is important to note that medieval English testaments, even under English civilian principles, were not the same as the 'solemn testaments' of the Roman period. While English civilians were familiar with the principles of the Roman legal institutions and procedures, making comparisons between the English civilian system and their usage in contemporary courts only highlighted the differences from the Roman law. English civilians always drew a strict distinction between written and oral wills; however, due to the willingness of the English courts to enforce oral statements by testators of their last wishes, the civilian distinction would often count very little.[15] One benefit of the preference for written wills was that it was a more secure and direct means of testation, with less dependence on

edition is the most widely known and best-preserved edition, although more than 80 versions exist in various forms having been produced from the late 1400s into the 1900s. For the full title see the bibliography attached.

[12] While the letter is only addressed to the bishop, the holder of this title during those years was Ubaldo Allucingoli, who became Pope Lucius III upon the death of Pope Alexander III.; The Diocese of Ostia is an ecclesiastical territory found within the city of Rome. Ostia is one of seven suburbicarian dioceses within the city of Rome. The bishop of this diocese held a significant position within the church hierarchy, as since 1150, the bishop was also the Dean of the College of Cardinals. For more on the diocese and its bishops, see Rudolf Hüls, *Kardinäle, Klerus und Kirchen Roms: 1049–1130* (Rome: Bibliothek des Deutschen Historischen Instituts in Rom, 1977).

[13] Jakub Wysmułek, *History of Wills, Testators and Their Families in Late Medieval Krakow*, p. 31.

[14] Michael M. Sheehan, *The Will in Medieval England: from the Conversion of the Anglo-Saxons to the End of the Thirteenth Century*, Pontifical Institute of Mediaeval Studies (1963): p. 128.

[15] Richard Helmholz, *The Oxford History of the Laws of England: The History of the Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford University Press, 2004), pp. 399-400.

accurate memories of all witnesses, thereby potentially avoiding later issues regarding determining the testator's testament intent. It can be argued that the canonist's interest in oral wills is an example of the canon-law preference for a living witness above the written legal instrument; however, the fact remains that written testaments alleviate a large portion of the burden of accurate memories from witnesses.[16] Most of the cases discussed throughout this thesis focus on disputes concerned with proving the tenor of missing testaments or otherwise dealing with ambiguity, as opposed to oral or nuncupative wills as they infrequently appear in the records.[17] Those that signed a testament as witnesses, either seven or two depending on the civilian and canon system, played a fundamental role in the determination of the defunct's testamentary intent. Upon the confirmation of the validity of the will, the witnesses would be called to affirm the true intent of the testament. There is some debate regarding the necessity of having the witnesses be examined,[18] even if no dispute was to go before the court, with later authors like Swinburne discussing the necessity.[19] In the context of this thesis, with the predominant focus in later chapters on court litigation, the witnesses would be compelled to be examined (potentially more than once). In the case of disputes, the examination was procedural and formal (see later transcriptions on the individual formulaic nature of how each witness would have to go item by item). For witnesses being examined in instances where the testament was not being disputed, only to affirm validity, it was largely informal and without written recording in most instances.

Moving beyond the number of witnesses, which will be returned to later, it is evident that both the canon and English common law agreed on limitations to the freedom for testators to include some aspects in their will, for which they could draw upon each other and more significantly, the civil law.

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[16] Helmholz, *The Oxford History of the Laws of England*, p. 400.
[17] Perhaps this is a challenge in identifying nuncupative wills in surviving records, as they are not clearly identifiable. During the research for this thesis, I did not find any instances of oral wills in later court cases.
[18] Helmholz, *The Oxford History of the Laws of England*, pp. 414-416.
[19] Henry Swinburne, *A Brief Treatise of Testaments and Last Wills* (London: Printed by Iohn Windet, 1590 [1st edn, colophon date 1591]), pt. VI.

Ferme thus summarised the well-known separation between moveable and immovable property:

> while the basic principle was that a man was capable of making a will and could devise his chattels and movable goods by testament, this did not necessarily mean absolute freedom over these goods.[20]

The separation between movable and immovable property was firmly entrenched by the thirteen century. While various limitations were put on what a testator could or could not include in a will, there are also several other considerations. Based in part upon the decretalists (a school of canon law thought that focused on papal rulings as the highest source in regard to matters of church discipline), by the twelfth century the canonical will "differed from Roman wills in its function – providing a legal basis for pious requests, and thereby facilitating them and ensuring their effective fulfilment for the benefit of the Church."[21] This will be discussed in more detail during chapter five, which will focus on the right of *legitim* (otherwise known as the right for children to receive goods whether included or excluded by the testator), and if *legitim* was a consideration while writing the will. Of course, testators were encouraged and often required to include provisions to be made for the church in their will. It is from the twelfth century onward that significant changes between what was or was not permissible under a civilian will sometimes bore little resemblance on the limitations of the canonical will.

The physical act of writing the will also had specific characteristics, such as the use of formulaic structure and specific wording being essential. This holds true for both the content of the will as well as the administrative notes. For example, it is rare not to find the following format: in the name of God, then the date, name, and usually profession or title, followed by a remark on the soundness of mind and being the true will. For example: "In the name of God, Amen. 20 February

[20] Ferme, p. 68; *Provinciale* p. 172a, a.v. *Mobilibus*.
[21] Jakub Wysmułek, *History of Wills, Testators and Their Families in Late Medieval Krakow*, p. 32.

1497. I, William Stevyns, canon of the cathedral church of Lincoln, rector of the parochial church of Girton, Ely diocese, and rector of the parochial church of Abbots Ripton, Lincoln diocese, being of full mind and true memory, make this my testament and last will in this form. Firstly, I commend my soul to Almighty God, the blessed Virgin Mary and all the saints, and my body …"[22] This would be followed with the specific bequests, the name of administrators, and other details. However, the formulaic nature was not confined to the opening preamble of the will. Increasingly, with wills being written in English for the fifteenth century onwards, the clerical notes of the will being proven by the Ordinary were produced in formulaic Latin. Three examples have been listed below to compare the similarities and prove examples of the exact nature of such formulaic testamentary models.

Will of Walter Oudeby: *The above-written testament was proved before the lord at Lambeth on the eighteenth day of February 1498* [i.e., 1499]*, by the oath of the executors named and approved and recorded in the same testament, etc. And administration of all and singular the goods and debts of the deceased was committed to the aforesaid executors named in the same will, to administer well and faithfully and under their unanimous consent and assent, and to make a full and faithful inventory of all and singular the goods and debts of the same, and to show that before the feast of the Annunciation of the Blessed Virgin Mary next, etc., as well as to render a plain and true account, calculation or reckoning, etc. Sworn on the Holy Gospels.*[23]

Will of William Chapman: *The before-written testament was proved at Lambeth before etc., and at Lambeth on the tenth day of February 1493* [i.e., 1494] *was sworn Master Nicholas Tapp, notary public, proctor, etc., who swore according to the information given to him, etc. And administration of all goods, etc., was committed to the executors named in the same will, in the*

[22] TNA, PROB 11/11/356 – Will of William Stevyns (1497).
[23] TNA, PROB 11/11/568 – Will of Walter Oudeby (1498).

person of their said proctor, to well etc., and a full inventory etc., before the feast of Easter next, etc., as well as to render a plain and true account, calculation or reckoning on their part. Sworn etc.[24]

Will of John Austell: *The above-written testament was proved before the lord at Lambeth on the 15th day of the month of February 1498 [i.e., 1499], by the oath of Master John Coplande, notary public, proctor, etc., and approved and entered, etc. And administration was committed to the executors named in the same testament in the person of the said proctor, [to administer] well and faithfully and under their unanimous consent, etc., showing a full and faithful inventory before the feast of St David the bishop next to come, etc., as well as a plain and true account, calculation or reckoning, etc. Sworn on the Holy Gospels.*[25]

These examples demonstrate how nearly all of the wording was identical, with very minor differences seen within William Chapman's will. Of course, this is due to pragmatic reasons. If the model was accepted by the ecclesiastical authorities, there was little incentive to deviate from this structure. The same remains true of modern wills, as well as conveyancing deeds. Any differences are surface level and have no effect on the tone or aims of the statement; differences include using the word "before-written" rather than "above-written," was "sworn" rather than "by oath." As is evident from these three late-fifteenth-century wills, the formulaic structure was ingrained and widespread. While the three examples are from clergymen within the Province of Canterbury, the same holds true for male or female wills throughout England – this is discussed in more detail, as well as specific wills provided in chapters three and four, and to a more limited extent in chapter six.

The language required in the drafting of a will is overtly formulaic, intentionally so, in order

[24] TNA, PROB 11/10/95 – Will of William Chapman (1493).
[25] TNA, PROB 11/11/564 – Will of John Austell (1498).

to ensure that efforts were taken by the testator to comply with the church's rules. Often, a single mistake could invalidate a will; hence, the frequent involvement of learned individuals in the canon law. As noted previously, while the presence of a priest or other ecclesiastical official was not required, it often occurred at the wishes of testators in order to avoid any challenge to the validity of a will after their death. In fact, model wills had been in circulation since as early as the late thirteenth century.[26] Manuscript will formularies also circulated[27] and would come to be included in popular almanacs by the mid-seventeenth century.[28] Another component that affected the writing of a last testament was in relation to earlier wills, in most instances the later will superseded any earlier versions, as they were perceived to be the 'true' intention of the testator.

2.3 - Proving the Will

Once the will was written and the testator died,[29] the next stage in the process of a testament was to prove the validity of a will. In proving a will, two witnesses were required (a fact widely known by contemporaries); this continues to the current day in many jurisdictions.[30] The efforts of Pope Alexander III cemented this fact, firmly distinguishing the canon law of testaments in this regard from the seven witnesses required under Roman law. This was followed in practice, as seen by the works of English canonists, who held roles that made them aware of such practices, including, for

[26] J.D. Alsop, "Religious Preambles in Early Modern Wills as Formulae," 40 *Journal of Ecclesiastical History* (1989): p. 22.
[27] Alsop, "Religious Preambles in Early Modern Wills," p. 22.
[28] Alsop, "Religious Preambles in Early Modern Wills," p. 20.
[29] It was quite frequent that wills were written years in advance, rather than the often-perceived deathbed writing of the will. This of course led to many problems and challenges such as heirs predeceasing the testator and the will not reflecting such developments.
[30] This is a legacy of the continued church jurisdiction over testaments into the 1840s and 1850s, allowing this practice to become firmly rooted in former British colonies such as Canada, New Zealand, Australia, United States of American, among many others.

example, William Lyndwood and Henry Swinburne. Swinburne denoted and described two avenues that executors could take to prove the validity of the will. The first was the most common, wherein a minimum of two witnesses were required to swear that the will was the true last testament of the deceased. The second method was known as the legal form (*in forma juris*). *In forma juris* "required the presence of the testator's next of kin or widow as persons who had an interest in the content of the testament."[31] Lyndwood, writing a century and a half earlier, held that two *integri* witnesses were sufficient to assure the validity of a will, notwithstanding any regional or local customs that might suggest or require that a relative or more often that a priest be present at the probate proceeding.[32]

The two witnesses were to be of an appropriate character and in good standing, disqualifying those that were of a questionable or unreliable character,[33] which would present potential challenges in the later stages of administering a will. To prove a will, several steps were required under canon law: firstly, to have the two witnesses to attest that the testament reflected the intent of the testator and aligned with what was permissible in transferring a person's assets to beneficiaries. The second stage of this process was to produce a copy of the contents of the will to be preserved in the church records.[34] These records make up the vast majority of material on wills, with relatively few original wills surviving, as once they were proved the church copy was of more importance.

Proving the will is a crucial step in the administration process, as this is the actual process of

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[31] Teague, *Patterns of Bequest within the Family*, p. 36-37; for general remarks see Henry Chichele, E. F. Jacob, and E. F. Jacob, *The register of Henry Chichele, Archbishop of Canterbury, 1414-1443* (Oxford: Oxford University Press, 1937) pp. xxix-xxxiii.

[32] Teague, *Patterns of Bequest within the Family*, pp. 36-37.

[33] This was a common practice regarding limiting who could undertake a given legal role, such practice was seen in jury selection as well. For more on this see 2 Hen. V. 2. c. 3 [*SR*. II, 188]; Thomas A. Green, *Verdict According to Conscience* (Chicago: University of Chicago Press, 1985) pp. 28-59; J.S. Cockburn and Thomas A. Green eds., *Twelve Good Men and True: The Criminal Jury Trial in England, 1200-1800* (Princeton: Princeton University Press, 1988), especially pp. 65-77.

[34] These would be written by learned church men, rather than the witnesses. For more on this see Richard Helmholz, *Roman Canon Law in Reformation England* (Cambridge University Press, 2004). It is for this reason that such similarities in the documents can be seen, especially in the notes written by clerics on the bottom or back of proved copies – usually relating to administration problems.

approving the validity and legality of will before moving forward with will administration.

The actual process and procedure of proving a will should, in theory, be simple. An executor or executrix, either individually or one of several, would give the will to the, usually, local and most relevant ecclesiastical authority. Thereafter, the physical documents of the will as well as the character and actual physical witnessing of the making of the will would be examined to establish that the will was authentic. If the will was nuncupative, that is made orally rather than written down, the witnesses would attest to that at this point in the process. While all of the witnesses would not likely be present, those that had brought the document to the local ecclesiastical authority would announce that the will was nuncupative. At this point, a distinction should be made between nuncupative and written wills – written either by a cleric or another on behalf of the testator or a holographic will, a testamentary disposition written entirely in the hand of the testator. There will be little attention paid to these here, as they were not commonly found in the research. But "if the statement of the testator's intentions were satisfactory and the condition in which the will was made corresponded with the formal requirements for validity, the will was then approved."[35]

This process is the product of a unique mixture of canon and civil law. Probate is *publicatio testamenti*, with the marked difference being that, under civil law, it was considered as a precaution; within England, however, it was obligatory.[36] Identifying the exact period in which it became mandatory in England is impossible; but it was roughly two centuries earlier than the focus of this thesis. Proving the will was the first stage that involved more than the testator and any ecclesiastical officials (i.e., parish priest) to advise the testator, and it is in this stage that the powerful influence of the church's authority over testamentary law is demonstrated. The next step in the process, once the validity and

[35] Ferme, p. 60.

[36] *Provinciale*, p. 170a, a.v. *Insinuationem*; Ferme, p. 60 further notes that it is "quite likely it was obligatory some time before 1250, for the subject of *publicatio testamenti* is dealt with in some detail in a course of lectures on the Institutes attributed to Vacarius."

legality of the will had been ascertained, was to appoint executors to administer the will.

2.4 - Appointment of Executors: Questions Regarding Refusal and Enforcement[37]

After the will had been proven and a copy, known as a proof, placed in the ecclesiastical church records - depending on the location it could be with a local court or one of the two Prerogative Courts at York and Canterbury - the appointment of executors followed. The Ordinary, a type of church officer that in general exercised the judicial functions of the bishop, was tasked with power to execute laws, moved the testament to the authority of the executors. The office of the Ordinary was an important legal official concerning many areas of church business, although the discussion of this role will be confined to testamentary proceedings. Two texts that formed the foundations of the law of executorship in civil law, were extensively used by the ecclesiastical jurists both within and outside of England. These were C. 1.3.28.pr and 48.[38] Within England, since there is no equivalent position or role compared to the highly formalised institution of an heir required under Roman law, gradually "the executor's powers were to become so great that he was assimilated to the heir of the Roman law."[39] The equivalation of these two positions demonstrates the level of authority executors were gradually given. Lyndwood and other prominent canonists, such as Henry Chichele (Archbishop of Canterbury, 1414–1443), perceived the English executor on an equal legal foundation to the heir in Roman law. As testamentary law became more firmly and completely under the authority of the ecclesiastical courts, "the executor's area of activity enlarged such that he became the genuine representative of the testator."[40] This gradual

[37] There are many types of executors (including Executores Sententiarum, Negotiorum, Praeceptorum, Testamentorum & Gratiarum) each with their respective roles, duties, and authorities.; For more information see Lyndwood, *Provinciale*, p. 168a, a.v. *Executor* and p. 178a, a.v. *Nullus Rector*.
[38] Ferme, p. 80; These sources are later discussed by medieval civilians extensively, as C. 1.3.28.pr (1. *Nulli, De episcopis et clericis*) and 48. (1. S*i quis ad declinandam*).
[39] *Provinciale*, p. 172a, a.v. *Intestatis*: "Executores universales, qui loco Haeredis sunt."; Ferme, p. 68.
[40] Ferme, p. 68; Executors never held universal authority of course, for example when an executor failed to do his

expanding of the executor's area of involvement is in contrast to the common law, where it progressed much more slowly, with a variety of continuing limitations on the executor's rights and obligations.[41] However, significant pressure was exerted from the various bishops and their courts on the common law, such that by 1285 the common law was compelled "to admit the essentials of the executor's position as the representative of the deceased."[42] Gradually the common law executor function and abilities continued to be expanded in both their rights and duties following 1285. For example, statues were passed in 1330 that prevented goods being carried away in the life of the testator and in 1350 more rights were provided to the executors of executors.[43] Due to developments such as these, executor's rights were now firmly established under the common law.

In most instances, two executors of good character would be appointed to administer the will. However, this process is not so straightforward. While the testator could name the executors, they could be removed upon the authority of the Ordinary if the individual executor was considered to be of a questionable character.[44] This is due to the concern that once the estate had been handed over to the executor, he might either do harm to the estate by mismanagement or attempt to steal to better himself or other specific individuals. Several cases are recorded where the Ordinary or family members of the testator bringing claims against an executor.[45] Chapter six will discuss, in part, the ability and process to remove an executor and the attached challenges.

The task of being an executor possessed some benefits as well as drawbacks, as the testator

duty to administer the will or did so in a negligent manner, the church courts would intervene.

[41] Sheehan, *The Will in Medieval England*, pp. 289-95.

[42] Ferme, p. 68; For more on the gradual evolution of the common law's conception of executors, with their relevant civil and canon law justifications, see Ferme, p. 69-77 and Richard Helmholz, "*Legitim* in English Legal History," *University of Illinois Law Review* 3 (1984): 659-674, especially footnote 6.

[43] See Y.B. 25 Edw. III, st. 5, c.5.

[44] Stratford, Constitution - *Adeo quorundam, & infra*, p. 177; *Provinciale*, p. 168b & p. 177a.

[45] York holds several surviving records: one such example is CP.G.212 [1476], which has extensive details on the defence and prosecution proctor, six witnesses, and many other interesting details. Several of these cases were extremely long and generated vast amounts of records. This case took the better part of a year, concluding with the plaintiff winning against the executor. Chapter six provides a more detailed treatment and the transcribed and translated copies of this cause paper are attached in the appendix.

usually provided in the will some goods for the executor(s); but they also faced substantial challenges. The provisions for executors varied considerably, from vast sums to very little. One option taken by some testators was to insert a generic catchall phrase, making the executors the residuary legatees. It was common to make the main beneficiary the residuary legatee,[46] thereby also preventing property not being covered by the will and falling into intestacy. This is seen for example in the following passage taken from the will of John Austell, written in 1498 and proved in 1499:

> The residue of all my goods not bequeathed above nor disposed of by me I give and leave to the aforesaid Thomas Awstell, John Seyntlo and William Long, who I name, ordain, make and constitute executors of me and of this my testament and last will by these presents, such that they will dispose of all and singular my goods not otherwise bequeathed or disposed of by me for the salvation of my soul, as shall seem best to them according to their discretion.[47]

Most notably, in the executor's task to acquit or repay the testator's debt, the most frequent and prominent problem that emerges from the surviving records was that some of the goods and chattels were in somebody else's possession. A large portion of the fifteenth-century testamentary causes that were eventually brought into the consistory court of Canterbury, where due (in part or fully) to problems with the recovery of debts due by or to testators that could not be paid as others were impeding the administration.[48] While the recovery of goods from others was normal, unnecessary delays were considered as impediments to a speedy administration with the potential to create intestacy. Other tasks required of the executor were to arrange for the funeral if not already done and to assign portions to the testator's wife and children if they survived.[49]

While in theory the task of the executor was straightforward, in practice the actual

[46] It is commonly done in modern wills to provide for individuals after specific legacies.
[47] TNA, PROB 11/11/564 – will of John Austell (1499).
[48] Brian L. Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford: Oxford University Press, 1952), p. 85.
[49] Sheehan, *The Will in Medieval England*, pp. 289-95.

execution was difficult, complex, and could take months or years to complete depending on the extent of the goods of the testator. This process was rife with conflict and misappropriation, or challenges to remove executors on suspicion of misdeed or negligence.[50] Once these aspects were completed the executor was expected to produce an inventory. This has been separated into a separate stage in the testament process due to the complexity and many problems surrounding the making and timing of the inventory.

2.5 - Inventory of the Goods

Lyndwood and many other contemporaries, both within and outside England, note that one of the first tasks of the executors upon appointment by the Ordinary, was to make an inventory. Indeed, the executor had to produce an inventory before the actual administration of the will could take place. A simplified summary of inventories denotes that they are lists of the goods and chattels in the possession of the deceased at the time of their death, with valuations.[51] For example, the 20th canon of the 1261 Council of Lambeth required the production of '*de bonis defuncti fidele inventarium*' — a faithful inventory of the goods of the deceased. The administration of the will could not begin until an inventory had been made.[52] This council's ruling on inventories was to be repeated extensively over the next several centuries and has been found reiterated among the works of John Stratford's Constitution *Statutum bonae memoriae* (1342)[53] and Lyndwood's *Provinciale*

[50] See for example CP.G. 212 for challenges to the executor, see CP.F.380 for an example of disputing the validity of a will.
[51] For more on this see Stuart A. Raymond, *The Wills of Our Ancestors: A Guide for Family & Local Historians*, (Yorkshire, England: Pen & Sword, 2012) pp. 45-58.
[52] For more on the Lambeth Council 20th canon see Dorothy Whitelock, M. Brett, and Christopher N. L. Brooke (eds.), *Councils & Synods: with Other Documents Relating to the English Church* (Oxford: Clarendon Press, 1964), vol. i, pp. 681-682; for more general treatment of canons on testamentary matters see *Councils & Synods*, i, p. 681-683.; Lyndwood also writes on this matter in the 1420s, see p. 170b, a.v. *Inventarium*.
[53] I have provided a translated version of the relevant passages for further context at the end of this thesis in

devotes significant discussion to the necessity of inventories. Clearly inventories were an essential component of English testamentary practice; however, ambiguity occurred in the justification beyond this requirement. It is important to bear in mind that ecclesiastical jurists were often trying to come to terms with the peculiarities of English practice, and so looked to the continental *ius commune* or civil law. Throughout this work, this theme of rationalising the peculiarities, often along local and national divisions, will be returned to as the English jurists continually attempted to place their unique testamentary practices within the wider canon and civilian tradition.[54]

The English requirement of an inventory is taken from civil law, demonstrated through a series of civil law sources that discuss in limited capacity the requirement to provide an inventory: 1. *Nulli* (for captives), C. 9.49.7 (criminals who had forfeited their property) and C.8.54.36 (which does not actually directly relate to inventories).[55] In a rather complex logic, English jurists used Roman sources such as Leo's Constitutions in C. 1.3.28pr. in order to equate the English executor with the Roman tutor. In this constitution it states that in one instance a bishop who had intervened to distribute a pious request left via a will, had to declare the amount received, the date it was received, all before (in this case) a provincial governor. By doing this, the bishop (or indeed any ecclesiastical authority of a certain level) was provided authority to compel the production of an inventory, as "executors in general were under the same obligation to make an inventory as a tutor, and that in this respect the executor more resembled the tutor than the heir, who might accept an inventory at his own risk."[56] The importance of equating the English executor with the Roman tutor, specifically in

appendix one. This entire passage is originally from Stratford's Constitution written in Lyndwood's *Provinciale* (denoting how important this passage is that Lyndwood includes it c. 80 years after it was published).

[54] For general remarks on this point, which occurs across nearly all areas of English law, see Richard Helmholz, *Roman Canon Law in Reformation England* and Richard Helmholz, *The Oxford History of the Laws of England*.

[55] See Ferme, p. 91 for comments on why medieval jurists referred back to C. 8.54.36 despite its rather loose relation to inventories.

[56] Ferme, p. 91.

relation to the inventory, are essential aspects to align the English practice with civil law as well as acceptable canon law.

This chapter will now consider the next prominent matter for executors in producing an inventory: their potential liability. In the production of an inventory executors were responsible as they were the individuals who compiled the inventory. If the inventory was incorrect or purposely misleading, the executors could face suit. The Roman tutor was obligated to make an inventory as soon as he took office. In D. 26.7.7.pr. it demonstrates that if the tutor failed to do this, with few exceptions, he was guilty of fraud under Roman civil law.[57] As the English executor was made equal to the Roman tutor under canon law,[58] the same principles applied. This was due to the principal that both an executor and a tutor were required to make an inventory before administration could begin, this is juxtaposed to the heir which had more freedom to make an inventory before or after administration.[59] While contemporaries made use of a series of authors, by far Durantis wrote the most extensively on the executor,[60] his writings helped shape contemporary understanding, although with few exceptions Durantis took many features from Johannes Blancus. The medieval civil law held a

[57] In the event that the tutor was poor he could be removed and put in chains, but not in chains for the wealthy as this was too degrading a punishment (according to D. 26.10.3.16.).
[58] For more on this see Durantis, *Speculum Juris* (Frankfurt, 1592), *sed an tenetur*, 343a, and *puberes autem*, 231-233b; Lyndwood notes that the popular opinion was that the executor resembles the tutor more than the heir: *Provinciale*, p. 176a, a.v. *Prius*: "*Sed hic adverte, quod isti Executores quoad confectionem Inventarii in casu hujus Constitutionis magis assimilantur Tutoribus quam Haeredibus; quia Haeredes, si velint, nullo inventario facto, possunt haereditatem adire, ut praedixi: sed Tutor non potest nec debet contingere Administrationem aliquam in bonis pupilli, nisi prius confecto Inventario ... Nota tamen, quod si non confecto Inventario, tales administrent, valet quod per eos actum est, possunt tamen removeri ut suspecti, possunt etiam incarcerari, ut ibi dicitur*."
[59] With regard to liability of the universal executor if failed to make an inventory, thereby becoming personally liable, see Lyndwood, *Provincale*, p. 176a, a.v. *Prius*: "*Requitur etiam, antequam se immisceat, Inventarii confectio, saltem pro securitate sua, ut sc. non teneatur ultra vires bonorum repertorum juxta formam* [C. 6.30.22]. *Si tamen tali Inventario prius non confecto se immisceat Administrationi bonorum defuncti, certis casibus exceptis ... tenebitur singulis Creditoribus respondere*." It is also worth noting that in this Lyndwood notes he is not in the *communis opinio* on this topic. For example, John of Acton does not expressly hold the executor to be *loco haeredis*, which is then followed by several other English writers such as Swinburne, Godolphin and Ayliffe. Swinburne, *A Briefe Treatise of Testaments and Last Willes* (1st edn) p. 198a-b; J. Godolphin, *Orphan's Legacy*, 3rd. ed. (London, 1685), Part II, c.21, p. 151; J. Ayliffe, *Parergon Juris Canonici Anglicani* (London, 1726) p. 267.
[60] Durantis, *Speculum Juris*, *De insturmentorum editione* and *Nunc vero aliqua*, pp. 331a-356b.

similar position as that of the canonists. The canonists accepted the civilian position, albeit with some minor difference.[61] Of course, genuine mistakes could and sometimes were overlooked;[62] but the underlying point was that executors, when transferred the estate by the Ordinary, bore risk. For example, from February 16th, 1513 until February 27th, 1514 in an unnamed court in York [Ebor] the sheriff of York and plaintiff Paul Gillor and his wife Isabel Gillor (daughter of the testator), along with Thomas Janson, Agnes Cornforth (another daughter of the testator), John Fulnaby and his wife Katherine Fulnaby (a third daughter of the testator) attempted to sue Matilda Atkirk, widow and executor of the will of George Atkirk.[63] This complex case of intrafamilial disputes centred on claims that Matilda had created a false inventory in order to defraud the plaintiffs (which in the instance of the three daughters prompted their husbands to bring lawsuits). While there is no sentence surviving in the records, this case illustrates the potential consequences of drafting an inaccurate inventory, whether with malicious or innocent intent. More will be discussed on a similar case in chapter six. This was such a well-known potential outcome, that non-legally trained individuals remarked on it. Even William Shakespeare wrote in his play Twelfth Night, albeit in a joking manner noting the specificity required:

It shall be inventoried,

[61] For example, the canon law stipulated that a monk could serve as a tutor; while under civil law, a monk could not. Overall, the canon law received the Roman law of *cura* and *tutela* as seen when comparing D.86 c.26 with Nov. 123.5. For more on this see R. H. Helmholz, "The Roman law of Guardianship in England," 52 (2) *Tulane Law Review* (1978): p. 227. The majority of canonists relied heavily or entirely on the civil law, Hostiensis only cited Roman law texts including Institutes 1.13.5; Code 5.29.2; Code 1.4.27; and Institutes 1.24.pr. See this in Henricus de Segusia, *Lectura in Libros Decretalium* ad X 2.28.67, no. 9 (1581).
[62] For more on judicial discretion, see Anthony Musson, "The Role of Amateur and Professional Judges in the Royal Courts of Late Medieval England," M. Mulholland and B. Pullan, eds., *Judicial Tribunals in England and Europe, 1200-1700: The Trial in History*, vol. 1 (Manchester: Manchester University Press, 2003), pp. 37-57 and Paul Brand and Joshua Getzler, *Judges and Judging in the History of the Common Law and Civil Law: From Antiquity to Modern Times* (Cambridge: Cambridge University Press, 2012).
[63] CP.G.66.

and every particle and utensil labelled to my will, As,

item, two lips indifferent red,

Item, two grey eyes, with lids to them,

Item, one neck, one chin, and so forth

Medieval jurists frequently referred to 1. *Scimus* and C. 6.30.22, outlining that it includes a set "of strict conditions with respect to the inventory and which affected the heir, especially in his relationship to the creditors."[64] Various practical elements were noted among the Roman sources which to a large extent were continued under canon law,[65] one example being that of the timeframe for the production and presentation of the inventory. In some instances, an inventory of the estate was required (if made by the heir upon inheriting) within sixty days, or the timeline was extended to a full year if the goods were elsewhere. In the latter case, the heir was only answerable to creditors as far as the value of the estate (after deductions for funeral expenses, cost of producing the inventory, pious charity, etc.).[66]

One final note is worth including in regard to the natures of inventories, until 1529 few inventories survived as it was only from that period onward that an English statute was passed requiring them under Henry VIII.[67] While this statute may have required their production, the English church had been producing and enforcing them for several centuries by that point. This is another example of the common law slowly adopting widely held and often enforced practices under canon law.

[64] Ferme, p. 91.
[65] It is important to bear in mind that English jurists used civil law to justify English testamentary practice so long as it did not conflict with the canon law. In such instances, it was frequently described as a local custom of the English people if it was not supported by civil law.
[66] Ferme, pp. 90-1.
[67] See [1529] 21 Hen. 8 c. 4 (Executors) & c. 5 (Probate fees, inventories, etc.).

2.6 - Administration of the Testament and Enforcement

Section four and five may appear to be mis-ordered at first, as surely once an executor was appointed to administer a testament, the inventory must follow - then why has section five been placed as a separate part? The answer rests in the actual chronology of the probate, there is considerable ambiguity regarding if the inventory should come before, after, or during the administration phase. Some examples of the different opinions regarding whether the inventory was required before or after administration as needed can be seen in Chichele's Constitution on Wills (1416) when it states that an inventory was required to be produced and approved before any such administration could commence.[68] Although this was not universally held, as contemporary William Lyndwood purposefully choose not to discuss Chichele's remarks on the requirement of producing an inventory. Chichele stated

> non statim committatur administratio, sed iniungatur executoribus in eodem testamento nominatis, super quo primitus ad Sacra Dei Evangelia corporale praestant iuramantum, quatenus infra brevem terminum ordinariorum seu jurisdictionem huiusmodi obtinentium arbitrio iuxta facti qualitatem moderandum, de omnibus bonis defuncti de quibus testari potuit, fidele et clarum fiat inventarium; quo exhibito, et per diligens examen reperto idoneo, tunc et non ante committatur eisdem executoribus administratio omnium bonorum ...[69]

However, among others, have noted that archival records show that the inventory was regularly shown after administration had been granted (both before and after Chichele's 1416 Constitution on Wills).[70] Perhaps this is why Lyndwood, well versed in the practical administration of church

[68] See Ferme, p. 94 for a more in-depth discussion of Chichele's opinion on this topic; For more on the constitution see *Reg.Chichele*, i, p. xxxi.
[69] *Reg.Chichele*, ii, p. xxxi; The Latin roughly translates to the following: the administration is not immediately committed, but the executors named in the same will are ordered, over which they first perform a corporeal oath to the Holy Gospels of God, in so far as within a short term at the discretion of the ordinaries or those holding similar jurisdiction (i.e., local jurisdiction) to regulate according to the quality of the fact, of all the goods of the deceased about which he could testify, faithfully and let the inventory be clear; when presented, and found suitable by diligent examination, then and not before, the administration of all goods is entrusted to the same executors ...
[70] See R. Houlbrooke, *Church Courts and the People during the English Reformation 1520-1570* (Oxford

affairs, excluded such remarks. Further examples that support Lyndwood's justification of not aligning with other canonists like Chichele, is shown within the city of Canterbury; courts frequently granted probate or will administration based upon an oath that an inventory would be produced by a specified date or in a few cases only in the instance that it was demanded or needed.[71] Although without an inventory, the process of administration might come under suspicion as to the executor's motives and this provided the potential of being removed.

The administration stage is arguably the most important for individuals to receive goods. It frequently involved litigation, even if, between 1450 and 1540 disputed legacy is by far the most common source of litigation in York. Hundreds of cases exist, many of which are consulted throughout this thesis, with a large portion surviving in the province of York for the period under consideration.[72] During this stage of the testamentary process, executors faced the most scrutiny and questions about their motives as in the next stage, rendering an account, wherein any inconsistencies would be found out and the executor may be liable. There is relatively little to note about this stage of the process, the actual administration was to divide the goods and provide them to the listed beneficiaries. The problems that frequently made this stage of the process difficult arises when recovering the property held by a third party.[73] Although, this is not isolated to England or even the medieval period, recovering property was frequently discussed by the Roman jurists as well as on the continent. Another matter that the common and canon law came to disagree upon, and debate was

University Press, 1979), pp. 92, 114.

[71] Ferme, p. 95; Although the validity of this claim has yet to be thoroughly researched, and Ferme provides no evidence to support this. I am currently researching discussions of an oath to produce an inventory, although there are substantial limitations in Canterbury records not present in York.

[72] The consultation of material was not confined to the Province of York, the author also viewed relevant records related to administration in a variety of locations such as London and Canterbury. For example, within TNA of the P.P.C. there is PROB 11/1/220, which is a document pertaining to the grant of administration of the goods of Sir Thomas Maxfeld. For more on this short document, see appendix two where it is transcribed in full. While a short document, it nevertheless outlines the importance of the granting of administration, although such documents rarely survive outside of larger cases going before the courts.

[73] *Provinciale*, p. 175a, a.v. *Effectum*.

whether an executor was obligated to account for goods undisposed by the testator. For example, in 1482 Chief Justice Brian disagreed with several ecclesiastical jurists when he held "that a legacy to an executor to dispose for the soul of the testator is void and not transferable, since the executor is bound to dispose in this manner of all the testator's goods which have not been otherwise disposed of. A legacy to an executor to his own use, on the other hand, is good."[74] It is likely that Chief Justice Brian was incorrect and unaware of the practice of the ecclesiastical courts; however, this is just one example of the divide between the understanding of administration under common and canon law. Obviously, C.J. Brian was aware of English ecclesiastical practices but without any training, he was mistaken. While the works of Lyndwood and Chichele were circulating in this period, perhaps Edward Coke was exceptional when he advised his reader that the civil and canon law rules of descent were "necessary to the knowledge of the common law."[75] It is evident that while there is some crossover areas, where common law and canon law both engaged in the same subjects, such as testamentary law,[76] in these areas, the common law courts could find themselves adjudicating on canon law rules with little understanding of the practice.[77]

As demonstrated, every stage of the testamentary process so far was rife with challenges and potential disagreement with the common law. Another example worth noting occurred in 1482 before the court of the Common Pleas. This case centred on whether an executor could keep aspects of the testator's estate and pay the debts with their own money. The question was whether this would constitute fully administering the estate.[78] No judgement is reported but this is just one example of the

[74] Y.B. P. 21 E. 4,5, pl. 15; quote taken from Ferme, p. 110.
[75] Sir Edward Coke, *The First Part of the Institutes of the Laws of England, or, A Commentary upon Littleton* (The Societie of Stationers 1628), p. 24.
[76] David J Seipp, "The Reception of Canon Law and Civil Law in the Common Law Courts before 1600," 13 *Oxford Journal of Legal Studies* (1993): pp. 388, 396.
[77] Christopher St German, *Doctor and Student* (T.F.T. Plucknett and J.L. Barton eds, Selden Society 1974): pp. 41–5.
[78] Y.B. P. 21 E. 4, 21, pl. 2.

type of questions surrounding the administration portion of the process. This is another example of the two jurisdictions, common law and canon law, looked to each other for dealing with difficult problems. Such cases are useful for this work when considering the interaction of the canon law and common law courts; as by this period, the common law had entrenched authority regarding the transfer of land upon death and the canon law on goods and chattels. Shifting now to the final portion of the will to consider challenges surrounding the rendering of the account.

2.7 - Render of the Account; Required or Optional?

The final stage in the probate occurred with the rendering of an account, which was to be presented, in most instances, to the Ordinary. If the Ordinary was not present, it could be presented to another lower-church official. Once this was done the executors were released and were finished with the process. As a general principle, all executors had to render an account, even if from an exempt religious order. However, there was some debate among canonists if the testator left direct instructions that an account should not be rendered, so that the executors were exempt from the obligation. This was a rather difficult question that was often avoided by leaving it up to the discretion of a judge should the case come to court.[79] The authority of the Ordinary might allow an executor to forgo the obligation of rendering an account, but the evidence for this is unclear. Nevertheless, it is an interesting legal position to hold, one which would have surely been of interest for a reading in the Inns of Court or the Doctor's Commons. Another more common question that does survive in the archival records is if the rendering could be substituted for an oath that the administration had

[79] *Provinciale*, p. 168b, a.v. *Rationem*; this section from Lyndwood is based on the Roman passages C. 8.54.36 and C. 8.50.2.

occurred to the specifications left by the testator.[80] Was an oath by the executor sufficient; were witnesses required for each item of the estate? To answer these uncertainties, English jurists looked to the continent, frequently to the works of Johannes Andreae (c.1270–1348). Andreae answered this question stating "*expensas notabiles, non tamen minutissimas*" which translates as only noteworthy expenses, not the minutest or smallest details.[81] This passage demonstrates the potential conflict related to the final step in the will administration process, rendering of the account. The position held by various jurists raises interesting questions regarding the authority of the Ordinary, which is the next section of this chapter.

2.8 - The Role of the Ordinary and other Relevant Church Offices

As previously discussed, the Ordinary was an essential church officer who authorised the executor(s) to inventory and administer the estate. It was the Ordinary who would take over administering the testator's estate in most instances when it became known that an executor was neglectful or of a questionable character, as either might lead to challenges to the validity of the administration being raised before the common law courts. The Ordinary did not have absolute authority, as shown by Lyndwood's assertion that the substitution of the rendering of an account was beyond an Ordinary's authority. It was not within an Ordinary's power to permit an individual to forgo the render of an account, if direct by the testator; such authority would have to come from the bishop. A concrete example that came before the courts is seen in 1456, Serjeant Choke (another decision from an officer

[80] The jurists were not of a single mind on this matter. Lyndwood for example holds that the Ordinary cannot do this, as it is beyond his authority, although the *ius commune* and civil sources hardly support this distinction: for more on this see *Provinciale*, p. 183a, a.v. *Fideliter*.
[81] Johannes Andreae, *Additiones ad speculum Guillelmi Durantis* (Strasbourg: Georg Husner, 1475) p. 338a-b.

of the common law) commented:

> that if the deceased make a testament, which is proved, the ordinary cannot change it, nor make another executor, and Danby agreed that if an executor admit the administration and be once sworn, though he will not administer afterwards the ordinary can make no other, but that it shall be deemed the folly of the testator that he would make an executor who would not administer.[82]

Furthermore, if all of the named executors renounced their role and refused to administer the testator's will, the Ordinary would appoint another executor by his own authority. If those individuals declined to act as executors, the Ordinary would appoint executors of the nearest kin of the defunct. If this also failed to produce an executor, an officer of the court could be appointed executor: such an executor appointed directly by the court in the wake of executors named expressly in the testament declining the office, would administer the estate of the defunct according to the testament insofar as the terms were lawful. If no other executor could be appointed, the Ordinary had the authority to commit the administration, as seen in Y.B. 36 H. 6, 7, pl. 4.[83] However, it is extremely questionable if a common law court would ever accept any action of an administrator appointed by the Ordinary, in the instance where the executor was willing to administer the estate but had been deemed unsuitable by the Ordinary. This is an interesting question to consider; however, there is no known case coming before the courts, although it would have likely been unacceptable for the common law justices' sensibility of testator freedom and such an extent of an Ordinary's authority to remove those willing to administer that had been expressly named by the defunct.

As has been noted, the Ordinary was not the only individual involved in the testamentary process. Beyond the few examples where testaments were referred to higher authorities such as a bishop, most often in the role of compelling or punishing an executor for unnecessary delaying or

[82] Y.B. M. 34 H. 6, 14, pl. 26.; Ferme, p. 100-1.
[83] Y.B. 36 H. 6, 7, pl. 4 *per* C.J. Prisot at fo. 8a.

refusing to administer an estate, it is not often clear who else was involved. Local clerics would have been involved in copying the will in the proving the will stage (2.3), which was then placed in the church records. Chapter four discusses the type of clergy involved at a more local and parish level, specifically within the city of York as a case example. Occasionally disputes came before the common law courts, as seen in the remarks of Serjeant Choke and C.J. Brian. While testamentary jurisdiction was under the church's authority, it is clearly a fluid relationship with the common law, as well as individual localities. As the Ordinary existed throughout Catholic Christendom, there is bound to be regional and personal variation, although such a study is beyond the scope of this work.

2.9 – Concluding Remarks:

This chapter has shown readers the influence of English canon law on the practical elements of testamentary law throughout the late medieval and early modern period. The various stages of the process of testamentary law, from the drafting of a will to its administration and the documents made during this procedure, demonstrate the importance of renewed consideration of church law to English testamentary law as a whole. The canonists used a complex system of civil and *ius commune* sources to justify some English practices that could not be explained under canon law. This chapter has aimed to show that this is a very complex and significantly under-researched subject, yet at the same time a most promising field of enquiry, as it has the potential to explain a crucial moment in the development of the law and, notably, of the institutions underpinning it. The amount of information present on canon law in England during the Reformation makes wills an invaluable means to study the practice of the ecclesiastical courts, and to contextualise the relationship between secular and ecclesiastical courts – which is very unclear and problematic, yet of crucial importance. Overall, there are six stages of the

administration of wills worth distinctly noting: 1) the writing of the will, 2) proving the will, 3) appointment of executors and their relevant concerns, 4) inventory of the goods, 5) the actual administration of the testament and enforcement, and 6) rendering of the account. The practical importance of outlining the stages of the will administration is to contextualise the eventual disputes discussed in later chapters. Understanding where the challenges are predominately occurring in the courts provides a vantage point into the nature of testamentary practice in fifteenth and early sixteenth-century England.

Section One: Wills, Content and Authors

CHAPTER 3

MARRIED WOMEN AND WILLS

3.1 Introduction:

> First of all she will want to understand thoroughly the last will and testament of her husband, and she will devote all her efforts to fulfilling his wishes as soon as possible in order to ease the blessed soul of the man she loved.[84]

It is common knowledge among historians that "in late medieval England, church courts had primary probate jurisdiction and, according to canon law (following Roman law), married women were fully capable of making a testament of their separate property."[85] While many studies have focused on the ability of women to make wills in a confined or singular locality, such as Kathryn Jean Staples's *Daughters of London: Inheritance Practice in the Late Middle Ages* (Ph.D., University of Minnesota, 2006), others attempt to provide a broader and comparative study of such trends – such as Sharon Teague's *Patterns of Bequest within the Family: Testamentary Evidence from the Ecclesiastical Registers of Canterbury and York c.1340-1440* (Ph.D., University of Toronto, 2013). This chapter will provide a treatment of married women's testamentary ability and challenges beyond the locality, i.e., considering the dynamics

[84] Christine de Pisan, *The Treasure of the City of Ladies or The Book of the Three Virtues*, ed. S. Lawson, (Hannondsworth 1985), p. 81.
[85] Quote taken from Cordelia Beattie, "Married Women's Wills: Probate, Property, and Piety in Later Medieval England," *Law and History Review* vol. 37, no. 1 (Feb. 2019): p. 31; Beattie supports this claim through the work of Richard H. Helmholz, "Married Women's Wills in Later Medieval England," in *Wife and Widow in Medieval England*, ed. Sue Sheridan Walker (Ann Arbor: University of Michigan Press, 1993), pp.165-182, especially p. 166.

between the national and local trends. This chapter has a limited focus on married women and widow's, rather than all women. This is a deliberate decision taken to ensure an in-depth case study of married women and testamentary law, while providing enough material for the purposes of this thesis.[86] This chapter provides a foundational background to several legal disputes related to married women, while laying the groundwork for future studies of a comparative nature considering all female testators. As previously noted, the focus on local custom by studying individual cities or records can often obscure the transitional periods from national to local customs in the late medieval period. This chapter will analyse specific elements of testamentary rights of married women, as to discuss the topic in its entirety would inevitably shift the focus towards the law of marriage, which is beyond the scope of the testamentary focus for this work.

This chapter on women and wills considers the continental and English canonical (and to some extent common law) understanding of women's rights and legal limitations, before moving to focus on the interaction of women with the courts. Concerning the latter, the predominant focus is on testimony depositions within the London Consistory Court, debates surrounding female testators in the Northern Province of York (specifically Hull and Leeds), and within the Province of Canterbury. By providing a sampling of depositions, wills, and discussions surrounding women and testamentary

[86] There has been considerable number of studies dedicated on widow's wills, see for example Sue Sheridan Walker (ed.), *Wife and Widow in Medieval England* (Ann Arbor: University of Michigan Press, 1993), P. J. P. Goldberg, *Women, Work, and Life Cycle in a Medieval Economy: Women in York and Yorkshire c.1300-1520* (Oxford: Clarendon Press, 1992), and Mary Prior, 'Wives and Wills 1558-1700', in English Rural Society, 1500-1800: Essays in Honour of Joan Thirsk, ed. John Chartres and David Hey (Cambridge, 1990), 201-25. Several works looking beyond England have also been recently undertaken, including Cordelia Beattie, "Married women, testaments and property in sixteenth-century Scotland," *The Scottish Historical Review*, 102 (1): 1-33. Other more general studies have also provided significant insight into married testators, often with a strong comparative benefit, including several chapters within Cordelia Beattie and Matthew Frank Stevens (eds.), *Married Women and the Law in Premodern Northwest Europe* (Woodbridge: Boydell and Brewer, 2013). Other useful literature includes Matthew Frank Stevens, "London Women, the Courts and the 'Golden Age' : a Quantitative Analysis of Female Litigants in the Fourteenth and Fifteenth Centuries," *The London Journal* 37(2) 2012: 67-88; Tim Stretton and Krista J. Kesselring (eds.), *Married Women and the Law: Coverture in England and the Common Law World* (Montreal: McGill-Queen's University Press, 2013); and Amy Louise Erickson, "Common Law versus Common Practice: The Use of Marriage Settlements in Early Modern England," *Economic History Review* 43, no. 1 (1990): 21-39.

practices, this section provides insight into the various local trends and situates them within the wider development of female testamentary progress into the early Tudor period. It is of course essential to note that as Claire Cross noted in the late 1980s, "[t]he myth that women below the nobility and gentry were virtually invisible in the Tudor [era] … is taking an unconscionably long time to die."[87] However, in documents produced by the courts, particularly the ecclesiastical law courts, women often appear in surviving records in a variety of roles, ranging from plaintiffs, defendants and witnesses. In particular, the records of testamentary challenges provide another vantage point in which women can be seen interacting with the law and with some regularity, since a significant proportion of women in the fifteenth and sixteenth centuries left wills.[88] While Cross noted this in the 1980s, this echoed early remarks made a century previous by F.W. Maitland, where he noted the wealth of material contained within the ecclesiastical records which was insufficiently explored. While our understanding and engagement with ecclesiastical court records has increased since the days of Maitland, there are still considerable aspects left under-investigated. This section utilises the ecclesiastical records to consider the active and/or passivity of women in the late medieval era, through the lens of testamentary law. As noted previously, the church records are better preserved and as such offer different insight compared to the common law records.

Throughout this chapter, it is essential to contextualise the significance of witness depositions when considered independently from the Act books and other records that pertain to the actual litigation in which the depositions serve as only one piece of evidence. In many instances studied in this chapter, the Act books and other related documents for these cases no longer exist, leaving only the depositions. In such cases, it is essential to acknowledge the limited value of the remaining source

[87] Claire Cross, "Northern Women in the Early Modern Period: the Female Testators of Hull and Leeds 1520-1650," *Yorkshire Archaeological Journal*, 59 (1987): 83.
[88] Cross, "Northern Women in the Early Modern Period," p. 83.

material. This limitation is reflected throughout the analyses that rely on the depositions.

While providing exact numbers is difficult, due to the nature of the surviving material, evidence exists to support the claim made immediately above by myself in regard to the effectiveness of ecclesiastical testamentary records. For example, of the 2,200 testator documents (predominantly wills although other material, such as depositions or statements of nuncupative wills) found in the Hull and Leeds between the period of 1520 and 1650,[89] approximately one out of every five testators were female.[90] While this is at the end of the period considered for this work, it nevertheless alludes to the wider significance of considering the role of females in testamentary practices. As early as the 1950s, scholars came to reconstruct the social implication and importance of the will, for example in Dorothy Whitelock's *The Beginnings of English Society* (1952) and expanded up by Michael Sheehan in the 1960s, positioning wills as a clear and distinct source of social history, particularly evident in his work, *The Will in Medieval England*.[91] Before considering the frequency of female testators, administrators, the content of their will in relation to men, and several other questions it is first necessary to consider female testamentary ability in England.

It is also worth noting that a married woman might encounter two barriers as to making a will: lack of clarity as to any property owned while married due to property being intertwined with the husbands, and the need to request a husband's consent, both of which fell away once the woman was widowed. It then follows, were female testators often widows rather than married women? This question will be taken up in the section that provides a breakdown of surviving wills and their trends, demonstrating a trend towards female testator's generally leaving fewer wills throughout the fifteenth

[89] Currently preserved within the Borthwick Institute for Archives in the University of York.
[90] Cross, "Northern Women in the Early Modern Period," p. 83.
[91] Michael M. Sheehan, *The Will in Medieval England, Studies and Texts*, no. 6 (Toronto: Pontifical Institute of Mediaeval Studies, 1963), p. 2; For more on the historiography of wills and the influence of Sheehan's works, see Sharon Teague, *Patterns of Bequest within the Family*, pp. 1-4.

and early sixteenth centuries.

3.2 Continental and English Canon Sources:

Within England, from the thirteenth and fourteenth centuries onward, ecclesiastical legislation firmly directed "that husbands must not prevent their wives making wills, under pain of excommunication."[92] Of particular focus for English canonists was the splitting of movable property owned by a married couple when their marriage dissolved, either by death or separation and divorce.[93] More will be discussed later on unmarried women, while the immediate discussion will be on married women. It is important to establish the canonical jurisdictional relation with the wills of women, particularly married women. Several relevant decretals discuss this topic and were grouped together in the title *De Donationibus Inter Virum Et Uxorem, Et De Dote Post Divoritum Restituenda*[94] of the *Compilatio prima* (Comp. 1, 4.20), before being incorporated in perhaps the most significant, systematic and well circulated work: the *Decretales Gregorii IX* (completed in 1234) in X. 4.20.3.[95] This work was to become an essential component of the universal law of the Church.[96] While the material covered within the *Decretals* is extensive, three features of the glosses

[92] Cordelia Beattie, "Married Women's Wills," p. 31.
[93] Michael M. Sheehan, "The Influence of Canon Law on the Property Rights of Married Women in England," in *Marriage, Family, and Law in Medieval Europe: Collected Studies*, ed. James Farge (Toronto: University of Toronto Press, 2019), p. 17; This is an edited collection put together honouring Sheehan, the original work is from "The Influence of Canon Law on the Property Rights of Married Women in England," *Mediaeval Studies* 25 (1963): 109-124.
[94] Also known as *De dote post divortium restituenda*.
[95] *Decretales Gregorii noni Pontificus* (Lyons, 1572) col. 1432, gl. *incidens accessorie* (X. 4.20.3); For more discussion on the timeline of the completion of the *Decretales Gregorii IX*, see Stephan Kuttner, "Zur Entstehungsgeschichte der Summa de casibus poenitentiae des hl. Raymund von Penyafort," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, *Kanonistische Abteilung* 39 (1953), pp. 419-34.
[96] Sheehan, "The Influence of Canon Law on the Property Rights of Married Women in England," p. 17; For more see A. Friedberg's edition of the *Decretum*, in *Corpus iuris canonici*, 2nd ed (Leipzig 1879; reprinted by Graz in 1955); Friedberg also discusses this in *Quinque compilationes antiquae*, (Leipzig 1882); Many passages confirm this, a sampling is listed here: *Compilatio Ia* IV 21; *Compilatio IIa* IV 14; *Compilatio IIIa* IV 15; *Compilatio Va* IV 3; *Collectio Lipsiensis*, tit I.XIII.

and treatises on these collections are of relevance for this topic: firstly, it demonstrates that the church's jurisdiction covered the division of property (both immovable and movable) between spouses, going beyond the declarations of separate and nullity.[97] Secondly, any discussion relating to the division of property between spouses was conceptually considered through a dotal system, wherein the main aim or focus was the recovery of the property owed to the wife.[98] Thirdly, evidence has been painstakingly gathered showing that "both papal decretals and the canonists were careful to recognize local custom."[99] An English example often used to demonstrate this recognition of local custom is a letter from Pope Alexander III (pope from 1159-1181) to the Bishop of Bath[100] – a diocese within the province of Canterbury. Alexander III compels the bishop to restore a dowry stating '*aut secundum consuetudinem terrae in presentia tua iustitiae plenitudinem exhibeat*', meaning according to the custom of the land (i.e., national and local customs), let him present in your presence the fullness of justice.[101] The acknowledgement of local custom as a factor is clearly reflected by the practical evidence of how the testaments of married women were treated in England.

In regard to the first of the three points, on the continuity of the church's jurisdiction even upon separation of a couple, Raymond of Peñafort (c. 1175–1275) wrote the *Summa de poenitentia*

[97] Raymund of Peñafort, *Summa de poenitentia et matrimonio* IV 25 (Rome 1503) pp. 481-4; *Glossa ordinaria,* vol. 6 (Venice, 1603), col. 1432, ad X 4.20.3, *incidens accessorie*; Michael M. Sheehan, "The Influence of Canon Law on the Property Rights of Married Women in England," pp. 17-18.
[98] Sheehan, "The Influence of Canon Law on the Property Rights of Married Women in England," p. 18.
[99] Sheehan, "The Influence of Canon Law on the Property Rights of Married Women in England," pp. 17-18.
[100] The bishop and diocese of Bath has a complex history, for more see E. B. Fryde, D. E. Greenway, S. Porter, I. Roy, eds. *Handbook of British Chronology*, Cambridge: Cambridge University Press, 1986 (3rd edition, reprinted 2003), and D. E. Greenway, *Fasti Ecclesiae Anglicanae 1066–1300: Volume 7: Bath and Wells: Bishops* Institute of Historical Research, 2001.; The bishop Alexander III addressed was either Robert of Bath (bishop 1136-1166) or Reginald fitz Jocelin (bishop 1174-1191) [vacant between 1166-1174]. Most likely the latter, for more see Lena Wahlgren, "Peter of Blois and the Later Career of Reginald fitzJocelin," *The English Historical Review* 111, 1996 (444): 1202–1215.
[101] *Regesta pontificum Romanorum*, ed P. Jaffe, 2nd ed. W. Wattenbach, S. Loewenfeld, F. Kaltenbrunner, and P. Ewald (Leipzig 1885-8) JL 13766; *Compilatio Ia* IV 21 2, ed. A. Friedberg, *Corpus iuris canonici*, 2nd ed (Leipzig 1879); Cf *Glossa ordinaria*, vol. 6 (Venice, 1603), ad X 4.20.2.

et matrimonio (Treatise on the Cases of Penance and Marriage), which was to serve as a manual of canon law for confessors on similar issues, such as separation of couples after the annulment of a marriage. It was intended for use in determining the type, amount and severity of penance an individual should and did receive for a specific crime or sinful act. The gloss was composed by William of Rennes, a contemporary of Raymond. It is contextually important to note that within Raymond's work, any matters pertaining to marriage and the canon law's treatment of such topics, are not present in Raymond's *Summa de casibus*, also titled as *Summa de casibus poenitentiae* and/or *Summa de poenitentia*.[102] This reaffirms historians understanding that Raymond expected any readers of his *Summa de casibus* to have access to and/or to have read Tancred of Bologna's (c.1185–1230/1236) *summa* on the subject. Tancred's *Summa de matrimonio* and Raymond's *Summa de casibus* bare striking similarity, beyond the commonplace use of similar source material (i.e., Gratian's *Decretum*),[103] as upon completing the *Decretals*, Raymond revised and updated Tancred's *Summa de matrimonio* in conjunction with revisions of his *Summa de casibus*. These two works are often printed together, see for example the 1603 edition. Raymond's *Summa de Poenitentia et Matrimonio* is suggested by some as the first work of its kind that treats penance and marriage in a sufficiently coherent manner that reflects practical elements.[104]

The second point denotes that one of the main preoccupations of the canonists was the recovery of the property of the wife, a rather counter-intuitive thing. The discussion often

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[102] Pierre J. Payer, *Summa on Marriage* (Translation ed.), *Pontifical Institute of Mediaeval Studies*, 2005, p. v-vi.
[103] See Stephan Kuttner, "Zur Entstehungsgeschichte der Summa de casibus poenitentiae des hl. Raymund von Penyafort," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, *Kanonistische Abteilung* 39 (1953): 419-34; A significant portion of Raymond's *Summa de matrimonio* is dedicated to the necessary preconditions, requirements, and matters arising with engagements and marriages, as well as legitimacy of children and dowries. For more on this see Xavier Ochoa and Aloisio Diez, eds. *Sanctus Raimundus de Pennaforte*, especially *Tomus B. Summa de paenitentia* (Rome, 1976) and *Tomus C. Summa de matrimonio, Decretales novae, Responsiones ad dubitabilia, Questiones variae canonico-pastorales, Summula de consanguinitate et affinitate* (Rome, 1978).
[104] Michael O'Kane, "St. Raymond of Peñafort," *The Catholic Encyclopedia*, vol. 12, New York, 1911, https://www.newadvent.org/cathen/12671c.htm.

concerned the consequences of a church court annulling a marriage, i.e., declaring it void and null, despite the couple thinking that they were legally married. These discussions could limit a married or widowed women's testamentary capacity yet providing ample support for the recovery of property beyond testaments. Within England at least, "the matter of probate jurisdiction was one of customary practice in England, not a canonical principle."[105] This assertion has been shown as one of the reasons why there was the ability and potential for development in regard to married women making wills.[106] As will be demonstrated below, significant development occurred that lead to a large decrease in the writing of wills by married women post-1450.

As noted in the letter of Pope Alexander III, the custom of the land was in effect acknowledged and great effort was taken to reflect this local custom.[107] Local custom both in the sense of local to England and local custom through individual English localities. Lyndwood wrote that there may be a general custom within a given province, or indeed within a city, territory or particular place, and that this custom of the land was to be followed with great diligence.[108] As justification for this practice, Lyndwood looks to both canon and civil law for justification; citing the decretals X. 1.4.8 and D. 33.7.18, D. 33.8.23, the glosses on the civil law material emphasise the importance of considering the custom of the region or place when dealing with particular legal challenges.[109] D. 33.7.18 states "… optimum ergo esse pedius ait non propriam verborum significationem scrutari, sed in primis quid testator demonstrare voluerit, deinde in qua praesumptione sunt qui in quaque regione commorantur."[110] While in a similar approach, D. 33.8.23 states: "… cum ex consuetudine domus

[105] Beattie, "Married Women's Wills," p. 31.
[106] Helmholz, "Married Women's Wills in Later Medieval England," p. 175.
[107] Sheehan, "The Influence of Canon Law on the Property Rights of Married Women in England," pp. 17-18.
[108] Lyndwood, p. 172a, a.v. *Consuetudinem Patriae*: "Non dicit, *Regni*; et hoc ideo, quia per totum Regnum forsan non est circa hoc una et eadem Consuetudo, sed diversae sunt Consuetudines secundum Patriarum diversitates. Potest enim esse Consuetudo generalis alicujus Provinciae; item specialis alicujus Civitatis, Territori, vel loci …"
[109] Ferme, p. 127; For more seethe gloss of Accursius on local custom in relation to the word "consuetudine," *Glossa in Digestum Infortiatum*, in *Corpus Glossatorum Juris Civilis*, VIII, Turin, 1968, p. 155c and 162d.
[110] "… he says that it is best, therefore, to examine not the proper meaning of the words, but firstly what the

esset, ut quidquid amplius ex suo in ratione loculorum erogasset, dominica ratio ei deberet atque exsolveret."[111]

In regard to these customs being enforced and understood as regional variations, Lyndwood normalises this by writing in the immediately following gloss the portion that belongs to the wife and children.[112] Lyndwood treats the custom of tripartite division as the most usual.[113] However, as previously discussed is not unanimously accepted by the canonists. To determine the correct assertion, one must consider what is reflected in the court cases. Lyndwood and Stratford both mention custom as affecting the proportion of goods women were to receive,[114] as well as problems relating to customary law and proportionality relating to the deceased's estate being given to someone or the church. Perhaps Lyndwood's extensive treatment of testamentary rights of the married women was due in one respect, to the demise of the system of *legitim*, both as an English custom and within the Province of Canterbury.[115]

In regard to both the second point, focus on recovery of the property of the wife, and the third point, local customs, the continental material supports these claims. For example, this is clearly demonstrated within the continental sources compiled within the *Tractatus ex variis iuris interpretibus collectorum* (1549).[116]

witness wished to show, and then in what presumption are those who dwell in each country."

[111] "... since it was the custom of the house, that whatever more he spent out of his own pockets, the Lord's account owed him and paid him."

[112] Lyndwood, p. 172a, a.v. *Defunctos contingit*: "… puta, medietas bonorum, ubi superset Uxor, et nulli liberi. Alioquin, si etiam supersint liberi, quod tunc defuncti portio sit tertia pars, aliis duabus uxori et liberis remansuris."

[113] Ferme, p. 128.

[114] Lyndwood, p. 163a, a.v. *Suis portionibus*: "Quoad has portiones in Anglia, quantum ad uxores, item quantum ad liberos, oportet recurrere ad Jura Regia, et Regni, et singularium locorum consuetudines."

[115] Ferme, p. 130.

[116] This work is a "massive collection of treatises dealing with all topics of the *ius commune* published by a group of printers in Lyon in the year 1549 in 18 volumes under the title *Tractatus ex variis iuris interpretibus collectorum* …" It is essential to note that it "has long been known to scholars as a convenient, if not always totally accurate, compilation of much that is useful from the period." Ames Foundation, Tractatus 1549. For more information, see Harvard Law Library and the Ames Foundation, which has digitised the volumes. Current research puts the massive work at 458 titles by over 200 authors.

3.3. English Case Examples:

While women had varying testamentary capacities and limitations, legal and societal in nature; it was their ability to administer wills that frequently came before the courts. This provides considerable insight into the legal capacity of women, both married and unmarried. The London Consistory Court has a wealth of material providing insight into women and wills.[117] The London Consistory Court was the highest ecclesiastical court in the diocese of London. The diocese of London includes the city of London, the counties of Middlesex and Essex and some portions of Hertfordshire; in these localities inhabitants could bring their disputes regarding many areas of law to the consistory court. While a variety of topics were brought before the court, of particular importance for this chapter is that approximately half of all surviving cases were related to marriage conflicts, the other half focused around such matters as "defamation, debt, the probate of wills, and other issues."[118] The nature of marriage played a significant role in female litigation and by extension so too did testamentary aspects for those in marriage, be it entering a marriage or leaving a marriage through the two possible ways; either (i) the marriage was declared void and null or (ii) if her spouse died. The issues arising from the intersection of marriage and testamentary law was often dowry. The surviving testimony records of witnesses reveals a wealth of information regarding marriages, urban life, labour practices and professions, material culture, while demonstrating the inner workings of the ecclesiastical court system.[119]

[117] Currently preserved by the London Metropolitan Archive.
[118] My thanks to Professor Shannon McSheffrey who pointed out these cases and provided images of the documents. For more on these cases, see forthcoming entries in McSheffrey's testimony database, https://consistory.org. Note that this database is current online, albeit in an outdate form, that McSheffrey is reworking.
[119] Shannon McSheffrey, https://consistory.org.

There are thousands of examples of such cases; for more examples see the lengthy treatment of the archival material by Professor Shannon McSheffrey in her database. For this chapter, two entries are of particular importance: MS DL/C/A/001/MS09065 and DL/C/0206.[120] Before focusing on each individual examples, it is essentially to explicitly acknowledge the limitations of just focusing on these cases as they have limited evidence accessible only through the depositions. While the cases to be discussed below are of value and insight, the limited nature and general applicability of this extant source material in such cases must be stated. It is near impossible to draw wider trends and conclusions from these depositions, beyond some more case specific observations. The MS 09065 file contains late 1480 - 1499 cases, while the DL/C/0206 file contains testimony from Oct 1510 - May 1516. These two collections were selected to cover the period under consideration for this research, while providing a relatively consistent entry of material in comparison with surrounding years which were less complete. Starting with the earliest material considered, the focus will begin with MS DL/C/A/001/MS09065. Contained within these folios, there are nine testimonies that specifically address testamentary cases and women. These cases range from 1486 to 1497 with a total of 560 depositions;[121] however, eleven earlier fragments, of which two directly pertain to women, have been identified and group with these folios despite being slightly before 1486.[122] The eleven earlier fragments date from 1460 to 1484, specifically the women's cases date from 1460 and 1461. As the number and temporal breakdown of cases demonstrate, there was not a large number of cases on women and testamentary problems in the late fifteenth century.

[120] Both of which are held within the LMA.
[121] Shannon McSheffrey, “Guildhall Library, MSS 9065B and 9065, Consistory Court Deposition Books, 1486-1497: An English Translation,” 2017.
[122] McSheffrey in her 2018 Latin documentation of all depositions in MS09065.

3.3 MS DL/C/A/001/MS09065:[123]

1. MS DL/C/A/001/MS09065 19rv:

An often-cited claim within this collection of depositions concerns Alice Norman c. William Clerk. This testimony was presented on June 26th, 1487, by Master William Chaunt, a notary public and proctor general of the Court of Canterbury. Chaunt had an extensive career having served as the "proctor for thirty-five years or thereabouts," being "sixty-one years old and more."[124] The designation of key individuals often includes more information than other testimony records found throughout England in this period. Not only was Chaunt, a notary public but also an ecclesiastical lawyer who had participated in "settling Mig's affairs while she was still alive and in helping execute her will."[125]

Given his position and experience, Chaunt states in response to the first question in the deposition, known as interrogatories, in a document not attached in the surviving folios that it is "the custom [*consuetudinem*] of the kingdom of England [that] a married woman, first having obtained license [*licencia*] from her husband, can make a testament concerning her own property [*bonis paraphonalibus* (*sic*) *et distinctis*]."[126] As previously discussed, the nature of customs in England

[123] There are nine testamentary cases in MS DL/C/A/001/MS09065, while only certain entries will be discussed as they refer to female defendants, executors, or plaintiffs, the following are the names and relevant files of all nine cases: 1487-06-26: Alice Norman c. William Clerk, 19rv; 1489-11-27: Office c. Margaret Agmundesham, 66r; 1493-01-18: John Baker c. Agnes Symson, previously Baker, 136r-137r; 1493-04-16: John Maliber c. Agnes Dalston alias Boste, 142v, 150v-153r; 1493-12-05: Henry Baker and Thomas Pursot c. Collecta Rawlyn, 173v-175r; 1494-06-11: Unknown c. William Eve and William Hayward, 203v-204r; 1495-11-08: William Maylond c. Margery Hoo, 238v-240r, 245v-246r; 1495-11-18: Margaret Shewyn alias Howsyn c. Adam Bagby, 240v-242r, 245r; 1496-07-12: Joan Brokemans alias Bevington c. Agnes Bevington, 255v-256r, 259v-261v.
[124] MS DL/C/A/001/MS09065 19r.
[125] Testimony of William Chaunt in Shannon McSheffrey, ed., "Consistory: Testimony in the Late Medieval London Consistory Court," https://consistory.org/2022/02/24/norman-c-clerk/.
[126] MS DL/C/A/001/MS09065 19r: Ad primum articulum dicit quod secundum consuetudinem Regni Anglie mulier conjugata licencia primitus ad hoc obtenta a marito potest condere testamentum de bonis paraphonalibus et

was not static. In the context of *legitim*, a national custom of England became exclusively referred to as a local custom. Meaning that it changed elsewhere and therefore what previously was the nation-wide custom came to be known as a local custom. Chaunt's declaration was in context of his testimony as a witness for the defendant in Alice Norman c. William Clerk, where his testimony was recorded on 26th June 1487. There is most likely an earlier testimony pertaining to this case that had already been taken in the consistory courts, "as Chaunt's testimony indicates, probably in the (now lost) previous volume of depositions."[127]

Chaunt's statement has been used multiple times by scholars, most recently in 2019 by Cordelia Beattie in relation to the conditions placed on women to be able to make a will that would be valid under canon and common law. However, Norman c. Clerk presents a claim by Alice Norman that the testator, Maude Mig (wife of William Clerk), had bequeathed a gown to her that was not provided. Maude Mig died of leprosy c. 1487 and had been separated from her husband through a grant of separation, so while living in separate locations, they remained legally married.[128] As noted in Chaunt's testimony, it appears that William Clerk had "about a month or […] seven before Maude's death, she was in the leper house on her sick bed, and said to this witness that her own husband had been with her and looked into her chests and took away her money and broke her head."[129] Alice Norman sued William Clerk in the London Consistory Court; Clerk most likely was the executor of Mig's will and he was being sued for withholding this item.[130] Chaunt had noted that

distinctis.; Beattie, "Married Women's Wills," pp. 29.

[127] Testimony of William Chaunt in McSheffrey, "Consistory: Testimony in the Late Medieval London."

[128] "The grant of separation, which allowed them to live apart though they were still legally married, may have been due to the leprosy which would have prevented cohabitation." Testimony of William Chaunt in McSheffrey, "Consistory: Testimony in the Late Medieval London."

[129] Shannon McSheffrey (ed.), "London Metropolitan Archives, MS DL/C/A/001/MS09065 and /MS09065B, Libri Examinationum, 1487-1497 (with some earlier fragments)," 2018, p. 19; MS DL/C/A/001/MS09065 19r-v: "Sed circiter mensem vel [...] septem proximum precedentem mortem eiusdem Mathildis ipsa in dicta domo lepresorum jacens in lecto egritudinis sue dixit huic jurato quod eius maritus proprius fuit cum ea et scrutatus est cistas suas et abstulit eius pecunias et fregit ipsius capud."; Based on this claim it is a possible alternative rationale for the grant of separation on the grounds of cruelty.

[130] MS DL/C/A/001/MS09065 19v: "… et quod tandem adinvicem concordatus erat inter eosdem quod dictus

Clerk had previously provided for Maude's support, while she was in the leper house in Knightsbridge, "a certain gown lined with fur, the colour of which however this witness does not recall."[131] Chaunt further goes on to state, in response to the seventh and eight questions posed (known as items),

> that many and repeated times both at the time of Eleanor's [this should read as Maude] widowhood and after the nuptials and the separation of goods made by William Clerk, Maude both at Knightsbridge and elsewhere, in the presence of Alice Norman and many other people whom he does not recall, said that Alice Norman would have her fur-lined gown, as he believes with boshes,[132] but its colour he does not know.[133]

Chaunt further goes on to estimate the value of the embroidered gown at approximately thirty shillings.[134] The legal problem under consideration in the Norman c. Clerk case is the withholding of goods. Underpinning this case was the ability for married women, albeit with a grant of separation most likely due to leprosy, to make wills. As has been demonstrated previously, English canon sources agreed that married women had the ability to create wills. Indeed, the ecclesiastical courts had a special responsibility to see justice done to widows.[135] Glanville states that a wife is not permitted to make a testament of her husband's goods without his permission; however, it states that it is *pium* and *valde honestum* to allow a wife to make a reasonable disposition of a third of the inheritance, which

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Willelmus haberet omnia bona sua ea intencione ut honeste sepeliret eam in ecclesia fratrum minorum London et quod iste juratus deliberaret sibi ad eius subsiduum in hac parte iiiior nobilia, in manibus cuiusdam Peperam carnificis existencia quod et fecit iste juratus."

[131] MS DL/C/A/001/MS09065 19r: "Ad vi articulum, dicit quod parum ante transitum eiusdem Mathildis usque ad Knyghtbrig prefatus Willelmus dedit eidem Mathildem ad eius sustenacionem quadam togam penulatam cuius tamen coloris non recolit iste juratus."; Testimony of William Chaunt in Shannon McSheffrey, ed., "Consistory: Testimony in the Late Medieval London Consistory Court," https://consistory.org/2022/02/24/norman-c-clerk/.

[132] McSheffrey states that this is likely referring to a type of embroidered design on the gown: "MS: Bosshis; perhaps boss, an embossed design on the gown? (OED, s.v. boss, n.1)." Testimony of William Chaunt in McSheffrey, "Consistory: Testimony in the Late Medieval London Consistory Court."

[133] MS DL/C/A/001/MS09065 19r: "Ad vii et viii articulos, dicit quod multis iteratis vicibus tam tempore viduitatis eiusdem Alianore et post nupcias celebratas et separacionem bonorum per dictum Willelmum Clerk factam ipsa Matilda tam apud Knighbrig et alibi in presencia istius Alicie Norman et aliarum diversarum personarum de quibus non recolit dix[it] quod dicta Alicia Norman haberet eius togam penulatam ut credit cum Bosshes sed cuius coloris nescit deponere."

[134] MS DL/C/A/001/MS09065 19v: "Ad ix articulum dicit quod estimacione istius jurati dicta toga valebat xxx s."

[135] Ferme, p. 132.

she would be entitled had she outlived him, and that most husbands do adhere to this practice, which is commendable.[136] This informal practice is noted in X. 4.20.6, particularly the rubric: "Nvper a nobis tua difcertio requisiuit, si aliqua terra data fuerit alicui, non in here ditatem vel feudum, sed tantum quo ad vixerit pofsidenda: & ipse post modum tertiam parte vxori fuar in dotem co cefferit, vtrum eo defuncto praefata dotem vxor (dum vixerit) habere debeat: & tenere: cam ecclesia dotes protegere tenea tur viduarum."[137] This passages, as well as the final sentence of X.4.20.6,[138] demonstrates the care provided to wives and widows for one third of the estate. While the context for X.4.20.6 is that the decretal concerns whether a widow, who had been assigned a third of the fruits of a usufruct held by her husband could continue to enjoy the same following the death of her husband. This was resolved against her being able to continue to enjoy the outcome of the usufruct, since usufructs were extinguished by the death of the usufructuary.[139] While the general focus of this decretal concerns subordinate real rights in property and their extinction, it does relate to the topic of property rights of wives and widows. While both relate, the rubric, rather than the final sentence of the decretal, provides a more authoritative citation of legal authority in that it directly notes about the wife and widows right to one third and the protection of these dowries by the church.

Notably, the common law did not hold this same position, as the title to movables of the living was separate from the succession of movables of the dead and the canonical principles underpinning it. Furthermore, if a wife was entitled under common law to a portion "of the movables which had

[136] Ferme, p. 132; Glanvill, VII, 5.
[137] Translates to: Now your distinction has been required from us, if any land has been given to someone, not as an inheritance or a fee, but only to be settled on what he lives for: and he, after the manner, will take a third part of the wife as a dowry, which will be the aforesaid dowry of the deceased wife (while she lived) ought to have: & to hold: the church should protect the dowries of the widows.
[138] The final sentence reads: "Illud vero te nolumus ignorare, quod uxor dare dicitur viro dotem, vir autem uxori donationem facere propter nuptias secundum legitimas sanctiones." For more on the general relevance of this section on the attitude of the church towards protecting dowries, as well as issues of usufruct, see Ferme, p. 132.
[139] An alternative that would allow the wife to continue enjoying the benefits of a usufruct would be if the owner of the property had consented to the assigning of the third, thereby in effect creating a usufruct of the one third in favour of the wife in her own right. This could occur in stances of extreme burden, likely financial.

been her's and her husband's, the English lawyers might have drawn the same conclusion as the Scottish lawyers, that her share belonged to her during marriage, but that she had no power of disposition so long as she was *sub vigra viri*."[140] Conversely, if the common lawyers had considered "the executors of her husband, and then what became of them thereafter was in fact a question with which the secular courts was not concerned, the inference was inevitable that they were her husband's goods."[141] This type of divide between the rationale behind female dispositions being permitted for succession of movable property on death but not while living as a secular-ecclesiastical concern that hampered married women's ability to disposes property. Although, it is worth noting again that many husbands would have allowed their wife to dispose of their share (a third) within reasonable parameters. Having outlined some of the elements regarding married women's ability or lack of ability to dispose under the secular and ecclesiastical divides, a second example is worth noting.

2. MS DL/C/A/001/MS09065 66r:

On the 27th of November 1489 the London Consistory Court heard a case between [?]Office c. Margaret Agmundesham. The exact plaintiff is unknown, although it is likely the office or official on behalf of the estate of the testator, which appears to be an unspecified individual. In this case, which deals with violated administration through the withholding of goods and/or profits from selling those goods due to the beneficiaries. While the only surviving entry is that of Margaret Agmundesham's witness testimony, one aspect worthy of note is the concluding note from the court scribe; "Et dominus eam dimisit a personali comparacione et licensavit eam constituere

[140] Ferme, p. 133.
[141] Ferme, p. 133; W.S. Holdsworth, *A History of English Law* [henceforth referred to as *HEL*], 12 vols. (London, 1903-38), vol. III, pp. 525-28.

procuratores."[142] This is an unusual example of the lord Official instructing the witness, who was also the defendant, to procure proctors for her case. In all other MS 09065 testimonies, this is the only example of the witness being expressly direct to procure proctors. The exact word is *licensavit* meaning to 'licensed her', why this was directly noted by the lord Official and scribe is unclear. In other instances, individuals simply procured counsel without the need or mention of *licensavit*. This case has been included for the unusual nature of why a woman was directed to find legal counsel, despite it being wide practice and women had no barriers to procuring proctors, other than financial. However, as noted within the York cause paper chapter, those of an extremely poor nature could apply for a stipend to assist with legal fees (although rarely utilised). Unfortunately, there are no known other surviving records for this case, although it is worth noting to demonstrate the wider trends. Women evidently utilised proctors frequently and their presence before the courts was commonly noted without dispute, as can be seen in many MS 09065 cases. While it is common to assume that being directed to find legal counsel makes sense when availing oneself of such counsel is common practice; however, the direct instruction or license of this lord official is distinct. It is evident that women frequently used legal counsel for testamentary matters. More commonly, within female wills the use of counsel was directed towards executors. For example, Elnor Gylbart's will (a widow) states "And alsoe I will that my executors with the counsell of my supervysers shall with all the sped that can be immediatly after my dyssease with theyr learned counsell put into feofment all my landes tenementes tythes …" Her will also states "I wyll that my executors with the counsell of my supervyser[s] shall see that the last will of my late husbond thomas gylbard …"[143] However, under the common law it was presumed by the courts that a testator had made his will without the aid of

[142] MS DL/C/A/001/MS09065 66r: "And the lord dismissed her from personal appearance and licensed her to constitute proctors."
[143] Shakespeare Birthplace Trust Record Office wills (SBTRO) BRT 3/1/31 – Stratford Wills.

counsel.[144] Although this did not hold true for litigation before the courts. For both men and women, the challenges of administering bequests of property could be particularly difficult from an administrative perspective. See for example, the will of William Neel, which required two clerics, two friends and a third friend to assist.[145] In practice, if a woman does own property and therefore has a right to make a will, it would mean that her husband has no right to prevent her from disposing of property and making a will. Professor Charles Donahue Jr., attempted to prove that Lyndwood's gloss (a.v. *Propriarum uxorum*) reflects and encourages a system of martial property in late medieval England, which in turn permitted the wife ownership of certain goods and thereby testamentary ability.[146] This is a convincing argument and likely to be true.

3. MS DL/C/A/001/MS09065 255v-256r, 259v-261v:

This case, Joan Brokemans alias Bevington c. Agnes Bevington, resulted in several folios, spanning four testimonies from witnesses and one administration note by the court. This case outlines the nature of female executorship, and problems pertaining to it. With the deposition of Agnes Bevington on 22 June 1496, the crux of the dispute is if the testator, John Bevington, had made a testament that appointed Ralph Bevington as his sole executor or if Agnes was named executrix (it does not clarify if her role was as sole executrix or jointly). The testament was proved (see chapter two for the stages) and probated before the Commissary of the bishop of London at

[144] Joanna Hester McCunn, *The interpretation of deeds and wills at common law, c.1536–c.1616* (Ph.D. thesis, University of Cambridge, 2019), p. 37; McCunn refers to *Newis et Ux v Lark and Hunt* (1571) Plow 403 as an example of this held tradition.
[145] See Teague, *Patterns of Bequest within the Family,* p. 239 for the various transcribed portions of the will.
[146] Charles Donahue, "Lyndwood's Gloss *propriarum uxorum*' Marital Property and the *ius commune* in Fifteenth Century England," in N. Horn (ed.), *Europaisches Rechtsdenken in Geschichte und Gegenwart. Festschrift fur Helmut Coing zum 70, Geburtstag*, Munich 1982, I, p. 19-37.

Ware. The will was committed to be administered by Ralph Bevington, Agnes Bevington's husband. Ralph did administer the deceased's goods, although the matter was if she should have administered the property if named by the testator. Agnes further states that she never administered the deceased's goods, but rather her husband did. To the ninth article or question presented during the testimony, Agnes says that she has no goods, as she believes, of John Bevington's goods, and those that she has, she has under the administration of her husband's goods, her husband having been his executor. The challenge before the court pertains mainly to articles ten and eleven, wherein Agnes was asked by Joan to give over those goods, and she responded that she was not held by the court nor obliged to give over any goods, because she enjoyed those goods under the administration of the goods of her husband.[147]

This concern is if a married women was named as executrix, was she required to administer an estate if her husband was able to. Evidently, this case revolved around a significant fortune, as once permission was given to Agnes by the judge (Smyth) within the church of St. Paul's in London, Agnes immediately constituted Falke, Heidon, Imbroke, Midd, and Stokesley as her proctors.[148] This case is speard of three witnesses depositions; John Pykman, 9 Oct. 1496; Robert Arnwey, 9 Oct. 1496; and Richard Barley, 16 Oct. 1496. There are two legal problems under debate within this case; firstly, if Agnes was directly named should she be required to administer an estate. Secondly, if she holds property provided for by the estate for the executor, is she able to hold this if she was not the individual to

[147] MS DL/C/A/001/MS09065, fols. 255v-256r.
[148] This is the administrative note written on this case: "12 July 1[4]96, in the church of St. Paul, London, resumption before the lord Official by Smyth etc., and having resumed, the judge licensed Agnes Bevington not to appear personally and to appear by her proctor, and Agnes immediately constituted Falke, Heidon, Imbroke, Midd, and Stokesley as her proctors etc. Proctor Falke appeared in Smyth's presence and assigned Smyth to speak on the third day of the Faith term. On which day, that is 9 October, before the lord Official in the church, Smyth appeared as proctor for Joan Brokemans alias Bevington and constituted himself for her part in Falke's presence, and produced John Pykman, Robert Arnewey, and Richard Barley as his witnesses, which the judge admitted and had swear, etc., Falke protesting concerning speaking in whole etc. if etc., and the judge assigned the administration of interrogatories to three pm."

execute the property. These two matters are intertwined with the legal personality of a married women – whether she could administer if her husband was able to. In regard to this first point, there are two considerations. Firstly, if she was named jointly with her husband then the law permitted him to solely execute a will on behalf of his wife. However, the problem is more complex if they were both named. Ultimately, this is an unknown factor as while the witnesses suggest as much, there is no decision by the judge either way. It is therefore why the answer is sought in the legal literature. Inevitably, this dispute centres around women holding property in marriage. The gloss to X. 4.20.2 is of some use here, as it engages with the idea of tracing title to acquests to the respective sources in the goods of the husband and wife, as two distinct entities. Lyndwood notes "that upon dissolution of the marriage, the goods which the husband received with the wife as dowry are restored to her, and she would not be entitled to restitution unless the goods were hers."[149] Using the concept of *dos* and acquests to establish a theory of a wife's testamentary capacity,[150] although the question remains if this holds true for their executrix capacity. Lyndwood denoted a significant portion of his *Provinciale* to testamentary executorship (Bk. III, tit. 13, *De Testamentis*). It was possible for a testator to make another man's wife his residuary legatee and executrix, seen in this instance and in relatively few others. For example, in 1590 a Stratford resident did just this, and it was treated as a unique situation for Stratford. Although in this 1590 case, it was not possible to trace any family connection between William Jones and Anne Pyggen, it is likely that one existed[151] – however it is clear in Joan Brokemans alias Bevington c. Agnes Bevington that such a family connection existed. Legally, a woman that was appointed executrix while single or widowed would retain this position and capacity to execute its obligations despite any subsequent marriage. Holdsworth explains this conceptionally that "the office of executor is transmissible to the executor of an

[149] Ferme, p. 136.
[150] Ferme, p. 136.
[151] Stephanie Jane Appleton, *Women and Wills in Early Modern England: The Community of Stratford-Upon-Avon, 1537-1649* (Ph.D. thesis, University of Birmingham, 2016) p. 37.

executor."[152] However, protective measures could and sometimes were taken, often in the case of creating a bond in order to remove the potential ability of "the woman's new husband from interfering with the deceased's property while under the direction of his wife."[153] This procedure could have problems, for example one case within the Worcester ecclesiastical records shows an instance where a widow's new husband had taken control over the goods which had been left to her as executrix of her late husband's estate. This new husband who had taken control subsequently died, "his son, as his executor, took control of the property in question, thus depriving the woman's son by her first marriage of his inheritance."[154] While such instances were not to occur, however Joan Brokemans alias Bevington c. Agnes Bevington denotes similar challenges. Swinburne, writing in the 1580s, stated that "if the wife die, the husband cannot conuert any of the goods and chattels belonging to the first testator to his owne proper vse; for of such goodes the wife her selfe may make a testament, appointing an executor without the licence of her husband…".[155] Evidently this was still a concern by Swinburne's time. While in theory, a woman could retain her role as executrix despite any subsequent marriage, in practice, she most frequently was restricted to simply naming a new executor. If she desired to actually administer the executorship herself, then she would require permission from her new husband.[156] For the second point, holding property provided for by the estate for executorship, seems to be a null point in this case. Regardless of if Agnes or Ralph had executed the estate, the goods would be held by the married couple. It appears that the widow, Joan, is more so focused on the underlying matter that Agnes was directly named and failed to administer the estate, and therefore should not benefit from the provisions the testator

[152] Holdsworth, *HEL*, III, p. 446.
[153] Appleton, *Women and Wills in Early Modern England*, p. 37; Amy Louise Erickson, "Common Law versus Common Practice: the Use of Marriage Settlements in Early Modern England," *The Economic History Review* 43, no. 1 (1990): p. 34; Mary Prior, "Wives and Wills, 1558-1700," p. 204.
[154] Appleton, *Women and Wills in Early Modern England*, p. 38, fn 17.; Worcestershire Archive and Archaeology Service, Ecclesiastical court depositions 794.052 vol. 6 ff167r210r.
[155] Henry Swinburne, *A briefe treatise of testaments and last willes*, 1st edn., 216v.
[156] Mary Prior, "Wives and Wills, 1558-1700," p. 38.

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The three case records contained within MS DL/C/A/001/MS09065 have highlighted some of the practical challenges women faced in regard to their ability to implement wills, administer and challenge wills in order to recover goods or correct alleged wrongs. Having considered the testamentary problems women faced, specifically when married and navigating the legal personhood when with a husband seen through fifteenth century cases, the next section considers other cases in the early sixteenth century.

3.4. LMA DL/C/0206 Cases

Having considered fifteenth century cases, the focus inevitably moves into the sixteenth century to consider trends moving from during the reign of Henry VII to his son, Henry VIII. The trends seen so far highlight that shift in women's ability and frequency with which they brought legal matters before the courts, seen through a selection of testimony. Following this forthcoming section, the discussion will denote the sharp decline in the frequency with which women, of all marital statutes, left wills. Before moving to that topic, the considerations of this research shifts to focus on the LMA DL/C/0206 collection, of which five are of particular interest. Three complete transcriptions of the most significant of the five cases have been attached, with relevant details for the remaining two cases that will be analysed below. By focusing on witness testimony valuable insight into the nature of court cases and testamentary concerns is seen, often in unique detail not typically recorded in cause papers and the like. While these cases, in large part, only survive in testimonies, they nevertheless warrant consideration as they usually provide material not noted upon by clerics in more structured appearances before the courts.

1. DL/C/0206 f. 110v

This case is a testamentary dispute over administration of legacy to a deceased child, that occurred in 1512-02-10. The only remaining records are the testimony deposition, witness testimony, though unfortunately the interrogatory (the list of questions being administered) isn't amongst them, so it might not always be clear what the witnesses answers are actually talking about. The depositions also contain a lot of abbreviations, and the handwriting is particularly difficult, so many aspects are unclear. However, what is certain is that this case was between Sir Robert Doddis c. Margery Calverley. In summary, the defendant states that her now deceased husband had bequeathed to his son £6 6s 4d, however the son had died while a child. It seems to appear that the child was from a previous marriage, as it is not her child. It is known that Sir Robert was the child's uncle. However, he had no goods from the child's estate to administer, as the goods had not come into the child's possession yet.[157]

This case is of particular interest as it intersects with many areas of law, making it especially complicated. Margery states 'that he [John Calverley's son, Ralph] could not make any will, because the said Ralph deceased in the eighth year of his age and so he was without a will on account of default of age, etc.'[158] Margery denotes the crux of the legal matter, "the said lord Robert Doddes has not yet administered any goods of the said Ralph, deceased, because none have come to his hands to be administered, but she believes that he wants to administer the aforesaid sum,

[157] DL/C/0206 110v; Thank you to Professor McSheffrey for providing additional context and insight into the following cases.
[158] DL/C/0206 110v: 'Ad vjta[m] posic[i]onem R[espo]ndet et credit eand[em] et dicit q[uod] nullu[m] potuit // condere testa[men]tu[m] quia dictus Radulphus decessit i[n] octavo // a[n]no etat[is] sue et sic erat p[ro]p[ter] defectu[m] etat[is] intestabilis ut et c[etera].'

if he can apprehend it, although he has no right in this matter, ….”[159] She further goes on to state:

> ... that after the death of the said Ralph the said lord Robert Doddes half a year ago requested from this deponent these sort of bequests, and that she refused to pay to him, because she did not know, as she says, that the said lord Robert had any right to exact that, but she does not believe, as she says, that by this refusal she impedes the will of the said John Calverley, her husband, nor that it is by this reason she should be excommunicated, on account that the said Ralph was of so tender and minor age, when he deceased.[160]

This case demonstrates another complexity that individuals could face, although it is worth noting that the legal matter effects Sir Robert Doddes as well. The condition in which the goods arrive to the executor or executrix are difficult, however more will be discussed in chapter five with a similar case. For now, it suffices to denote that complexity with which disputes regarding how the provisions of the estate should be executed without sufficient funds.

2. DL/C/0206 f. 157v-158r, 179v-180r, 221r-222r

As is evident from the length of the folios, this case spanned approximately one year from 1512-07-29 to 1513-07-08 between Cecily Burges c. Joan Cardiff. The problem behind this suit was a dispute over the legacy left to the plaintiff by the defendant's late husband. The defendant's late husband left the legacy on condition that she married a freeman of the City of London. The money left by Joan Cardiff's previous husband John Yong to Cecily if she married a freeman of the City of

[159] DL/C/0206 110v: ‘Ad viijva[m] po[s]ic[io]ne[m] credit q[uod] dictus d[omi]n[u]s Robertus Doddes no[n] du[m] // admi[ni]strav[i]t aliq[ua] bona dicti Radulphi defu[n]cti quia nulla p[er]veneru[n]t // ad ei[us] man[us] admi[ni]stra[n]d’ credit tamen q[uod] vellet admi[ni]strare // su[m]ma[m] p[re]dicta[m] si posset ea[m] app[re]hendere. licet nullu[m] ius h[ab]eat // i[n] hac p[ar]te ut credit..’

[160] DL/C/0206 110v: ‘Ad xjma[m] et duodeci[m]am posic[i]ones dicit q[uod] post morte[m] dicti Radulphi // dictus d[omi]n[u]s Robertus Doddes ad demediu[m] a[n]ni elapsu[m] requisivit // ab ista iurata legat’ h[uius]mo[d]i quod ip[s]a recusabat sibi // solvere quia no[n] novit ut dicit q[uod] dictus d[omi]n[u]s Robertus // h[ab]uit aliquod ius illud exigendi s[ed] no[n] credit ut dicit q[uod] // p[er] recusac[i]one[m] h[uius]mo[d]i ip[s]a impedit volun[ta]te dicti Joh[ann]is // Calv[er]ley mariti sui n[e]c q[uod] e[st] eo p[re]textu sic exco[mmun]icata. p[ro] eo q[uod] // dict[us] Radulphus erat ta[m] temere et minoris etat[is] qua[n]do decessit.’

London and lived in the city; Cardiff claims Cecily did not do that. The conditional nature of the legacy left in the will is difficult, as there are assertions or allegations of an improper will. For example, Sir John Gedge's testimony also names John Reve as party with Cecily Burges; it appears that Gedge is alleging that Reve wrote the will improperly. One of the matters of concern is the amount of the legacy, throughout the testimony spanning roughly a year, the defence changes; perhaps this is a change in tactics by Cardiff? She eventually concedes that the £20 was to be given but disputes the items in the document.[161] As is evidence from the several folios and multiple witnesses, this is a difficult case with many legal aspects of interest that demonstrate the complexity of legal matters women might have to face under testamentary law. It is also worth noting that there are also remarks that the will was revoked by the testator.[162] Joan was also the executrix of her late husband's will, which was written by Master John Reve, notary public and a witness whose testimony is in f. 179v.

While there are many aspects of potential analyses, of particular importance is the conditional nature of the will, that Cecily was to marry from a specific location (City of London) and to live within that location in order to receive the legacy. It is also worth noting that Cecily was not from London, it is remarked that "if the same Cecily had returned to her own parts and had been married there among her friends and kinsfolk, this was not so."[163] Within this conditional nature there is further ambiguity and problems put forth:

> Then in the holy testament and last [will] of the same John Yong, husband of this deponent, the same man left to the said Cecily £20 of sterling on this condition, if the same woman had been or was married to a freeman of this city of London, living within the precinct of the city, this was

[161] See the difference between DL/C/0206 f. 221r and 221v compared to 157v.
[162] DL/C/0206 f. 157v.
[163] DL/C/0206 f. 157v.: Ad vjta[m] R[espo]ndet et dicit q[uod] maritus suus defunctus condidit d[omi]no testamenta in quor[um] p[ri]mo reliquit et legavit Cecilie Burges p[ar]ticulas in scedula li[bel]lo in hac p[ar]te porrect' a[n]nexa contentas sub hac condic[i]o[n]e si ip[s]a Cecilia rediisset ad p[ar]tes p[ro]prias et ib[ide]m int[er] amicos et consang[ui]neos suos fuisset maritata que sic no[n] fuit ut dicit.

> not so, but [she was married] to a certain Thomas Jonys, then assistant and servant of this deponent. Who, at the time of the marriage, made by him with the same Cecily, had not been free, nor had the franchise or liberty of the aforesaid city, but afterwards through six weeks, as she says.[164]

As shown in this testimony, there are two aspects of Yong's conditional legacy; firstly, that she 'had been married or was married to a freeman' of London; and secondly, that Cecily had to be living within the precinct of the City of London. While Cecily did marry and remain within the precinct of the city, he was not a freeman at the time of the marriage nor had there been permission from the city, although this was to be given reportedly six weeks later. Based on this testimony it appears to be a simplistic conditional legacy requiring Cecily to abide by the two conditions outlined; however, a later witness reports that certain goods would still be provided if not all the conditions were met. Roger Hall states in his testimony

> that John Yong willed and bequeathed to Joan Burgess £20 of sterling, as if she was joined in matrimony to any freeman of the city of London. And if and whether she was not so married to such a man but returned to her own parts to her acquaintances and kinsfolk and was married among them, then the said Cecily should have from the goods of the aforesaid John Yong certain things or particulars, *viz* a bed and gown and other items, about all and singular which he does not remember, as he says. In such a way that Cecily should not so have the £20 and these things or particulars, for the reason that she was married at London, as is aforesaid. But she should have only one or the other according to the diversity of the aforesaid cases and she should so be contented, as he says.[165]

While the outcome of the case is not listed, as the DL/C/0206 folios only contain testimony from the London Consistory Court, the challenges outlined within Cecily Burges c. Joan Cardiff is very engaging for legal historians. With no known record of the outcome, the problem of conditional legacy must be further considered through the surrounding material, i.e., canon sources. As the London Consistory Court was the highest-church court in the City of London, the focus will remain on the canon law material, although future research into the common lawyer's thoughts (perhaps in

[164] DL/C/0206 f. 157v.
[165] DL/C/0206 f. 222r.

the readings of the Inns of Court) might prove useful. Next, we consider another common problem; return of money given for safekeeping.

3. DL/C/0206 f. 234v

This 1513 case between Richard Langstone c. Sir Robert Tenet and Sir John Butler, is an instance in which the plaintiff requests money that has been given to the testator for safekeeping, while the defendants are the administrators of the will. This case also has elements of ecclesiastical individuals, as Robert Tenet and John Butler are chaplains, in addition to their role as administrators of the goods of Sir William Jely, who before his death was the keeper (*custodis*) of the Guildhall, London. While this is how the folio states Jely's position in line four (see transcription in appendix three on page 385), it is perhaps more accurate to consider his position as warden of the guild of the Blessed Virgin at the Guildhall, London.[166] The main dispute concerns money; the two witness accounts differ as to the exact amount, that Richard Langstone's wife (Joan) had provided to Sir William Jely for safekeeping. There is also note that the money was to be converted, "whenever [Joan] asked to have back the same sum of money from the lord William, she promised that the said lord William would convert the same white money into gold."[167]

The previous section has studied three cases heard before the London Consistory Court in the early sixteenth century. These cases within the DL/C/0206 folios have been selected to outline the types of cases in which women and their testamentary ability played a significant role. The cases can

[166] On f. 234v there is some distinction between the two possible titles within the witness's statement.
[167] DL/C/0206 f. 234v, lines 17-19: et dictu[m] erat tu[n]c ib[ide]m int[er] eosdem Joha[n]na[m] et d[omin]um Will[el]mum q[uod] qu[ando]cu[n]q[ue] ip[s]a requireret eand[am] su[m]ma[m] pecunie a dicto d[omi]no Will[el]mo rehaberet p[ro]misit q[uod] dictus d[omin]us Will[el]m[us] q[uo]d conv[er]teret ip[s]am pecunia[m] alba[m] i[n] auru[m] ut dicit.

be further categorised into three groups; those that have men as the main roles representing the interests of women on their behalf (often as husbands, brothers, fathers), instances in which a male and female directly engage within the suit, and thirdly where the plaintiff and defendant are both female. While some cases such as Sir Robert Doddis c. Margery Calverley (f.110v) shows women taking central positions in proceedings against a man, other cases such as Cecily Burgers c. Joan Cardiff (f. 157v-158r, 179v-180r, 221r-222r) has women directly acting as plaintiff and defendant in their own right. Having discussed the records before the court, as a sample demonstration of the types of testamentary litigation women were frequently involved in, the natural progression is to consider the wills themselves.

3.5 Female Wills:

It is important to note that there is considerable trepidation regarding the wills of women. In many instances there is a concerning lack of married women's wills in the records; Mary Prior in "Wives and Wills 1558–1700," denotes the particular figures of surviving wills and the difficult methodology required to study and find these documents.[168] For example, within the PCC registers that cover the period of 1454-1500 held within The National Archives, four married women's wills can be identified: "PROB 11/7/39 (Elizabeth Chittok, 1480); PROB 11/7/304 (Agnes Lytton, 1486); PROB 11/8/87 (Alice Tympley, 1487); and PROB 11/9/273 (Matilda Esterfeld, 1493)."[169] As this demonstrates, there is a considerable lack of material particularly inthe late Plantagenet/early Tudor period (c. 1450-1480) for which this research studies.

[168] Prior, "Wives and Wills 1558–1700," pp. 208-209.
[169] Beattie, "Married Women's Wills," p. 59.

This section explores the life experiences and testamentary abilities of women in late medieval England through a qualitative and quantitative examination of wills. These records are found within a variety of archives, including the London Consistory Court, the Court of Husting, and within the Northern Province in the towns of Hull and Leeds. The locations have been selected both for the quantity and quality of surviving records, in addition to the fact that wills can yield considerable details and comparative information about the way of life of urban women throughout late medieval and early modern England.[170] Three distinct groups will be considered within this section; daughters, married women, and female executors. It is important to note that the dominant principle in "probate jurisdiction in late medieval England was one of customary practice, rather than canonical principle, which allowed for regional variation,"[171] as has been demonstrated in both the custom of *legitim* and through the cause papers. The provisions left by medieval parents to provide for their children, touched upon in the legitim chapter, will be the focus on the section on daughters. The bequests left in parents' wills demonstrate that daughters were considered as "viable heirs and capable managers of property."[172] The content of wills left by married women demonstrate that in the instances where married women were supported in their efforts to make a will, there was clear parameters for such an act: "she must secure her husband's permission (a King's Bench case discussed if this needed to be explicit or could be implied) and only bequeath her own personal property (and here the lawyers argued about what might be said to be the wife's own)."[173] As *legitim* demonstrates, some locations throughout England continued the custom of reserving one third of the parent's goods for heirs well into the seventeenth century, "some areas continued to allow (if not

[170] Cross, "Northern Women in the Early Modern Period," p. 83.
[171] Beattie, "Married Women's Wills," p. 60.
[172] Kathryn Jean Staples, *Daughters of London: Inheritance Practice in the Late Middle Ages* (Ph.D. thesis, University of Minnesota, 2006): p. ii.
[173] Beattie, "Married Women's Wills," p. 30.

encourage) married women to make wills."[174] Thirdly, the nature of female executorship will be briefly discussed. Ultimately, this section is a study of locality and the various approaches to women, whether in the material left to daughters, the making of wills by married women, the ability to act as executrix, or their treatment before the courts.

Considering the content of female wills, provides scholars with insight into questions regarding marriage, dowry, and familiar structure. Female wills apply beyond married women, to also include children and widows under the remit of female wills. Ultimately, the study of the types of material included in female wills enables considerations of "the impact of gender upon an individual's social and legal status and property rights."[175] Broader trends can be observed in these records. For example, within the city of London, Kathryn Jean Staples has conclusively demonstrated that the archival records reflect a decline in the number of female testator records surviving in the wills.[176] From the period of 1300 to 1500, the number of cases is skewed to the first c. eighty-five years, peaking with 51 female testators in 1349.[177] In both male and female testator categories, the number significantly dropped often to only one or two for the female testators, and only slightly higher for the male testators. For the period considered for this study that overlaps with these records (from 1450 to 1500), only fifteen female testators are noted with 37 years having zero, compared to 137 male testators which only saw six years with zero testators.[178] While this is only focused on the first fifty years of my period and within the city of London, it reflects wider trends for the surrounding century and a half leading up to the period of focus for this study.

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[174] Beattie, "Married Women's Wills," p. 60.
[175] Teague, *Patterns of Bequest within the Family*, p. 4.
[176] Staples, *Daughters of London*, pp. 159-163.
[177] Staples, *Daughters of London*, p. 160; This peak is made more remarkable since the second highest number was 21 and occurred one year earlier in 1348. However, the year preceding 1348 only counted 3 female testators, and after the peak in 1349, counted only 7 in 1350. This considerable rise also coincided with a peak in the male testator records, with 233 in 1349 (although the next closest year was 1361 with 116).
[178] Staples, *Daughters of London*, pp. 162-63.

The traditional response to questions regarding the nature of this decline in female wills and testatorship, can be understood by considering the dialogue between the canon and common law regarding the requirement of a husband's consent for a married woman to make a will. Two key cases, one occurring in 1426 and the other in 1497 (which refers back to the 1426 case), cemented the idea that while the canon law permitted married women to make wills without consent, the common law required the husband's consent. Chief Justice Fineux stated before the King's Bench in 1497 that, "by ecclesiastical law she [a wife] can appoint an executor of her paraphernalia [*son apparel de son corps*] though they belong to the husband at common law, and she requires his consent at common law."[179] Chief Justice Fineux referred, in his justification for this requirement at common law and not ecclesiastical law, to a 1426 case which stipulated women held no possessions under "our law" referring to the common law.[180] This case, during the first reign of Henry VI, focused on the judicial remarks and justification provided by a justice that "argued that it did not matter if canon law allowed a married woman to make a will, in this court 'our law' prevailed, and under this law she had no possessions."[181] Curiously, this justice's remarks were not universally held, indeed even within the courtroom this position was challenged. However, Chief Justice Fineux in his 1497 case picked this prior case as justification for the testamentary practice in relation to married women that occurred in this period. Helmholz has postulated,[182] and to which a large portion of the scholarly community agree (with the recent exception of Cordelia Beattie in her 2019 article), that the position generally held by the common law prevailed, in so far as "the church did not succeed in convincing people that married women did not need their husbands' consent to make a will, but perhaps also to

[179] Trin. 12 Hen. VII pl. 2 f. 22a; translation taken from Alfred K. R. Kiralfy, *A Source Book of English Law* (London: Sweet & Maxwell, 1957), 436; Beattie, "Married Women's Wills," p. 29.
[180] Trin. 4 Hen. VI pl. 21 f. 31; Seipp 1426.050; discussed in Sara M. Butler, "Discourse on the Nature of Coverture in the Later Medieval Courtroom," in *Married Women and the Law: Coverture in England and the Common Law World*, ed. Tim Stretton and Krista J. Kesselring (Montreal: McGill-Queen's University Press, 2013): pp. 30–32.
[181] Beattie, "Married Women's Wills," p. 30.
[182] Specifically in Helmholz, "Married Women's Wills in Later Medieval England," p. 175.

the extent that married women largely ceased to make wills from 1440 or 1450 or thereabouts."[183] This passage appears to reflect the trends in the data, at least insofar as the City of London has demonstrated with its decline by c. 1400, and few female testators after the mid-fifteenth century. However, the question remains if this is true throughout England or merely another local custom with regional variations. Beattie focuses on some select examples of regional variation throughout the late fifteenth century, particularly "on the deanery of Wisbech 1465–77, its linked diocese of Ely 1449–1505, and the Archdeaconry of Buckingham 1483–97, where married women made wills in significant proportions and had them proved."[184] While an important work in shifting the focus towards regional variations, Beattie's own focus remains predominantly on the Diocese of Ely, within the Province of Canterbury, while summarising in particular the works of Helmholz and Goldberg in regards to York.

Having discussed the historiography, one must consider the content of wills, their authors, the nature of regional variation, and the trends within England leading up to and into the Tudor period for women to make wills, have them proved and to act as testators in their own right. As previously noted, it is essential to distinguish between married and unmarried (or unknown status) female testators. As has been demonstrated, and will be shown in the tables below, a predominant theme within scholarship has been to consider the trends of wills up to 1500, rarely continuing. While the lack of wills is noted, wills written by females did not internally cease. It is therefore a gap in our current understanding of will making and women's abilities in the mid-fifteenth century onwards.

Table 2. Married Women's Wills in the Exchequer Court of York, 1389–1500.

[183] Beattie, "Married Women's Wills," p. 30.
[184] Beattie, "Married Women's Wills," p. 30.

Dates	No. of Wills	Female Testator %		Married Female Testator %	
1389–1408	437	136	31.1	68	15.6
1418–44	668	182	27.2	35	5.2
1445–69	370	85	23.0	3	0.8
1470–1500	448	89	19.9	2	0.4

Source: P. J. P. Goldberg, *Women, Work, and Life Cycle in a Medieval Economy: Women in York and Yorkshire c.1300–1520* (Oxford: Clarendon Press, 1992).

From Goldberg's table it is clear that the number of wills did not suffer greatly throughout the fifteenth century in the Exchequer Court of York: however, the interesting trends in the nature of married to unmarried female testators reveals a trend. While unmarried female testators' number and percentage of wills decreased in a significant manner, ranging from a peak of 182 to a low point in the mid-to-high eighties from the 1440s onwards. However, the drastic decrease of married female testators' wills and percentages declined from approximately 15% to less than 0.5% by 1500. Particularly from the 1440s onwards, barely any examples of married female testators survive to a statistically insignificant amount. Again, conscious of the narrow focus of these records on York, they provide insight into the wider trends. While Helmholz and others are correct that female wills decrease c.1450 onwards, these records suggest the decline was particularly in regard to married women, while female testators remain relatively consistent compared to the general turbulence of the Wars of the Roses (1455–1487).

Goldberg uses probate evidence to ascertain marital status at the time of death, in order to analyse secular change in the frequency of marriage and remarriage. He divides evidence into

five categories; single, married, remarried, widowed and widowed following remarriage.[185] While his categories are useful as a methodological tool, it is not always possible to ascertain the final category, as it is infrequently remarked upon in legal testamentary records. The other four categories are easier to glean from the records. Goldberg concludes one component of this trend is that "The increasing importance of matrimony for women as job opportunities for the single female diminished is reflected in the changing convention of nomenclature observed in contemporary records. Whereas in the early fifteenth century women are often not distinguished by marital status, but are sometimes described by their trade, by the end of our period [c. 1520] females are identified solely in terms of marital status."[186]

Next is to consider if this trend of married will creation declined generally but not across all categories of women; did it occur elsewhere in England or do the records demonstrate a local custom and trend confined to the general region of York. When looking at surrounding polities, such as Hull and Leeds to consider these trends, it is evident that between 1520 and 1650 one in five testators was female.[187] Cross states the widely held view that "[w]hen a woman married in law she lost this independence, her property and goods being merged with those of her husband. For this reason, married women did not normally make wills …"[188] This aligns with the focus on the decline of married women's wills, although to what extent does this reflect the wider trends within other jurisdictions, such as Hull and Leeds? Both received a general decline in the surviving number of wills.

Single, married, widowed, and remarried women continued to make wills throughout this

[185] P. J. P. Goldberg, *Women, Work, and Life Cycle in a Medieval Economy: Women in York and Yorkshire c.1300–1520* (Oxford: Clarendon Press, 1992), p. 266.

[186] Goldberg, *Women, Work, and Life Cycle in a Medieval Economy*, p. 278.

[187] Cross, "Northern Women in the Early Modern Period," p. 83; In this period there are almost exactly 1000 wills for Leeds, around 1200 for Hull: of these 2200 testators 173 from Leeds were women and 234 from Hull were written by women. This approximately equates to one in five testators being female.

[188] Cross, "Northern Women in the Early Modern Period," p. 85.

period, although it is clear that for specific groups there was considerable decline. Geographically, within London, it is possible to see the dispersal of women whose wills were contained in register Palmer from different locations within the diocese. Within the Palmer records, "[e]ight of the nine laymen and women whose wills are contained in register Palmer came from the outer areas of the diocese."[189] Also within register Palmer, "the wills of the lay testators show greater variety in form and content than those of the priests,"[190] although more will be discussed on this in the following chapter on the content of wills written by ecclesiastes. Mary Prior describes 'pockets of resistance' to the national trend, which she considered the decline in women writing wills to occur in c. 1440, where she refers to some locations such as the archdeaconries of Buckingham and Sudbury.[191] There is a considerable gap in modern scholars' understanding of the location within a given diocese from which women who made wills resided, although women making wills was clearly possible throughout England. Prior's classification of 'pockets of resistance' is perhaps a problematic phrase, as it has negative connotations for the remainder of the locations outside of 'the resistance.' Women continued to make and have administered their wills, that fact is not contested by mainstream scholars. Framing it as a resistance movement implies an active role against the mainstream, it is more appropriate to consider these locations through the lens of local customs. In these locations that the number of married women's wills continued in greater numbers might not have been centres of resistance to patriarchal society or the law by any means, merely that the local customs differed from the developing national custom wherein married women infrequently made wills. This is clearly an area for future work to consider the active or passivity of the women in these locations throughout England wherein married women continued to write wills in any significant numbers.

[189] "Introduction," in *London Consistory Court Wills, 1492-1547*, ed. Ida Darlington (London: London Record Society, 1967), ix-xxii. *British History Online*.
[190] "Introduction," in *London Consistory Court Wills, 1492-1547*, ix-xxii.
[191] Prior, "Wives and Wills 1558–1700," p. 202.

Having analysed the content of wills, it is worth briefly noting the topic of testamentary freedom in the division of personal property. Bearing-in-mind the caveat that land could not be transferred via a will, regardless of gender of the testator. A typical example can be seen in Elizabeth Mayson who purposely did not include any of "her own relations from her will in 1578, leaving all her goods to her late husband's brothers, Thomas, William, John and Peter Mayson, having 'found more friendship and favour in them, than ever she found with her own friends, and therefore she did then say that her own kinsfolk should never have any of her goods.'"[192] This is a typical example wherein women had the same ability to dispose of their personal property as men did. While there would often be societal pressure to provide executorship or goods to relatives, such as fathers, uncles, sons, women had the potential to deliberately exclude their own relatives. While it is more common to find wills that follow the typical pattern of giving personal property to closest living relatives or spouses, it would be incorrect to assume that women (married, single, remarried, or widowed) lacked the testamentary capacity to do so.

3.6 Concluding Remarks:

This chapter has presented an overview of women's testamentary capacities, administrative responsibilities, concerns pertain from both their attempts to make and administer wills, before shifting to consider the frequency with which women made wills and their survival in the archives. The shifting nature of women's relationship to last wills and testaments demonstrates the societal changes occurring in the late medieval period within England. The debate between the canon and common law regarding women, particularly married women's, ability to own property brought the debate into marriage (under

[192] Borthwick Institute Prob. Reg. 21 f. 281r; Cross, "Northern Women in the Early Modern Period," pp. 88-89.

church jurisdiction) and dowry (under secular law). The aim to synthesise the understanding of this topic has reaffirmed the trends noted by Helmholz and Beattie, while conceptionally framing these challenges with a view to consider local and national customs. It is evident that while regional variations did exist, particularly demonstrated in the locations with which married women continued to make wills post-1450, ascertaining local customs that permitted married women to hold property more easily is not evident.

Within this chapter the use of depositions from the London Consistory Courts has demonstrate one of the challenges of archival work within this period, that only partial records remain (in this instance just the witness testimony). While these cases have their use and insight, it is always necessary to contextualise the limited evidence within the larger picture, mainly the trends within the production of wills by married women, their engagement and frequency with which they appeared in various roles before the courts. This chapter has concluded that while regional tendencies did exist, the underlying legal principles remained more or less coherent. Having considered the development of women and wills, the next chapter considers another subgroup of authors of wills and testaments, ecclesiastical individuals. Particularly concerned with priests, in an effort to consider more common place wills over exclusively focusing on the highest offices (although they are discussed, but to a more limited extent).

CHAPTER FOUR

ECCLESIASTICAL WILLS

4.1 Introduction:

This chapter studies the last will and testament from the point of view of the testator, focusing on the content of various English wills, written by ecclesiastics of various levels ranging from canons to an archdeacon and bishop. Of particular importance is the nature of certain requests stipulated within the wills, often to be buried in a given location of local church significance. The importance of analysing this subject matter lies in the fact that this is admittedly a complicated subject – first because it is hard to distinguish a cleric's property from that of the churches where he served, and second because many clerics would have taken a vow of property. In most instances, regular clergy, meaning monks, nuns, and friars, took vows not to own any property – a vow of poverty. This is juxtaposed to secular clerics that could hold property, more will be discussed later in this chapter about the development of limitations in relation to alienation of church property. Therefore, the starting point is to consider those decretals that were included in the title *De testamentis*,[193] in book 3 of liber extra which is found in sections X 3.26.1-20. The initial focus of this chapter will be to outline what the texts and the gloss had to say about it, before moving to view the archival evidence. There will also be references to a selection of the many treatises on last wills and testaments written by a canonist that were circulating. It is from this complex starting point where I began my studies, knowing that I would likely find something of interest in these sources to compare with the practical evidence from

[193] It is commonly referred to by this name, the full title is *De Testamentis Et Ultimis Voluntatibus*.

the wills. The significance of approaching the last will and testament from the ecclesiastical testator provides insight into the above-mentioned factors, how to discern a cleric's property from the church's as well as the diminutive or common types of bequests, with reference to practices of the wider non-clerical society or laymen.

There are two components or sections to this argument; firstly, considering the canon law position primarily through the Decretals; and secondly, considering the evidence left in wills and documents found throughout England in relation to the previously established canonical guidelines. Cleric's property rights will also be noted, as is relevant to understand their testamentary capacities. Within the latter position, there is a further subdivision when studying the archival material. Firstly, the divergence within the city of York in the pre-Reformation period will be studied, particularly considering the divide between the minster and city clergy, before moving to consider the example of a few select Richmond wills. The following section will consider material held within The National Archives on behalf of Canterbury, specifically looking at a sampling of wills written by six canons, one archdeacon, and one bishop, as well as one grant of administration, and one appeal to the king and parliament for redress. All of these have been selected to represent a cross-section within the English church offices and to consider trends in wills throughout the period of 1450-1540. The chapter will then conclude with final remarks about the nature of cleric's wills as well as the gaps in the literature and archival material. Most notably, it is not possible to any significant extent to divide the types of clergy by office, as is possible within York (minster and city clergy).

Ultimately, the ambition of this chapter within the larger thesis is to take a small, but relatively reliable step toward demonstrating the necessity and benefits of historically enquiry into the nature of clerical testaments. This chapter provides an under investigated dialogue of legal theory and practice in testamentary abilities, limitations, and problems – most prominently, the challenges of

ascertaining the division of clerical and church property. A better understanding of these debates and practical concerns is an essential prerequisite to overcoming recurring misinterpretations of canonical sources, mired in a religious dimension, and the relationship between the individual (clergymen) and the church in which they held office.

4.2 Canon Material:

Before considering the last will and testament of the ecclesiastical authors, it is essential to first outline the canonical conditions, limitations, and thoughts on the parameters of wills written by ecclesiastics. The foremost authority on the subject is Decretals X 3.26.1-20, although the multitude of treatises circulating throughout Europe in the fourteenth century onward ensured that any interested reader would surely be able to find a manuscript to learn more on the topic. It is worth stating that decretals were most frequently answers to consultations but they could (although rarely in practice) come from the initiative of the pope himself.[194] Without providing in any way an exhaustive list (which would be extremely difficult), the most significant works include:[195] William Lyndwood's section on testamentary practices in the *Provinciale*,[196] Henry Swinburne's *A briefe treatise of Testaments and last Wills*, Philippus de Casolis's[197] *Tractatus de testamentis et*

[194] Auguste Boudinhon, "Decretals", in Hugh Chisholm, ed., *Encyclopædia Britannica*, vol. 7 (11th ed.), Cambridge University Press, 1911, p. 915.

[195] As noted, some of these treatises are directly focused on last testaments and wills whereas others only devote portions of their work to that subject matter.

[196] c. 1375–1446. For more on Lyndwood's Provinciale see Paul Cavill, "The First Readers of Lyndwood's *Provinciale*," *Ecclesiastical Law Journal* 24 (1) 2022: 2-13.

[197] c. early 14th–1391. He is mentioned to be a teacher of Raffaele Fulgosio and a colleague of Uberto da Lampugnano at Pavia. Unknown where law degrees were obtained, some scholars think it is most probably at Padova. First mention is in 1348 as a member of the commission to revise the statutes of Milano. Eventually became a well-known teacher of civil law at Pavia. He was considerably active in diplomatic missions, only known to have written one work (*De testamentis*), which, if the title is taken to be true, was a *disputatio* that took place in the last year of his life. Full title of work is *De testamentis, et successionibus, per modum disputationis, in qua interfuerunt D. Baldus de Ubaldis et eius discipulus D. Christophorus Castellioneus, anno*

svccessionibus, Raymond of Peñafort's *Summa de Poenitentia et Matrimonio* also touches on some relevant aspects of testamentary practices, and Angelus de Ubaldis's *Consilium*,[198] in addition to the works of Bartolus of Sassoferrato,[199] Giovanni Nevizzano,[200] Johann Oldendorp,[201] with Cinus Sinibuldus Pistoriensis' *Tractatus compendiosus de successione ab intestato*,[202] among many others.[203] The above-mentioned sources are noted in particular as they are mentioned more often than others in Lyndwood or other English sources, such as Swinburne and Chichele. Lyndwood is the most important for discerning the practical elements of English testamentary law with the late medieval period. Swinburne provides a detailed treatment, although his experience is shaped by his practice in the 1570s onwards – after the break with Rome.

It is important to note that these works were predominantly directed towards two groups within the legal profession, practising lawyers and academics. While they show up in the libraries and wills of the higher officials of the church in England, but the main focus was usually the uninitiated to the canon law or lower-level ecclesiastical jurists. For example, with

Domini 1391 in studio papiensi. He died in Pavia on 11 November 1391, if this is true he would have died suddenly, as of 4 November he was still carrying out his usual duties as professor. He was buried for his will in Piacenza, in the chapel of S. Tommaso of the church of the preachers known as S. Giovanni del Canale.; Biographical Dictionary of Italians, vol. 21 (1978).

[198] Lived 1327-1407. Known by several names – Angelo degli Ubaldi; Angelus de Ubaldis; Angelus de Perusio, etc. Angelus is frequently outshone by his famous brother, Baldus. However, Angelus had a distinguished career where he taught Roman law at Florence, Bologna, and Padua.; For more see O. Scalvanti, "Angelo degli Ubaldi," *L'opera di Baldo* (Perugia 1901) pp. 279–98.

[199] Lived 1313/14–135, arguably the best-known medieval civilian jurist.

[200] Nevizzano died in 1540, although his birth year is unknown.; In respect of his works that touch on inheritance (specifically intestate practices), see *Sylvae nvptialis libri sex. In quibus ex dictis moder. materia matrimonij, dotium, filiationis, adulterii, originis, successionis, & monitorialium plenissimè discutitur. Vnà cum remedijs ad sedandam factiones Guelphorum & Gebelinorum ... Ioannes Nevizano ... authore ..* (Bartholomeus Vincentius, Lyons: 1572).

[201] Approximately 1480-1567.

[202] Also known as Cino da Pistoia; lived c. 1270–1336/37.; Cinus taught Bartolus de Saxoferrato. For more on Cinus see Peter Weimar, "Cino da Pistoia," in Michael Stolleis (ed.). *Juristen: ein biographisches Lexikon; von der Antike bis zum 20. Jahrhundert*, 2nd ed. (München: Beck, 2001) p. 133.

[203] While those sources predominately focus on testate succession and inheritance, several important works on intestate succession are worth noting. These include authors such as Dinus de Mugello (1254–c. 1300) [Dinus taught Cynus]; Matthaeus de Mathesilanis (fl. 1398–1410) - for more see Andrea Labardi, 'Mattesil(l)ani, Mattteo', in DGI (2013) 2.1308.; Rolandinus de Passageriis (c. 1215–1300); and Johannes Baptista Rosellus (c.1430–1510).

regard to Lyndwood's work, judge and author Thomas Littleton (c. 1407–1481) "left to the parish church of Halesowen (in Shropshire) a book containing the provincial constitutions, one of which appears to be Lyndwood's text."[204] Another example is the serjeant-at-law Richard Heigham (d 1500) who referred in his will to 'my booke called lynwode', having received it from his brother William, a doctor of divinity.[205] The audience of these works on last testaments and wills varied, from Peñafort's complexity, through Lyndwood's stated aims towards those 'simply learned and understanding little',[206] and Swinburne's 'fit to be understood by all men, that they may know, Whether, Whereof, and How, to make them.'[207] It is important to note that while some works appear simplistic, such as Lyndwood, he engages in multiple series of legal and verbal gymnastics often to ensure that the English law he presented fit within the civil and canon law. This was done to such an extent that the line was often blurred between if Lyndwood was showing off his learned rhetorical eloquence or completing such manipulating of the sources that contemporary canonists would have been left scratching their heads in confusion. The varied nature of intended audiences helped ensure an adequate supply of treatises for all levels within and outside the clergymen.

There is no singular author or source in canon law that English jurists and lawyers considered as definitive. For example, in regard to the question of if two witnesses were required (to be present to witness a will) in relation to the presence of a priest: '*conclusio w[illemi] quod*

[204] TNA, PROB11/7/74 – Will of Sir Thomas Lytilton [also Lyttelton or Littleton]. In late fifteenth-century London, a volume of provincial constitutions was chained in the Lady Chapel of St Margaret's, Bridge Street: London Metropolitan Archives, P69/MGT3/D/001/MS01174, fo 13v.; Paul Cavill, "The First Readers of Lyndwood's *Provinciale*," p. 5.
[205] TNA, PROB11/12/98.; Paul Cavill, "The First Readers of Lyndwood's *Provinciale*," pp. 5-6.
[206] Lyndwood, *Provinciale*, pp. 79m, 95c, 335r.
[207] Swinburne, 1677, 1; The 1590, 1611, 1635, and 1640 editions state: 'Very profitable to be understood of all the subjects of this Realme of England, (desirous to know, Whether, Whereof, and How, they may make their Testaments: and by what meanes the same may be effected or hindered,).' All subsequent editions held no mention of this desire for all subjects of the realm to be able to understand the text.

sufficiunt duo testes in vltima voluntate sine presencia proprii [presbyteri] Sicut dotis Sed hodie requiritur eius presencia secundum constitucionem editam per dominum Bovc[hier] iam Cantuariensem Archiepiscopum.'[208] An unknown later reader of Lyndwood's gloss pointed out the contradiction when considering a constitution made by "archbishop, Thomas Bourgchier (1454–1486), requiring the presence of the parish priest at the making of a testament, had superseded Lyndwood's gloss."[209] The supposed contradiction is due to Lyndwood's stance held that two *integri* witnesses were sufficient to assure the validity of a will, notwithstanding any regional or local customs that might suggest or require that a relative or more often that a priest be present at the probate proceeding.[210] This is a matter of legal development, rather than actual contradiction, as archbishop Bourgchier's constitution was written after Lyndwood's work. Curiously, it is worth mention, as it has typically been seen as a contribution of the superior work of Lyndwood and later jurists favoured the work of Lyndwood compared to the slightly later work of Bourgchier. This new provision the archbishop merely superseded what Lyndwood had written – it would be a contradiction if Lyndwood lived later than the archbishop, but since the archbishop died 40 years after Lyndwood it just seems a question of legal development that was not well received by later jurists. Bourgchier, roughly thirty years after Lyndwood wrote the bulk of his treatise, held that no such regional variation was acceptable, nor a will witnessed without the presence of a parish priest. The presence of priests at the creation of a will is first noted in a Salisbury statute by Richard Poore[211] in the early thirteenth century. Lyndwood defended his position from contemporaries by

[208] Cambridge University Library, Peterborough Cathedral, MS 9, fo 46r. This manuscript refers to Lyndwood, *Provinciale*, p. 174g.
[209] Paul Cavill, "The First Readers of Lyndwood's *Provinciale*," p. 12.; For more on this see Brian Ferme, *Canon Law in Late Medieval England*, p. 65.
[210] Teague, *Patterns of Bequest within the Family*, pp. 36-37.
[211] Died 1237. He led a distinguished career, attending the Fourth Lateran Council in 1215 and establishing Salisbury Cathedral and the City of Salisbury. For more see John R. H. Moorman, *Church Life in England in the Thirteenth Century* (revised ed.) (Cambridge, U.K.: Cambridge University Press, 1955).

noting that the presence of a priest was never a custom throughout England, merely a local custom:[212] *Nec requiritur presbyterum parochialem adesse, nisi in loco, quo sit testamentum, sit talis consuetudo…*.[213] The rationale behind Lyndwood's statement might reflect a disagreement relating to X. 3.26.10: *Nullum ex officio rationalis, qui exactioni vel chartis inserviat, in alio iudicio adduci oportet, nisi forte cuiuspiam caput accusatio legibus instituta pulsaverit*. In an illustration of the debate surrounding this point, Durantis (c. 1230–1296) held that this decretal is not confined to testaments to pious causes, insisting upon the presence of both the priest and of two other witnesses "since the solemnities required by the law are not to be deemed to have been remitted any further than is expressed."[214] In essence, the requirements of priests to bear witness was substantially diminished by the fourteenth century (most certainly by the time of Lyndwood), albeit occasionally requiring priests as witnesses due to variations suggested by local customs and practices; this is noted in subsequent theoretical-practical works of canon jurists, revealing a growing incidence favouring the general rule that it was not required. While this occurrence might be attributed or influenced by the political and legal transformations of the later Middle Ages and the eventual European Reformations, this point demonstrates the peculiarities of the *ius proprium* and local customs on the common testamentary practice. It is of particular interest within England to view the reception and acculturation the plurality of legal systems, which was in favour of local customs and regional variance - at least within this period, with the eventual curtailing of ecclesiastical jurisdiction and standardising testamentary law under the common law. The nature of priestly witnesses is also noted in X.3.26.10 & 11. X 3.26.10 states: *Valet testamentum, quod parochianus facit coram presbytero parochiali et duobus testibus, nec valet contraria consuetudo*. X.3.26.11 also touches upon the same

[212] Ferme, *Canon Law in Late Medeival England*, p. 65.
[213] Lyndwood, *Provinciale*, p. 174a, a.v. *Probatis*.
[214] Ferme, *Canon Law in Late Medeival England*, p. 65, fn. 46; G. Durantis, *Speculum Juris*, Frankfurt 1592, Lib. I, Partic. 2. *De instrumentorum editione*, *Testamenta qualiter impugnentur*, n. 11, p. 321.

area of concern, but states: *Valet ultima voluntas ad pias causas coram duobus testibus, et est casus singularis*. In these two decretals we see a surprising difference, 11 states that for a will made for pious reasons, two witnesses is sufficient without any mention of a priest.[215] The response to this also illustrates the concerns, it provides an ambiguous two or three witnesses is sufficient, it appears to be situational: *et tribus aut duobus legitimis testibus requisitis [sitis contenti] quoniam scriptum est: "In ore duorum vel trium testium stat omne verbum.*"[216] This situational nature of two or three witnesses is contrasting with X.3.26.10 wherein it notes the use of two witnesses and a priest, although it states that the *nec valet contraria consuetudo*. The response to this claim is telling and the passage will be provided in full:

> Quum esses, frater episcope, in nostra praesentia constitutus, diligenti nobis narratione proposuisti, talem in tuo episcopatu consuetudinem obtinere, quod testamenta, quae fiunt in ultima voluntate ab iis, qui potestatem habent super alios, penitus rescinduntur, nisi cum subscriptione septem vel quinque testium fiant, secundum quod leges humanae decernunt. Quia vero a divina lege et sanctorum Patrum institutis, et a generali ecclesiae consuetudine id noscitur esse alienum; quum scriptum sit : "In ore duorum vel trium test ium stet omne verbum," praescriptam consuetudinem penitus improbamus, et testamenta, quae parochiani vestri coram presbytero suo et tribus vel duabus aliis personis idoneis in extrema de cetero fecerint voluntate, firma decernimus permanere et robur obtinere perpetuae firmitatis, sub interminatione anathematis prohibentes, ne quis praesumptione qualibet huiusmodi rescindere audeat testamenta. [Praeterea quum principes etc.][217]

This passage outlines several factors, the regional variation through custom upon which the questioning bishop has stated that the custom holds seven or five witnesses to ensure validity of a testament, with justification under secular law. This custom is *praescriptam consuetudinem penitus*

[215] X.3.26.11 roughly translates to ‘The final will is valid for pious reasons in the presence of two witnesses, and it is a unique case.’
[216] X.3.26.11: Relatum est auribus nostris, quod, quum ad vestrum examen aliqua super testamentis relictis ecclesiae causa deducitur, vos secundum humanam, et non divinam legem in ea vultis procedere et, nisi septem vel quinque idonei testes intervenerint, omnino inde postponitis iudicare. Unde, quia huiusmodi causae de iudiciis ecclesiae, non secundum leges, sed secundum canones debent tractari, et his, divina scriptura testante, duo aut tres idonei testes sufficiunt, discretioni vestrae per apostolica scripta Mandamus, quatenus, quum aliqua causa talis ad vestrum fuerit examen deducta, eam non secundum leges, sed secundum decretorum statuta tractetis, et tribus aut duobus legitimis testibus requisitis [sitis contenti] quoniam scriptum est: "In ore duorum vel trium testium stat omne verbum."
[217] X.3.26.10.

improbamus, and clearly garners an angry response directing that such local custom is not to be permitted, under threats of *ne quis praesumptione qualibet huiusmodi rescindere audeat testamenta*. However, it is still none the clearer in regard to the exact nature of witnesses, stating two or three. From these two decretal passages, it reaffirms that in certain instances such as pious bequeaths, two witnesses sufficed without a priest. Although, if a pious bequest was being made, the presence of a priest was likely taking place albeit not in the role as a witness.[218] What is more difficult to ascertain is Lyndwood's claim, that the presence of a parish priest was never a universal English custom, but merely a local custom: *Nec requiritur presbyterum parochialem adesse, nisi in loco, quo sit testamentum, sit talis consuetudo….*[219]

While this is not the focus of this chapter, it is worth noting the complexity within the example of having priests as witnesses. It was assumed that a priest would be at the location with the testator to preform last rights, in fact without confession, it was considered to die in disgrace.[220] Therefore, the lack of a priest (even if not in the role of a witness), would have cast serious doubt on intestate individuals.

While the presence of a priest is a singular matter, it points to the larger aspects present in late medieval England; notably, a wealth of material that could contradict each other leading to serious feats of academic flourish attempting to avoid contradictions while not offending certain groups of canonists. For instance, Lyndwood had to go to considerable effort to navigate Bartolus'[221] differing assertion regarding the nature and effect of an executor refusing to administer a will, Lyndwood held that

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[218] Brian Ferme, "The Canon Law Culture of Medieval England," *Periodica* 82 (1993): pp. 38-40.; For more on the type of witnesses permitted, specifically on women's ability to be a witness for a testament, see Sheehan, *The Will in Medieval England*, p. 179, fn. 51.
[219] Lyndwood, *Provinciale*, p. 174a, a.v. *Probatis*.
[220] See Holdsworth, *HEL*, vol. 3, Book III, *The Mediaeval Common Law (1066–1485),* p. 535.
[221] This is not to be mistaken as a claim that Bartolus was a canonist, merely the Lyndwood had to use a variety of sources (that despite differing with his opinion) in order to keep it inline with the canonical principles and ensure that the canonical material had some semblance of civil law justification.

individuals "non possunt testari" have been incorrectly considered *intestatus*, when they should be *intestabilis*. Bartolus held that they were immoral whether the deceased had made a testament or not – which other differed regarding how an intestate individual should be treated if they had attempted or even made a testament but it had been unfulfilled for the following reasons: *destitute*, *ruptum*, or *irritum* (destitute, broken, or invalid).[222] The change in the status of the deceased was what caused *irritum*.[223] Again, the variation within the *ius commune* is shown, as for the case within England, it is unclear why Lyndwood would cite Bartolus on this matter "even though it would appear that only the testament that was *destitutum* had any actual relevance in English practice."[224] It seems unlikely that Lyndwood made a mistake in this regard; perhaps it was another example of academic flourish, which Lyndwood is well-known to have done on occasion, to keep differing English practice in line with canon and civil law. It is worth noting one further example before considering specifics regarding clergymen making wills; Lyndwood held that all were able to make testaments, who were not prohibited by law.[225] This general statement unsurprisingly was not wholly accurate; clearly some individuals were forbidden to exercise the ability to bequest goods by custom or common law.[226] While the discussion surrounding this topic inevitably considers married and widowed women, mentally ill persons, criminals, foreigners, among others,[227] the focus of this chapter will be on clergymen and ecclesiastics, and their extent or ability to freely bequeath goods and chattels.

Clearly, there are two concerns that this line of enquiry faces; firstly, it is surprisingly

[222] For more on this topic see Lyndwood, *Provinciale*, p. 170a, a.v. *Bonorum huiusmodi* and p. 172a, a.v. *Intestatus*.
[223] Bartolus, *Interpretum Iuris Civilis … Commentaria*, Basle 1562, ii, pp. 954a-b.
[224] Ferme, *Canon Law in Late Medeival England*, p. 66.
[225] Lyndwood, *Provinciale*, p. 176a, a.v. *Legari sunt*: "*Et est regulare, quia omnia possunt legari, quae non sunt prohibitia.*"; *Provinciale*, p. 166a, a.v. *Legitima Testamenta* and p. 167b, a.v. *Condere testamentum*.
[226] Lyndwood particularly focuses on the right of married women to bequeath chattels; see *Provinciale*, p. 173a-b, a.v. *Propriarum uxorum*.; For a detailed discussion see R. Archer and Brian Ferme, "Testamentary Procedure with special reference to the Executrix," *Reading Medieval Studies* 15 (1989): 3-34.
[227] As is evident from a sampling of the listed types of persons above, these were often marginalised groups. While this focus has shown considerable light on the limitations of certain persons, the treatment of clergymen and more generally, ecclesiastics, remains teaming with potential enquiries.

difficult to distinguish a cleric's property from that of the churches where he served, and secondly, because many clerics would have taken a vow to have no property. As previously mentioned, regular clergy, meaning monks, nuns, and friars, took vows of poverty. This is juxtaposed to secular clerics that could hold property, which were subject to various canonical controls.[228] As early as the Gregorian Reforms ushered in by Pope Gregory VII (1073–85), the principle was formalised in law that ecclesiastical individuals could not have a legitimate heir of their body. However, they were permitted to institute by testament an heir. It was generally assumed that clerics would derive any personal wealth from the ecclesiastical benefices they held, therefore these individuals had only limited and often vague rights to devise goods by testament. It is easy to see the practice implications of such limitations on the testamentary capabilities. For example, if a wealthy cleric died, this was a prime occasion for legal disputes. Often many claimants would come forward upon the defunct goods, often with tenuous claims such that it was not free from contestation. This could often include, for example, a designated heir, such as a cousin; the executor of the testament (if it existed), acting for any beneficiaries; an ecclesiastical superior, i.e. bishop, in the capacity of corporate personhood on behalf of their chapter, church or wider spiritual community; the successor to the title, once the individual was elected; a secular or ecclesiastical patron of the defunct.[229] The are multiple possible claimants that could come forward with their own possible claim, it was with this legal confusion and challenges of customary rights to goods, that successive Avignon popes (1309–76) began to exercise increased oversight and formal capabilities over the goods left behind by certain clerics. This power was generally termed the *ius spolii*.[230] However, it is worth providing a brief discussion of the

[228] Daniel Williman and Karen Corsano, *The Right of Spoil of the Popes of Avignon 1316 – 1415*, The Ames Foundation (New York: William S. Hein & Co., 2020) p. 3.
[229] Williman and Corsano, *The Right of Spoil of the Popes of Avignon 1316 – 1415*, p. 4.
[230] The right to spoils of certain deceased clerics will not be discussed in detail here, for detailed studies see

canonical and civil sources providing for this right. The Roman law of *sacra* was aimed to prevent the alienation of church property, passed by the Codex Theodosianus 5.3.1, incorporated into Justinian's Codex 1.3.20. Further examples exist, such as *Novellae* 131.13 which is a strict deathbed rule for bishops, in part it reads: "We forbid the holy bishops to transfer any goods, movable or immovable or self-moving, which may have come to them in any way after their consecration, to their own relatives or to any other persons."[231] It also states that the church authorities "give them license to alienate, or to leave to whomever they please, only those things which they are proven to have possessed before their episcopal consecration; but after consecration, only those things which came to them from their families; and in case of intestacy, those may inherit who are within the fourth degree."[232] In the canon law context, the *Decreta* of Gratian expanded the number of laws aimed against the alienation of church property by its administrators in Causa 12, questions 1 and 2, although the topic is treated in various sections in different sub contexts.[233] For most religious clergy the vows of poverty lead to the consequence of the individual being incapable of owning property. As the brief discussion on this point has highlighted, the relationship between vows of poverty and issues related to the alienation of church property was an area interconnected. By taking vows of poverty, forgoing property and the variety of issues related to possession after their death, the church was able to control and

Williman and Corsano, *The Right of Spoil of the Popes of Avignon 1316 – 1415* and Fritz Prochnow, *Das Spolienrecht und die Testierfähigkeit der Geistlichen im Abendland bis zum 13. Jahrhundert*, Historische Studien 136 (Berlin 1919; reprint Vaduz 1965).

[231] Rudolf Schöll and Wilhelm Kroll, *Corpus Iuris Civilis*, vol. 3, 3rd ed. (Berlin: Apud Weidmannos, 1904), pp. 661–662: *Interdicimus autem sanctissimis episcopis res mobiles aut immobiles seseque moventes, quaecumque post episcopatum ad eos quoquo modo pervenerint, in proprios cognatos aut in alias quascumque transferre personas*.

[232] Schöll and Kroll, *Corpus Iuris Civilis*, vol. 3, pp. 661–662: 1. *Et quicquid ex huiusmodi rebus post obitum eorum in ipsorum facultate remanserit, iubemus hoc ad proprietatem ecclesiarum quarum sacerdotium habuerunt competere. In illis enim solummodo rebus licentiam eis alienandi aut relinquendi quibus voluerint damus, quas ante episcopatum probantur habuisse, post episcopatum vero quae ex genere sibi coniuncto ad eos devolutae sunt, quibus ab intestato usque ad quartum gradum succedere potuerunt.*

[233] For example, see C.12 q.1 c.19 for additional discussion on the rights of bishops in this regard.

mitigate alienation of their property before the death of the religious clergy.

Returning to X 3.26.1, it is evident that there is clear distinction between the limits of individual property and its relation to the church: *Episcopus de rebus patrimonialibus testari potest; de rebus vero ecclesiae seu intuitu ecclesiae quaesitis testari non valet*. The response, quoted in the footnote, notes that great effort was taken to distinguish what should be given to Attellanae civitatis episcopus daughter-in-law and what belongs to the church.[234] To effectively distinguish property, the method utilised it to divide that which the bishop held before his consecration to be his, and therefore go to the daughter-in-law as heir, while anything after his consecration belonged to the church - *Quicquid vero ecclesiae vel ante ipsius consecrationem fuisse cognoveris, vel in episcopatus ordine praedictum episcopum acquisivisse, in eiusdem ecclesiae dominio conservetur*.

The next relevant passage from the decretal is X 3.26.5:[235] *Non debetur legatum, quum testator rem non suam, sed ecclesiae legavit. H. d. simpliciter inhaerendo literae*. This is a detailed example wherein a son has brought forth a claim that his father left goods for the church, for the purpose of his burial, and there is a dispute regarding the payment of this debt by the heir.[236] Of

[234] X 3.26.1: *Quorundam ad nos relatione pervenit, quod I. Attellanae civitatis episcopus, dum de hac luce migraret, condito testamento in octo unciis totius substantiae suae nurum suam heredem instituit, et ecclesiam suam in residuis quatuor. Hortamur ergo experientiam tuam, ut sollicite hoc discutias, et, quicquid ipsum habuisse patuerit, a qualibet persona detineri nullatenus patiaris, nisi hoc solum, quod eum ante episcopatus ordinem proprium habuisse constiterit. Quicquid vero ecclesiae vel ante ipsius consecrationem fuisse cognoveris, vel in episcopatus ordine praedictum episcopum acquisivisse, in eiusdem ecclesiae dominio conservetur.* [*ne quisquam exinde aliquid usurpare qualibet occasione praesumat*.]

[235] X.3.26.3 outlines the one year requirement for the executor to administer the will before it reverts to the bishop, who would then administer the will: *Si infra annum a die monitionis non fit exsecutio testamenti per debentem exsequi, devolvitur exsecutio ad episcopum*.; X.3.26.6 builds upon this stating that abandoning property to be administer based upon the wishes of the testator by the executor is not permitted: *Heredi, non adimplenti iussa testatoris, ab episcopo interdicitur res a testatore relicta*.

[236] X.3.26.5: *Filius noster F. [vir eloquentissimus ad nos veniens] conquestus est nobis, quod quondam P. pater suus aliqua ecclesiae vestrae, sepulturae suae gratia, iuris alieni reliquit. Et quidem leges saeculi hoc habent, ut heres ad solvendum cogatur, si auctor eius rem legaverit alienam. Sed quia lege Dei, non autem lege huius saeculi vivimus, valde mihi videtur iniustum, ut res tibi legatae, quae cuiusdam ecclesiae esse perhibentur, a te teneantur, qui aliena restituere debuisti.*

particular interest is the passage, '*Sed quia lege Dei, non autem lege huius saeculi vivimus*,' juxtaposed by the previous statement, '*Et quidem leges saeculi hoc habent, ut heres ad solvendum cogatur, si auctor eius rem legaverit alienam*.' The discussion on the difference between the law of God and the law of the world, and *ius commune*, in relation to the payments due to the church is noteworthy. Considering the relation between canon law and secular law is most often framed in terms of justice under the canon law, whereas in X.3.26.5 it states that *valde mihi videtur iniustum* or it seems to me to be an injustice if the son [F.] should be disadvantaged by the actions of the father [P.] This dialectic relationship between justice and whether church law is justified in its jurisdiction of testamentary practices is virtually non-existent in medieval literature. It is worth considering if those within the church, i.e., clergymen, received satisfactory testamentary treatment or if they were hampered by the constraints of their role.

Continuing in the theme of clerical abilities, privileges and detrimental aspects, the next relevant passage from the decreatal is X 3.26.7: *De bonis per ecclesiam acquisitis clerici testari non possunt*. While this initial passage refers to prohibiting clerics to test about goods acquired by the church, it is more useful to consider the following passage in its entirety:

> Quum in officiis caritatis primo loco illis teneamur obnoxii, a quibus beneficium nos cognoscimus recipisse, econtra quidam clerici, quum ab ecclesiis suis multa beneficia perceperint, bona per eas acquisita in alios transferre praesumunt. Hoc igitur, quia et antiquis canonibus constat inhibitum, nos etiam nihilominus prohibemus [et] indemnitati ecclesiarum providere volentes, sive intestati decesserint, sive aliis conferre voluerint, penes ecclesias eadem bona praecipimus remanere.[237]

The order to have goods remain within the church ('*penes ecclesias eadem bona praecipimus remanere'*) is not exceptionally noteworthy, the passage on '*sive aliis conferre voluerint*,' does outline the limitations on testamentary abilities. If the goods of the church are to remain in the

[237] X.3.26.7.

church, which is logical, it means three things: firstly, that it was occurring frequently enough to include in the decretal in order to address this problem. Secondly, there was sufficient confusion regarding the division ofpersonal clerical and church property and goods. This has previously been noted in this chapter as one of the main concerns when approaching the wills and last testamentary abilities of clergymen. Thirdly, the testamentary freedom of clerics was increasingly being limited based on the literature, within this chapter the archival evidence will be considered to challenge this claim. X.3.26.7 originated as the canon *Cum in officiis*, was a constitution that came out of the Third Lateran Council (1179) published in the *Compilatio prima* and then as X.3.26.7 in the *Decretales* of Gregory IX (1234).[238] In regard to the second point, medieval jurists, both canonists and civilians, were acutely aware of this matter - one attempt to provide an answer to this concern was framed around *peculium*. Bernard of Pavia (pre-1150–1213), in his *Summa decretalium*, "tried to settle the question by defining and distinguishing different types of *peculium*, disposable property, without treating bishops differently from other clerics."[239] Bernard's passage reads, in part:

> What is called *peculium* here is what is possessed by any cleric as his own. … There are two types of *peculium* of clerics, one coming from the church, which can be called *profectitium*, the other coming from any other source, which can be called *adventitium*,
> for instance what comes to a cleric from his own craft, or any acquisition intended for his own person.[240]

[238] Williman and Corsano, *The Right of Spoil of the Popes of Avignon 1316 – 1415*, p. 4.
[239] Williman and Corsano, *The Right of Spoil of the Popes of Avignon 1316 – 1415*, p. 5.
[240] Williman and Corsano, *The Right of Spoil of the Popes of Avignon 1316 – 1415*, p. 6; Bernardus Papiensis, *Summa decretalium* 3.21.1, 3, 5 (ed. Laspeyres 92–95) - Latin transcript below:

Peculium hic appellatur, quod ab aliquo clerico velut proprium possidetur; usualiter autem peculium solet dici filiorum et servorum, scil. quod pater concedit filio vel dominus servo . . . . Duo vero sunt peculia clericorum, aliud ab ecclesia proveniens, quod profectitium vocari potest, aliud aliunde procedens, quod potest adventitium nuncupari, puta quod provenit clerico ex suo artificio vel alia qualibet acquisitione intuitu personae. Licet autem omnibus clericis habere peculium, qui propriis non renuntiaverint, ut clericis secularibus; non autem canonicis regularibus aut monachis vel monachabus . . . .

Nunc videamus, quam potestatem habeant clerici de peculio suo; et certe profectitium peculium possunt, dum in ipsa ecclesia vivunt, et praecipuum habere et retinere et inde moderate donare . . . ; ab illa vero ecclesia transeuntes vel morientes ipsi ecclesiae relinquere debent . . . , nec obstat, quod ea quae ab ecclesiis proveniunt, clericis communiter sunt habenda . . . ; nam illud intelligitur, antequam sua cuique portio assignetur. De peculio vero adventitio potestatem habet clericus, et inter vivos et causa mortis cui voluerit conferendi, etiam regi Arturo . . . .

This distinction was held by more than just Bernard, Guillelmus Durandus (Durantis) in *De peculio clericorum*,[241] goes further than Bernard and cites Roffredus Beneventanus for a third category from the civil law:[242] the so-called *peculium quasi castrense*, – a type of public work: *quod provenit ex opera quasi publica, puta patrocinando in ecclesiasticis causis et maxime in Romana curia secundum eum*. However, Durantis was in the minority of canonists to include this third category, so it was generally not dealt with. In order to reinforce the legal tradition of an orderly succession, of the goods from beneficed clerics, to go to the church and the heirs, each according to their rights, efforts were taken by several pontifs in its defense of those rights against unjust usurpations.[243] For example, Boniface VIII issued *Praesenti* (1298) and Clement V issued *Frequens* (1311),[244] both decretals against spoliation. Without delving into the complex minuta, these decretals were attempts to deal with impoverished benefice unable to provide pastoral care. While the right of spoil is typically removed from scholarly treatments of testamentary practices, these two passages provided the right of spoils to the deceased clerics' goods in order to support the pastoral care and upkeep of churches. Although the impact of these decretals is unclear, as they were firmly directed at bishops and higher offices in the church.

Ultimately the matter of determining, under canon law, the distribution of a deceased cleric's movable goods was still a considerable challenge. One attempt put forward by Giovanni d'Andrea (c. 1270–1348), amongst others, in his *Novella commentaria* was to address the concern before it

[241] Guillelmus Durandus, *Speculum iuris* 4.3, *De peculio clericorum* (ed. Venezia 1602, 3:375–376).
[242] Exact dates are unclear, c. 1170–c. 1243/4.; K. Pennington, "The Decretists: The Italian School," in *The History of Medieval Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX*, W. Hartmann and K. Pennington, ed. (*History of Medieval Canon Law* 6; Washington D.C.: 2008) pp. 167–68, 170.
[243] Williman and Corsano, *The Right of Spoil of the Popes of Avignon 1316 – 1415*, pp. 8-9.
[244] *Frequens* would be promulgated in 1317 by John XXII, originally used for the Council of Vienne.; Williman and Corsano, *The Right of Spoil of the Popes of Avignon 1316 – 1415*, p. 9.

became *postmortem*, i.e., while the clergymen still lived.[245] Obviously, this has limitations as some individuals might die suddenly or be unable to perform this task if seriously ill. This was known as *licentia testandi* or *facultas testandi*. This method would permit a cleric to create a testament under a special papal privilege, with the intended outcome that it was left to the testator and his "conscience the duty of dividing his ecclesiastical from his patrimonial and other peculiar wealth."[246] This method combined the cleric's personal knowledge of the facts, goods, and ownership, building upon his equitable skills and moral duties, in combination with the special privilege from the papacy – which held the authority of the Apostolic See. All these factors came together to defend the testator's dispositions *postmortem*, thereby potentially laying to rest any concerns and limiting litigation. This approach was also seen to be more directly following the wishes of the cleric, who had more direct authority to expressly delineate his personal goods and that with the church, whilst alive. The archival evidence supports that this privilege "was used with increasing frequency beginning with the pontificate of Innocent III [1198], if not earlier."[247]

Having outlined some of the difficulties and approaches canonists considered in relation to division of movable property, which will be returned to later when considering the theoretical-practical delineation through archival evidence in England, returning to the decretals provides additional uses. The next relevant passage from the decretal is X 3.26.9 (Alexander III): *De bonis propriis vel acquisitis intuitu personae clerici testari possunt, de acquisitis intuitu ecclesiae non*. This passage directly relates to the problem of distinguishing between cleric's personal and church property. This decretal clearly outlines the intended division:

> Quia nos tua duxit prudentia consulendos, utrum clerici saeculares de mobilibus vel immobilibus rebus possint condere testamentum, Consultationi tuae taliter respondemus, quod

[245] Giovanni d'Andrea, *Novella commentaria* on X 3.26.7, *Cum in officiis*, ad verbum *remanere*.
[246] Williman and Corsano, *The Right of Spoil of the Popes of Avignon 1316 – 1415*, p. 11.
[247] Williman and Corsano, *The Right of Spoil of the Popes of Avignon 1316 – 1415*, p. 11.

> licet clerici de his, quae paternae successionis vel cognationis intuitu aut de artificio sunt adepti, seu dono consanguineorum aut amicorum suorum, non habito respectu ad ecclesiam, pervenerunt ad ipsos, libere disponere valeant. De his tamen, quae consideratione ecclesiae perceperunt, nullum de iure possunt facere testamentum.[248]

Despite such a clear passage, determining what exactly constituted church and personal property remained a problem; demonstrated by the plethora of authors noted previously, who engaged with this topic. Related to this passage is X 3.26.12: *De propriis potest testari clericus; in acquisitis per ecclesiam etiamsi sint mobilia, succedit ecclesia vel successor; potest tamen aliqua servitoribus vel pauperibus elargiri. Si autem defunctus habet plures ecclesias vel beneficia, fiet aeque divisio inter illa*. In part the response to this reads as, '*Ceterum, quae ex hereditate, uel artificio aut doctrina proueniunt, distribuantur pro arbitrio decedentis*,' or 'all other things that arise from heredity, art, or teaching will be distributed at the discretion of the departed.'[249] The contradiction is in regard to the frequency with which is occurred in all other things or in certain instances: *ceterum* or *potest tamen aliqua servitoribus vel pauperibus elargiri*.

Between X.3.26.9 & 12, there are more attempts to divest between the two types of property, X.3.26.12 going so far as to denote blood relatives that may take the office of the deceased bishop or cleric, in remote locations that require such succession of offices/benefices.[250] In this passage, quoted

[248] X.3.26.9.

[249] X.3.26.12: *Relatum est auribus nostris, quod, quia statuimus in Lateranensi concilio, ut bona per ecclesiam acquisita ad eam in clericorum obitu devolvantur, dubitatis, an hoc sit de immobilibus tantum, vel de mobilibus sentiendum. Responso quoque nostro quaeritis edoceri, si praescripta bona in usus episcopi vel eius, qui clerico decedenti successeritis, de iure transeant, vel communi ecclesiae utilitati debeant applicari. His itaque breviter Respondemus, quod generaliter bona quaelibet per ecclesiam acquisita eis debent iuxta Lateranense concilium post acquirentis obitum remanere. Nomine autem ecclesiae non solum episcopus vel successor clerici morientis, ubi est collegium clericorum, sed communis congregatio intelligitur, quae rerum illarum debet canonicam distributionem et curam habere. Ubi autem in loco defuncti tantum unus est ordinandus, is ea bona, sicut et alia ipsius ecclesiae, in Dei timore dispenset. Licet autem mobilia per ecclesiam acquisita, ut duximus, de iure in alios pro morientis arbitrio transferri non possint consuetudinis tamen est non improbandae, ut de his pauperibus, et religiosis locis, et illis, qui viventi servierant sive consanguinei sint sive alii, aliqua iuxta servitii meritum conferantur. Ceterum, quae ex hereditate, vel artificio aut doctrina proveniunt, distribuantur pro arbitrio decedentis. Quia vero nonnulli in diversis ecclesiis beneficia possident, ita distinguimus, ut dividantur quae habuerant per aestimationem congruam inter ipsos.*

[250] X.3.26.12 (relevant passage): *Ubi autem in loco defuncti tantum unus est ordinandus, is ea bona, sicut et alia ipsius ecclesiae, in Dei timore dispenset. Licet autem mobilia per ecclesiam acquisita, ut duximus, de iure in alios*

within the footnote, the mention of mitigating circumstances such as small and remote churches is among the first attempts to pinpoint the exact nature of property. There are several other passages within the decretals that touch upon this subject, although not of direct use to discuss here: X.3.26.14, 15, 17, 18, & 20.

Clearly the canonists spent great time and devoted many treatises, decretals, and thought to the challenges presented by clerical testaments, with particular concern regarding the division of property to ensure the church was not defrauded or left wanting. However, the question remains, having reviewed the overarching canonical conscience, did this hold true within England. To answer this question, three factors are worth considering: written primary sources by English canonists, provincial and legatine constitutions, and most significantly – practical evidence seen through archival documents. It has been stated that "the matter of probate jurisdiction in late medieval England was one of customary practice, rather than canonical principle," which allowed for significant regional variations.[251] This point is essential in contextualising English testamentary practices, as well as why a significant portion of this doctoral research considers archival material compared to canonical sources and their treatment within England. This is not to suggest that canon sources were unimportant, rather their significance was more passively than actively influencing the practice of testaments and wills within English in this period.

4.3. Provincial and Legatine Constitutions:

pro morientis arbitrio transferri non possint consuetudinis tamen est non improbandae, ut de his pauperibus, et religiosis locis, et illis, qui viventi servierant sive consanguinei sint sive alii, aliqua iuxta servitii meritum conferantur.

[251] Beattie, "Married Women's Wills," p. 60.

1. Acts of Parliament:[252]

Before discussing the canonical constitutions passed within England, it is worth noting, albeit briefly, some acts of parliament. Leading up to the final year under consideration for this research (1540), there are thirty-one acts of parliament ranging from the year 1215 onward, sixteen of which were issued in the sixteenth century. While several acts are of little importance to the wider topic of clerical testaments, it is worth noting how all of the sixteen acts of parliament were proclaimed under Henry VIII as a result of his break with Rome. The next pre-Hen. VIII statute was passed in 1415: 3 Henry V, c. 8; Ordinaries shall take nor more for proving of Testaments, with their Inventories, than was taken in the time of King Edward III.

Two statutes of the thirteenth century are worth mentioning, for their focus on attempting to prevent land coming to the church, thereby depriving the king of revenue: 1217 1 Henry III, Magna Carta, c. 43 and 1279 7 Edward I, st. 2 (both of which consider Mortmain).[253] 1 Henry III, Magna Carta, c. 43 states:

> Non liceat alicui decetero dare terrram suam alicui domui religiose Ita quod illam resumat tenendam de eadem domo. Nec liceat alicui domui religiose terram alicujus sic accipere quod tradat eam illi a quo eam receperit tenendam: Si quis autem decetero terram suam alicui domui religiose sic dederit & super hoc convincatur domum suum penitus cassetur & terra illa Domino suo illius feodi incuratur.[254]

[252] While only a selection of relevant statutes will be discussed, a fuller list is attached in the appendix.
[253] The 1279 Statute for Religious Men [also known as forming part of the 'Statute of Mortmain'], was passed in two enactments, in 1279 and 1290. For more see Pollock and Maitland, *History of English Law*, vol 1., Cambridge University Press, 1968, p. 329.
[254] English Translation: 'It shall not be lawful from henceforth to any to give his lands to any religious house, and to take the same land again to hold of the same house. Nor shall it be lawful to any house of religion to take the lands of any, and to lease the same to him of whom he shall have received it. If any from henceforth give his lands to any religious house, and thereupon be convict, the gift shall be utterly void, and the land shall accrue to the lord of the fee.'

While this statute is clearly an attempt to maintain feudal revenue, it also denotes a significant matter worthy of the king's attention – the volume in which the church was acquiring land. It has been widely noted that at least by 1450, the church owned significantly more land than the crown, which clearly was trending this way as late as the beginning of the thirteenth century. This statute has been noted for its relation to property, as noted previously the personal and church property could be difficult to intertwine in a testament *post mortem*, here there are attempts to decrease the flow of land to the church, which would have effects on the types of testamentary bequests.[255] By this it is meant that with less land going to the church, there was therefore more land to be dispensed by testament. This point gets to the centre of the distinction between moveable and immovable property and its relation to testamentary succession, by altering the conditions in which lords of the fee would accrue the land in question.[256] Within this context, it is worth noting that the Statute of Uses (1536) enacted radical reform of English land law and it was from the embers of the statute's execution of uses to perform last wills that the doctrines of the modern trust emerged. In the later years of this period (up to 1540s), a coherent campaign from the mid-1520s against uses was underway.[257] The crown became active in earnest from 1526 onward, within increasingly engagement with the practical elements, seeking to protect itself from the loss of feudal revenue.[258] In addition to the crown's pragmatic efforts, an intellectual campaign was taking place – which Ashley Hannay argues was perhaps of even more importance.[259] While these developments did not directly engage with

[255] This is a difficult point to compare with later fourteenth-sixteenth century wills which survived in greater numbers.
[256] 1 Henry III, Magna Carta, c. 43: '… terra illa Domino suo illius feodi incuratur.'
[257] John Baker, *The Oxford History of the Laws of England: Volume VI 1483–1558* [henceforth referred to as *OHLE*], The Oxford History of the Laws of England Series (OUP: 2003), pp. 665-672; A. J. Hannay, ''By Fraud and Collusion': Feudal Revenue and the Enforcement of the Statute of Marlborough, 1267-1529," (2021) 42 *Journal of Legal History 42*, pp. 65, 80-87.
[258] Baker, *OHLE*, p. 664, n. 88; J. A. Guy (ed.), *Christopher St German on Chancery and Statute* vol. 6 (London, U.K.: Selden Society Supplementary Series, 1985), pp. 78-9.
[259] A. J. Hannay, ''By Fraud and Collusion': Feudal Revenue and the Enforcement of the Statute of Marlborough, 1267-1529," p. 65; In a reading in the Inner Temple in 1526, Thomas Audley outlined a radical doctrine against uses that would be adopted in the anonymous author in his *Replication*. For more on this see Guy, *St German on*

testamentary law, the preamble to the passing of the Statute of Uses denotes the atmosphere of reform:

> Where by the common laws of the realm lands tenements and hereditaments be not [divisible] by testament, nor ought to be transferred from one to another but by solemn livery and seisin, matter of record writing sufficient, made bona fide without covin or fraud, yet nevertheless diverse and sundry imaginations subtle inventions and practice have been used, whereby the Hereditaments of the Realm have been conveyed from one to another by fraudulent feoffments, fines, recoveries and other assurances craftily made to secret uses, intents and trusts, and also by wills and testaments sometime made by nude parols and words sometime by signs and tokens and sometime by writing, and for the most part made by such persons as be visited with sickness, in their extreme agonies and pains or at such time as they have had scantly any good memory or remembrance; At which times they being provoked by greedy covetous persons lying in wait about them do many times dispose indiscreetly and unadvisedly their lands and inheritances…[260]

The language of the preamble is worth noting, as twice testaments are mentioned. Similar to Richard III's 'grievous vexations' in 1 Ric. III, c. 1, the 1536 statute is dramatic, with illusions to the idea that feoffors had acted unadvisedly and in mistake. After all, the Tudor period has been called the so-called 'great age of the preamble,'[261] and the Statute of Uses adhered this Plucknett's assertion of preamble propaganda. Holdsworth went so far as to liken the preamble to "the sixteenth-century equivalent of a leading article in a government newspaper upon a government measure."[262] The two mentions of testaments demonstrate this attitude towards supposed mistakes that had deprived the crown of feudal revenue, the supposed Hereditaments of the Realm having been 'craftily made ... also by wills and testaments.' It is worth noting the context in which the tail-end of this work considers, four years later the Statute of Wills would be passed which made it possible for landholders to dispose of their land and determine who would inherit their land upon their death by

Chancery and Statute, pp. 99-105.
[260] *SR*, vol. 3, p. 539; John Baker and S. F. C. Milsom, *Baker and Milsom Sources of English Legal History: Private Law to 1750* (Oxford: Oxford University Press, 1986) p. 132.
[261] T. F. T. Plucknett, *A Concise History of the Common Law*, 5th ed., 2001 (The Lawbook Exchange, 1929), p. 324.
[262] Holdsworth, *HEL* vol. 4, p. 460.

devise by will.

Returning now to provincial and legatine constitutions, there are three worth noting, enacted in 1268, 1329 and 1342. Cardinal Othobon, a papal legate in 1268 enacted *Libertatem extremi* and *Cum mortis*. Simon Mepham, archbishop of Canterbury in 1329 enacted *Item quia locorum*, which focused on testaments directly. The third individual, John Stratford, another archbishop of Canterbury in 1342 issues three relevant provisions: *Cordis dolore concutimur, & infra* - which deals with donations; *Statutum bonae memoriae* which focuses on testaments; and also regarding testaments, *Adeo quorundam, & infra*. There were significant canons proclaimed in 1604 by Richard Bancroft, bishop of London, although they fall outside the period of consideration.[263] The *Libertatem extremi*, in part, states the following:

> The executors of testaments, before they shall intermeddle with the administration of the goods, shall make an inventory in the presence of some credible persons, who shall competently understand the value of the deceased's goods; and the same shall exhibit unto the ordinary: and if shall presume to administer, without such inventory made; he shall be punished by the discretion of the ordinary.[264]

As previously outlined, the repeated statement seen in the decretals and treatises refers to the credible witness without mention of a priest. Indeed, no mention of exactly how many witnesses are required, differing from the broader church doctrine and literature which states two or three, or two plus a priest.[265] Although the specification of a priest was not uniform, despite claims by some, the closer to everyday practice is seen by Lyndwood's account of it not being required unless by local custom.

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[263] Specifically, Canon 92, 93, 125, & 126. For more on these see S.B. Babbage, *Puritanism and Richard Bancroft* (London: S.P.C.K., 1962), pp. 192-94.
[264] John of Acton, *Constitutiones Legatinae Constitutiones Othonis et Othoboni , cum annotationibus Johannis de Athonis* (Oxford, 1679), pp. 107-109.; Acton's work was added to the later copies of Lyndwood's *Provinciale*, called *Provinciale, seu Constitvtiones Angliae, continens constitutiones provinciales quatuordecim Archiepiscoporum Cantuariensium* (Oxoniae, Excudebat H. Hall, impensis R. Davis, 1679).
[265] See discussion under title - Canon Material, as well as generally X.3.26.1-20.

Wills offer a unique insight into the lives of many English clergymen, denoting what items were of specific importance to note, what limitations were placed on the movement of personal property and the types of legacies left. Due to the sheer scale of surviving wills from the late fifteenth century onwards,[266] a select sample has been brought together; denoted for their unusual significance, details or perculatiry, or otherwise to provide a coherent comparative analysis. This research approach also provides perspective into the creation of wills, most often clergymen only made a single will; however, their role as clergymen did not prevent or hinder them, should they choose to, draft more than one. For example, Peris Leigh in his will dated 1 Feb 1521 [modern calendar would show the year as 1522] in Lyme is noted as having written three wills during his life as a priest.[267] Another demonstrative will can be seen in R D/RP4 folio 130, where John Smyth, a priest and master of the chantry of West Tanfield has written a will which portions are later revoked and amended. In a will dated 19 Aug. 1535, a codicil was also included alongside the will; note that this was when it was written, there is no evidence when it was proven and if it was accepted, often codicil could lead to disputes regarding administration especially if beneficiaries were removed.[268] A codicil can take the form of an addition or supplement to an existing will that explains, modifies, or revokes in full or in part.[269] Codicil were rarely used following the collapse of the western Roman Empire – whereas they had widespread use in classical Roman law – until the latter half of the twelfth century. The

[266] See for example the publications from the Richard III Society entitled *Index to Testators 1399-1540*, which has categorised 28,236 individual wills (at least 250-300 of which were clergymen). This document is a compiled list of all known cases, found in various publications spanning more than a century. The Richard Society has also published their own works on wills, including Heather Falvey, Lesley Boatwright and Peter Hammond (eds.), *English Wills proved in the Prerogative Court of York, 1477-1499* [this work focuses on TNA PRO E404 which covers the records of the Exchequer]; Lesley Boatwright, Moira Habberjam and Peter Hammond (eds.), *The Logge Register of PCC Wills volume one, 1479 to 1486* [this work focuses on TNA PROB 11/7, which contains c.390 wills in Latin and English] and (forthcoming) *The Milles Register of PCC Wills, 1487- 1491*.
[267] *Index to Testators 1399-1540*, Richard III Society, entry 15848; for more see L&C RS, vol 30, 1896, pp. 31-33.
[268] "Codicil," *A Dictionary of Law*, 10th edition, Jonathan Law (ed.), Oxford University Press, 2018; For more on codicil, see Kenneth Reid, Marius J. de Waal, and Reinhard Zimmermann, ed. *Comparative Succession Law*. 1st ed. (Oxford: Oxford University Press, 2011), p. 9.
[269] R D/RP4 folio 130; This is from West Yorkshire Archives, which has access to the Archdeacon of Richmond probate collection.

codicillary clause was incorporated in such claims, "*quae si aliqua sollempnitate iuris fuerit destituta saltim vim codicillorum aut alicuius alie last voluntatis vim obtineat atque robur.*"[270]

Within the same series of folios, three other wills written by priests demonstrate wider areas of consideration: the frequency with which clergymen specified burial locations and the nature of legacies to the church. Nichola Nichols, a priest, in a will dated 3 July 1478 requests to be buried at Nun Monkton.[271] Rev. John Gibson, a priest who is also specified as *dominus*, requests to be buried at the church of St Oswalds, [Thornton or Thornton Steward], in a will likely written between 1480-1490.[272] In the third example, another priest, Robert Derelove, requests to be buried in the church of St John the Baptist, Knaresborough.[273] These three examples are simplest in nature, hence why they perfectly illustrate the question regarding burial requests and bequeathed property. The three examples found within the Archdeaconry of Richmond collection are in no way extraordinary, clergymen and laypersons (male and female) did at times request burial locations. However, it is significantly less frequent to come across burial requests to be beside a specific individual. This point will be discussed in more detail later, suffice to state that locality and thereby local customs played a noticeable role in the frequency of such requests, also seen in specific groupings of years. Having discussed some simplistic cases, it is worth noting that the wills of clergymen also followed formulaic models. Specifically, the extent to which legacies and pious bequeaths were left will also be considered. Of course, pious requests were not limited to clerics or the rich; for example, William Carus (not a clergymen), left a legacy towards the renovation of Kendal church, as well as a request to be buried at the church of St Michael of Basin[hall] within the

[270] Giovanni Scriba, *Giovanni Scriba's paper* (ed.) M. Chiaudano, M. Moresco, Turin, Lattes: 1935, I, pp. 93-94.; For more on this see, Lorenzo Sinisi, "Una presenza costante: il testamento nei formulari notarili fra Medioevo ed età dei codici," *Quaderni della Fondazione Italiana del Notariato* (no. 1/2016): pp. 161-170.
[271] R D/RP1/1 folio 24v.
[272] R D/RP1/2 folio 29.
[273] R D/RP4 folio 143v.; The will is dated (written) 27 March 1534, proved 30 April. The exact date is unclear in the folio due to damage and deterioration, it is most likely 1534.

city of London, dated 5 Nov 1531.[274] Unfortunately, the record is fragmentary and little other details can be gleaned; however, the question remains – where clergymen, in the surviving records surrounding major metropolitan localities, more or less prone to pious legacies towards the church, beyond the formulaic and (almost) obligatory nature. This question will be considered in the following sections within this chapter.

4.4 Relating to the actual Wills:

As previously noted, the formulaic nature of wills in general was a European occurrence due to the influence of the *ius commune*: for example, in a Genoese will from 1157,[275] almost all practical elements of the late medieval and early modern will are present, albeit in some cases a rudimentary manner: including the presence of witnesses (although along the Roman protocol of seven witnesses), the specific bequeaths in favour of different beneficiaries, an indication of the place of burial, and notarial practices.[276] Within England, the earliest will of a canon within the P.C.C is that of John de Bisschopiston, Cancellor (*sic*) and Canon of Chichester.[277] De Bisschopiston's will contains all of the precursors of the fifteenth and sixteenth century wills, the only minor difference being the language it was written in – Latin. Although, this is unsurprising, as the further back in the fifteenth century wills, the more are written entirely in Latin, as opposed to select passages during the later period. This will, from 10 December 1384, outlines that the number and content of wills fluctuates greatly

[274] R D/RP3 folio 81.
[275] The will of Alda, the wife of Guglielmo Burone, was dated on 3 April, 1157. Guglielmo Burone was a brother of Ingo (or Ingone) della Volta, a powerful and wealthy Genoese politician. See Eugene H. Byrne, "Genoese Trade with Syria in the Twelfth Century," *The American Historical Review*, Jan., 1920, vol. 25, no. 2 (January, 1920), pp. 191-219, specifically footnote 34 (p. 200).
[276] For more on this see M. Chiaudano and M. Moresco, eds. "*Il cartolare di Giovanni Scriba. 1154-64*," 2 vols. *Documenti e studi per la storia del commercio e del diritto commerciale italiano* (Turin: 1935, 1, *Regesta chartarum Italiae*): n. 177, pp. 93-94.
[277] TNA, PROB 11/1/7.

both across the years and regional differences, therefore the following discussion of wills have not been divided chronologically but rather institutionally or along locality. This division has the effect of "illustrating the consequences of the Reformation changes for the local clergy."[278] Within certain locations, such as York, it is possible due to sufficient records to provide a cohesive treatment of the two categories of clergy – minster and city clergy. Minster clergy, as opposed to minister clergy, is a distinct category or type of church given an honorific title, the most prominent of which are York Minster (Yorkshire), Westminster Abbey (London), Southwell Minster (Nottinghamshire), and Lincoln Cathedral (Lincolnshire). The etymology is rather complex for minster; however, most importantly is that by approximately the tenth century, distinction between a 'regular' church and a 'mynster' was emerging.[279] Elsewhere in England, there are too few records to ascertain any difference in testamentary practices between the types of clergies and are as such treated in a more monolithic fashion (while remaining aware of the individualism within the clergy).

4.5 Literature on the Contents of Wills:

Before discussing the content of wills and the interaction between common and canon law on matters of inheritance, testaments, and jurisdiction, some remarks on the historiography are required. In a brief overview, in the past there was little interest in certain aspects of testamentary law, which focused more on legal concerns rather than authorship or content. However, in the last decades much

[278] Claire Cross, *York Clergy Wills 1520-1600: I Minster Clergy*, in Borthwick Texts and Calendars: Records of the Northern Province, vol. 10 (York, U.K.: Borthwick Institute for Archives, 1984), p. iii.
[279] For more on the etymology and history of the distinction between churches and minsters, see generally John Blair, *The Church in Anglo-Saxon Society* (Oxford University Press, 2015) and Sarah Foot, *Monastic Life in Anglo-Saxon England, c.600-900* (Cambridge University Press, 2006).; Even as early as 731, Bede mentions them in the *Ecclesiastical History of the English People*.

research has been done to broaden the focus on topics under testamentary law. A dominant theme throughout English legal history in the nineteenth and early twentieth centuries was to approach the legal and administrative aspects of testaments, without discussing the contents of wills and the individuals that made them. Amongst the many great scholars that have discussed testamentary law, including Frederick Pollock, F. M. Maitland, Theodore Plucknett, W. S. Holdsworth and many others, a shift towards the content of wills is seen in part in the works of Holdsworth and Bryce Lyon. In *A History of English Law* (W. S. Holdsworth),[280] engaged with the English will almost exclusively within his discussion of succession. While Holdsworth discussed a variety of important testamentary topics in considerable detail, such as guardianship, inheritance and dowries—topics that are intricately intertwined with testamentary law— however, these discussions lacked any specific engagement with wills, in favour of a treatment of general principles. Holdsworth wrote only five pages on a section he entitled as testamentary causes, which completely focused on probate jurisdiction, without any focus on the testaments themselves.[281]

One individual's approach has differed from preceding scholars as seen in the work of E. F. Jacob. Author of *The Register of Henry Chichele*, Jacob in equal parts discusses the content of wills written by both the men and women who wrote them as well as considering the broader legal and administrative aspects of last testaments and wills.[282] This renewed interest can be seen in the works of several authors spanning the last few decades that focus on a direct engagement with authors and the content of wills.[283] Of particular note is the shift trend towards considering the

[280] This multiple-volume work was produced between 1903 and 1938.
[281] Holdsworth, *HEL*, vol.1, 7th ed. (London: Methuen & Company, 1956), pp. 625-629; Teague, *Patterns of Bequest within the Family*, p. 3.
[282] Teague, *Patterns of Bequest within the Family*, p. 3.
[283] Several doctoral studies have been completed within the last fifteen years which look at specific cities or types of testamentary authors – for example, Staples, *Daughters of London* and Teague, *Patterns of Bequest within the Family*.

testaments, and to some extent, the executorship of women in the late medieval-early modern period, both within and beyond England. This has been strengthened by the continued relevance of considering the legal and administrative histories.[284]

Notably this chapter seeks to engage with the content and authors of various wills, from the perspective of comparative analysis, seeking to determine the relationship of the wills written by various types and levels of clergymen, in relation to what the canon lawyers are writing. Having considered what canonists wrote on the matter and seeking to determine if this was the position held throughout the schools of continental canon lawyers, then questioning if there was any change that occurred. This change could be an indication of potential influence of the common law. Before moving to the substantive content of the wills and focus of this chapter, consideration regarding what contemporary literature noted on this subject will be discussed.

4.6 Clergymen:[285]

1. The Division of Clergy within York:

[284] Several examples of this approach have been utilised in the last few decades, such as Matthew C. Mirow, *Readings on Wills in the Inns of Court 1552-1631* (Ph.D., University of Cambridge, 1993) and Joanna Hester McCunn, *The interpretation of deeds and wills at common law, c.1536–c.1616* (Ph.D., University of Cambridge, 2019).

[285] Note that there appears to be a difference in the formulaic model used for testimony. Within York, the cause papers typically state "Christopher Wharf of the parish of Dodyngton, Lincoln diocese, aged 60 years and more, of free condition, of honourable reputation, not being a kinsman, relation, servant or member of the household of any of the parties, as he says, …" CP.G.212, document three, line 1; compared to within the London Consistory, the highest-level church court in the diocese of London, typically states "Richard Hunt of the parish of Ulting, London diocese, where he has lived for forty years, illiterate, of free condition, sixty years old and more as he says. Sworn etc., he says …" GL MS 9065, fols. 173v-174r. This is a testimony from *Henry Baker and Thomas Pursot c. Collecta Rawlyn*[?], Deposition of Richard Hunt, 5 Dec. 1493; In a significant majority of cases the inclusion of the illiterate status (*illiteratus*) of the individual is noted, whereas within the northern province this is not commonplace in the surviving records.

Before approaching the archival material, it is worth noting the idea of sin and its relation to life-time preparations for the fate of the soul after death. While this is firmly within the realm of religion, its impact on testamentary practices is profound. Set in the backdrop of purgatory, as the in-between location between heaven and earth where souls suffered purgation for their sins, through the Fourth Lateran Council in 1215, purgatory became official doctrine and came to shape the types of stipulations left in wills.[286] For example, canon 22 form the Fourth Lateran Council, stated *Quod infirmi prius provideant animae quam corpori*, meaning that the souls of the sick took precedence over the body, which ultimately compelled physicians to summon a priest to prepare the soul of the sick before medicine could be provided.[287] This example is useful when considering the fourteenth century onward in England, there were many ways in which individuals could attempt to mitigate the expected pains of purgatory, one of the most prominent was ensuring prayers for the dead.[288] Leading up to the break with Rome, and even more generally in the lead up to the many religious reformations across Europe into the sixteenth century, it was widely held that the actions of the living on behalf of the dead would affect the nature (particularly duration) of purgatory.[289] Cindy Wood, in her article "William Wykeham, Bishop of Winchester (1366–1404) and His Preparations for Death" developed a table wherein the nature of requests left in wills reflects the intended effect on purgatory of the deceased.

Table 1. Conditions in Wills to Mitigate Purgatory through Spiritual and Temporal Perspectives

[286] For more on the Fourth Lateran Council, see Anne J. Duggan, "Conciliar Law 1123–1215: The Legislation of the Four Lateran Councils," in Wilfried Hartmann and Kenneth Pennington (eds.), *The History of Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX* (The Catholic University of America Press, 2008) pp. 318–366.
[287] Norman P. Tanner, *Decrees of the Ecumenical Councils*, vol. 1. (Washington, D.C.: Georgetown University Press, 2016), p. 245.
[288] Anu Lahtinen and Mia Korpiola (eds.), *Dying Prepared in Medieval and Early Modern Northern Europe*, (Lieden: Brill, 2017), p. 47.
[289] Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England, 1400–1580* (London: Yale University Press, 1992), p. 350.

Acts of Spiritual Mercy	Acts of Temporal Mercy
Teach the ignorant	Feed the hungry
Counsel the needy	Give drink to the thirsty
Admonish sinners	Clothe the naked
Comfort the sorrowful	Welcome the stranger
Pardon offenders	Visit the sick
Suffer tribulation	Visit the prisoner
Pray for all men	Bury the dead

Taken from Cindy Wood, "William Wykeham, Bishop of Winchester (1366–1404) and His Preparations for Death," in *Dying Prepared in Medieval and Early Modern Northern Europe*, Anu Lahtinen and Mia Korpiola (eds.), Leiden: Brill, 2017, p. 48.

These types of requests are common, especially among cleric's who are more well versed in the church concept of purgatory in this period and might specifically emphasise these factors beyond the formulaic models typically utilised by laymen.[290] The focus on considerations for one's soul was often treated as a topic squarely for theologians and religious scholars; however, in recent decades significant developments in this area have occurred. The effect on testamentary practices due to bequests relating to "the fate of one's soul after death—be it heaven, hell, or purgatory—was very real to all men and women," it is due to this reason that it is worth concentrating, even just briefly, on this aspect of mortality which directly altered wills and last testaments.[291]

1.1. York Material:[292]

[290] For examples, see *Testamenta Eboracensia*: A Selection of Wills from the Registry at York, vol. 1-6, ed. James Raine and John William Clay, Surtees Society, 1836-1902. Specifically for the period under consideration for this doctorate, see vols. 4, 30, 45, 53, 79, and 106 of the Society's publications.; also see chapter on York Cause Papers wherein multiple wills are included and the formulaic nature is evidence. The introduction chapter discusses the formulaic details in more detail.

[291] Richard Helmholz, "Deathbed Strife and the Law of Wills in Medieval and Early Modern England," in *Planning for Death: Wills and Death-Related Property Arrangements in Europe, 1200-1600*, Mia Korpiola and Anu Lahtinen (eds.), Leiden: Brill, 2018, p. 239.

[292] The work of Claire Cross has shown considerable light onto the testamentary practices and particularly the

Having outlined the spiritual components of why some provisions were typically included, the next consideration is to discuss these wills and outline the trends. As noted previously, priests often specified their burial location, although this was seen in several wills of the laity. While the treatment of legacies so far has focused on the general, it is useful to consider practical elements of such bequests by clergymen. For example, the church of St Martin, within the city of York, "owed its reconstruction and refashioning entirely to its vicar, Robert Semer."[293] Particularly inthe late medieval period, a significant portion of legacies and funds whilst alive, went to the construction of stained-glass windows. Robert Semer died in 1443, having drawn up his will on 1 January and proved on 7 June, he stated his intention to be buried under a marble stone within a local parish church that was very close to the St Martin window, which he had funded its creation and eventual completion.[294] Semer left specific instructions for the division of his property,[295] which included some small (perhaps, token in nature) bequests to select clergy, Semer bequeathed the remainder of his goods to St Martin's, which was to the value of £80 (after the payment of debts) a considerable sum – with the condition "that the said parishioners build anew the said church and its chancel within seven years from henceforth following, just as I proposed to and agreed with the said parishioners I would do."[296] Within this condition was stated that if the they (presumably meaning the administrators

socio-economic circumstances for city and minster clergy.

[293] Claire Cross, "The Donors of the Glass in some Parish Churches of Later Medieval York" in E. Lord and N. R. Amor, eds., *Shaping the Past, Theme, Time and Place in Local History: Essays in Honour of David Dymond* (Hatfield: University of Hertfordshire Press, Hatfield, 2020), p. 20; For more about the Church see P. M. Tillott, (ed.), A History of the County of York: the City of York (Oxford, 1961), p. 308; For details on the life and career of Robert Semer see Cross, *idem*.

[294] Cross, "The Donors of the Glass in some Parish Churches of Later Medieval York," p. 21.

[295] Including dispersing several manuscripts and treatises to friends, other clergymen and the minster library (which received *De regimine principum* - a treatise by Giles of Rome [c. 1243–1316]). For more see Ch. F. Briggs and P. S. Eardley (eds.), *A Companion to Giles of Rome* (Leiden & Boston: Brill, 2016), specifically pp. 6-33.

[296] Cross, "The Donors of the Glass in some Parish Churches of Later Medieval York," pp. 21-22.

of the goods on behalf of the local parishioners) did not do as instructed, the executors[297] were required to use £40 or half the value "to augment the salary of the chantry chaplain at St Mary's altar and dispose of the rest at their discretion."[298]

In this scenario, it is clear that by leaving the remaining funds to the discretion of the executors, that the intent was for pious works to be assisted. However, the nature of their discretion did not occur as Semer's intended purposes of his bequests worked. Semer's successor, Thomas Ellerbek, quickly began working towards the completion of the revitalised church, seen through his actions such as a contract to buy stone and payments to the masons for their work (which occurred shortly before the seven-year deadline Semer had imposed, which was in 1449). Generally, a respectable stained-glass window would cost in the area of £10 in the late fifteenth century.[299] Semer having left such a large sum to cover the expenses clearly valued the beauty and significance of stained-glass windows. Semer was not alone in favouring stained glass related bequests, this example is particularly common among the clergy, both minster and city, of York - wherein a significant focus remained on the stained windows of several churches. More so, Semer's will demonstrates the use of a testament to fufill one's own obligations, which ties into the previous discussion in the section above regarding purgatory and sin.

The fulfilment of promises made to the church or community were of the utmost importance for the clergy, seen through many wills both within York and broader England. A typical occurrence was to provide funds to enable prayers for the deceased's soul. For example, in 1481 John Walker of York died in London. His will left instruction and funds bequeathed to support the following: his

[297] John Appilton who was the sub-treasurer of the Minster and Semer's servant Robert Butler were the two executors.
[298] Cross, "The Donors of the Glass in some Parish Churches of Later Medieval York," pp. 21-22; Black et al., various authors (see bibliography for full list), The Latin Project, (ed.), *The Testamentary Circle of Thomas de Dalby, Archdeacon of Richmond d. 1400* (York, 2001), pp. 189-90.
[299] R. Marks, *Stained Glass in England During The Middle Ages* (London, Routledge: 1993), p. 6.

funeral to be held in All Hallows by the Tower, a requested burial location within the churchyard, as well as for the offering of requiem masses (*missa pro defunctis* or *missa defunctorum*) for his soul. Most interestingly, it also stipulates funds for *missa pro defunctis* for the the soul of Thomas Broune, both to occur once daily for six months in the London church and for twelve months in Holy Trinity Goodramgate in York.[300] Walker's will highlights two key aspects; the locational factor of his bequests and the inclusion of others. The provision and instruction for requiem masses is commonplace among clerical wills throughout England. One example, attached in the appendix, is the will of Richard Lichefield (1496).[301] Lichefield included seven mentions to masses (both celebratory and requiem). However, it is less common for the souls of others to be included within the provisions. Lichefield's will is unique in that he states certain requiem masses for his soul and "for the soul of the reverend father Sir Thomas Kempe, formerly bishop of London, and for the souls of my parents and all my benefactors …"[302] The more common approach was to direct exclusively for their own soul, seen for example in the passage 'I will that the pristes of the Guylde in Stratforde say masse of Requiem …'.[303]

Those clergymen that left goods in their wills spanned all ranges of church officials, even those from humbler beginnings could leave substantial funds as a legacy to the church (often specified in their use). For example, Thomas Marsar came from relatively humble means in the early 1510s, to gain multiple offices and benefices such that when he died in 1457 his estate was determined by the executors at the value of £161 8s. 11d.[304] Continuing with the focus on stained glass windows, it appears that all donors whether clerical or lay had free choice in the images within

[300] Borthwick Institute of Archives, York Probate Registry 4 f. 32 (John Walker); See Pauline E. Sheppard Routh, "A Gift and its Giver: John Walker and the East Window of Holy Trinity, Goodramgate, York," *The Yorkshire Archaeological Journal* vol. 58 (1986) pp. 110-111 for a full translation of Walker's will.
[301] TNA, PROB 11/11/172 – will of Richard Lichefield (1496). Appendix two, p. 305.
[302] TNA, PROB 11/11/172 – will of Richard Lichefield (1496). Appendix two, p. 305.
[303] TNA, PROB 11/30/101 – will of Thomas Atwode alias Tailor (1543).
[304] Cross, *York clergy wills 1520-1600: I Minster clergy*, pp. 69-76.

their stained-glass windows. This appears to have been true for those funds donated during life and legacies provided through their wills – in so far as their intentions could be specifically noted when it came to the type of images of saints and other religious imagery.

1.2 Burial Bequests:

Turning now from stained glass windows, the content within testaments in regard to burial places will be approached. It is well known that canons and other clergy often requested and instructed burials in particular places often in relation to relevant churches within the offices, and occasionally even next to individuals. Even more rarely, the testator specified or requested an individual to bury them. Such an example can be seen in 1524, when "Thomas Reynes asked to be buried by his friend William Underhill, who was also a canon, in the north cloisters."[305] While requests to be buried by specific individuals is rare, this example highlights the nature of clerical friendship and its impact on testamentary practices. Reynes' example occurs between two canons within the College of St Stephen's, Westminster, demonstrating that "canons made bequests to other canons on occasion, and acted as executors for each other, suggesting friendships were formed within the college if not between different groupings within the college."[306] These types of friendship within specific religious institutions, for example St Stephen's College, provides unique insight into the types of relations seen

[305] Elizabeth Biggs, *The College and Canons of St Stephen's, Westminster, 1348 - 1548,* 2 vols. (Ph.D. thesis, University of York, 2016), vol. 1, p. 138.
[306] Biggs, *The College and Canons of St Stephen's, Westminster, 1348 - 1548,* vol. 1. p. 138; In John Gunthorpe's 1498 will, he named Richard Hatton as one of his executors (see Somerset Medieval Wills (1383–1500), ed. F. W. Weaver, (London: Somerset Record Society, 1901), p. 361). This trend was continued when the same Richard Hatton in 1509 appointed Gunthorpe his benefactor and endowed masses at St Stephen's College for both himself and Gunthorpe, see PROB 11/16/504. Likewise, another canon, Richard Wolman left vestments to the college as well as gifts to other canons, including Drs. [William?] Benet and William Knight, who was also his executors, PROB 11/27/113.

through testaments and wills. For context, St Stephen's College was founded by Edward III in Westminster in 1348 and later dissolved by Edward VI in 1548 as part of an effort to rework and consider the existing relationship between the Crown and the Church. The college would regain prominence as a result of the Reformation, as the canons within the college assisted to shape the theology of the emerging Church of England.[307] It is possible to trace friendship through testamentary documents to a relatively certain outcome; for example, in 1498 John Gunthorpe named Richard Hatton as an executor of his estate.[308] In 1509, Richard Hatton noted John Gunthorpe as a benefactor and provided funds for requiem masses at St Stephen's College for himself and Gunthorpe.[309] It is common to see clerics leaving gifts to each other, especially among those of a similar office; Richard Wolman (1528)[310] left vestments and other robes to St Stephan's in addition to various items to other canons, Dr Benet and Dr William Knight, who were also named as his executors.[311]

While the above wills were more aligned to the wishes of keeping goods within the church and ensuring pious legacies seen throughout X 3.26.1-20, one factor not previously noted was the divergence between groups. For instance, throughout the fifteenth and sixteenth centuries within St Stephen's (although seen throughout England), the archival evidence provides insight into the lives and testamentary practices of canons, although it does nothing to improve our knowledge for the vicars. In fact, there are no discernible bequests in the surviving P.C.C. wills from 1348-1548 to

[307] Biggs, *The College and Canons of St Stephen's, Westminster, 1348 - 1548,* vol. 1., p. 2; Substantial and wide scale purges of monuments of superstition associated with the Catholic Church took place in the reign of Edward VI when reforming churchmen denied the existence of purgatory and the validity of the intercessory powers of the saints, and no longer permitted prayers to be offered for the souls of the dead. For more see Claire Cross, "The Donors of the Glass in some Parish Churches of Later Medieval York," pp. 17-26.
[308] F. W. Weaver (ed.), *Somerset Medieval Wills (1383–1500)*, London: Somerset Record Society, 1901, p. 361; Weaver's text provides the abstracts from registered P.C.C. wills at Somerset House, London. Reprinted in a single volume by Alan Sutton Publishing in 1983.
[309] TNA, PROB 11/16/504.
[310] Wolman was one of Wolsey's men (his proctor), who had been involved in a limited capacity with the king's divorce, but was not an ardent reformer.; F. D. Logan, "Doctors' Commons in the early sixteenth century: a society of many talents," *Bulletin of the Institute of Historical Research* 61 (1988), p. 161.
[311] Biggs, *The College and Canons of St Stephen's, Westminster, 1348 - 1548,* vol. 1, pp. 103, 106, 206.

vicars, suggesting that there might have existed a type of social gulf between canons and vicars.[312] Biggs convincingly demonstrates that within the confines of St Stephan's, "canons self-identified as canons in their wills, not exclusively, but certainly enough to be suggestive that they saw the college as an important affiliation."[313] Building upon this focus on certain groups of ecclesiastes and their wider image, St Stephan's evidently cared for the self-image and presentation of the canons as a group, seen through burials and requests for burials, even if not carried out. While the identity of being a canon naturally created a distinct group, nowhere is it more felt than within St Stephan's where a social group developed, as reflected in their desire to be buried next to friends who were also canons.[314] Having considered the broad group of canons, with brief comparative mention of vicars, it is logical to consider other testamentary practices of church officials – specifically, higher clergy.

1.3 Remarks on the Wills of Higher Clergymen:

As has been demonstrated in the example of canon wills, there is a significant increase of the surviving [and possible production] of wills more generally into the 16th century. However, this is not a universal trend completely explained by the passage of time and increased record keeping methods. In the example of wills written by bishops, of which twenty-eight exist; fifteen wills exist from 1450-99, and thirteen wills exist from 1500-40. This is a unique example as there is little difference in the production and survival of wills of bishops, approximately 0.31 wills were written per year in the fifteenth century based on the archival material. It is important to note that the records

[312] For more on this see Biggs, *The College and Canons of St Stephen's, Westminster, 1348 - 1548,* vol. 1, pp. 138-140.
[313] Biggs, *The College and Canons of St Stephen's, Westminster, 1348 - 1548,* vol. 1, p. 138.
[314] Biggs, *The College and Canons of St Stephen's, Westminster, 1348 - 1548,* vol. 1, pp. 138-140.

are unusually spread across the whole period.[315] This would lead to approximately one will per three years. In the sixteenth century, approximately 0.33 wills per year were written by a bishop in the period 1500-40. Again, this leads to approximately one will per three years.

This chapter does not focus on the wills of bishops, as the approach is to consider the more common canons or priests and their relation to canonical sources, such as X 3.26.1-20 and several treatises and glosses. This is a conscious decision to consider more low-level church officials, leaving aside more elite level offices such as that of bishops. Nevertheless, the production of wills by bishops demonstrates that the inherent commonly understood improvement of record keeping with time, is not necessarily reflected in the archives. However, it would be remiss to entirely exclude higher officials, as such two wills from the later years of the period will be considered, i.e. late 1530s, are worth drawing attention towards; the will of Edward Foxe [on the will an 'e' is included to his last name, modern spelling removes the 'e'], bishop of Hereford, and the will of Nicholas Metcalfe, clerk and archdeacon of Rochester.[316] The earlier of the two wills, Foxe's dated 8th of May, 1538 [i.e. 1539], while the exact date for Metcalfe's will is unstated but it was proved 16th of October 1539. These two wills are being studied as they outline the end period of this thesis' focus, the relationship between relatively modest priests and canons compared to the those among the highest church ranks in England, and finally to see if the individual mindset (be they reformer or ardent papist) had any effect on the last will and testaments of two key individuals in Henry VIII's divorce. Both Foxe and Metcalfe lead distinguished careers, culminating on opposing sides in regard to Henry VIII's divorce from Catherine of Aragon in 1533. Foxe having supported it while Metcalfe opposed it initially as an ardent Catholic but later recanted and conformed to the new church but was

[315] 15 wills over the 49 years leads to the number of c. 0.31, if the exact year is not considered.
[316] Full transcriptions of both wills have been attached to the appendix. Both wills are predominantly written in English, with only a standard passage written in Latin (denoted by italics).

still required to resign in 1537 for his initial opposition.[317]

Formulaically the wills reflect that of lower clergymen, however the content it different. Bishop Foxe uses a debt the Lord Admiral owes to him, to pay for his own debt to the King's College in Cambridge:

> Item, to the King's College in Cambridge, for such sums of money as I have borrowed of them, I will that they shall have an obligation wherein my Lord Admiral is bound unto me for the payment of seven score and ten weight of right bay salt, and that my said Lord Admiral shall be bound unto me, the said bishop, and my successors, provosts of the said college, and the vice-provost, fellows and scholars of the same, to deliver them the said salt, at what time and whensoever he shall be by them required.[318]

However, this alone does not demonstrate any difference between lower and higher clerics, as similar use of debt owing, and debt owed interchangeably occurred for the laity. Interestingly, Foxe divides his remain estate equally between his brother and sister, although the brother has first decision.[319] Foxe's will and its subsequent executorship is concluded without exception, demonstrating that the high rank held no practical differences in regard to his testament. Considering archdeacon Nicholas Metcalfe's will, there are minor differences not seen in other wills previously studied here. The preamble phrase 'make this my testament and last will in manner and form following' is atypical to the formulaic structure. Furthermore, Metcalfe directs that his sisters should receive a yearly sum, stating 'that I will that Lucas Metcalf pay yearly during their lives, upon an obligation between him and me."[320] The use of obligations and debts owed to them distinguish these wills from that of lower clergy, although it is not unheard of for canons and priests to use debt interchangeably. This obligation Lucas Metcalf has to the testator is noted several times, such that he willed to pay sums and 'if he refuse to pay, I will them,

[317] For more on the life of Foxe see Hugh Chisholm, ed. "Fox, Edward," *Encyclopædia Britannica*, vol. 10 (11th ed.), Cambridge University Press, 1911, p. 765; For more on the life of Metcalfe see David Knowles, *The Religious Orders in England* vol. III (Cambridge University Press, 1971), p. 157.
[318] TNA, PROB 11/27/436 – will of Edward Foxe, bishop of Hereford (1539).
[319] PROB 11/27/436.
[320] TNA, PROB 11/27/548 – will of Nicholas Metcalfe, archdeacon of Rochester (1539).

my executors, to take the advantage of my obligation.'[321] The obligation is unstated, although perhaps common knowledge for the executors and the obligator, such that it was not necessary to state. Another interesting component of Metcalfe's will is his instruction that 'I will that Lucas pay or cause to be paid to my executors immediately after my decease twenty pounds.' It is unclear why such an instruction is stated, it does not appear that the executors would need such funds to administer the estate. Likewise, as noted in chapter two, the timeline for the actual administration was most commonly two or more months. Perhaps, although impossible to prove, the testator wished to provide for the executors as his will might be difficult to administer if he foresaw problems with Lucas Metcalfe.

Metcalfe also provides specific and general pious provisions. The general provisions for the poor and the soul were standard; however, his item instructing that 'the residue of my goods, my will and legacies discharged, to be distributed among poor scholars of name coming to Cambridge for learning, to help to maintain them with all after the discretion of my executors.'[322] The final peculiarity with Metcalfe's will, is that he signed it himself. Himself a clerk as well as archdeacon, he would have been well versed in the drafting of wills, although no other clergymen's will has a personal signature. In English it states, 'By me Nicholas Metcalfe, clerk'.

Ultimately, the content of wills is insightful for both the individual person but also to consider wider trends. While the differences between the higher and lower officials of the church demonstrate a few differences, the differences between individual (both in circumstances and personality) highlights the importance of considering the wills of ecclesiasts.

4.7 Content of the Wills and Comparative Analysis:

[321] PROB 11/27/548.
[322] PROB 11/27/548.

1. York Priests and Clergy:[323]

This section will be divided into two parts, firstly considering York (with the division of minster and city clergy) and secondly, the canons of the P.C.C..

1.1 York

As noted previously, there are two types of clergies that previously research has been able to find considerable information on (minster and city). The following sections consider the details of the surviving wills as well as some trends within each category before comparing them to consider trends.

1.1.a City Clergy:

Professor Cross in the 1980s painstakingly compiled a list of all surviving wills written by city clergy within York from 1520 to 1600. Only the initial twenty years of which pertains to this

[323] Note that there appears to be a difference in the formulaic model used for testimony. Within York, the cause papers typically state "Christopher Wharf of the parish of Dodyngton, Lincoln diocese, aged 60 years and more, of free condition, of honourable reputation, not being a kinsman, relation, servant or member of the household of any of the parties, as he says, …" CP.G.212, document three, line 1; compared to within the London Consistory, the highest-level church court in the diocese of London, typically states "Richard Hunt of the parish of Ulting, London diocese, where he has lived for forty years, illiterate, of free condition, sixty years old and more as he says. Sworn etc., he says …" GL MS 9065, fols. 173v-174r. This is a testimony from *Henry Baker and Thomas Pursot c. Collecta Rawlyn*[?], Deposition of Richard Hunt, 5 Dec. 1493; In a significant majority of cases the inclusion of the illiterate status (*illiteratus*) of the individual is noted, whereas within the northern province this is not commonplace in the surviving records.

chapter, twelve city clergy wills survive, a list of all of those wills is provided below alongside when the will was written:

i. Robert Comersall, 21 August 1520
ii. Martin Awnderson, 26 October 1520
iii. William Grave, 6 February 1520/1
iv. William Snar, 11 April and 6 May 1521
v. Robert Bechame, 22 June 1521
vi. Thomas Barton, 21 May 1523
vii. William Simpson, 25 February 1527/8
viii. Thomas Threpeland, 12 June 1529
ix. John Smyth, 10 August 1529
x. John Pulley, 1530-1
xi. Henry Cundall, 1533
xii. Richard Oliver, 20 June 1535

As Cross has provided complete transcriptions, the following discussion will focus on a comparative approach to see trends within this category or group of clerical wills. The dispersal of wills is haphazard and grouped around sections of years, although this is common in late medieval England. City clergy tended to leave briefer wills then their minster counterparts. City clergy were more likely to die with little to their names, which reflects why their wills were usually shorter.[324] York was an 'over churched' city by 1520,

[324] Cross, *City Clergy*, p. v-vi.

with roughly fifty parish churches in a relatively small space, meaning is given new context when considered in the population decline experience in the lead up to the 1520s. As such, the city could hardly maintain and support such a large number of city clergy, again contributing to the overall poor situation for the majority of city clergy. Eventually, by 1547, on their own initiative the number of parish churches was reduced to twenty-three, a more manageable size for a limited population – this was achieved through a private Act of Parliament sponsored by the city.[325]

It is accurate to state that in the early sixteenth century, as compared to the minster clergy, city clergy formed a homogenous group. Likewise, the vast majority of city clergy were from the city, with non-native to York individuals holding the role was virtually unheard of. Well trained, graduates were also uncommon, indeed some higher individuals who took office never set foot in their city, using it as a steppingstone to greater offices and benefices. See for example, the tale of Nelson (a lawyer in the ecclesiastical courts) who likely never took possession of St. Martin's. The same holds true for several other individuals with higher learning.[326] Overall, the facts have presented a rather bleak life for city clergy, now the nature of their wills shall be considered, to see if this was actually the case. One striking fact of the wills is the limited economic ability for outlets, as well as very limited social distinction – again, presenting a more homogenic group. See for example the will of Robert Comersall, dated 21 August 1520. Comersall's will has no specific items, all with generic statements: after the expenses for burial, the remaining funds should be used at the discretion of the executors.[327] While not all wills are as bare as Comersall's, they are

[325] Cross, *City Clergy*, p. v-vi.
[326] See Cross, *City Clergy*, p. vii.
[327] Cross, *City Clergy*, p. 1; Archbp.Reg.27 f.152r.

characteristically similar. For example, the next will, that of Martin Awnderson (26 October 1520), there are five specific bequeaths, all of which are of an extremely small amount.[328] The general economic context of these twelve wills, is that city clergy had extremely limited funds and this is reflected by the lack of property and often the lack of providing beyond a small sum of money – there is few specific items will, compared to elsewhere (for both clergymen and the laity). The next category is minster clergy, the only distinction between the two is that one group exclusively services within York minster church and grounds, while the others perform their role throughout the wider city.

1.1.2 Minster Clergy

Within the minster clergy for 1520-1540, seventeen wills survive:

i. William Burton, 30 November 1520

ii. Richard Wiatt, 8 July 1522

iii. Thomas Seton, 21 October 1522

iv. Richard Plummar, 15 October 1524

v. John Usher, unclear but before June 1526

vi. Robert Barra, 4 October 1526

vii. Peter Sympson, 6 August 1528

viii. William Melton, 20 August 1528 [Chancellor of York Minster]

ix. John Hertley, 9 July 1529

[328] Cross, *City Clergy*, p. 2; Archbp.Reg.27 f.151v.

x. John Fewlare, 7 August 1530

xi. John Nosterfeld, 20 March 1531/2

xii. Thomas Forne, 13 July 1533

xiii. John Sheffeld, 19 November 1534

xiv. Henry Gelsthrop, 29 June 1538

xv. Brian Higden, 3 June 1539 [Dean of York Minster]

xvi. Edward Kellett, 29 September 1539

xvii. William Crosby, 24 May 1540

These seventeen minster clergy wills reveal considerable information when compared to the surviving city clergy wills. The minster clergy left more wills than their city clergy counterparts; twelve to seventeen. The dispersion of wills is also more representative throughout the twenty-year period. As noted previously, there was relatively little homogeneity with the individuals within the minster clergy, as their lifestyles ranged from great riches for those in large minsters cathedrals to relatively poor subsistence. Usually the bequeathed amount was larger, not massively, but usually by more than 10% compared to their city clergy counterparts. One point worth noting is that mothers are more directly mentioned among minster clergy, perhaps due to their more favourable lifestyle allowing for the support of close family.[329] Linguistically, more of the minster clergy wills contain or were completely in Latin, compared to city clergy. Likewise, generally minster wills were on average at least twice as long, denote much more minute information about bequeaths (i.e., colour of the clothes,

[329] For instance, amongst the seventeen minster clergy wills, four wills expressly list provisions for their mothers. See wills of the following: William Burton (1520), Thomas Seton (1522), John Usher (before 1526), and Brian Higden (1539).

location of items, occasionally the condition of the item).

1.2 Province of Canterbury:[330]

In order to study ecclesiastical wills contained within the Province of Canterbury records, a comprehensive examination and inventory was conducted to compile a list of all known cases, as it was not feasible to individually study each case. This list has been provided in appendix five, starting on page 398. The investigation has revealed the following findings: six wills of canons during the period of 1450-1499, twenty-nine wills of canons between 1500-1540. Curiously, the final will located within the period is from 1539, and the next surviving will found is that of Robert Perfey, Bishop of Hereford [PROB 11/40/27], which was written in 1558. There are no intervening wills between 1539 and 1558, a nineteen-year gap. Additionally, several more wills were examined from the period of 1500-1540, with all wills surviving from the year 1537 onwards. The vast majority of these are specifically from the clerical role known as parsons. Similarly, from 1537 onwards, the mention of wills of priests as a distinct category can be found within the TNA database. These distinctive patterns are not limited to the wills of clerics but can also be observed when examining judges and justices. For instance, only one identifiable surviving will under the title of judge (in 1493) exists,[331] and no wills under the title of justice from 1450-1499 are discernible in the records held by TNA. However, there are twelve wills of justices from 1500-1540. By including a list of

[330] Clergy and cleric(s) show no results in The National Archives within the period of 1450-1540; the term canon does garner results.

[331] This is the will of Sir Roger Townesende, attached in full in appendix fiveour. This will is rather unique, first in that it is the only located will of a judge within the entirety of the period focused on for this thesis. Secondly, it is of conservable length and includes mentions of revoking prior wills as well as the exact language requested for prays during Townesende's burial (while requesting prays was common, to go to the length of specifying exact wording is distinct to this will).

known P.C.C. wills, further research can be conducted to analyse trends and make comparisons across centuries. For example, there is an increase in the survival of wills of canons when comparing the latter half of the 15th century to the first half of the 16th century, with only six surviving wills in the former and twenty-nine in the latter. The reasons behind this increase, whether it indicates a rise in will writing or better preservation of documents, remain uncertain and require future investigation by the author of this thesis. Other questions that arise include the significant rise in the number of surviving wills in 1537, possibly influenced by events such as Bigod's rebellion and the general attitude towards convert clergymen. Due to gaps in the surviving documents, it is challenging to establish a clear argument regarding fluctuations in the number of wills being written and the rate of their survival. The trends identified in the surviving records raise numerous questions that cannot be answered within the scope of this thesis but merit further exploration in a more extensive project examining geographical and temporal patterns, alongside content analysis. The inclusion of such lists in the appendix of this thesis serves to highlight the many questions that have emerged during this research and direct readers' attention to understudied areas. While these discoveries have generated significant inquiries, the author hopes that readers recognize the value of disseminating this information. A selection of the more distinct have been made available as a transcribed and translated (where necessary) in appendix five. These wills have been discussed at various points throughout this chapter, see for example the prior discussion related to Nicholas Metcalfe, Edward Foxe, William Chapman, Walter Oudeby, John Austell, Richard Lichefield, and William Stevyns.

Having briefly discussed relevant P.C.C. wills and highlighted some developing trends worthy of further study, this chapter shifts to view cases before different types of courts.

4.8 Coming Before the Courts – DL/C/0206:[332]

The following sections consider two London Consistory Court cases in 1515 and 1516. As noted in the previous chapter, these are testimony records and do not retain the questions being asked, merely the responses of the witnesses. Regardless, these two cases outline the type of problems in relation to the wills of clergymen: DL/C/0206 f. 339r-355v, 479v-483r and DL/C/0206 f. 447v-465v. These two cases have not been translated due to their considerable size and difficult nature of the written material, i.e., the depositions contain a significant number of abbreviations, and the handwriting is poor.

1. DL/C/0206 f. 339r-355v, 479v-483r:

This is a case heard from 1515-05-23 to 1516-04-28 between Sir John Tubney c. William Gladman and Richard Stoderd. The plaintiff Sir John Tubney, rector of Stapleford Tawney, sues the defendants Gladman and Stoderd, who are the executors of the will of the previous rector, for money for repairs to church and rectory which (Tubney claims) was neglected by the previous rector.[333] The case is headed *Ex parte Tubney contra Stoderd et Gladman in causa dilapidacionis* or 'On the part of Tubney against Stoderd and Gladman in a case of embezzlement'. Tubney is rector of the parish of Stapleford Tawney, Essex (recently assuming the position: Lee says half a year before); and Gladman and Stoderd are the executors of the previous rector, Master John Savage. From the witness testimony it appears that Tubney is suing to get Savage's executors to pay for repairs to the choir, chancel, and

[332] DL/C/0206 is a Depositions or Examinations Book; Date of Creation: Oct 1510 - May 1516; From Collection: Diocese of London.
[333] DL/C/0206 f. 339r.

rectory that Savage himself neglected to do in the course of his incumbency as rector. Interestingly, there is testimony from building professionals about the work that was required and costs, although the witnesses include someone identified as an "architect" which is atypical. This is a useful case example of how the church's yearly expenditure could be supplement via testamentary proceedings.

2. LMA DL/C/0206 f. 447v-465v

This is a testimony that was heard from the 8th-21st of February 1516 [1517], regarding Sir Robert Chillingham's testament. A dispute between Sir Edward Hikkis and Master John Cherche, Sir John Fyssher, and William Chillingham, administrators of Sir Robert Chillingham's testament, occurred before the London Consistory Court. The legal matter at hand was a dispute regarding the testament (or intestacy) of priest associated with Guildhall college; essentially questioning did he have a will, whom did he name as executor(s), and was he of sound mind when he designated executor(s). This case garnered a rather large set of documents, from 447v to 465v. It is most likely that the problem stemmed from the fact that a written testament could not be located; his brother testifies that he was intestate.[334] Although he also seems to allude to a possible testament that Sir Richard Cooper, warden of the Guildhall, had submitted in evidence. However, no one was witness to its being made. As previously discussed, the importance of two witness or perhaps two witnesses and a priest was essential. While the presence of at least two witnesses is an unshakable component of English law, and indeed the broader *ius commune*; Lyndwood conceded, with regard to the presence of a priest, that it never became the general principle throughout England, although it could be required by a particular (i.e., local) custom.

[334] DL/C/0206 f. 464r.

This is seen in is statement that "Nec requiritur presbyterum parochialem adesse, nisi in loco, quo sit testamentum, sit talis consuetudo …".[335] Furthermore, examples include the first rule outlining a priest's presence in the Salisbury statute of Richard Poore (d. 1237), later to appear in the canons of Canterbury, Durham and Exeter.[336]

Returning to Sir Edward Hikkis c. Master John Cherche, Sir John Fyssher, and William Chillingham, problems include who was named executor, as the original witnesses seem to agree on Sir Richard Cooper; while a second set of witnesses suggest that Sir Edward Hikkis was named executor. Even still, several others were also noted as candidates, including all named in the suit. One request was that Sir Robert was to be buried next to a specific individual, another priest in the college of the Guildhall, who had also yet to die.[337] There is also mention of the custody of a brother, William, who appears to need a guardian; however, this might be a clever strategy employed to demonstrate that he is not suitable as an executor.[338] Crucially, none of the witnesses were present when an actual will was made; rather they were present when Sir Robert indicated his intentions. There is also a concern of whether he had a sound mind at the end of his life, a key component of all testaments. A common defence seen in the York cause papers, for example, was that the testator was not of a sound mind when dictating the will so close to death.[339] The Starkes, witnesses, both testify that his arms and legs were bound because of his unsound mind, and then say that he then moved back into lucidity and named Sir Edward Hikkis as executor, while his brother William testifies that he did not recovery lucidity. The crux of the legal matter was determining if he was of a sound mind, in addition to all of the other

[335] Lyndwood, *Provincale*, p. 174a, a.v. *Probatis*.
[336] Sheehan, *The Will*, p. 180; For a comparative study, see Henri Auffroy, *Évolution du testament en France des origines au XIIIe siècle* (Paris: A. Rousseau, 1899), pp. 443-59, 598-99.
[337] As discussed in chapter four, burial request denotes possible community and fraternal friendships developing within the ranks of the church.
[338] A useful strategy, returning to the ever-present fact that only suitable individuals could hold executorship. Being in the custody of another would mitigate any claims to executorship.
[339] More will be discussed on this point in chapter six.

concerns and challenges such as locating the will. Unfortunately, this case was not to be resolved as only the testimony depositions survive. The value of this evidence cannot be widely applied, as the case did not progress further and as such, only limited weight can be specifically given to this case. Regardless, they nevertheless denote an interesting legal concern for further consideration. Another area of interest to consider is how was Sir Robert Chillingham's testament, despite not being located, already assigned administrators, who could be named in the suit. One supposes that they were named under intestacy laws, although this in itself is not entirely clear. Returning to the importance of lucidity and ascertaining whether one truly was lucid, the matter is difficult to justify. The canonists represent the standard position, with which, in large part, the civilians adopted the same position. The Statute of Wills adopted the capacity requirement based upon its inclusion in the ecclesiastical law which governed wills of personal property.[340] The Statute of Wills adopted capacity requirement, derived from the ecclesiastical law. The ecclesiastical law, in turn, derived its testamentary capacity requirement from Roman law. Although it is difficult to exactly determine the development of testamentary capacity requirement found in ecclesiastical law and its supposed derivation from Roman law. The purpose of the capacity requirement has no specific and satisfactory explanation. Sheehan cites the lack of any sound explanation for capacity requirement or 'sound mind' criteria for the testator.[341] Sheehan is not alone in noting this problem, other such as Reppy and Tompkins' History of Wills,[342] posit that the development of testamentary mental capacity requirements lack satisfactory explanatory basis. The roman law foundation states that testamentum is "*mentis nostrae justa contestatio in id solemniter facta ut post mortem nostram valeat*."[343] The inclusion of the phrase

[340] Holdsworth, *HEL*, vol. 3 (5th ed., 1966) pp. 541-44.
[341] Sheehan, *The Will*, p. 255.
[342] Alison Reppy and Leslie J. Tompkins, *Historical and Statutory Background of the Law of Wills: Descent and Distribution, Probate and Administration* (U.S.A.: Callaghan, 1928) pp. 18-20.
[343] Ulp. Frag. tit. 20; comp. Ulp. Dig. 28 tit. 1 s1, where he has "justa sententia."

relating to the solum mind and soundly made, implies mental capacity. X.20.1.1 notes that an individual has *justa sententia*. Of course, the Roman testament required seven male witnesses of competent age and legal capacity, from which it is assumed that legal capacity refers beyond the permission to make a will but also the mental capacity to do so. These two cases are interesting examples, outlining the nature of testamentary testimony in the London Consistory Court, as well as the relation to academic law as seen through the understanding of the continental and English canon lawyers.

4.9 Concluding Remarks:

This chapter has outlined the nature of clerical wills, demonstrating the trends within certain groups. Most notably, the distinction between city and minster clergy in York provides a unique case example to consider homogeneity. Likewise, with St. Stephan's College the collegiality between canons is evident in their bequeaths and burial locations. While York was only one example, it testifies to the complexity of the institution and its surroundings, the individuals that held such positions and their eventual outcomes. This chapter also considered the nature of higher and more common offices to see if any significant differences are seen in the testamentary practices. To this end, a thorough examination and cataloguing has been undertaken to list all known cases, as it was not possible to study each case individually.[344] This study has located the following: six wills of canons for the period of 1450-1499; twenty-nine wills of canons for the period of 1500-1540 (with the final will of this period being made in 1539, the next surviving will written is not found until 1558 in the will of Robert Perfey Bishop of Hereford [PROB 11/40/27]). Also, in the period of 1500-1540 several more wills survive, especially for

[344] For a full list, see appendix five, starting on p. 396.

the year 1537 onward (specifically in the type of clerical role known as parsons).[345] Likewise, from the year 1537 onward, the mention of wills of priests as a distinct category is found within the TNA database. These distinct trends are not confined to the wills of clerics, seen for example when looking to judges and justices. For example, there is only one identifiable surviving will under the term of judge (in 1493), no will under the title of justice from 1450-1499 is discernible in the records held by TNA. Whereas there are twelve wills of justices from 1500-1540.

By including a list of known P.C.C. wills, it is possible to conduct further research to study the trends and make comparisons across centuries. For example, the increased survival of the wills of canons is seen when comparing the latter half of the 15th and first half of the 16th centuries, where in the former only six wills survive and in the latter twenty-nine. It is unclear if this is an increase in the writing of wills or the survival of documents, this is an area of future enquiry for the author of this thesis. Other such questions include why 1537 saw such a significant rise in the number of surviving wills, perhaps due to Bigod's rebellion and the general atmosphere towards convert clergymen. Due to the gaps in surviving documents, it is difficult to defend any clear argument regarding the fluctuation of the number of wills being written and the rate of their survival. The trends the surviving records provide outline many questions not answerable within the scope of this thesis but warrant a larger project studying the geographical and temporal trends, alongside an analysis of content. The intrinsic value of providing such lists within the appendix of this thesis is to highlight to readers the many questions that have arisen during this research as well as to direct readers to direct readers to as of yet currently understudied areas. While the types of questions these discoveries have provided are significant, the author hopes the reader will see the value in disseminating such information is warranted.

While the above paragraph has noted many questions, the main content of this chapter has

[345] A parson is an ordained Christian person responsible for a small area, typically a parish.

highlighted that while the canonical source regarding the nature of clerical property is complex, the crux of the matter is the difficulty in ascertaining if the property is that of a specific cleric or of the churches, thereby not disposable.

CHAPTER FIVE

LEGITIM

This chapter considers the nature of a child or children's right to receive a portion of the inheritance of movable property form the testator, weather denoted in the will or not. The structure for this chapter is as follows; firstly, considering if *legitim* was a custom or right seen through its development and practice in England, with particular note of the civilian and *ius commune* influence. Following this initial section, consideration is given to the Provinces of York and Canterbury with references to the City of London. This section demonstrates the shift from a national right to a local custom in Canterbury, considering this decline by 1400s and any attempts to litigate on the issue during the fifteenth century. The next focus is on a distinct shift from a right to a local custom in York, which continued until 1679. There are also brief remarks on the City of London as a conceptual third 'Province' within England, given its use of *Legitim* despite being within the Province of Canterbury – similarly to an enclave for bygone rights. Finally, this chapter considers the general trend towards the disuse of *Legitim* and some foreign continuation within the *Ius Commune* of the right.

1) Introduction:

The vast majority of medieval parents, both male and female, wanted to provide for their children through bequests in their wills. While there remains more scholarly studies and analysis to be undertaken on the testamentary powers of widows and daughters; for this chapter, the focus will remain on children's rights. It is abundantly clear "from the wills of artisans, merchants, professionals, church officials, government officials," as well as nobles and gentry that many parents extended this view to

include both sons and daughters as viable heirs to inherit property and chattels.[346] As briefly discussed in chapter three, English parents preserved their testamentary provisions related to their estates, including goods, chattels, money, businesses and in some limited instances land,[347] through the six step phased system demonstrated in chapter one. The most common occurrence was for the male testator, if predeceasing the wife, to name his spouse as sole or one of the executors. For example, in one case study of seventy-five sixteenth-century wills from London, approximately 77% of male testators named their wives as sole executors.[348] Outside London, the percentage raised as high as 90% in some locations, such as late medieval York, Hull, and Beverley; there is also some divide across professions — one case study of a select group focused on noblemen and knights in late medieval England, in alignment with the case study from London, 77% of male testators left instructions naming their wives as executors, furthermore 35% of these individuals named their wives as sole executors(trix).[349] While these case studies outline male testators naming wives as executors, there remains considerable lack of clarity surrounding the rights of those not named executors, namely children in late medieval England. It is to this area that this chapter provides clarity, demonstrated through two examples: (1) *legitim* and (2) implied revocation.

When looking at such relationships between men and women, one set of documents that provides insight into late Plantagenet-early Tudor society exists in the *London Consistory Court Wills*.[350] Within this collection, ninety-four testaments, (from 1514-1520) for the City of London are

[346] Staples, *Daughters of London*, p. ii.
[347] Staples, *Daughters of London*, p. 13.
[348] Jacqueline Murray, "Kinship and Friendship: The Perception of Family by Clergy and Laity in Late Medieval London," *Albion* 20, 3 (1988): 376.
[349] Barbara J. Harris, *English Aristocratic Women, 1450-1550: Marriage and Family, Property and Careers* (New York: Oxford University Press, 2002), p. 129; see also Jenny Kermode, *Medieval Merchants: York, Beverley and Hull in the Later Middle Ages* (Cambridge: Cambridge University Press, 1998), pp. 107-109.
[350] Ida Darlington, ed., *London Consistory Court Wills 1492-1547*; also see Richard M. Wunderli, *London Church Courts and Society on the Eve of the Reformation* (Cambridge, Mass., 1981), pp. 110-115.

housed in the Register Palmer.[351] This register concludes in 1520, the next surviving starts in 1548, making Register Palmer the last record of this type during the reign of Henry VIII. The twenty-eight-year gap is indicative of this period, wherein several gaps in records lead to difficulty making generalisations or studying trends. Within London, there have been several efforts to address these gaps in records, although outside London the gaps are usually worse. Some records were bundled together when efforts to address the gaps in sources were underway in the 1880s.[352] Between these two collections, the period of 1514-1547 in the City of London is relatively accessible, if not slightly haphazard, with a total of 245 testaments.[353]

While some discussion has already been provided on the substantive content of ecclesiastical wills in comparison with layperson wills in chapter four, the history of this record has been noted for two reasons. Firstly, as a source to consider the right of children to receive a share of the estate, even in instances where they were not included in a will. London is one of three locations where the records exist in a somewhat coherent and consistent manner, the other two are York and Canterbury. Secondly, to denote the limitations of source material available. The City of London generated large amounts of testamentary material, and perhaps more importantly – concerned efforts by nineteenth century archivists to make sense of the records. *London Consistory Court Wills* collection is atypical and other material considered within this chapter, and the wider research project, will often be of a more haphazard nature. In essence, there were several available means for which testators could leave inheritance to children, one such example was particularly utilised in the case of underaged children –

[351] The will of Thomas Palmer is from 1492 and his name was used for the register by later individuals.
[352] A collection of individual testaments was bundled together by the Assistant to the Record Keeper of the Probate Registry (George Rodman, 1880s).; Jacqueline Murray, *Kinship and Friendship: The Perception of Family by Clergy and Laity in Late Medieval London*, p. 372.
[353] Murray, "Kinship and Friendship: The Perception of Family by Clergy and Laity in Late Medieval London," p. 372: "Of the ninety-five testaments in Register Palmer, eighty-four are those of priests who died in the Diocese of London, although those of six laymen and two laywomen are also included. Among the separate group 108 laymen, thirty-three laywomen, and eight priests appear. Thus there is information available for a total of ninety-four priests, 114 laymen, and thirty-five laywomen."

Legitim. While legitim and revocation are interconnected, consideration will begin focused on the history and records of legitim before shifting to revocation and its surrounding controversy.

a.) Development and Use of *Legitim* in English History

i) *Legitim*: What it is and how is it practised?

Legitim is in relation to parent/testator's ability (legally and morally) to dispose of their estate as desired, with the option to share with children. *Legitim* refers to "a child's right to a share of his or her parent's estate and (its opposite) the parent's right to dispose of the estate free from any filial claim except a moral one."[354] This right represents a unique place in English law, having been discussed in nearly every account of English legal history.[355] The right came to England through Roman law (for example D.35.2.3), and is further enforced by canon and natural law, particularly on the moral and spiritual grounds of providing for children (especially underaged children without means of support). Essentially, the church canonized the civilian principle that stipulated that a child had a *de lure* share up to one third in a parent's estate.[356] *Legitim* as a practice began occurring in the early medieval period and continued until the late seventeenth century (1679); however, the concern within the time period of this chapter, focuses on the partial continuance in some localities and

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[354] Helmholz, "Legitim in English Legal History," p. 659.
[355] Examples include Holdsworth, *HEL*, pp. 550-56 (3d ed. 1923); T. Plucknett, *A Concise History of the Common Law* (5th ed. 1956), pp. 743-46; Frederick Pollock and Frederic William Maitland, *The History of English Law Before the Time of Edward I* (2nd ed., 1905), pp. 348-56; J. P. Cooper, "Patterns of Inheritance and Settlement by Great Landowners from the Fifteenth to the Eighteenth Centuries," in *Family and Inheritance* (1976) pp. 192, 225-26; John Baker, "Succession on Death,"in *An Introduction to English Legal History* [henceforth referred to as *IELH*] (Oxford University Press, 5th, 2019), pp. 411-12; the best work on *legitim* is R. H. Helmholz, "Legitim in English Legal History," *University of Illinois Law Review* 1984, no. 3 (1984): 659-674.
[356] *Glossa Ordinaria* X 3.26.16 (Venice 1572) s.v. *Trebellianum*: *Elt multae ipsius leges sunt canonizatae*.

eradication elsewhere.

Litigants or their administrators in the early common law were able to bring forward "a writ, similar to debt, called *de rationabili parte bonorum*, whereby the widow and unpromoted children could claim their reasonable shares."[357] The was in relation to arguing that the testament was a *querela inofficiosi testamenti*, as it did not provide for any children.

ii) Origins in Civil Law and the *Ius Commune*

Legitim continued in many other jurisdictions outside of England, which discontinued its use in the late seventeenth century in favour of revocation cases;[358] in the case of Scotland, it continues into the present day.

ii.a) Roman-Canon History:

The basis for this right is centred in the civilian principle that a child had a *de iure* or right to a share in the estate of their parent(s).[359] With the rediscovery of several Roman legal texts in the eleventh century onward, several works touched on this principle of entitlement of children; however, with variation specifically about the portion of the share for which children should be entitled. One example is the *lex Falcidia* (41–40 BCE),[360] which in part puts in place stipulations

[357] Baker, *IELH*, p. 411.
[358] See for example W. A. Graunke and J. H. Beuscher, "The Doctrine of Implied Revocation of Wills by Reason of Change in Domestic Relations of the Testator," vol. 5, 7 *Wisconsin Law Review* (April 1930): 387-388.; More will be discussed on this point, as well as the rise of case examples later in this chapter.
[359] Helmholz, "Legitim in English Legal History," p. 660, fn. 4.
[360] Jakob Fortunat Stagl, "lex Falcidia," *Oxford Classical Dictionary*. 26 Apr. 2018: https://doi.org/10.1093/acrefore/9780199381135.013.8272

that the designated heir(s) must transfer to a third person (known as *legatum*).[361] Wherein it ordains "that he [the testator] is not allowed to bequest more than three quarters [of his estate], therefore the heir must have one fourth of the estate."[362] While the rights of children were not explicitly stated in the *lex Falcidia*, it was a natural progression as most often the decedent's heir was also his child(ren), so much so that medieval jurists occasionally referred to a child's share of the estate as the so called *quarta Falcidia*.[363] It is from this civilian principle that the early medieval law stipulated children had a *de iure* entitlement to a fourth of the estate, which was to later be expanded to a third under English law (more will be discussed on this in the next section). Under Roman law, children that were disinherited could bring forth a *querela inofficiosi testamenti*.[364] Justinian conditionally expanded the rights of children to a third of the estate (if four or fewer children), and to half of the estate if there were five or more children.[365]

This was to be recognised and enforced through several works, the most influential of which were the *Decretum Gratiani* (c. 1140) and Pope Gregory IX's *Decretals* (1234). These two compiled works were to form the basis for any interaction with *legitim* throughout the majority of European Christendom for the late medieval period.[366] Medieval commentators wrote at great length on *legitim*, summarised in one example (taken from Hostiensis, d. 1271), quoted in *Lectura Super Quinque Libros Decretalium* by Panormitanus, that while the majority of testamentary law could be justified through local custom or to individual testator choice, however "in the legitim

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[361] Max Kaser, *Das römische Privatrecht*, 2nd ed. (Munich: Beck, 1971), pp. 756-57.
[362] Gai. I. 2,27.
[363] One such use of this term can be seen in Antonius de Butrio, *Commentaria in Libros Decretalium* (Venice 1578) X 3.26.18, nos. 7-18; Helmholz, "Legitim in English Legal History," p. 660-61.
[364] Helmholz, "Legitim in English Legal History," p. 661, fn. 8.
[365] Nov. 18.1.
[366] *Corpus Iuris Canonici*, X 3.26.16, 18, cols. 544-45 (volume 2, Emil Friedberg ed., Leipzig: Bernhard Tauchnitz, 1881): "*In bonis patris, matris et aviae habet quis debitum iure naturae, in qua gravari nequit; et filius, rogatus de restituenda hereditate sub conditione, detrahit debitum iure naturae et Trebellianicam , in qua computantur fructus post litis contestationem percepti*."

[the child] could in no way be injured."[367] There are several canonical justifications for *legitim*, such as piety, equity, and natural law.[368] While each justification has its benefits and proponents, the most prominent was to consider *legitim* as a component of natural law. Fathers were therefore bound *ex lure naturae,* or under natural law, to provide for their children which extended to their death, especially to children under the age of maturity without the ability to provide for themselves. The *Glossa Ordinaria* states that "*nota ergo quod quartarum alia est debita iure naturali*," meaning note therefore that the other quarter [of the estate] is due to the law by the natural [to provide for children].[369]

The enforcement of *legitim* was more complex, as it presents concerns for testamentary freedom of the testator. More will be discussed on this topic in the late medieval English context: however, under medieval canon law any potential right that allowed for a child to set aside the testators will inevitably raise many questions and problems.[370] There exists several conditions upon which an action of *legitim* cannot be brought forth, including physical assault by a son upon his father and a daughter marrying without consent or against the wishes of the father.[371] Both of these demonstrated "vice of ingratitude" or *vitium ingratitudinis*, wherein the testator may legally disinherit children without concern for *legitim*.[372] These limitations on *legitim* were not universally accepted and were often debated. Hostiensis, for example, writes on

[367] Panormitanus, *Lectura Super Quinque Libros Decretalium* X 3.26.16, no. 71 (Venice 1581). The text reads: "In legitima enim gravari non potuit ullo modo."; Helmholz, "Legitim in English Legal History," p. 661, fn. 14.
[368] For more on the justifications, see Helmholz, "Legitim in English Legal History," pp. 661-62, fns. 15-17; Richard H. Helmholz, *Natural Law in Court: A History of Legal Theory in Practice* (Harvard University Press, 2015), p. 54.
[369] Decretales Gregorii IX, *Glossa Ordinaria* X 3.26.16 (Venice 1572), marginal gloss s.v. *Trebellianum*.
[370] See Helmholz, "Legitim in English Legal History," p. 663 for an interesting example of how complex this matter is. One example is if the father entered a monastery, what right did a child have to *legitim* and set aside the testator's will. Canon and civilian jurists disagreed on this specific example, and many wrote about it.
[371] Although, as will be demonstrated later, in regard to *legitim* being void through marriage was especially contentious.
[372] Hostiensis, *Summa Aurea* (Venice 1574) IV, *de matrimoniis*, no. 27: "[Q]uicquid leges dicant, incurrit tamen filia vitium ingratitudinis nisi voluntati patris consentiat, et propter hoc exhaeredari posset."

the example of a daughter marrying against the father's wishes, that "... *et propter hoc exhaeredari posset*," meaning that the daughter could and/or may be disinherited.[373] This language points to the complexity of disinheriting children and is further complicated by the idea of compulsory inheritance.[374] Building upon this discussion, medieval (and modern courts) understandably question what the point is in having such a right when it is so seldom claimed? It could be argued that limited claims demonstrate that these rights are not 'abused' and are retained and used only in the most egregious cases of unjust disinheritance. In the following section on English cases, the frequency of *legitim* claims will be discussed, as well as the geographical breakdown of such claims between the two Provinces of York (until 1679) and Canterbury (until c. 1375), alongside the City of London.

While the problem of providing for children was widely accepted, significant disagreement over the particulars can be seen between canonists and civilians. Michaelem Crassum, wrote in his *Tractatus de Successione* (1581) several examples of types of continental disputes over *legitim*.[375] While Crassum is writing predominantly focused on select countries in Europe, his work holds true for broader discussion throughout continental Europe. His work was prefaced by the statement "*Haec materia legitimae iucunda, utilis, et in foro frequentissima est*."[376] While this may be dismissed as an attempt by Crassum to market his treatise for the wider reader, it denotes that *legitim* was an essential

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[373] Hostiensis, *Summa Aurea* IV, tit. *de matrimoniis*, no. 27 (see transcription in immediately preceding footnote).
[374] This draws upon the canonized civilian principle relating to the de lure share that a child had a right to receive. For more see *Glossa Ordinaria* X 3.26.16 s.v. *Trebellianum*. The church drew upon many Roman sources including Inst. Just. 2.22; Dig. Just. 35.2.3; Code Just. 3.28.36.
This topic of compulsory inheritance is not confined to the medieval period neither exclusively to England, for example in modern Scots law there is considerable debate surrounding the idea that very few members of the public are aware that even if they leave all their property by testament in a way that disinherits a spouse/issue, that person will nevertheless have such a claim.
[375] While Crassum's treatise was completed in 1581, the 1584 edition will be cited; In English his work is roughly translated as *A treatise on succession as well from testamentary and intestate, and other rights of last wills, substitutions, trusts, right of accretion, falcidia, trebellian, legitimate, and all things of the same kind*.: *Tractatus de Successione* (Venice 1584 and 1595).
[376] 'The theme of this work is legitimately enjoyable, useful, and is the most common on the market.'; For more see Helmholz, "Legitim in English Legal History," p. 662, fn. 19.

topic for the sixteenth century testator, and well known hence its inclusion. Crassum discusses whether *legitim* applied after the physical or 'legal' death of the testator, using the example of if the father had entered a monastery, as under civil law the physical death of the father was the exclusive path to claim *legitim*. Some canonists held that a father entering a monastery was considered a 'civil death' wherein the children could claim *legitim* while the father was physically alive.[377]

One particular topic widely discussed by fourteenth-sixteenth century jurists was whether a statute or custom could affect *legitim*. Crassum writes the "*Maxima quaestio est, una de difficilioribus quae sit in lure . . . ita quod asserverat Socinus circa veritatern huius quaestionis Doctores pugnasse a ducentis annis citra*."[378] While various arguments were suggested, one being that *legitim* was a right under natural law and therefore could not be affected by custom or statute; whereas others held that as imperial constitutions had granted the right under civil law, and they were essentially statutes, they could be removed or altered by statutes.[379] This would then be further debated as the statute was a declaration of the natural law principle, and each subsequent point had rebuttals.

One dispute of particular importance is conditional *legitim* and its relation to the basic necessities of life that parents were inheritably and unquestioningly meant to provide (*alimenta*). On this point the continental jurists and Roman sources were especially divergent in regard to providing support to children that did not require support to live; i.e., should wealthy children be able to receive legitim, as the testator did not include them in the will and they had no need of support. Many jurists were in favour of maintaining the testament and not allowing legitim for children, as any goods of the estate should instead go to pious bequests.[380] If support for the basic necessities of life (*alimenta*) was

[377] Helmholz, "Legitim in English Legal History," p. 663, fn. 26.
[378] Michael Crassus, *Tractatus de Successione* (Venice 1584), Quaest. 42, pr., pp. 386-387. Note that page 386 is mislabelled as 486, this is a clerical error.
[379] For more on these discussions see Helmholz, "Legitim in English Legal History," pp. 663-664, fns. 28-30.
[380] Helmholz, "Legitim in English Legal History," p. 664.

lacking in a given instance, the debate shifted to question if *legitim* resembled the right to *alimenta*.[381] The distinction laid between the division, *alimenta* held a test whereas legitim was based on a share of the estate (either half, a third, or fourth).[382] The eventual consensus reached among medieval jurists was that statutes or local customs "might validly diminish, but it could not entirely abrogate, the child's right."[383] While this theoretical debate between the medieval jurists reached a conclusion, the practical implications were not yet addressed in the courts. However, through several decisions of the Roman Rota, the consensus of the jurists was affirmed: Antonius de Butrio (1338-1408) states how following the decisions of the Roman Rota it became the accepted decision and that "the opinion [decisions of the R.R.] has always been to my liking."[384] This decision, that a statute or local custom may diminish but not distinguish was affirmed and became the standard for canon law: "*Nos igitur, eiusdem cardinalis sententiam* exigente iustitia promulgatam *ratam habentes, ipsam auctoritate apostolica confirmamus*."[385]

Having outlined the development of the canon law approach to *legitim*, considerations were naturally shifted to the practical. If a testator had several children for example, disinheriting one for the vice of ingratitude,[386] should the estate be divided based on the assumption that the testator had all the children or one less child (as if they were not his child). The main point being would the existence of a child, even if disinherited for valid reasons, affect the shares of other children, despite not

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[381] Crassus, *Tractatus de Successione*, Quaest. 42, pr.; Panormitanus, *Commentaria*, X 3.26.16.
[382] For more see Helmholz, "Legitim in English Legal History," p. 664; Helmholz notes the loose semblance to some of the provisions within the English Inheritance (Family Provisions) Act of 1938 - for more on this act, see Anon, "Provision for Dependents: The English Inheritance Act of 1938," *Harvard Law Review* 53, no. 3 (1940): 465–72; In essence, the 1938 Act provided the surviving spouse and dependent children the right to apply to the court for maintenance from the estate, without overruling the terms of the will.
[383] Helmholz, "Legitim in English Legal History," p. 664; Panormitanus, *Commentaria*, X. 3.26.16: "quod potest diminui non autem in totum tolli quia esset contra equitatem naturalem."
[384] Antonius de Butrio, *Commentaria in Libros Decretalium* X 3.26.17, no. 23: "Et ita decidunt domini de Rota et semper mihi placuit haec opinio." & X. 3.26.18, nos. 7-18.
[385] X 3.26.16, 18.
[386] See Hostiensis, *Summa Aurea* IV, tit. *de matrimoniis*, no. 27; *Decretales Gregorii* IX, *Glossa Ordinaria* ad X 3.26.16, s.v. *legilimam*.

inheriting themselves. Children would be entitled to half the estate if the disinherited child was considered; otherwise, they would be limited to a third of the estate.[387]

Bartolus of Sassoferrato's (1313–1357) testament,[388] while it is an Italian example, nevertheless demonstrates (1) the importance of carefully drafting a will, (2) inclusion of provisions for future children or their deaths, (3) ability to implement the testator's wishes despite the rigid testamentary system, and (4) the interaction between local customs and statutes. Bartolus made a will in 1356, in which he distributed many items (the most significant of which are): his wife, Pellina, received the restitution of her dowry, retained clothes and the right to use the family residence in Perugia; his sons were appointed as co-heirs; dowries of equal value were stipulated for all of his daughters regardless of their marriage status (this was not required by statute or canon law, but existed as a local custom); he made instructions should any legitimate sons born to him, they would also be constituted as an heir. He also appointed alternative heirs, should his children die before having heirs of their own, in order to avoid intestacy. If all were deceased, his brother Bonacursius would succeed; Bartolus further directed that if his brother died with only legitimate daughters, one half of Bartolus' estate would go to his daughters, while the other half went to the daughters of Bonacursius. Bartolus' instructions relating to any deaths of heirs, "which favours female descendants, shows that the imperative of patrilineal succession was not absolute. Despite the restrictions imposed on testators by urban statutes, there was room to distribute the remainder of the estate in accordance with the testator's final wishes."[389]

As will be demonstrated, the delicate balance between local custom and statute would be

[387] Helmholz, "Legitim in English Legal History," p. 663; Bartolus would discuss this in more detail in Commentaria at *Authenicum*, *Collatio* iii, tit. *de triente et semisse (Iam quidem)*, no. 9.
[388] Ferdinando Treggiari, *Le ossa di Bartolo. Contributo all storia della tradizione giuridica perugina* (Perugia: Deputazione di storia patria per 'Umbria, 2009), pp. 178-85.
[389] Osvaldo Cavallar and Julius Kirshner, *Jurist and Jurisprudence in Medieval Italy: Texts and Contexts* (University of Toronto Press, 2020) pp. 777-783.

especially debated in the English courts. Having demonstrated the civil and canon foundations, debates, and decisions, *legitim* in the early English context will be studied.

ii.b) Early English History:

As demonstrated in the previous section, with the debates surrounding *legitim* played out on the continent approximately thirteenth to fourteenth century[390] before the principle that a statute or local custom could diminish but not outright abrogate the right, the early English context has remained unclear. Pre-Norman conquest, English succession law for children was generally divided into halves or thirds, to take into account supporting any legitimate children and the whole family. The estate would be divided, both movable and immovable property, into shares. With the increased importance of church institutions, gradually the concept of providing a portion of the estate to be disposed of by testament in the name of the soul for the testator developed. This usually amounted to a third, with the remaining two shares were to go to, by custom, to any widows and then children. This is shown in early treatises such as *Glanvill* (c. 1187–1189), *Bracton* (before c. 1235),[391] and Magna Carta (1225) all of which refer exclusively to movable property; while each had differences in exact amount of share of the estate, provisions for children was an essential component. The earliest of these three treatises, *Glanvill* stipulates that one third of the testator's estate will go to the

[390] Albericus of Rosciate (c. 1290–1360), in his commentary on the *Digest* mentioned to his readers that succession law in general was so widely discussed that he entered an "ocean" with countless works and decisions that made it difficult to "navigate." Even following the decisions of the Roman Rota, *legitim* continued to be widely discussed.

[391] This date refers to the original version most likely written by William of Raleigh who gave it to his clerk, Bracton - who updated material including provisions of 1236. For a full treatment of this topic see Thomas J. McSweeney, *Priests of the Law: Roman Law and the Making of the Common Law's First Professionals* (Oxford: Oxford University Press, 2020).

heir (and the heir alone).[392] *Bracton* notes the right for a portion of the estate to go to any children,[393] while Magna Carta claimed a reasonable part of the estate was to go to the widow and any children.[394]

In the early common law jurisdiction, a writ could be brought to claim a reasonable share of the estate if the testator had not included them in the division of the estate. This writ was called *de rationabili parte bonorum* and applied both to widows and children. Similar to writs on debt, *de rationabili parte bonorum* allowed a suit to be brought against executors which refused to provide a widow or child a third of the movable goods of the estate, after the debts had been paid.[395] By the thirteenth century, testate and intestate succession for movable estates was firmly brought under the jurisdiction of the ecclesiastical courts.[396] The spiritual jurisdiction surrounding the soul and death meant that most questions about testaments and distribution on intestacy were in the purview of the Church courts.

Legitim is divided into three distinct locations and their respective time period: the Northern Province of York (until 1679), the Southern Province of Canterbury (ends 1375/c.1400), and the City of London (abolished c. 1700). The difficulty with identifying *legitim* cases is that the term is rarely used and almost never is it the central matter of the case; for example, in a 1526-28 case[397] heard before the Curia Ebor (highest court at York), the main

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[392] Glanvill, vii. 5 (p. 80); Baker, *IELH*, p. 411, fn. 61.
[393] Bracton, *De Legibus Et Consuetudinibus Angliæ*, G. Woodbine ed. & S. Thorne trans. 1968, II, p. 180 (fols. 60b-61); Baker, *IELH*, p. 411.
[394] c. 18, refers to the 'reasonable parts' of the estate that should go to the widow and any legitimate children.
[395] Baker, *IELH*, pp. 411-12.
[396] For more on this see Helmholz, *The Oxford History of the Laws of England*; For more on the overlap and struggles between jurisdiction, see David Millon, ed. *Select Ecclesiastical Cases from the King's Courts 1272 – 1307* (Selden Society v.126, 2009), p. 1: "While in theory the church's jurisdiction was spiritual and the crown's secular, in practice the two fora were not independent of each other either in respect to the classes of persons subject to each or the subject matters justiciable in each. This was probably unavoidable because the church was not independent from secular life." Many areas of law frequently overlap, including contract, debt, trespass, defamation, tithes, wills and all forms of criminal conduct could have a spiritual aspect, and so come before either forum.
[397] Borthwick Institute for Archives, GB 193, CP.G.444. Appendix three, starting on p. 354.

consideration was for a disputed legacy. While there is no deposition or sentence within the records, it has libel, although the outcome is unknown. This is typical within the records, hence why this is an under researched area as each case needs to be read before it is known if *legitim* is a consideration.[398] Despite the royal courts withdrawing from the law of succession (only for movables, not land) under Edward I (1272-1307), logically one would expect to see *legitim* cases still occurring before this time within the church courts, through the use of canonized Roman law, before succession for movables was firmly under the common law's jurisdiction. Helmholz particularly notes that

> [w]hen one looks at the records for answers to questions about actual enforcement, it is immediately apparent that the records leave much to be desired. They are much more complete for the fifteenth and sixteenth centuries than for the thirteenth and fourteenth, so that conclusions are surer for the later period than for the earlier. They are also unlike modem case reports in that they almost never reveal any substantive reasons for the judge's decisions. The historian's conclusions must always remain tentative or rest on reasonable inferences drawn from the accumulation of evidence.[399]

However, in pre-fifteenth century England, it is assumed that *legitim* was known and utilised throughout England. What little evidence remains and has been located, shows several cases in Canterbury, Cheshire, Durham, Hampshire, Kent, Lichfield, London, Sussex, York, and several other locations. Due to the widespread nature, spanning centuries, this supports the conclusion that legitim was a right known throughout England, in effect at one point. It is essential to note that legitim was principally conceptualised as a custom, rather than a statute from the church. This underpinned their assumption that as it was not derived from a statute law, it was not a guaranteed

[398] For example, Borthwick Institute GB 193 CP.G. 18 is a 1503 case before the Curia Ebor reported as a false inventory case. However, *legitim* is a significant component of the debate within this case. Cases like this demonstrate the difficult nature of ascertaining cases where *legitim* is a legal topic (this case generated nearly 30 pages of handwritten reports – there are no direct mentions in the onset of the case, therefore any scholar would have to read a large portion before legitim presented itself).
[399] Helmholz, "Legitim in English Legal History," p. 665.

right. Secondly, testators in most locations throughout England were able to have freedom of testation; Helmholz lists this as being in practice "from at least the end of the fourteenth century," while Pollock and Maitland said by the seventeenth century.[400] The evidence definitively shows that in southern England, *legitim*, was not in effect and therefore denied to wives and children, enabling testators to dispose of their estates freely. It is evident from the little surviving records, that with few exceptions, children rarely enjoyed the right of *legitim* post-1400, save in two locations – northern England (under the control of York) and the City of London.

The nature of *legitim* as a custom, albeit throughout England, was an almost completely accepted fact: there is one known case of a potential challenge that might have attempted to prove that it was a right given by statute, however this was not decided in a court and was merely remarked as a possible approach that could be taken. *Waleys c. Waleys*, is a 1306 case in Canterbury, which suggested that the *lex Falcidia* might be an argument that legitim was given by statute and not custom; although it is unclear if the author was referring to the respective rights of the executor and/or heir, and might not have meant in respect to the rights of children.[401] However, little weight can be placed on this case, given the quantity of examples that cite *legitim* as a custom of England. These examples are found throughout England stating: "according to the custom of England";[402] "*de iure vel consuetudine anglicana*";[403] among several other examples. Contemporary understanding of *legitim* was as a custom in this earlier period. William Lyndwood wrote in respect of the *legitim* portion of the testator's estate that "recourse should be had to the custom of the place" and that "a general

[400] Helmholz, "Legitim in English Legal History," p. 665; Frederick Pollock and Frederick Maitland, *History of English Law before the Time of Edward I*, (Cambridge: Cambridge University Press, 1924), 2 vol., p. 349; Helmholz is more accurate, as Pollock and Maitland were unable to seriously consult the ecclesiastical records.
[401] *Waleys c. Waleys*, Lambeth Palace (London) MS. 244, fol. 49r; Jakob Fortunat Stagl, "lex Falcidia".
[402] Bonn c. Felingham (1306), Lambeth Palace (London) MS. 244, fol. 17v: "*terciam partem bonorum dicti defuncti ipsam dominam Johannam iuxta consuetudinem anglicanam existentibus liberis*."; For more on these early cases, see Norma Adams and Charles Donahue, Jr. eds. *Select Cases from the Ecclesiastical Courts of Canterbury c. 1200-1301* (vol. 95 Selden Soc. 1981) pp. 138-39.
[403] Borthwick Institute for Archives GB 193, D/C H 1/2, fol. 112/I (1365).

custom of any province, and likewise of any city, territory, or place. The custom of the location or region is to be attended to diligently."[404] While the customary nature of *legitim* was seen throughout England, this was not to last, as shown by Lyndwood who denotes it as a local custom. Between the earlier case examples from 1306 and 1365 in Canterbury and York respectively, by the time of Lyndwood writing in c. 1410-20, the nature has shifted from an English custom to a strictly local custom. It is to this development that will be focused on, seeking to understand this change through case examples. As Canterbury was to put an end to the use of legitim, the last known case in 1375 – generally assumed to have abated by the latest 1400, York will provide majority of the case material. This point reflects the wider decision to consider the fifteenth and sixteenth centuries as they provide insight into local customs that had become extinct in other locations in England.

ii.c) The Gender Divide:

Throughout England, sons and daughters frequently were provided support from the estate which contained conditions. Throughout the *London Consistory Court Wills* collection, various stipulations were placed in testaments for "children of both sexes to use their inheritance to support relatives, to pay debts, or to use their inheritance in a pious manner."[405] The gender of the testator statistically held some distinction for the inheritance of children,

> Fathers more equally left real estate to their children of both sexes than mothers did, and likewise left legacies of both types of property … more equally to their children than mothers. Both parents favored their daughters as recipients of movable property.[406]

[404] Lyndwood, *Provinciale*, p. 178, s.v. *defunctum*, also see p. 172, s.v. *consuetudinem patriae* for more on the local custom of *legitim*.
[405] Staples, *Daughters of London*, p. 62.
[406] Staples, *Daughters of London*, p. 63.

While these claims are exclusively related to London, it is clear that gender of children and of the testator did impact the types of inheritance received.

Another example of the types of conditions placed in a will can be seen in the following testament of John Yardley:

> *John Yardley. 1504*. I John Yardley of the parisshe of Sanct Laurence, [Essex], bequeth my soule to God and to Our Lady Sanct Mary and to all the holy company of hevyn, my body to be buried in the church of Sancte Laurence. I bequeth to the hye aulter for my offerynges and tithes necligently forgoten, 3 shepe, for my fordrove 2 shepe. I bequeith to Agnes, my wiff, Byknaker with 105 shepe also 20 kyne, Cane with 200 shepe or ellis 10 *li*. I bequeth to John, my eldest sone, Estnewland full storyd. I will that the incresyng therof to fynd my 3 children with the lond of my eldest sone, also I will that John Denby, myne executor, receyve thes 3 children att Michelmes next comyng, also that the said John Denby take possession of Estnewland at Michelmes next to the behof of my eldest sone till he be of 20 winters of age. I bequeth to William my sone, a tenement with thappurtenaunce callid Nocke lying in Layndun if my sorender may stond, and if my sorender may not stond than William have of the said Nock 40 marke. I will that John Denby receyve this 40 marke to delyver the said William at 20 yer of age. I bequeth to Thomas, my sone, 20 marke at the age of 21 yer, to my doughter Jone, 10 marke, to Agnes, my dowghter 10 marke, to my yongest doughter 10 marke. I will that if any of my daughteris dey or they be maried that iche of them be others heyres. I bequeith to the child that my wif gois with, if it be a dowter 10 marke, if it be a sone 10 *li*. I bequeith to a prist to syng for my fader and moder and for me for a yer 10 marke, also to a prist to sing 5 masses 20*d*. The residue of all my goodis I gyve to my executours to be disposed for the helth of my soule or ellis to such thynges as is necessary and my executours to have ech one 20*s*., and my oversear as myche. I ordeyn my executours Agnes, my wif, and John Denby and Sir Henry Crosse to be oversear.
>
> [Proved 24 Sep. 1504 in the presence of John Wyman, official of the Archdeacon of Essex. Note below in the handwriting of T. Gotson that will and probate were exhibited in the Consistory Court of London and registered 24 Jul. 1517.][407]

This testament notes both the conditions, in that the son would not receive the money until of twenty-one years old. It also outlines that John Yardley left specific provisions for his pregnant wife, and the value of the estate to be provided was conditional upon the gender: ‘10 marke’ if a daughter, or ‘10

[407] No. 41, f. 22 'Register Palmer: Nos. 41-95', in Ida Darlington ed., *London Consistory Court Wills, 1492-1547*, p. 26.; The timeline listed between when the will was written and proved in 1504, exhibited in court and registered in 1517 - this is presumably when his son came of the stipulated age (21).

li' if a son. Another typical form of restrictions testators could place on children was to specify "that an heir inherit indirectly in tail or for life, or inherit second, third, fourth, and so on, in the line of succession."[408] For example, John de Bricheford (1335) stipulated in his testament that a tenement was to go to his son Henry following the death of his wife (Alice); following Henry's death, the tenement reverted to Thomas (John's second son) and any heirs Thomas had [remainder in tail], it was then to revert (in the third instance) to John's brother Osbert.[409]

These examples were utilised to demonstrate the complex context in which children might attempt to assert their right of a share of the inheritance.

ii.d) A Unique Case:

Within the *London Consistory Court Wills*, only in ten testaments were close living relatives other than the wife or children named as executors.[410] In 1544, Thomas Hollton or Alton, appointed his father executor, over his living spouse or child of legal age.[411] Here lies the will:

> *9 Nov. 1544*. I Thomas Hollton bequeth my soule to Almyghty God to whom I gyve thangkes for my creation and most spetially for my redemption thorowgh His Most Blessyd Holy Pressious Bloud, my body to the Chrystiane buryall of S. Andrew Hubberd unto the whiche hegh autor I gyve my rynge of sylver and gylte. I wil to Annes Alton, my mother, 5 powndes sterlyng, to my brother, John Alton, 4 *li*., to Elyzabeth, my sister, 40*s*., unto Mary Alton, my syster, 40*s*. and the leyst chyste, to Robert, my brother, 26*s*. 8*d*., to my father in law 10*s*., to my mother in law 10*s*. I gyve unto Alys, my wyff, fyfftie shylienges and a coberd and the greattest chyest, to John Caro and his wyf 3*s*. I make my father, Cornelyus Johnson, and

[408] Staples, *Daughters of London*, p. 81.
[409] Reginald R. Sharpe, *Calendar of Wills Proved and Enrolled in the Court of Husting, London, A.D. 1258-A.D.1688*, vol. 1 (London: Corporation of the City of London, 1889-90), pp. 406-07.
[410] Murray, "Kinship and Friendship: The Perception of Family by Clergy and Laity in Late Medieval London," p. 377: see fn. 51 which outlines the exact break down of all ten cases - (1) father, (1) mother, (1) brother, (2) sisters, (1) brother-in-law, (1) cousin, (2) kinsmen.
[411] No. 206 [bdle. II. 36], "Separate wills: 1544-47 (nos. 200-45)," in Ida Darlington ed., *London Consistory Court Wills, 1492-1547*, pp. 125-150; The will is endorsed 'Thomas Alton', although it appears this was a mistake.

> Garred Gyllys, my exsecutors and gyve to yche of them 7*s*. to see my debttes payd and thys my wil performyd. The resydew of my godes to be gyven in dedes of charite to the helth of my sowle and to the glory of God. Amen. Wytnessys John Caro, Mary Alton and Thomas Grene, clerk, and person of S. Andrew Hubberd.[412]

While there is no mention of children, this case warrants inclusion within this chapter due to the possibility that children could also be passed over, thereby not receiving the required third of the estate. English customary law held that legitimate children could claim *legitim*, to do so they simply had to bring a case to that effect against the executor, which executor would have to administer the estate so as to conform to the judgement of the court in respect of the claim to the *legitim*.[413] Distribution of the *legitim* is treated above legacies out of the portion of the estate for the defunct's movables which could be disposed of by testament.[414] This would occur after the *legitim,* and any other related forced heirship provisions had been met. The only basis of the claim of a child in such circumstances, regardless of age, was that the child was legitimate, had not been provided for in the will, and in some instances did not have sufficient means to support themselves. Generally, the right of legitim for surviving spouses and children is treated interchangeably, hence why this case is one example in which children might be removed from their typical role as heir(s) and executor(s). It is from this topic that leads into another and interrelated area of law in which the rights of children were frequently brought into debate — revocation.

iii) Revocation:

Legitim was not the only significant concern within children's succession, another was implied

[412] No. 206, "Separate wills: 1544-47 (nos. 200-45)," in Ida Darlington ed., *London Consistory Court Wills, 1492-1547*, pp. 125-150.
[413] Joseph Dainow, "Limitations on Testamentary Freedom in England," *Cornell Law Quarterly,* vol. 25, no. 3 (1940), pp. 341-43.
[414] Dainow, "Limitations on Testamentary Freedom in England," p. 343. Also see Pollock and Maitland, *The History of English Law*, vol. ii, chpt. vi, § 3.

revocation, primarily utilised to provide for new-born infants left out of wills. Within this chapter, implied revocation is meant in relation to inofficious wills and children's rights. Implied revocation refers to revocation by inconsistency of a will; under modern law, this typically occurs when the testator has a will, and then executes a new will that has no clause revoking the former will, and the new will is inconsistent with the former will.[415] The inconsistency between the wills impliedly revokes the former will. English law had a significant historical foundation to base the implementation of implied revocation: such was the importance of this right under the civil law that in his 55 B.C.E work, *De Oratore*, Cicero (106–43 B.C.E.) wrote: "For who is it that would seek to inherit under this will which the father of the family made before his son was born? Nobody; because it is agreed that a will is broken through lack of knowledge."[416] While *De Oratore* is a rhetorical-philosophical text, it is evidently based in Roman law; not least demonstrated by the author, who was known for his legal knowledge. Gaius, II. 138 provides the foundation for Cicero's treatment of implied revocation (or at least what is called implied revocation in modern law):

> If after making his will a man adopts as son either a person *sui juris* by means of the people (*in comitia*) or one subject to the power of an ascendant by means of the Praetor, his will is inevitably revoked as it would be by the subsequent birth of a self-successor.[417]

By this statement it is meant that a revocation of an existing will is inevitable under Roman law, as any new-born sons or adopted sons are considered self-successors. It is through this principle of inevitable revocation, that a consensus regarding implied intention towards dividing an estate would

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[415] Graunke and Beuscher, "The Doctrine of Implied Revocation of Wills by Reason of Change in Domestic Relations of the Testator," pp. 387-388.
[416] Cicero, *De Oratore*, I. 241: "*Num quis eo testamento, quod paterfamilias ante fecit quam ei filius natus esset, hereditatem petit? Nemo; quia constat agnascendo rumpi testamentum*"; Cicero further writes on this topic in *pro Caecina* (based on a speech made between 71-69 B.C.E.), c. 25; Both are based off of Gaius, II. 138; Graunke and Beuscher, "The Doctrine of Implied Revocation of Wills by Reason of Change in Domestic Relations of the Testator," p. 388.
[417] Gaius, book II. 138, Gaius and Edward Poste, *Gai Institutiones*.., 4th ed., Oxford: Clarendon Press, 1904.

become common practice. Roman law was not exclusively concerned with revocation on the death of the testator, Gaius provides more examples of testamentary invalidation, such as II. 143, wherein discussion is made upon the "recent" changes "made on the proposition of the late emperor Hadrian":

> if the father is alive when the error is proved, the old rule obtains and the will is in every case avoided; but when the error is proved after the father's death, if the son was passed over in silence, the will is revoked; but if he was appointed heir or disinherited the will is not revoked; in order that carefully executed wills should not be rescinded at a period when reexecution is impossible.[418]

This passage notes the implied revocation available to children, both in infancy and beyond. In English legal history, two distinct aspects occurred that affected children's rights: *legitim* and implied revocation. Within England, contemporaries considered revocation by inconsistency in that a parent should and (ideally) would have written a new will if they were able to (based on the assumption that they died before being able to, or the children was born after the father's death). While disinheritance was possible, shown in the previous notes on "vice of ingratitude," the focus remains on those instances where disinheritance was not justified. The difficulties of disinheriting for marriage under natural and church law will be discussed later with this chapter.

In this instance, inofficious wills refers to the division of the testator's estate intentionally (or unintentionally) which has the effect of depriving descendants of their entitled share under succession law. During the late medieval period, several cases took place related to the more general *portio legitima* of children (and spouses), with a predominantly focus on cases that dealt with intestacy of the parent.[419] While intestacy is not dealt with extensively within this chapter, it is important to make brief remarks that following the death of the testator, any individual that owed debt to the estate, for

[418] Gaius, book II. 143, Poste, *Gai Institutiones*...
[419] Helmholz, "Legitim in English Legal History," p. 667, fn. 42.

all intents and purposes was known as an "impeder" of the administration. These “impeders” affected the administration of any estate, either intestate or testate, in the same manner by virtue of owing things to the estate that was required to be dispensed.[420] Such interference with the administration of an estate, either testate or intestate, was considered a severe offence and could lead to several punishments, the most extreme being excommunication: "*sunt auctoritate concilii excommunicationis sentencia involuti et contra ipsos tanquam ecclesiasticarum libertatum violatores per censuram ecclesiasticam procedi debeat.*”[421] There was additional recourse available, church courts would compel such debtors to pay what was owed, under the threat of excommunication. If excommunication had failed to compel such debtors, recourse could be had to royal courts for further process on the church's sentence. While the societal pressure from neighbours brought about by receiving the court’s censure through excommunication or public penance was a powerful motivator, some brief remarks on the enforcement of the judgements of church courts will be noted here. It is not a given fact that the Church courts were able to enforce the canon law in England, due in part to jurisdictional relations with the secular courts.[422] Church courts had various methods of enforcement and recourse to bring non-compliant persons to the royal courts to compel the individual to adhere to prior court decisions or face harsh punishments, such as the death penalty which the church did not use. Noncompliance was a serious matter for the church courts, although they had to often engage with the secular courts as due to the many areas of overlap, neither the royal courts nor the ecclesiastical courts could keep entirely on ‘their side’ of the issue of probate.[423] One area of

[420] Sheehan, *The Will in Medieval England*, p. 226. For more on this point, see the later analysis of the *Thwing contra Beckinsale* cause paper.
[421] Canterbury Ecclesiastical Suit Roll, no. 140 (1293); This is one example, though this represents the consensus for the seriousness and punishment for those that impeded the administration of an estate through owing debts.; For more examples see R.H. Helmholz, “Debt Claims and Probate Jurisdiction in Historical Perspective,” *American Journal of Legal History* 23, no. 1 (1979): 73.
[422] Richard Helmholz, “Crime, Compurgation and the Courts of the Medieval Church,” *Law and History Review* 1, no. 1 (1983), p. 6.
[423] Helmholz, *OHLE: 597 to the 1640s*, p. 398.

particular interest to contemporaries, as well as many modern scholars, is the issue of debtor and the creation of debtors' prisons.[424] With a variety of court actions and court powers available to compel a debtor to pay a debt owed to a defuncts estate, whether as a result of the exercise of church court powers, or royal court powers, the executor had recourse to escalate the matter by getting a court involved. In this sense, the matter would become more serious as the debtor ended up not just failing to honour a debt but also disobeying a judgement of a court. The courts could then use the powers at their disposal to compel the debtor to pay the debt. If church court powers proved ineffective, the royal courts used their powers to enforce the church court judgement, i.e., most often through forcible seizure of debtor's goods so that such good could be used to discharge the debt.[425]

Due to this classification of a debtor was an "impeder", ecclesiastical courts throughout England did not make any discernible differentiation regarding the recovery of chattels and recovery of any debts owed to the defunct.[426] There are several examples that demonstrate that goods and chattels were considered the same in relation to debt.[427] One example is in *Wynstall c. Wynstall* (1375), which the justice ordered all goods to be restored to the executor that had been held by the testator or owed to him while alive.[428] This case is only one example demonstrating the subsequent trend in the surviving records, as demonstrated in these cases: *Ex officio c. Jakys & Edwardes* (1468);[429] *Chaydok c. Tyldesley* (1502);[430] *Shepard c. Mason & Gretton* (1529);[431] and *Aldred c.*

[424] For a general discussion of the relation between debtors and probate as well as jurisdictional aspects, see Helmholz, "Debt Claims and Probate Jurisdiction in Historical Perspective," *American Journal of Legal History* 23, no. 1 (1979): 68–82.
[425] Helmholz, "Debt Claims and Probate Jurisdiction in Historical Perspective," p. 74.
[426] Helmholz, "Debt Claims and Probate Jurisdiction in Historical Perspective," p. 73.
[427] For more see Helmholz, "Debt Claims and Probate Jurisdiction in Historical Perspective," pp. 71-74.
[428] *Wynstall c. Wynstall*, Canterbury Cathedral Library, Diocesan Act book Y. 1.1, f. 99v: "quod restituat eidem executori omnia bona mobilia que fuerunt dicti defuncti dum vixit." In fols. 102r, 104v, 107v, more discussion is noted in relation to the intestacy of the parent and its effect on children.; See Helmholz, "Debt Claims and Probate Jurisdiction in Historical Perspective," p. 73, and Helmholz, "Legitim in English Legal History," p. 667.
[429] Cambridge University Library, Ely Diocesan Records, Probate Liber B, fol. 33v.
[430] Cheshire Record Office, Chester Archdeaconry Records, EDC 1/1, fol. 7b.
[431] Joint Record Office (Lichfield) Act book B/C/2/3, fol. 51r.

Aldred (1529).[432]

Returning to inofficious wills and implied revocation, this is a topic that would continue with some significance until the High Court of Delegates[433] ruled in the 1681 case of *Overbury v Overbury*[434] that any individual that after making a will has issue and dies without altering their will, was an instance of implied revocation due to a natural inclination and duty parents owed to their issue. However, focusing within the fifteenth and sixteenth centuries, allows consideration of the debates and challenges surrounding implied revocation before this landmark case. Notably, *Overbury v Overbury* explicitly considers the doctrine of implied revocation in civilian terms and openly acknowledged as such by the justices. This case is recorded in the English Reports as "[t]he birth of a child is a virtual revocation of a will of personal property."[435] Further reporting that:

> Upon an appeal before sentence to the *Delegates*, it was adjudged, that if a man make his will and dispose of his personal estate amongst his relations, and afterwards has children and dies, that this is a revocation of his will, according to the notion of the civilians, this being an *inofficiosum testamentum* (a).[436]

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[432] Lichfield Act book B/C/2/3, fol. 68v.; These have all been located by R.H. Helmholz and discussed in several of his works. For a brief overview see Helmholz, "Legitim in English Legal History," p. 667, fn. 42.

[433] The High Court of Delegates existed from 1533-1833, succeeded by the Judicial Committee of the Privy Council which continues to this day.; For more on this, see G. I. O. Duncan, *The High Court of Delegates*, Cambridge University Press, 1971.

[434] 2 Show. K.B. 242; 89 Eng. Rep. 915; TNA - PROB 18/13/8: This is a probate lawsuit concerning the deceased Nicholas Overbury.

[435] 89 Eng. Rep. 915.

[436] 89 Eng. Rep. 915; An extensive footnote follows this case: "A will devising real estate maybe virtually revoked by the same alteration in the circumstances of the testator's family as will revoke a will disposing of personal property, *Brudenel v. Boughton*, 2 Atk. 268. *Brown v. Thompson*, Swinb. 535; and it seems to be settled that the alteration presumed from a subsequent marriage, and the birth of a child, are the only circumstances sufficient for this purpose, *Lugg v. Lugg*, 2 Salk. 592. 1 Ld. Raym. 441. *Eyre v. Eyre*, 1 Peer. Wms. 304. *Brown v. Thompson*, Cases in Eq. 413. *Pullen v. Husband*, 1 Eq. Cases, 413; for marriage alone is not sufficient, Wilkinson's case, 1 Vern. 23. *Wellington v. Wellington*, 4 Burr. 2165; nor even marriage and the birth of children who die in the lifetime of the testator, *Driver v. Standing*, 2 Wils. 88, but as the concurrence of these two circumstances only raises a presumption of the testator's intention to revoke his will, that presumption, like all others, may be destroyed by evidence of the contrary, *Brady v. Cubit*, Dougl. 31. It has, however, been lately determined, that a subsequent marriage, and the birth of a posthumous child, the wife of the testator being *grossement enceint* [heavily pregnant] at the time of his death, is an implied revocation of a will. Mich. term, 34 Geo. 3. 5 Term Rep. 49 to 64. But marriage alone is a revocation of the will of a feme sole, *Hodesen v. Lloyd*, 2 Brown's C. C. 534, and see *Ewbank v. Hattenwell*, 2 Bro. Ca. Ch. 220, 514. *Lawrance v. Wallis*, 2 Bro. Cas. Ch. 319."

This decision became fundamental for English law and is reaffirmed throughout a succession of cases in the roughly the eighteenth century, including *Lugg v Lugg* (1696);[437] *Brown v. Thompson* (1702);[438] *Brudenel v. Boughton* (1741),[439] among several others. Each case reaffirmed the decision in *Overbury v Overbury* while adding their own precedence - for example, in *Wellington v. Wellington* subsequent marriage alone was not sufficient for an implied revocation after the death of the testator, requiring both subsequent marriage and birth of child to meet the revocation threshold.[440] Eventually the consensus was implied revocation of subsequent marriage and posthumous child, with the condition that the testator's wife was *grossement enceint* [heavily pregnant in French] at the time of his death.[441] While this is the eventual conclusion reached in the later eighteenth century, several cases dealt with similar disputes during the sixteenth century - one such example, *Bold v Molineux* (1536) will be discussed as it is a case wherein a posthumous child was born and then dies (after the death of the mother) and questions remain regarding contractual debt.

In essence, the debate gradually became two areas of consideration once the subsequent marriage and birth of child was established, which focused on time. The time that the writing of the testament and when it came into effect as a will; both ecclesiastical and common law courts operated on the presumption of alteration of the testator's intentions or the "tacit condition" attached to the testament that it should be revoked if there is a significant (and often unforeseeable) alteration of

[437] Mich. 8 Will. 3, B. R. 1 Ld. Raym. 441, S. C.
[438] This case is discussed in more detail in Henry Swinburne, *A briefe treatise of Testaments and last Wills* 1743, p. 535: "Lord Keeper held that alternation of circumstances might be a revocation of a will of lands as well as of personal estate, and that notwithstanding the Statute of Frauds and Perjuries, which does not apply to an implied revocation …"; This discussion of *Brown v. Thompson* is not present in the earlier editions of Swinburne's treatise.
[439] For more on this case and its late uses, see 27 E.R. 357.
[440] *Driver v. Standing*, 2 Wils. 88 would alter this with a further stipulation that the two categories of alternation of circumstances were required, but not accepted if they occurred while the testator was living (i.e., the children couldn't be born during the testator's lifetime, as then it would be assumed he choice to not support his children).
[441] For all intents and purposes, this would be the concluding decision in implied revocation, occurring in 1794 (34 Geo. 3).

familial circumstances.[442] This "tacit condition" in English law, similarly to civil law, engaged with the idea that a parent owed an inert and natural love to a child, which was in the form of a moral duty to provide for them. It was due to this duty that English law considered a change in circumstances as resulting in an implied revocation.[443]

iv) Children's Rights Under Natural Law:

Natural law provided the basis for the foundation that parents were required to provide nurture for their children. These legal conclusions were reached under natural law, with lasting implications for support beyond a given child's infancy. This in turn was considered with the possibility that a requirement was placed upon any children to support a parent in certain salutations, such as special need, in a reciprocal nature.[444] As previously noted, the authority of *legitim* was derived originally from a statute in Romanised-canon law, perceived as a national custom, then shifting to local custom; this further demonstrates that the law of English succession (and many other countries) was an area in which locality played a focal position.[445] Helmholz has shown that natural law was ever present even within these countries in which succession law was predominantly mandated by local customs.

[442] Graunke and Beuscher, "The Doctrine of Implied Revocation of Wills by Reason of Change in Domestic Relations of the Testator," pp. 387-392; Elizabeth Darfee, "Revocation of Wills by Subsequent Change in the Condition or Circumstances of the Testator," vol. 40, no. 3 *Michigan Law Review*, (1942): 406.
[443] Dig. 25.3.5.1; Graunke and Beuscher, "The Doctrine of Implied Revocation of Wills by Reason of Change in Domestic Relations of the Testator," pp. 387-389; see: *Cookson v Ellison* (1790) 2 Cox 220, 30 Eng. Rep. 102; *Tolson v Collins* (1799) 4 Ves. Jun. 483, 31 Eng. Rep. 248; *Christopher v Christopher* (1771) 1 Dickens 445, 21 Eng. Rep. 343; *Johnston v Johnston* (1817) 1 Phill. Ecc. 447, 161 Eng. Rep. 1039; *Talbot v Talbot* (1828) 1 Hagg. Ecc. 705, 162 Eng. Rep. 725; For literature see W. Ward, *A Treatise on Legacies: Or Bequests of Personal Property*, (J. S. Littell, Philadelphia ,1837) p. 275 and W. Blackstone, *Commentaries on the Laws of England*, volume 1, (Clarendon Press, Oxford 1765) pp. 434-35.
[444] Helmholz, *Natural Law in Court: A History of Legal Theory in Practice*, p. 53.
[445] Helmholz, *Natural Law in Court: A History of Legal Theory in Practice*, p. 54.

Another aspect of consideration relates to the obligation under natural law to provide support for illegitimate children. Such children already had a difficult life, barred from certain careers and professions, for example illegitimate children could not enter into Holy Orders.[446] The prevailing outcome was that "they took no share of the estate of parents who died intestate leaving legitimate children."[447] While medieval lawyers did not place the fault of their birth circumstances on the children, rather their parents for adultery or fornication, however they still reasoned that it warranted excluding illegitimate children from the vast majority of privileges their legitimate counterparts enjoyed. Illegitimate children were not left completely to their own devices, they still received a duty of nurture and support from their parents. Such leniency was justifiable through natural law, as it drew no distinction between the categories of children, illegitimate or not. The justification was that none would survive to adulthood without support, regardless of category, children being inherently reliant upon parents initially. X. 4.7.5 outlines this adherence with natural law; medieval jurists brought such an obligation to be enforceable by the church courts, which gradually became incorporated into the *ius commune*.[448] With this general duty or obligation to nurture and support children, the next focus was *legitima pars liberorum*, essentially a portion of the parent's estate the child had a right too. While intended for legitimate children, it was rarely used for illegitimate offspring. While the general name was legitim in England, rather than *legitima pars liberorum*, this right of the children and parental obligation was recognized in the Roman civil law: Inst. 2.22; Cod. 3.28; Nov. 18.1, and it was further endorsed by the canon law (X 3.26.16 & 18).[449] However, it is worth noting that the medieval canon law had several opinions on this obligation. For example,

[446] X 1.17.1.
[447] Helmholz, *Natural Law in Court: A History of Legal Theory in Practice*, p. 54.
[448] Helmholz, *Natural Law in Court: A History of Legal Theory in Practice*, p. 54.
[449] Helmholz, *Natural Law in Court: A History of Legal Theory in Practice*, p. 54.

Panormitanus (1386-1445) held the view that this obligation was only part of the positive law.[450] C. Pellegrino arguing that restricting children's rights would go against or was unaligned with the position of both civil and natural law.[451] F. Tortus argued that *legitim* was not due to natural law but to civil law by the recommendation of natural reason (i.e., natural law).[452] The eventual consensus reached was that the children (legitimate and illegitimate) should be provided with goods if the testators assets permitted.

The most common forms of legal debate in litigation were usually confined to two questions; under what conditions or circumstances could parents be excused from this obligation. The second question pertained to whether a custom (local or national) or statute could regulate, reduce it, and to what extent if so.[453] The most common opinion, seen in Joannes Corserius' (active 1392-1416) *Capella Tholosana*, arguing that while statutes could limit or diminish a child's share and the parents' obligation, statutes did not have the ability to eliminate such a right/obligation entirely.[454] The most logical example is seen in if the obligation remains when the child or children are ungrateful. Under Roman law, ingratitude is excusable for such obligations. While the Roman concept of exclusion for ingratitude in part went against the wishes of the church, therefore jurists had to rework the Roman law to work with the church's aims. The simplest example utilised for this conundrum, as Helmholz notes, is in the marriage of children against the parents' wishes. While the

[450] Panormitanus, *Consilia*, Cons. 63, no. 4.
[451] Carlo Pellegrino, *Praxis vicariorum et omnium in utroque foro jusdicentium . . . ac Sacrae Rotae decisiones* (Venice: Franciscum Groppum, 1696), Dec. 116, no. 3: *odiosum legi naturali et civili*.
[452] Flavius Tortus, *Annotationes seu lucubrationes ad statuta inclytae civitatis Papie* (Pavia, 1617) Prael. 105–06: *non debetur de iure naturali sed de iure civili suadente naturali ratione*.
[453] See Charles Reid Jr., *Power over the Body: Equality in the Family* (Michigan: Wm. B. Eerdmans Publishing Co., 2004), pp. 165–74.
[454] Joannes Corserius, *Decisiones capelle sedis archiepiscopalis Tholose (a Joanne Corserio collectae), una cum additionibus additis per egregium Stephanum Auffrerii,... postremoque iterum diligenter limate ac novis additionibus decorate noviter additis* (commonly known as *Capella Tholosana*), Lyon: Venundantur... ab Stephano Gueynard... Impressum... per Johannem de Vingle, 1508, Quaest. 437: Such limitations were put on statutes as if it were possible to entirely eliminate the child's share, that would be "contra omnem legem naturalem. Et ista est communis conclusio de equitate canonica."

church permitted children to marry whomever they wished and was supported under canon law, under Roman law this was clearly ingratitude and justifiable to exclude children's shares.[455] The jurists typically went to painstaking lengths to avoid having canon law be at odds with Roman law, neither did jurists seek to create disorder with families. Therefore, to avoid such legal troubles between the church's teaching on free marriage rights, but aligning with exclusion via inheritance, the two questions were removed and dealt with separately henceforth. This allowed for the exclusion from inheritance for a disobedient child that had shown ingratitude, while still permitting a child's right to marry whomever they selected without interference from parents.[456] Further debates surrounding *legitim* included what to do with statutes or customs that required absolute primogeniture, thereby neglecting the obligation to other children.[457] Legitim was a complex topic throughout the *Ius Commune*, demonstrated by J. Mangilius' treatise, *De imputationibus*, which spanned 730 folios divided into two hundred *quaestiones*.[458] As with every area of canon law, the jurists opinions varied greatly, however the so called *communis opinio* can be stated as such: "[t]he right of children to their parents' inheritance was stronger than the parents' right to dispose freely of their property."[459] Therefore, it is generally accurate to state that firstly, while a statute or custom

[455] Helmholz, *Natural Law in Court: A History of Legal Theory in Practice*, p. 55, fn. 56; Both F. Merlino Pignatelli, *Controversiarum forensium* (Neapoli: Ex regia typographia Aegidij Longi, 1634), Cent. II, ca. 38, no. 14 and O. R. Seraphinus, *Aureae decisiones* (Venice 1615) Dec. 811 uphold the statute as its authority is derived from natural law and has not substantive effect on the marriage. C. Barzius held a contrary position that such marriage should not be permitted between whomever and it was ingratitude; C. Barzius, *Decisiones* (Venice: erede Damiano Zenaro, 1610) Dec. 29, no. 9.

[456] Helmholz, *Natural Law in Court: A History of Legal Theory in Practice*, p. 55; for more on why children could marry without parental consent, is due to the nature that vows between two individuals formulated a marriage – see chapter two, "The Act: The Making Of Marriage In Medieval Canon Law" in M.M. Korpiola, *Between Betrothal and Bedding: Marriage Formation in Sweden 1200-1600* (Leiden: Brill, 2009), pp. 89–148.

[457] For more see José de Sessé y Piñol, *Decisiones* (*Decisiones sacri senatus regii regni Aragonum et curiae Domini justitiae Aragonum causarum civilium nec non criminalium, hac postrema editione recognitus atque expurgatus*, Apud Juntas, 1612), Dec. 26.: [note that while this work focuses on Aragon, its conclusion is that parents were to give a set amount (5s.) to sons in place of *alimenta*].

[458] Joannes Antonius Mangilius, *De Imputationibus et Detractionibus in Legitima Tremellianica … Tractatus* (Venice: Bertanorum sumptibus, 1618); Mangilius was not alone in his fascination with legitim, see for example Claude De Battandier, *Tractatus Liberorum Parentum ac Fratrum … Legitimarum Materiam Continens* (Lyons: Apud Mathiam Bonhome, 1560).

[459] Olga Tellegen-Couperus, "Father and Foundling in Classical Roman Law," *Journal of Legal History* 34 (2013):

could diminish an obligation or right of legitim, it could not take it away completely, and secondly, that despite primogeniture, financial provisions (albeit potentially very little) should always be given to other children. This second point could be achieved either through *inter vivos* or upon the death of the testator/parent – this applied to all legitimate children without gendered discrimination.[460]

iv.a) The Right of Children to a Share of the Estate under English Canon law:

As testamentary jurisdiction was firmly, in the vast majority of instances, under the authority of Church courts, let us look to the canon law to support children. John Baker notes that wills were encouraged by the Church, "even to the extent of disposing of all their movables and thereby overriding the guaranteed shares of wives and children."[461] In such instances, children could only claim a reasonable share if the testator died wholly or partially intestate, "or if a local custom preserved the older principle restricting testation to the deceased's part."[462] It is to this unique matter that this chapter focuses on, the geographical divide between allowing and prohibiting *legitim*.

By 1400 at the latest, the province of Canterbury, with the exception of London as a distinct 'semi-third province', had permitted the entirety of the testator's personal estate to be disposed of by will, while the province of York maintained the old system of proportions of the personal estate being able to devise by testament until 1679.[463] With the inclusion of the City of London in 1724, freedom of testation became universal in England.[464] In 1357 Edward III issued a statute stating "that bishops

p. 135.
[460] Helmholz, *Natural Law in Court: A History of Legal Theory in Practice*, p. 55.
[461] Baker, *IELH*, p. 411.
[462] Baker, *IELH*, p. 411.
[463] Baker lists this year as 1692, however records show *legitim* ceased in 1679: Helmholz, "Legitim in English Legal History," p. 667.
[464] Henry Horwitz, "Testamentary Practice, Family Strategies, and the Last Phases of the Custom of London,

were to commit their responsibilities in this connection to administrators, who were enabled to sue and be sued in the same way as executors."[465] This was to continue throughout the fifteenth and sixteenth centuries until the 1670 and 1685 statutes were passed instructing how administrators were to distribute the estate.[466]

v) Frequency of *Legitim* Cases:

With all cause papers, calculating frequency is difficult as *legitim* is not identified in either York or Canterbury as a distinct form of case. For example, while not expressly stating *legitim* as a concern in *Pye c. Baledon* (1529), it is phrased as invalidation of testaments as '*contra officium pietati*' towards spouses and children.[467] There are several other considerations with regard to late fifteenth to early sixteenth century *legitim* claims, they would occur exclusively within York and London. Originally, London held a distinct place between the two provinces, having a long history of retaining *legitim* even after the practice was abrogated in Canterbury, this was attributed to "the custom of the City of London" rather than referring to the wider English practice as it only

1660–1725," 2 *Law and History Review* (1984) p. 223; Of course, probate of wills and any related litigation was in the jurisdiction of the Church courts until 1857. Court of Probate Act 1857 (20 & 21 Vict. c. 77). Administration of testate and intestate estates' were both under the Church jurisdiction, this was accepted as law despite some conflicting earlier material: Magna Carta, c. 27 and *Bracton*, II, p. 179 are both in favour of church administering intestate estates, argued against Henry I's Coronation Edict (1100 - called Charter of Liberties). *Glanvill*, vii. 16 (p. 89) states that intestate goods were to go to the church, which clearly was not accepted.

[465] Stat. 31 Edw. III, sess. i, c. 11; Baker, *IELH*, pp. 411-12.

[466] Statute of Distribution 1670 (22 & 23 Car. II, c. 10); This was in response to an earlier case heard by the king in 1666. The 1670 statute was to be reaffirmed and made perpetual by the Administration of Intestates' Estate Act 1685 (1 Ja. 2 c. 17); The legitim third for spouses was affirmed in intestate estates, and the portion for children or next of kin was enlarged to two thirds. Baker, in *IELH* on p. 412 notes that a key subsequent reform "was the reintroduction of provision for close members of the deceased's family who had been cut out by will. The extension of free testation had led to the harsh result that widows and children could be completely cut off by their husband or father making a will in favour of someone else. It was over two centuries before the remedy was found."

[467] *Pye c. Baledon*, Borthwick Institute CP.G.444 (1529). Appendix three, starting on p. 354.

continued in the northern province.[468] The history of London and the right of *legitim* is a complex history and it potentially continued the right even after York ceased to in 1679, as it is believed to have been discontinued in London c. 1700, although the exact date is as of yet unclear. However, one such case to demonstrate the continued enforcement of the right is in *Hall c. Walpole* (1486).[469] Wherein this case states that "*terciam partem bonorum iuxta consuetudinem civitatis London*," meaning that a third of the property according to the custom of the city of London was to provide for spouses/children. This is within the backdrop of the province of Canterbury, as the last known surviving case occurring in 1375, it is assumed to have been discontinued by 1400, if not slightly beforehand. This is an example of the exceptionality of London, and why it is considered as almost a 'third' mini province, as the shift from national custom to local custom had no discernible effect, nor any debate as to the right following the abolishment of the custom in Canterbury.

The decline of the 'status' of *legitim* in England, particularly in southern England, is due to the long-held belief without any challenges appearing before the court, which attempted to assert that the right was not a custom but provided by statute. Without such a challenge, *legitim* shifted to a local custom, thereby relocating into an almost purely northern custom. The only known expectation is London, although they also followed the same process of *legitim* as a local rather than national custom.[470] The surprising lack of litigation relating to the right in the fifteenth-century records of ecclesiastical courts is mostly due to the apparent discontinuation and denigration of the

[468] Helmholz, "Legitim in English Legal History," p. 667, fn. 43.
[469] *Hall c. Walpole*, London Guildhall Library Act book MS. 9064/2, fol. 147v (1486); Helmholz in "Legitim in English Legal History," on p. 667 provides the citation material, however the manuscript is no longer held by the Guildhall Library, it was transferred to the London Metropolitan Archives. The new reference number is DL/C/B/043/MS09064/002. This chapter is the only known work to use this new citation, all other references following the outdated Guildhall style.
[470] Helmholz notes the right continued as a local custom in "a few places in the South of England" although examples beyond London in the fifteenth century are indecisive: Helmholz, "Legitim in English Legal History," p. 667.

right to a local custom. The justification behind the previous statement is based that it appears the matter did not arise in practice, although this assumption is based on a lack of evidence rather than direct evidence about less litigation.[471] Within the province of Canterbury, there is little to dispute that no evidence supports that the right continued into the fifteenth century.[472] With few remarks to be made for London, indeed it remains unclear as to the exact date when the right fell from general observance, the records for the northern province of York shall be the focus for the remainder of this section.[473]

While the previous section considered several case examples from the Province of York, it would be inaccurate to present the Southern Province of Canterbury as a location in which children's rights ceased to be a concern. *Legitim* ceased to be used, although various other legal mechanisms were utilised to ensure children were provided with necessary support. For example, within Canterbury John Hull in 1600 was able to leave a residuary legacy to his legitimate children.[474] As one child was sickly, the courts provided ten times the share as was typical due to his sickly nature ("quia est morbosus"), denoting that the church courts did not adopt a heartless stance towards support for children.[475] Through instances like this, it is clear that medieval and early modern canonists, despite debating whether or not customs could abrogate *legitim*, the underlying principle that child that cannot support themselves, their right to a share of inheritance and support should be preserved. However, the nature

[471] See for example, Helmholz, "Legitim in English Legal History," p. 667: "Although this is merely an argument from silence, it is enough to suggest that the custom had died out in most places. The law on the subject was complicated. It should have produced legal disputes. However, such disputes do not figure in the surviving records."
[472] Richard H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge: Cambridge University Press, 1974), pp. 233-35.
[473] Please note that CP.G.444 (disputed legacy, 1526-28), CP.G.365 (false inventory, 1546-47), CP.F.18 (1402), CP.F.163 (widow claiming dower, 1427-29), CP.F.128 (1420), & DC.CP.1563/8 (validity of will, 1563-65) are all of general interest, albeit not directly engaged with in this work.; Other York *inter alia* suits involve the recovery of the child's portion, seen in *Wilson v. Belwoode*, CP.G.365 (1547); *Polyngton c. Polyngton*, CP.G.18 (1503-04); *Clerk c. Executors of Rede*, CP.F.128 (1420); *Holme c. Holme*, CP.F.18 (1402).
[474] Canterbury Cathedral Library, Act book Y.3.2, fol. 361 (1600): While the typical allocation was 10s. (and was given to the three sibilings), the court allocated £5 to Cales Hull (son of John Hull).
[475] Helmholz, "Legitim in English Legal History," pp. 667 & 670.

of discretionary ecclesiastical remedies is difficult to ascertain, given it is unclear how uniformly this was enforced, it does suggest that the intention of support remained.

vi) The Status of Living Male Issue:

One particular case of importance that illustrates the types of litigation that occurred surrounding children and inheritance, was seen in *Bold v Molineux* (1536). While this is not an example of *legitim*, it was a case wherein the existence of living male issue underpinned the division of the estate – in addition to debt (although debt is not the main concern for this chapter). The background to the case was that Richard Bold had married Johan Molineux, daughter of William Molineux. William Molineux issues a bond to the value of £30 to Richard, with the condition that Richard would not be required to repay "if Johan died before the Feast of St John the Baptist [24th June] in 1533 without issue male then living."[476] The matter centred on the wording of "issue male then living," as Johan had a son before dying. However, Johan and Richard's son also died, following Johan's death but before the Feast of St John the Baptist. The question remained if the "the son had to be living at the time of the Feast or at the time of Johan's death, prompting a debate on the meaning of the word 'then.'"[477] While a variety of arguments were put forth by several justices, the most significant is that of justices Fitzherbert and Baldwin. Fitzherbert asserted "that the parties had intended the payment to fail if the son died at any time before it fell due."[478] Fitzherbert stated that "the common practice of all

[476] *Bold v Molineux* (1536) Dyer 14b, 16b; McCunn, *The interpretation of deeds and wills at common law, c.1536–c.1616*, p. 59.
[477] McCunn, *The interpretation of deeds and wills at common law, c.1536–c.1616*, p. 59.
[478] McCunn, *The interpretation of deeds and wills at common law, c.1536–c.1616*, p. 130.

men who give large sums of money with the marriage of their children," with the assumption that "if the issue die, the payment shall immediately cease."[479] Both justice Fitzherbert and Baldwin noted the redundant nature of including the words "then living" if their inclusion was conditional to the time of Johan's death, as the same result would be achieved without them. Therefore, "this interpretation therefore fell foul of the rule that 'in all conditions, a man ought to expound every word that purports a meaning of the parties.'"[480] The final outcome of the case is unclear, while not explicitly linked to *legitim*, the legal focus centres more on the contractual elements, it nevertheless outlines the importance and potential necessity to determine "the intention of the makers and parties" to be expounded upon in order for legal clarity to be maintained.[481] While this case concerns a loan which might become a gift, depending on subsequent events, it is the nature of the subsequent events as a concept that is being intentionally noted here. The clear and direct nature to avoid interpretation of testamentary deeds, as well as intentions, is evidently an area of concern especially with potential more variations occurring into the mid-sixteenth century – this point will be returned to in chapter six, specifically in regard to CP.G.18.

vi.a) Related to *Bold v Molineux*:

Separate from marriage, familiar affection and love was recognised as a consideration for revocation before 1529. Spilman reports this pre-1529 case of John at Stile:

> Note by Broke, that where a man makes feoffees to his use and to his heirs, and dies, his heir

[479] *Bold v Molineux*, Dyer 17b; McCunn, *The interpretation of deeds and wills at common law, c.1536–c.1616*, p. 130.
[480] *Bold v Molineux*, Dyer 14b, 17a; McCunn, *The interpretation of deeds and wills at common law, c.1536–c.1616*, p. 175.
[481] *Bold v Molineux*, Dyer 14b, 17b.

> being in ward, and at full age the feoffees sue an ousterlemain (and not the heir who has the use, for he cannot do so when a man has feoffees in trust), and [the heir] makes a will that his feoffees should make an estate to one John at Stile, his cousin, in fee, and dies, and John at Stile enters and makes a feoffment in fee; it seemed to all the court, except Fitzherbert, that the use in in John at Stile at once after the death of the testator, for there appears a consideration in the will-that the said John at Stile was his cousin-whereby the use should be to him. And it should not be taken for a feoffment in trust127 because, seeing that it appears by his will that he [i.e., John at Stile] should have the land to himself to his own use, therefore the use should be in him before any estate made. For where on consideration it appears that an estate ought to be made, now before any estate made the use shall be adjudged in him. Therefore his feoffment by force of the statute of Richard III shall be said to be good, and no disseisin.[482]

Implied revocation in support of children was subsumed with the general debate surrounding revocation of testaments. John at Stile's case supports the assertion that familiar love was a valid consideration for revocation of a testament. Furthermore, Henry Swinburne wrote:[483]

> ... the testament, which was good at the beginning, is afterwards made void, is revocation of the same testament. For as it is lawful for every testator to add and diminish to and from his testament, and to alter the same; so is it likewise lawful for every person having made his testament, to revoke the same, and die intestate.[484] But no man is presumed to have revoked his testament once made, unless it be proved.[485] Insomuch that if a man do live forty years after he has made his testament, yet is not the testament presumed to be revoked by the course of so long time;[486] though his wealth and substance do greatly increase, yet is not the testament presumed to be revoked.[487]

In that passage the conditional nature and revoking testaments is discussed, as well as highlighting

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[482] Spilman's MS Reports, f. 179a; A. W. B. Simpson, "The Equitable Doctrine of Consideration and the Law of Uses," *The University of Toronto Law Journal* 16, no. 1 (1965): 29; case is undated but pre-1529 as justice Richard Brooke (assuming it is referring to him) died in 1529.
[483] Henry Swinburne, *A briefe treatise of Testaments and last Willes* (1591 edition), pp. 268v-269r.; Modern spelling has been adopted for ease of reading, although the content remains unchanged. The following footnotes are the sources Swinburne cites.
[484] Swinburne citation (1590): Bald. in L. fancimus. C. de test. Mantie. De conject. vlt. vol. lib.2. tit. 15.
[485] Swinburne citation (1590): L. eum qui voluntatem. ff. de probac. Mascard. Tract. de probac. concl. 1280. qui varijs & ampliac. & limitac. hanc conclus. ornavit.
[486] Swinburne citation (1590): Paul. de Castr. Alex. & Iaf. in d. L. fancimus. C. de testa. Quaere tamen Bart. Sing. 183. & Mantic. lib. 6. tit. 3. n. 46. etiamsi prius fuerit testamentum ad pias causas.; meaning "even if there had been a will for pious reasons."
[487] Swinburne citation (1590): Alex. & Iaf. in d. I. fancimus.

the difficulties with which this area of succession dealt with. Swinburne is questioning whether a testator was able to alter their testament at their pleasure and to choose to die intestate if they so wished. The passage, "if no man is presumed to have revoked his testament" means that the testator is considered to maintain their will, unless they revoke their will by one of the following methods: making a new will, revoking by invocation due to circumstances, or to have revoked the will with the intention of dying intestate. A testator could revoke his will by invocation, Swinburne acknowledged this principle of revoking via invocation but followed this acknowledgment by immediately noting that this had to be proven and was not to be taken as evident merely due to a change in circumstances. The temporal considerations of forty years is another difficult matter for English inheritance law, possibly creating conditional testaments that had limits on how long they lasted after being written.[488] In most instances the passage of time did not revoke a will, although the terms of the same passage of time might diminish or adeem over time. In this passage Swinburne is stating that the will is not revoked by the passage of time alone, it must be considered with change in conditions. Swinburne's discussion of the passage of time in regard to this forty-year period is most peculiar, it appears to have its origin in C.6.23.27, which is the *lex Sancimus* of the title *De testamentis* of Justinian's Code. Swinburne cites the following in support of this forty-year period, 'Paul de Castr. Alex. & Ias. in d. L. sancimus. C. de testa. Quaere tamen Bart. Sing. 183. & Mantic. lib. 6. tit. 3. n. 46. *etiamsi prius fuerit testamentum ad pias causas*.'[489] C.6.23.27 makes it so that wills that are created more than ten years prior with a surviving testator do not become void;[490] this was promulgated in 530 CE,

[488] The forty-year period is considered *longissimus temporis praescriptio* in late Roman law. For more on this see Marie Theres Fögen, "Longi Temporis Praescriptio," in *The Oxford Dictionary of Byzantium*, ed. Alexander P. Kazhdan (Oxford: Oxford University Press, 1991).
[489] This can be interpretated to mean the following: "see the comment of Paulus de Castr(o), Ale(Xander Tartagni) and Jas(on de Mayno) on C.6.23.27. Look however at Bartolus' ["Sing" is surely wrong, instead this should read cons.] n. 183 and (Francis) Mantic(a), book 6 tit. 3 n. 46, even if a will in favor of pious causes was done before."
[490] C.6.23.27: We order that where anyone makes a will in accordance with law, and the term of ten years has elapsed since its execution, and no alteration or change of intention by the testator has appeared, it shall be valid. For why should what has not been changed be forbidden to stand? And why should a person who has made a

overriding the prior law in 418 CE (C.Th.4.4.6) that had implemented a fixed term that after creating a will it would be made void by the passage of more than ten years (*si quis condito testamento decennio superstes fuerit et suam non mutaverit voluntatem, quod ante decennium factum est, vacuum remanebit*).[491] By the law of C.Th.4.4.6, a testament would immediately be invalidated when it reach more than ten years old, so long as the testator was still alive. C.6.23.27 altered that law, although it does note some conditions, such as the creation of a second will; most importantly in regard to Swinburne's point, it outlines that under any circumstances, it is not permitted for the will of a deceased person to become void merely due to the fact that the period of ten years from the creation of the will had passed. Returning to Swinburne's claimed forty years, it is not immediately clear where this specific amount of time comes from; while Swinburne does not cite this, it may be that he refers to prescription (*longi temporis praescriptio*). Prescription is primarily concerning the process in which an individual gains possession of a thing they do not own, one condition of which is through the passage of time,[492] specifically the passage of forty years. While some passages of the

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will, and revoked nothing in it, be declared intestate? If, however, in the meantime, the testator is shown to have executed a second will, and it is perfect in all respects, the first one is revoked by operation of law. But where he merely stated that he did not wish his first will to stand, or by the use of other words showed that he intended to revoke it, or manifested such an intention either in the presence of not less than three competent witnesses, or by means of some public document, and the term of ten years has elapsed, the will shall then be void, as well on account of the change of intention by the testator as by the lapse of time. We do not, however, under any circumstances, suffer the will of a deceased person to become void through the mere fact that the period of ten years from the time of its execution has expired, and all former constitutions promulgated with reference to the annulment of wills of this kind are hereby entirely repealed. [Given at Constantinople, on the fifteenth of the Kalends of April, during the fifth Consulate of Lampadius and Orestes, 530.] Taken from S. P. Scott, *The Civil Law Including the Twelve Tables, The Institutes of Gaius, The Rules of Ulpian, the Opinions of Paulus, The Enactments of Justinian, and the Constitutions of Leo: Translated from the Original Latin, Edited, and Compared With All Accessible Systems of Jurisprudence Ancient and Modern*, XIII-XIV (Cincinnati: The Central Trust Company, 1932).

[491] C.Th.4.4.6: Iidem aa. palladio pf. p. ne quis post diem mortis scriptis ante decennium testamentis praestetur assensus, nullisque penitus viribus scriptura huiusmodi tempore antiquata taxetur: praesertim quum, si voluntas continuata perstiterit, brevis mora sit, recentibus vetustatem innovare temporibus. vix enim fieri potest, ut per haec tempora, quae fidei amore contraximus, omnem testium conscientiam mors coniurata surripiat, et revera nefas est, ut antiquae deliberationis ordinatio voluntas postrema dicatur. dat. x. kal. iul. ravenna, dd. nn. honorio xii. et theodos. viii. aa. coss. A. Kriegel & E. Osenbrüggen, *Corpus iuris ciuilis*, Verlag: Leipzig, 1872.

[492] Passage of time is just one of the various conditions beyond mere possession that ordinarily makes up the process of prescription. For more details on this principle, see D. Nörr, *Die Entstehung der longi temporis praescriptio* (Cologne-Opladen: Westdeutscher Verlag, 1969).; The 40-year longi temporis praescriptio became relevant by its incorporation into the *Basilika* (5.2.14, 5.3.7): *Basilika* was a collection of laws completed in c. 892

novel 111.1 (a.541) and novel 131.6 (a.545) highlight the same forty-year period, this is in respect to items belonging to the church and pious institutions, so long as they were not under the *res religiosae* (meaning they are excluded from possession by prescriptive rights). As such, it remains to be seen where the relevance of the forty-year period came from, as there is no immediate link to C.6.23.27 which focuses on ten years, or prescription which uses the forty-year mark. This is an area for future research, which could further delve into the case examples of any such cases.

Returning to the main area of focus that occupied much legal thought of medieval and early modern jurists, was the often-debated legal discussion related to the change in a testator's circumstances, the majority focuses on the birth of children or death of relations which has effect on heirs and/or named executors. This is often framed as revocation of testaments by reason of significant change in domestic relations of the testator.[493] Moreover, the change in the economic status, if the forty-year timeframe is taken as true, would also lead to revocations. Swinburne, amongst others, further notes the difficulties of this argument related to the passage of time and its effect on testaments. Specifically relating to children, Swinburne wrote that

> … the testator, after the making of the testament, have a child born, I suppose that the testament is not presumed thereby to be revoked;[494] especially if the testator did live a long time after the birth of the child, and might have revoked the testament, and did not.[495] On the contract, the testament is sometimes presumed to be revoked, and the will of the testator altered.[496]

AD in Constantinople by order of Byzantine Emperor Leo VI. Fundamentally, the *Basilika* was a continuation of the work of his father, Basil I, to simplify and adapt the Justinian Corpus Juris Civilis code of law issued between 529 and 534, as it had become outdated. The title of this collection of laws comes from Greek: Τὰ Βασιλικά meaning "Imperial Laws" and not from his father's name. For more on the *Basilika*, see F. H. Lawson, "The Basilika," *The Law Quarterly Review* 46 (1933): 486–501.

[493] Graunke and Beuscher, "The Doctrine of Implied Revocation of Wills by Reason of Change in Domestic Relations of the Testator," pp. 387-411.

[494] Swinburne citation (1590): Hoc ita ob desectum patriae potestatis. L. quod dicitur. ff. de lib. & posthu.

[495] Swinburne citation (1590): Mantic. de coniect. ult. vol. lib. 12. tit. 2. in fin. quamuis inspecta iuris civilis dispositione, contraria opinio approbatur. Graft. §. legatum. q. 67. Ripa in L.si unquam. C. de donac. 42. Mascard. de probac. conclus. 1280. n. 153. quae conclusio ampliatur & limitatur per Prat. Tract. reg. & fal. lib. 2. reg. 466. fol. mihi 16. verb. legato.

[496] Swinburne, *A briefe treatise of Testaments and last Willes*, 1590, pp. 269v-r.

The conclusion of this passage notes that in some instances a testament is considered revoked, and the will is altered, in order to support the children. The sentence on if the testator lived and decided not to include the child is a more complex topic. If the child was never included in a testament, it is most often considered to be unjust and against both natural law and local custom to provide for children, as discussed previously. If the child was included in a will and then subsequently removed, this may potentially alter any argument for revocation. This would then shift to arguments regarding if the child was ungrateful or had some justification for their disinheritance, which was in accordance with civil and English law, as noted earlier within this chapter (i.e., "vice of ingratitude"). The arguments for disinheriting children for ingratitude in the English context were more complicated than the Roman, as it would frequently raise additional problems between the common and ecclesiastical spheres of the realm. One such instance that testators frequently sought to disinherit children was regarding marriage. Under medieval canon law, children were allowed to marry against the wishes of their parents, which particularly "presented a hard problem for excusing payment of the *legitim*."[497] Naturally, revocation and *legitim* in this example are intertwined, as there were frequently two sides to the same legal argument.

Swinburne also denotes the implications of revocation in regard to children that were disinherited through

> when the testator, in heat of anger or displeasure conceived without just cause against his son, or other persons to whom the administration of his goods were to be committed, if he had died intestate, maketh his testament in favour of others, and afterwards (the heat of his displeasure being extinguished) they be reconciled; for by this reconciliation the testament is presumed to be revoked.[498]

This example again reiterates that disinheritance was a complex topic in which church and

[497] Helmholz, *Natural Law in Court: A History of Legal Theory in Practice*, p. 55.
[498] Swinburne, *A briefe treatise of Testaments and last Willes*, 1590, pp. 269r-270v.; Swinburne citation (1590): L. filium de inoff. testim. Hier. Franc. in L. quicquid. de reg. Iur. ff. Mantic de conject. ult. vol. lib. 12. tit. 1. n. 25.

common courts took interest.

vii) Formalities of Revocation:

When considering revoking a testament and its potential impacts, both for children and testators, some remarks are required as to the uncertainty in which the legal formalities required to do so. Given that *legitim* was to shift to a local custom, firmly entrenched as such by the 1400s, Lyndwood states that there is "a general custom of any province, and likewise of any city, territory, or place. The custom of the location or region is to be attended to diligently."[499] Despite the local customs, there was a general debate throughout England regarding the exact wording of revoking a testament. By the late sixteenth century, Swinburne also wrote that:[500]

> It is a question appertaining to the Revocation of a Testament not altogether free from doubt, whether a Testament may be revoked by a bare and naked Revocation, that is to say, whether the Testament be sufficiently revoked, when the Testator saith, *I revoke my former Testament*, or, *I will that my former Testament be of no Force*. Many writers are of this opinion, that the Testament is not revoked by a bare Revocation before Witnesses, unless the Testator had added unto his former words, and said, *because I will die Intestate*.[501]

The exact wording for the revocation process demonstrates that uncertainty if a testator would have to be permanently intestate in order to revoke a testament. Evidently some jurists supported this approach - "*quorum opinio multorum testimonio communis est*." In support of this debate, Swinburne

[499] Helmholz, "Legitim in English Legal History," pp. 666-667; Lyndwood, *Provinciale (Seu Constitutiones Angliae)* at 172, s.v. *consuetudinem patriae*; Also see 178, s.v. *defunctum* for more on the local custom of *legitim* (1679).
[500] Henry Swinburne, *A Treatise of Testaments and last Wills* (1728 edition), pp. 509-10.
[501] Swinburne, *A briefe treatise of Testaments and last Willes* 1591, p. 270v.; Swinburne citation (1590): Bar. in L. si iure. ff. de leg. 3. Alex. & alii in L. fancimus. C. de testa. quorum opinio multorum testimonio communis est. Dec. confil. 582. Clar. §. rest. q.91 Graff §. test. q.84. Simo de Praetis de Interp. ult. vol. I. 4. fol. 226. Vasqu. de success. Crea. I.2. §. 15. requisite. 17. n. 62. ubi sic, sicut (inquit) si vas aureum, vel argenteum, vel lureum seceris, deinde iusseris illud insectum sieri, non per hoc insectum siet, nisi manus adhibeas, illudgue fregeris; ita quoque test. &c. Sed Bar. alia ratione nititur, quia viz ex hac voluntate non potest adiri haereditas.

cites sections from the works of Simon de Praetis, Francesco Mantica, Paulus Castrensis [Paul de Castro], Josephus Mascardus, and more generally Baldus de Ubaldis and Bartolus.[502] Mantica (1534–1614) wrote *Tractatus de coniecturis vltimarum voluntatum* (1585), Antonius de Praetis (1510-1602) wrote *De ultimarum voluntatum interpretatione tractatus* (1582) and Josephus Mascardus wrote *Conclusiones Probationum* (Lyon 1584). All of which were influential continental treatises on succession law that circulated and were known to English jurists. Swinburne's citation of such varied works demonstrates the influx of *ius commune* through the continent – this is contrasted with Lyndwood's citation that predominately focuses on earlier medieval canon material and civil law. Swinburne also cites the de Castro's (d.1436/1441) *In Secundam Infortiati partem Commentaria* (Lyon 1583), while this is a commentary on the whole digest, his work is noted as a general foundation upon which Swinburne draws upon. While the majority of sources focus on testamentary law and inheritance, Swinburne also relies upon more general selective works to justify peculiarities of the English law in line with the canon and civil law. Of course, Swinburne is not alone in this fact, although he is perhaps more subtle, others like Lyndwood had to use less circulating *ius commune* works, in favour of directly engaging with twelfth and thirteenth century canonists works and Roman civil law. Swinburne demonstrates the type of engagement with more circulating ideas, from which he could pick and choose, rather than a more direct reliance on Roman civil law. This trend is worth noting as with the progression into the sixteenth century, the material with which canonists were drawing upon were shifting, demonstrating a level of influence from the *ius commune* and common law not as distinct in earlier generations' works. This was not a universal trend, counterexample can be drawn from the common law works, for example William Fulbecke's (1560-1603?) *A Parallele or*

[502] Birke Häcker, "A Case Note on All Souls College v. Cod[d]Rington (1720)," *Rabels Zeitschrift Für Ausländisches Und Internationales Privatrecht / The Rabel Journal of Comparative and International Private Law* 76, no. 4 (2012): 1070.

Conference of the Civill Law, the Canon Law, and the Common Law of this Realme of England.[503] Fulbecke, and many others, were more at ease with the written civil law rather than the ambiguities that characterized English common law. While Fulbecke's work covers many topics, sections seven (*The Seuenth Dialogue Of Deuises and Legacies*) and nine (*The ninth Dialogue of the bailement or deliuerie of goods and Chattelles*) are of relevance. Fulbecke is evidently well versed in knowledge of medieval lawyers, seen in his familiarity with works of Bartolus of Sassoferrato, and fellow sixteenth century French jurists Guillaume Budé (1467-1540) and François Hotman (1524-1590).

While the revocation process demonstrates the surrounding uncertainty if a testator would have to be permanently intestate in order to revoke a testament. While most jurists supported this position, Swinburne further notes that some jurists (and presumably justices based on his citations), were of a contrary opinion:

> … seeming that it is sufficient to make a bare Revocation without any express mention of dying Intestate.[504] And this opinion, in my understanding, is more sound and more reasonable. For whiles the Testator will not have his Testament to stand, it followeth that it is his Will and Meaning to die Intestate,[505] and so the next of kin to be called to the administration of his goods. Besides, it seemeth absurd and unreasonable to maintain a Testament, not only without a Man's will, but even against his Will;[506] at least within this Realm of England, where we do not observe the Solemnities of the Civil Law, this opinion is to be preferred; for even by the Civil Law Legacies are taken away by a simple and naked Revocation;[507] and so be divers testaments; those, I mean, wherein those Solemnities are not necessary; as Testaments *ad pies causas*,[508] or

[503] William Fulbecke, *A Parallele or Conference of the Civill Law, the Canon Law, and the Common Law of this Realme of England. Wherein the agreement and disagreement of these three Lawes . . . are opened and discussed [etc.].,* Printed by Thomas Wight, London, 1601. This work was printed in three parts.; While Fulbecke's work covers many topics, sections seven (*The Seuenth Dialogue Of Deuises and Legacies*) and nine (*The ninth Dialogue of the baile/ment or deliuerie of goods and Chattelles*) are of relevance.
[504] Bald. in l. fancimus. C. de testa. Socin. Jun. ceonsil. 145. Afferens hanc fententiam pluribus & majoris ponderis authoriratihibus confirmatam. Quinius narrat eandem cuilibet fenfato & rationabili intellectui quadrare, & quemlibet Judicum posse ah opinione Bar. Recedere. Cum quo etiam convenit Mantic. de conjuct, ult. vol. lib.12.tit.15. Idem vid. Pap q. 200 & Barb, consil. 60. Vol. 2 & Raph. Cuma in d. L, si jure, non dubitans pronunciare confiderationem Bartoli effe Truffam.
[505] All additions of Swinburne cite the following sources (across the remaining footnotes): Alex. consil. 104, vol.2.
[506] Mantic.d.lib.2. tit.15. n.22.
[507] L.3.ff. de alimen. leg.
[508] Alex. poft. Bald. d. consil. 104.

> amongst the testator's children,[509] or miliary testaments.[510] Wherefore as those Testaments are reclaimed and made void by a bare Revocation; so ought our testaments to be measured with the same line, and to enjoy the Liberty, as well in the Dissolution, as in the Constitution.[511] A Revocation may be by word only, without being expressed in the will or any other writing; likewise Revocations may be by Act and Operation of Law, as well as by Fact or any express terms."[512]

The nature of revocations was evidently a complex area of law, as is evident from the diverse nature of sources Swinburne cites.

An example of the types of limitations children faced can be seen in a later edition of Swinburne's text, although believed to have been true throughout English history. The 1728 Swinburne edition states that within a share "was devised to an infant with interest, but not to be paid till the child come to the age of twenty-one years or was married; the infant dies under twenty-one and unmarried, the portion was decreed to the administrator of the infant."[513] The legal issues seen throughout the following cases denote a lack of litigation or survive of records in the period considered in this thesis. While considering these legal issues from the earlier period, noting that such a case would have been useful but does not occur, so this is the nearest and next best thing. The following section will discuss pertinent issues in children's testamentary rights, albeit through later cases.

An influential case from 1696,[514] *Lugg v Lugg* was reported by William Salkeld

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[509] Alex eod consil. 104.
[510] Vafq de success refoluc. lib. I. § 9.11.7.
[511] Confulas Vafq. n. d. 7. ubi testa. militar. eam ob causam nuda volunate posse dissolvi contendit, quia nuda volunate potest constitui, per L. nihil tam naturale. de. reg. jur. ff. Confulas etiam de hac re Masc. de probac. concl.1282. n. 36. qui has dissidentes foedere conciliare conatus est.
[512] Henry Swinburne, *A Treatise of Testaments and last Wills* (1793 edition), pp. 531-32. The sentiment of this passage is reiterated in several Swinburne editions, see for example the 1591 edition on p. 270v, the 1611 edition on pp. 334v-335r, 1640 edition on p. 176, 1677 edition on p. 438. The exact quote is taken from the 1793 as it is among the most accessible and clearly printed editions. There are minor variations between all editions, but the point is maintained across all editions. Much of what was mentioned here would later be altered following the Statute of Frauds (1677: 29 Car 2 c. 3).
[513] Henry Swinburne, *A Treatise of Testaments and last Wills* (1728 edition), pp. 510, 513-514; This is referring to *Collins v Metcalse*, 1 Vern. 462.
[514] This case is frequently misdated, including 1700, 1795: one example includes Graunke and Beuscher, "The Doctrine of Implied Revocation of Wills by Reason of Change in Domestic Relations of the Testator," p. 390;

(1671-1715) in his work entitled *Reports of Cases Adjudged in the Court of King's Bench: with Some Special Cases in the Courts of Chancery, Common Pleas and Exchequer, from the first year of K. William and Q. Mary, to the tenth year of Queen Anne*. Despite being outside the late medieval period under consideration, it nevertheless clearly outlines that despite having years to write a will to support his children, the presumption of intention allowed children to benefit from the estate despite evidence to the contrary:

> The testator being a single man devised all his personal estate to *I.S.* afterwards he married and had several children, and died without making any other will; it was decreed by the Delegates, that there being so great an alteration both of his circumstances and likewise of his estate, from the making the will to his death, that a revocation might be presumed, and that he did not continue all that while in the same mind.[515]

Lugg v Lugg is a case that mirrors several earlier disputes, as well as highlighting the misconception regarding implied revocation. The most essential aspect to note is that in order for the revocation of the estate in favour of the children, Chief Justice Treby[516] stipulated that the testator is presumed to have changed his mind after changes in his familial circumstances, and thus the court may presume that the testator intended to revoke their earlier will but was unable to do so. This was held to be the case despite there being no direct evidence of this intention by the testator. This case is an example of the two main characteristics considered in the courts, the subsequent marriage and the birth of children. Later authors stipulate that this case is representative of earlier centuries, wherein the necessity of having both subsequent marriage and having children were needed to move forward with implied

several late 19th century-mid.20th century authors misdate this case. Another example is in Joseph Phillimore's *Reports of Cases Argued and Determined in the Ecclesiastical Courts at Doctors' Commons: And in the High Court of Delegates*, vol. 1 (Dublin: J. Butterworth and son, and J. Cooke, 1818), p. 449, although later corrected on p. 468.; These mistakes are often due to the material alongside *Lugg v Lugg* in 91 Eng. Rep. 497 is from that period - the author notes 'The following note, relative to this subject, was taken by the editor' before discussing more contemporary cases.

[515] Swinburne, *A Treatise of Testaments and last Wills* 1728, pp. 512-13.

[516] His full name is Sir George Treby (1643–1700), a Lord Chief Justice of the Common Pleas and multiple times Member of Parliament. For more information see Paul D. Halliday, "Treby, Sir George (bap. 1644, d. 1700), judge and politician," *Oxford Dictionary of National Biography*. 23 Sep. 2004.

revocation. *Lugg v Lugg* referees to *Doe, ex dem. Lancashire v . Lancashire*,[517] wherein this case stated that implied revocation is based on "a tacit condition annexed to the will," and that the testator does not want it to occur as listed in the testament due to change of circumstances with the family.[518] This case also states that "that marriage and children, taken together (though neither of them taken separately was sufficient) did amount to an implied revocation."[519] In *Doe, ex dem. Lancashire v . Lancashire*,[520] Kenyon CJ and Buller J report the distinction between the secular and ecclesisatical courts, with the former following the example of the latter, which utilised the principle from Inst. 2.13.2; however, the common law courts did so without accepting or utilising all components concerning inofficious wills.[521] Essentially, the common law courts conceptualised, as evident through the case law, that implied revocation exclusively resulted from subsequent marriage and a child's birth, and that they were required together in order to demonstrate significant alteration of circumstances within the family.[522] Returning to *Lugg v Lugg*, this case is often seen as decisively demonstrating that "[t]he doctrine of revocation of a will by the alteration of circumstances, is established to extend to devises of lands by" a select group of influential cases.[523] As demonstrated, this principle of significant change via subsequent

[517] *Doe, ex dem. Lancashire v. Lancashire*, 5 T. R. 49.
[518] Henry Ballow and John Fonblanque, *A Treatise of Equity* (Dublin: Byrne et al., 1793) p. 563; *Doe, ex dem. Lancashire v. Lancashire* essentially provides that "[a] posthumous child has equal rights, and is to be considered in the same situation with a child born in the lifetime of the father."
[519] Ballow and Fonblanque, *A Treatise of Equity*, p. 563.
[520] 101 Eng. Rep. 28; 5 T.R. 49 (1792).
[521] 101 Eng. Rep. 28, 35; 5 T.R. 49 at 52, 61; Graunke and Beuscher, "The Doctrine of Implied Revocation of Wills by Reason of Change in Domestic Relations of the Testator," pp. 387-395; T. Jarman and M. M. Bigelow, *A Treatise on Wills*, fifth edition, volume 2 (Boston: Little Brown and Company, 1881) p. 152.
[522] *Cook v Oakly* (1715) 1 P. WMS. 302; 24 Eng. Rep. 399; Graunke and Beuscher, "The Doctrine of Implied Revocation of Wills by Reason of Change in Domestic Relations of the Testator," pp. 387-397; Jarman and Bigelow, *A Treatise on Wills*, pp. 151-52; J. R. Rood, *A Treatise on the Law of Wills: Including also Gifts Causa Mortis and A Summary of the Law of Descent, Distribution and Administration* (Chicago: Callaghan & Company, 1904) p. 241: "It seems never to have been claimed in England that the marriage of a man would of itself revoke his previous will."
[523] 91 Eng. Rep. 497, 2 Salkeld 593; *Brown v. Thompson*, 1 Eq. Ca. Ab. 413.; *Christopher v. Christopher*, 4 Bur. 2171 n. 2182.; *Sprang v. Stone*, Ambl. 721.; *Doe ex dem. Lancashire v. Lancashire*, 5 T. R. 49: "In the last case the rule was extended to the birth of a posthumous child, and the Court were of opinion that the principle is not so much an intention to alter the will, arising from the circumstances happening afterwards, as a tacit condition annexed to the will itself, at the time of making it, that the party does not then intend that it should take effect, if there should be a total change in the situation of his family." 91 Eng. Rep. 497, 2 Salkeld 593.

marriage and birth of child was not static, and this requirement evolved. Several cases exist wherein only one of the factors has altered, and yet were still able to revoke a testament. In addition, the types of estate that could be revoked were also discussed through case examples.

One example can be seen in *Brook v Warde* (1573), wherein the testator had the intention of revoking and altering his will; however, he was married before he could return to his town to revoke the will due to significant change in circumstances.[524]

The matter of whether provisions by will or in other writing for the spouse alone or for after-born children alone, was enough to prevent revocation. In *Marston v Roe* (1838) before the Court of the Queen's Bench,[525] the justices were of the opinion that

> Where an unmarried man, without children …, devises all the property he has … [leaving] no provision for any child of a future marriage, the law annexes to such will the tacit condition that, if he afterwards marries and has a child born of such marriage, the will shall be revoked. And evidence (not amounting to proof of republication) cannot be received in a Court of Law to show that the testator meant his will to stand good, notwithstanding the subsequent marriage and birth of issue.[526]

This case outlines "that a provision for the future wife only and not for after-born children did not prevent revocation by subsequent marriage and birth of issue."[527] This rule was apparently satisfactory, as revocation of a testament by alteration due to marriage and birth of a child would only benefit the child and not the wife, "inasmuch as they alone would thereby become entitled to their intestate share. On the other hand, it has been held that where the will disposed of the entire estate and the testator subsequently acquired property which would not pass by the will, but would descend to his child, this would not prevent a revocation."[528] The case then shifted to discussion over the

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[524] *Brook v Warde*, Dyer 310b.
[525] *Marston v Roe* (1838) 8 AD. & E. 14; 112 Eng. Rep. 742
[526] 112 Eng. Rep. 742.
[527] Graunke and Beuscher, "The Doctrine of Implied Revocation of Wills by Reason of Change in Domestic Relations of the Testator," p. 395.
[528] Graunke and Beuscher, "The Doctrine of Implied Revocation of Wills by Reason of Change in Domestic

reasonable presumption of what changed circumstances would have altered a testator's mind. This further shifts into the focus of interpretation and character of individuals, which a brief note on interpretation will be mentioned below.

Overall revocation is a complex aspect of succession law, one which clearly continued into the modern era, albeit often the history behind its use in English law was misunderstood. For example, Joseph Phillimore wrote that implied revocation of a testament

> arising from marriage and the birth of a child is not mentioned, as far as I am aware, by any ancient text writer upon the law of England as a part of our English jurisprudence; nor, as far as I am informed, was it a part of the ancient jurisprudence of any other country. It is not mentioned as a rule existing in Swinburne's time; nor is it enacted by the statute of frauds, or any other statute.[529]

As this section has demonstrated, the law surrounding implied revocation was discussed and came before the courts in several surviving cases in the fifteenth and sixteenth century. Within these examples, consideration was given towards revocation in instances where subsequent marriage had occurred, the birth of children, or both instances. The records show that implied revocation was not limited to having both, as seen in several other instances noted below. While these debates continued until the nineteenth century, if the lawyers were aware of the earlier cases, it would have assisted their efforts in developing English succession law. Several cases in the eighteenth century are considered important benchmarks in the history of children's inheritance rights (such as *Overbury v Overbury*, *Cook v Oakly*, and *Lugg v Lugg*); however, similar cases were often decided a century or two earlier without as wider acknowledgment, perhaps due to the focus on the concept of local custom.

Relations of the Testator," p. 395.

[529] Phillimore, *Reports of Cases Argued and Determined in the Ecclesiastical Courts at Doctors' Commons: And in the High Court of Delegates*, p. 449; Archer and Ferme, "Testamentary Procedure with special reference to the Executrix," p. 6: matters concerning the making of wills, revocation and interpretation fell within the ecclesiastical jurisdiction.

viii) Interpretation:

Interpretation is a complex topic, hence only short remarks on the nature of interpretation of the testator's intent (presumably to alter the will) will be considered. Elsewhere, "[t]he intentions of a testator were understood differently to those of the parties to a deed. Only the testator's intention had to be taken into account when interpreting a will, but the intentions of both parties were relevant to the interpretation of a deed."[530] However, implied revocation and *legitim* both engage with the topic of a testator's intention. Firstly, it is needed to consider the means by which the testator's intentions were identified. In consideration of both how to identify intentions and the content of those intentions, "lawyers looked at the words of the instrument and the circumstances in which it was made."[531] For succession law, this had to be balanced by presumptions about what a 'reasonable' individual would have intended – which is a unique vintage point to consider societal norms and customs.

ix) Conclusion:

English children enjoyed a distinct era of restrictive and occasionally helpful rights differentiating from previous and subsequent periods. Two essential components were present in English law; those that children could directly use in an attempt to claim inheritance (*legitim*) and those that revoked a will based on implied revocation considerations. These are two distinct doctrines as

[530] McCunn, *The interpretation of deeds and wills at common law, c.1536–c.1616*, p. 228.
[531] McCunn, *The interpretation of deeds and wills at common law, c.1536–c.1616*, p. 228.

one sought to assert their own claim, despite potential disinheritance and error on the part of the testator, while the other sought to actively revoke the will based on a perceived natural inclination and requirement to nurture and/or provide for any children. This leads into further subdivisions, between the rights of legitimate and illegitimate children. This topic is of significance as it borders the debate between testamentary freedom and societal norms (i.e., providing support), debates that continue into the modern day.[532] Decisions surrounding interpretation of possibly what the testator intended and what society and the law required often show light on an otherwise unclear period in the history of English succession law. Ultimately, the perceived nature of *legitim* as a national custom, and its eventual denigration to a local custom, outline that testamentary law in England was a unique interpretation different from continental European countries and civilian jurisdictions. Societal norms played a key role in ensuring children, both ill-and legitimate, were provided for through the testator's estate (sometimes against their actual wishes as stated in their existing will). There is much to be considered in regard to this conclusion, such as balancing the religious undertones of nurture and support, with the more pragmatic view about avoidable death of infants and young children if given assistance from the testator's estate. This reiterates my wider interest throughout this doctoral thesis, that the relevance of the Roman and canon laws for the development of the common law intersected in succession law, with results that differed within England and was distinct from continental Europe. The rights, privileges, and responsibilities of children under fifteenth and sixteenth century English law was a complex topic that garnered significant debate, within and outside the judicial system. This is demonstrated by the discontinuation of *legitim* within the Province of Canterbury, and its shift to a local custom confined to London and the

[532] It is particularly interesting to note the large influx of academic papers surrounding implied revocation in America from approximately the late 1880s until just after the Second World War.

Province of York until its eventual abolishment in c.1700 and 1679 respectfully. Implied revocation continued to be debated in the common law courts for another two centuries before general consensus and precedent were reached – if the later lawyers were conscience of the ecclesiastical records from earlier centuries, their efforts to balance testamentary freedom and support for children would have had English examples to consider.

Having discussed the right and custom of legitim, with its focus on becoming a well-defined local custom, with regional variations, the overarching point has been to demonstrate the potential for children to be provided for with a third of the inheritance, and recourse for unjustly being disinherited. Further discussion on the practicalities of this will also be mentioned in the following chapter, specifically in regard to CP.G.18. Expanding the scope of this thesis section beyond children's rights, the discussion shifts towards examining various types of litigation, their approaches to obstacles, and their active or passive involvement with testamentary matters throughout the court proceedings.

CHAPTER SIX

YORK CAUSE PAPERS

1) Introduction:

Having considered one type of testamentary litigation surrounding children's right to a share of the testator's goods, this chapter broadens the focus to a series of testamentary litigation types found within the York Cause papers. One aim of this chapter is to consider the manner in which these various court cases conceptualised testamentary law. By this it is meant that in some cases, the focus is overtly focus on testamentary law, whereas others it is a passive quality, particularly evident in the conceptualisation of cases with respect to impeding administration and intestacy. However, before moving to consider individual cases, some general remarks are necessary regarding the York cause papers as a whole. These documents are housed within the Borthwick Institute for Archives, founded in 1953 to house the York Diocesan Archive of the Archbishopric of York which dates from the early medieval period and includes vast archival records from the early 1300s to 1858. The Borthwick Institute for Archives holds 14,000 cause papers relating to cases heard before the church courts. There are 2706 testamentary cases in the cause paper records, the earliest dates from 1336.[533] In the period of consideration for this thesis, there are eighty-one testamentary cause papers from c.1450-1540. This figure of eighty-one also includes some cases identifiable to the 1400s but it is impossible to identify their exact dates. After personally examining all eighty-one cause papers, a categorization system was developed into which cases fit. There are eleven essential 'categories' that can be identified with some overlap in the period under consideration, within the eighty-one cases. They are

[533] CP.E.32 is the first testamentary cause paper; it concerns the mismanagement of goods of wards.

as follows: disputed legacy, embezzlement by executors, disputed administration, validity of will, forged will (this only applies to known forgeries and is separate from immediately preceding category), debt, perjury by arbitrator, unpaid dues to estate, false inventory, disputed value of goods, and validity of inventory. Regarding the selection criteria for specific cases that became part of this chapter, the author decided to focus on a sampling of cases from a few 'categories', these cases studied within this chapter are rare, of unusual significance, or produced significantly large records as to provide substantive engagement with key legal issues. While all eighty-one cases were viewed, it quickly became apparently that at least fifty percent of cases had little detail and would be insufficient for this chapter, which seeks to engage with contentious legal issues on a fundamental level.[534] As such, these cases were removed from consideration. In conjunction with advice from my supervisors and leading experts, cases where the legal issue pertained to debt were removed from consideration due to the complexity of the topic and advice that it would not be feasible to cover such issues within the limited space of a doctoral thesis chapter. Debt accounted for eight cases out of the total eighty-one, roughly ten percent. What remained were a selection of unique cases and some more mundane cases that had sufficient information for study, this was roughly the remaining third of cases. Disputed legacy cases were the most frequently occurring types of cause papers in the period of c.1400-1540, making up forty entries out of the eighty-one cause papers, although the vast majority of these cases are lacking documentation required to study litigation and disputes in-depth, beyond identifying individuals involved.[535] For the remaining approximately fifteen cases, each case was treated in detail, including full transcriptions and translations, before selecting the most versatile cases that allowed for in depth analysis of contemporary legal issues.

[534] While these documents are useful for providing an overview or perhaps a statistical study of court cases and their frequency, these cause papers were often only a paragraph or two long without substantive content.
[535] These cases are particularly lacking in depositions, libel, and sentence documents.

This chapter mainly considers five cases, all of which reflect substantial debate over underlying testamentary law, such as testamentary freedom, will administration, withholding goods owed, and technical mistakes such as incorrect inventories. The following cases are considered: CP.G.18 (Pollington c. Pollington, 1503-04); CP.G.212 (Slater c. Donbigynge, 1476); CP.G.894 (Lidyerd c. West, 1500-50); CP.G.95 (Willingham c. Cawton, 1520); and CP.G.967 (Thwing c. Beckinsale, 1500-50).[536] These select suits are individual cases heard in the church courts: in this case the ecclesiastical courts at York, mainly in the *curia Ebor*. Each case garnered significant debate and demonstrated wider trends within the legal system in late fifteenth to mid-sixteenth century England. The active or passive engagement with testamentary law, as well as the conceptualisation of cases surrounding impediment of administration are the underlying comparative considerations throughout these cases. Before discussing the individual cases, overviews of the provincial divide, court systems, and stages of the court case are needed.

2) Background to Cause Papers and the Northern Province of York:

As previously noted in chapter one, ecclesiastical courts in England until the nineteenth century had jurisdiction over a variety of cases, including contract, defamation, debt, probate, matrimony, tithe, trespass, church rights, clergy breach of faith (*Fidei Lesio*) and occasionally even criminal conduct.[537] Any area of law which could be considered to have a spiritual aspect could be potentially brought before the ecclesiastical authorities. Although this occurred in the reverse for

[536] There are also reference to CP.G.44 and CP.G.444, which overlap with the discussing surrounding legitim and more generally, cause papers. See appendix three, starting at p. 317 and p. 354.
[537] For more on this development, see Millon, *Select Ecclesiastical Cases from the King's Courts 1272 – 1307*.

secular authority, as many aspects that contained a spiritual aspect would also have been under the common law courts jurisdiction.[538] In an administrative sense, each parish was grouped into archdeaconries, which grouped together to form a diocese under the authority of a bishop,[539] which belonged to either of the provinces, York or Canterbury.

Specifically within the province of York, cause papers began to survive in the fourteenth century, although there is evidence of archiepiscopal courts, or courts related to the archbishop, performing a similar function pre-fourteenth century.[540] Starting in the early 1300s, the majority of cases were heard before one central court – the *curia Ebor* – which was to be augmented by the creation of the consistory court and the chancery court in the fifteenth century; the majority of causes considered in this chapter were held before the *curia Ebor*. Cases were not geographically limited to the diocese of York, as disputes and appeals throughout the Northern Province were brought to York. Appeals is a somewhat contentious topic within York, as appeals could also be made to Canterbury or directly to Rome through the Roman Rota (papal courts) – this was to remain the case until the 1533 Ecclesiastical Licences Act which replaced the papal courts of appeal with two English courts, the High Court of Delegates and the Court of Faculties.[541] While the supremacy of the Province of Canterbury in relation to York's appellate authority was often debated, this is not the focus of this chapter.[542]

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[538] For more on this see Helmholz, *OHLE: 597 to the 1640s*, pp. 387ff; Richard Helmholz, "Bankruptcy and Probate Jurisdiction before 1571," 48 *Missouri Law Review*, 1983: 415-30.

[539] Dioceses ruled by an archbishop are known as archdioceses, the majority of which are metropolitan sees. It is worth noting that 'archdiocese' as a term is not found in canon law; terms such as "diocese" and "episcopal see" were used in refer to the ecclesiastical jurisdiction of any bishop. For more on this see Charles G. Herbermann, ed., "Archdiocese," *Catholic Encyclopedia*. New York: Robert Appleton Company, 1913.

[540] For more on this point see D. M. Smith, *Ecclesiastical cause papers at York: the Court of York, 1301-1399*, Borthwick texts and calendars; 14 (University of York, Borthwick Institute of Historical Research, 1988); D. M. Smith, *The Court of York 1400-1499: a handlist of the cause papers and an index to the archiepiscopal court books*, Borthwick texts and calendars; 29 (University of York, Borthwick Institute of Historical Research, 2003).

[541] These courts were to be further supplemented in the 1580s with the permanent establishment of the Court of High Commission, which had irregularly been in existence from the 1550s, later abolished in 1641.

[542] For a detailed discussion on the York and Canterbury jurisdictional relations, see Ronald A. Marchant, *The*

The history of the relevant courts in York, despite the gradual decline of church authority with the temporary suspension under Cromwell and the Restoration in 1660, continued to hear a large number of cases – seen in the surviving cause papers from the late seventeenth century onward. Of particular note in the decline of church court jurisdiction is the 1832 Special Report on the Practice and Jurisdiction of the Ecclesiastical Courts, which suggested the reform of the courts and their jurisdiction. These reforms were to be implemented throughout the 1830-50s that removed parts of the ecclesiastical courts' jurisdiction.[543] The 1857 Court of Probate Act, implemented in 1858, removed testamentary cases to the secular courts, ending church direct involvement with this area of law. The amount of litigation heard before the York courts reached its peak about 1590, so throughout the period considered within this project, the frequency of cases is gradually increasing.[544] It is for this reason of a wide variety of surviving material that the cause papers have been selected as they are actual documents used in litigation from the fifteenth and sixteenth centuries.[545] This chapter has selected and provided full transcriptions and translation of the more interesting of these papers. A large portion of cause papers contain the courts' decisions and show insight into how academic and

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Church under the Law: Justice Administration and Discipline in the Diocese of York 1560-1640 (New York: Cambridge University Press, 2008 reprint), pp. 12-14; and Sion Hughes Carew, "The convocations of Canterbury and York," *Ecc. L.J.* 2019, 21(1): 19-47; One example of the jurisdictional relations between the two provinces is that church laws or canons gained their authority and legitimacy following the approval of a provincial convocation, followed by assent from the crown. While each convocation would recognise the canons, there could be delays before ratification, such as the Canterbury Canons that were ratified and approved in 1604, but the Convocation of York did not ratify them until 1606.

[543] For example, in 1836 the Tithe Commutation Act effectively ended church jurisdiction in this area of law. In 1855, defamation was moved to the secular courts, while in 1857 the Matrimonial Causes Act ended church courts hearing marriage cases.

[544] Marchant, *The Church under the Law: Justice Administration and Discipline in the Diocese of York 1560*-1640, pp. 15-16; Charles Donahue has surveyed the surviving records, concluding that in the pre-Reformation court material (including archdiocesan, Dean and Chapter archives) at York are nearly six hundred sets of cause papers.

[545] This is an area in which significantly more studies could be completed as this material provides a wealth of insight into both the law and society. For example, Charles Donahue proposed a study to match his earlier work on the Province of Canterbury: Adams and Donahue, Jr., *Select Cases from the Ecclesiastical Courts of the Province of Canterbury, c. 1200-1301*. This proposed work was to cover the Province of York from the period c. 1300 onward, however it was never undertaken. This is a need for a general treatment of the York Cause Papers, although the difficult nature of transcribing case material (the Canterbury material is much easier) has provided hurdles to many potential researchers.

papal law was being applied in practice. These papers also contain a wealth of information about how the York ecclesiastical courts worked, how conflicts in jurisdiction came about and how they were resolved, as well as who were the judges, advocates, proctors and other officers. These depositions provide much social information, and it is often given in unusual detail. The cause papers of the late fifteenth century have received relatively superficial or limited study; therefore, this chapter will provide some basis of future comparison for the practice of the northern and southern provinces of England. Having outlined the history of the relevant courts as well as the rationale for their selection, some remarks are required regarding court practices in York, particularly to denote their relevance for the main cases discussed within this chapter.

3) Breakdown of Court Practice in York[546]

There are fifteen stages of litigation in York, which are listed below. While this list provides the most common occurrences, some variations occurred due to fluctuation between the type of cases. This list provides an overview of the vast majority of stages litigation would go through in York.

1. Citation and certification

    1.1. In the initial stage, a proctor is usually appointed by the plaintiff, although plaintiffs and defendants could act on their own, they would not be required to attend court if their designated proctor was able to on their behalf. The plaintiff would make their complaint, which could be made orally or more commonly in a written libel, before the court and ask the judge to cite the *reus* party or defendant. Following

[546] For more on the individual stages see University of York, Borthwick Institute for Archives, *What are cause papers?*

this initial complaint, the judge was to make letters of citation to be provided to the archdeacon or rural dean (or priest) where the defendant lived,

which was presented before two witnesses to the defendant, summoning the individual to appear before the court on a given day.[547] After the archdeacon or rural dean had provided the citation, he had to inform the court that he had completed his actions. A large portion of cases were settled at this stage, after the letters of citation had been presented, for example in Norwich approximately one third of cases ended at this stage.[548]

2. Contumacy for Non-appearance

2.1. There was relatively leniency for appearing before the court: individuals could send their proctors, and if one party did not appear this would usually be allowed, and a subsequent court date being announced. If further non-appearance accrued, the other party would ask the judge to declare the individual as contumacious, or directly and purposely disobedient to the court order. If three absences occurred, the judge nearly always obliged and declared the individual as contumacious in nature and suspended them, which usually barred the individual from attending church services, which was proclaimed via a public announcement. This declaration by the judge had two components; firstly, outlining that the individual was of a contumacious character, i.e., stubbornly or purposely disobedient to authority,[549] as seen through their actions. Secondly, after establishing the first component and the individual's disobedience, the

[547] If two appropriate witnesses could not be found, it was possible although rare to make a public citation such as in church to inform the community to verify the citation was presented.
[548] See Marchant, *The Church under the Law: Justice Administration and Discipline in the Diocese of York 1560-1640*, pp. 16-29.
[549] With authority being considered in the broadest of terms.

judges had the requirement to suspend such individuals. It is particularly difficult to determine the frequency with which judges would go to the final stage of suspending or eventual excommunication. Within the court cases analysed within this chapter, and the wider material considered for this research, no cases show this practice. This may be an indication not of the lack of occurrence, merely that this consideration was not as pronounced in testamentary litigation.

2.2. Finally, any further absence or disobedience could lead to excommunication and the cost of one day's fee to the plaintiff.[550]

[550] It is difficult to determine the exact cost of one day's fee, although it was *relatively* inexpensive.

3. Libel

3.1. In this stage, both parties were before the court, the libel would be presented with a *libellus conventionalis* – a written statement of the plantiff's case, as well as the action brought. As noted in the terms page before the introduction, *libellus conventionalis* is a Romanesque reworking of the classical term *libellus conventionis*. Although the terms '*conventionalis libellus*' is already seen in the *Authenticum* (*Nov.* 112.2).[551] It is important to note that the *libellus conventionalis* should not be conflated with the term 'writ', which it occasionally is through a loose translation; however, throughout history including the modern day, a writ is "an official instrument, issued by authority, whereas the *libellus conventionis* was drawn by the plaintiff or professionally on his behalf."[552]

3.2. This document included the names of the judge, both parties and proctors, statement of the exact charges and request for judgement. It would be read to the court, sealed and a copy provided to all parties. The defendant would be given a separate day to

[551] H.G. Richardson, "Studies in Bracton," *Traditio* 6 (1948): 73; The *Authenticum* or *Liber authenticorum* was originally a teaching collection for Justinian's legislation made at the law school of Constantinople (c. 550s). This was rapidly adopted and utilised in Italy, with the addition of some laws in Latin, although the vast majority of the legislation was in Greek (albeit with word-for-word Latin translations to aid both students and the practicing lawyer). The *Authenticum* was largely neglected in the early medieval period, it would return in popularity in the western countries in the twelfth century and was aided by the removal of the Greek material. This came to be incorrectly assumed as part of the collection of Novels that Justinian officially approved. Due to this error, a large portion of the Novels (97 out of 135), was included in the standard version of the *Corpus Iuris Civilis*. The standard edition by Gustav Heimbach (2 vols.; 1846/1851) is a reconstruction of the *Authenticum* which does not survive in full or in an original form. For more on the *Authenticum* see the works of Professor Luca Loschiavo (University of Teramo), specifically L. Loschiavo, "Il codex graecus e le origini del Liber authenticorum", *Zeitschrift der Savigny Stiftung für Rechtsgeschichte: romanistische Abteilung* 127 (2010), pp. 115-171 and L. Loschiavo, "La riscoperta dell'*Authenticum* e la prima esegesi dei glossatori", in L. Loschiavo *et al.* (eds), *Novellae Constitutiones. L'ultima legislazione di Giustiniano tra oriente e occidente da Triboniano a Savigny* (2011), pp. 111-139; UCL Special Collections recently purchased one of three surviving copies (c. 1200), denoted as UCL Ms Ogden 5.

[552] Richardson, "Studies in Bracton," p. 73.

respond to the libel.

4. Dilatory and Declinatory Exceptions

4.1. Once the libel had been read before the court, the defendant could bring forth exceptions, although these were usually made in the next session (i.e., the defendants appointed date to reply to the libel – *libellus conventionalis*). Any such exceptions would be made to the judge and asked to be admitted to the court for consideration; two types of exceptions were possible: delays and jurisdictional challenges. The first category provided reasons for any delays, as well as it could note that the libel was imprecise or redundant, which was common. See for example, CP.G.212: "after a libel had been offered by the said party bringing suit, and a copy of the same delivered to the said party defending in this manner. … And that libel is had here as read, and the lawsuit relating to the same libel being negatively contested by the same party defending, and an oath having been made by both parties … about a challenge and speaking the truth, and a term having been given to the same party bringing suit to make points."[553]

4.2. The second category of exceptions were challenges to the right of the court to hold the case, this usually occurred where the defendant could claim they did not live within the court's jurisdiction. This latter category does not apply for the cases considered within this chapter, as the *curia Ebor* was the highest court in the Northern Province of York. Theoretically, only two courts were higher, in

[553] Borthwick Institute GB 193, CP.G.212, document two, lines 6-9: *ex altra oblato per dictam partem actricem libello et copia eiusdem dicte parti reo liberata in hunc modum In dei Nomine amen et cetera Et habetur libellus ille hic pro lect' liteque ad eundem libellum per ipsam partem ream negative contestat' ac Juramento de calumpnia et de veritate dicend' per ipsas partes hinc et inde datoque termino eidem parti actrici ad ponend'*.; For the full transcription and translation see Appendix three, p. 305.

Canterbury and the Roman Rota, although the former was frequently ignored by York. Appeals to Rome were rare, more common (although still infrequently occurred) in Scotland than in England. A third category of exception did exist, although its use was infrequent; a *recusatio* could be made, claiming that the judge was biased or that the opposing party was excommunicated and could not appear before ecclesiastical courts. Similar to the jurisdictional challenges, the exception of *recusatio* is not attempted or utilised in the relevant cases considered within this chapter.

4.3. If an exception was provided, debate regarding its validity would ensure and the judge would choose to accept or deny it. In theory this could significantly prolong any litigation, as the judge was able to take considerable time reviewing any exceptions.

5. Litis Contestatio

5.1. In order for the case to progress, the libel had to be contested. If the defendant admitted the libel the case would end and proceed to sentence. When the defendant inevitably contested the libel, this ended the preliminary stages and proceeded to the bringing of witnesses. While not a distinct stage or phase, it has been distinguished as a separate entity due to its essential nature and that with the *litis contestatio* the next phase in the trial would begin in earnest.

6. Oaths of Calumny

6.1. Following the denial or contesting of the libel, both the plaintiff and defendant (usually, their proctors would stand in for this) took oaths of calumny, *de calumnia seu de veritate*

dicenda.[554] This meant that both parties swore that the case was not brought to cause trouble, their respective positions were just and no false evidence or witnesses would be produced, and the truth would be provided. Little records of this are made beyond passing notes, as the oaths were made in person.[555] For example in CP.G.212, which reflects the typical entry into the document, a statement that such an oath was made: *negative contestat' ac Juramento de calumpnia et de veritate dicend'*.[556]

7. The Proof

    7.1. The burden of proof to support claims was usually on the plaintiff, and broadly fell into three categories: admission by the defendant, a sworn statement by two 'unexceptionable' (meaning not successfully objected to) witnesses, and an authentic document.[557]

8. Admission by the defendant – the positions/personal answers/allegation

    8.1. The plaintiff's proctor would outline the positions based on the libel. Each claim or item became a separate point, which would individually be asserted and questioned by witnesses. The defendant, or proctor, would be asked each item and their response, usually disputing, would be recorded.[558] The defendant, or proctor's answers were often recorded in their own handwriting as *creditur* or *non creditor* (believed or not believed). If any of the positions or items were agreed by both

[554] Meaning: of calumny or of telling the truth.
[555] The oath of calumny was sometimes made before a proxy appointed by the court rather than in front of the judge himself.
[556] Borthwick Institute GB 193, CP.G.212, document two, lines 8-9: "negatively contested by the same party defending, and an oath having been made by both parties on both sides about a challenge and speaking the truth."
[557] The first two types occurred most frequently, with the last type rarely used due to obvious reasons.
[558] These items were called positions because most often each point began with *Pono* or *Ponit quod*.; There are some variations to the wording, such as *Item quod dicti arbitri*; GB 193, CP.G.894, document one, line 16.

parties, that point would not need to be continued – often resulting in a new document being produced with only the remaining contested positions included.[559]

9. Production of Witnesses and Depositions

9.1. Witnesses would be presented, sworn by oath and examined between hearings –always by someone other than the judge; within York examinations were conducted by the examiner-general or someone from his office. The plaintiff usually had three terms to produce witnesses, and a minimum of two witnesses were required although some cases had more than twenty witnesses. For instance, one example considered in detail within his chapter is CP.G.18 (Pollington c. Pollington, 1503-04) which had seventeen witnesses. In most instances the witnesses had to appear before the court in York, although some exceptions could be made for the elderly or sick. Witnesses, at York or their home, would be asked each position and their response would be recorded; three copies would be made and presented to the judge, plaintiff and defendant. All witnesses had to be at least over 14 and freeborn and this was compulsory, non-compliance risked excommunication.

10. Interrogatories

10.1. Cross-examination was not permitted; however, interrogatories could be utilised to challenge the remarks of the witnesses. These would be additional questions for the

[559] It is important to note that cases between married couples had an alternative approach with additional steps. Borthwick Institute for Archives, *What are cause papers?*: "In these cases the first detailed claim of the libel was that they were legally married. It was important the defendant accepted this point as once he had done so the plaintiff (usually the wife) could be awarded a sort of interim alimony whilst the case continued. Usually in these cases the defendant accepted the first article (proof of which has been attached to the libel). If he did not the court would have to start with that one point, calling witnesses to prove or disprove the marriage, before they could carry on with the rest of the case. Once the marriage had been proved interim alimony was awarded and the case continued."

witnesses, often relating to questions of being bribed or other factors not reported, such as relation to the plaintiff. In very rare cases, the defendant could bring their own witnesses through an exception to the libel or bringing their own counter positions, with their witnesses to be treated in the same system outlined in step nine.

11. Exceptions against Witnesses and their Statements

11.1. Once the previously mentioned copies of witnesses' responses to the positions had been produced, the defendant's side could claim exceptions to the individual witnesses or given response. This usually took the form of direct attacks on certain witnesses,[560] although they had to be provided and could be attracted or denied by the judge.[561] If successful, that witness's testimony was discounted. This could be done for each witness, potentially elongating the litigation significantly.

12. Literal Proof

12.1. As previously noted, documents could also be provided to support claims or refute them, although this rarely occurred in practice. These documents would be in addition to witness accounts. The use of physical evidence plays a relatively limited role in the cases selected for this chapter, with almost no mention of physical evidence coming before the court (even when it would have been beneficial). CP.G.18, for example, a case regarding two wills and question surrounding validity, reviewing the two wills would have greatly assisted the plaintiff's case: however, throughout the

[560] This usually took the form of accusation the witness was a vagabond, excommunicated, criminal, insane, unfree, a servant or relative of either party. They could also accuse the witness of being an enemy with grudges that prejudiced their statements.

[561] However, this process to prove or deny such claims could be time consuming and require additional witnesses to attest to those claims first, before making decisions and returning to the case in question.

case the focus remains on the witness's accounts.[562]

13. Term for Propounding All Acts and Disputation

13.1. The judge would put a limit for which all evidence had to be displayed before the court (*terminus ad proponendum omnia*) in order to prevent unnecessary delays. This was essentially a peremptory term to produce all evidence. Although exceptions to this limit did occur, the exceptions were infrequent and only when required upon further proof or deliberation for complex cases. Once the limit had been passed, a date would be set by the judge for the delivery of the sentence, which both parties or their proctors needed to attend. Conceptionally, this returns to the idea of delays as impeding the administration of a testament or will, thereby leaving the testator intestate. Throughout this chapter, impediment of administration is a predominate factor in regard to speedy process, among other areas of testamentary law. Once the evidence had been considered and a date was set, sentencing followed.

14. The Sentence

14.1. Two main types of sentences existed: interlocutory sentences and definitive sentences. This was standard sentencing procedure everywhere, including in the Civil law. Interlocutory sentences were temporary in nature, while definitive sentences were permanent and at the end of the case.[563] Interlocutory sentences were often used in relation to decisions regarding the validity of exceptions. Interlocutory sentences are difficult to discern as they were usually not recorded within the records as they were not the final decision that ended the suit, therefore what has survived in the cause

[562] See Appendix Three (p.305) for more on this case.
[563] For more on English criminal law and sentencing see (for a general reference) Elizabeth Papp Kamali, *Felony and the Guilty Mind in Medieval England* (Cambridge: Cambridge University Press, 2019).

papers is definitive sentences.[564] Occasionally, as seen in CP.G.894 (Ledyerd c. West, 1500-50) the distinction was overtly noted: *et diffinitive pronunciari decerni et declarari Necnon eundem pro tante temeritat' excessu ad peragend' penitentiam*.[565]

14.2. It is useful to contextualise the notes within the records, they are written in a standard format and do not outline how or why the judge reached a given decision. They often describe the case, quoting the libel. It has been claimed that the usual delay in the final sentence was to allow for reconciliation, a key principle under the church.[566] Until the final sentencing, a central tenement of the church's teaching and practice emphasised the desire to reconcile all parties, and this occasionally meant that at any point in the litigation a case could disappear from the records. Of course, reconciliation was not the only rationale for a case disappearing from the records, another reason was the practical necessities like the cost of continuing the case.[567] The decision would be read out to the parties and a copy provided to the archdeacon or rural dean, in order to ensure both parties abided by the decision (as they would return to their locality). Any violation of the decision, to be monitored by the dean, could be punishable with a varying level of severity up to excommunication. Definitive sentences could be appealed, for example in CP.G.212 (1476), William Donbigynge after losing his case to the plaintiff in 1476, sought to appeal to the pope for remedy in 1477 - "*mencio ad*

[564] For general discussion on the types of sentences and judges, see Brand and Getzler (eds.), *Judges and Judging in the History of the Common Law and Civil Law*; in particular see David J. Seipp, "Formalism and Realism in Fifteenth-Century English Law: Bodies Corporate and Bodies Natural," pp. 37–50.
[565] CP.G.894, document two, line 10: "lord judge by definitive sentence pronounced, decreed and declared [as perjurious and infamous]". For more see Appendix Three, p. 305.
[566] William H. Campbell, "Theologies of Reconciliation in Thirteenth-Century England," *Studies in Church History* 40 (2004): 84–94.
[567] The significant portion of cause papers have no conclusion, indicating that a large percentage might have reconciled or settled outside of the court. Of the five primary cases within this chapter, CP.G.147 has no conclusion, although the cases selected were noted for their uniqueness or complete litigation.

sacrosanctam sedem apostolicam et dominum nostrum papam."[568] Barring appeal, typically the whole process for the case would be completed within a year, although many went beyond for several years (Slater c. Donbigynge spans at least three years at least before the record provides no more evidence, potentially fifty-five in the dorse notes are to be believed).

15. Taxation and Costs

15.1. The losing party was required to pay the costs of the other party, usually a significant amount. Courts were financed from the fees levied from those appearing and document production also increased the cost. Proctor's services were also costly, although the initial appearance was usually inexpensive but gained in cost with additional appearances before the court. Bills of cost constituted significant costs as well, as they included each document written, additional copies if requested (which frequently were), sealing and delivery of documents to various parties, travel and living costs for witnesses and occasionally the cost for the judge were all expenses incurred. It is important to note, although in practice it rarely occurred, that within the canon law individuals who were unable to pay the fees should still be able to sue in order to see justice. The poor could ask for their case to be *in forma pauperis* which would provide a small allowance to assist their suit (£2-£5).[569] *In forma pauperis* refers to only a certain social-economic class of

[568] Borthwick Institute GB 193, CP.G.212, document two, lines 35-36: "... *me[n]c[i]o ad sac[ro]s[anc]tam sede[m] ap[osto]licam et d[omi]num n[ost]rum papa[m]* …" or "… appealed to the sacrosanct apostolic seat and our lord pope …".

[569] *In forma pauperis* was very rarely claimed, although in theory it was intended to provide the poor with the right to justice. For more on the *in forma pauperum* admissions in English church courts, see Richard Helmholz, *Canon Law and the Law of England*, pp. 44, 47; For more general remarks see Laura Flannigan, "Litigants in the English 'Court of Poor Men's Causes,' or Court of Requests, 1515–25," *Law and History Review* 38, no. 2 (2020): 303–37.

individuals:

15.1.1. A Person that has just right, but not an able purse, must in this case get a petition drawn to the Judge of that Court where he intends to begin, setting forth the justice of his cause, and his indigency, and praying that he may be admitted, and such an one for his Attorney, or Clerk in Chancery, under which must be an Affidavit that the petitioner is not worth five pounds besides the matter in question.[570]

15.1.2. English common law, adopting similar canon law provisions, passed a 1495 *in forma pauperis* statute (11 Hen. VII, c. 12.),[571] which outlined that the poor who "be not of abilite ne pouer to sue according to the laues of this lond," would have access to legal counsel without charge.[572] This was confined to the instance in which a poor individual was pursuing private cases before the king's justices, although it mirrored earlier canon practices. Within the common law, in 1509 a proposal was made "to shift the facility of free counsel for poor people into the regular common law courts," as it appeared that the use of *in forma pauperis* had become "associated with the

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[570] H. R. *The Country-Mans Counsellour, or, Every Man Made His Own Lawyer. Plainly Shewing the Nature, and Offices of All Courts as Kings Bench, Common Pleas, Chancery, Exchequer, Marshalsey, &c. With the Just Feas for All Writs & Proceedings in Each Court; Allowed and Established by Act of Parliament. As Also How to Sue a Man to the Out-Lawry, or to Reverse the Same: To Pass a Fine'er Recovery, to Sue an Attorney or Clerk, to Get an Injunctionin Chanciry to Stop Your Advercsaries Proceedings at Law, to Sue in Forma Pauperis, &c. With Approved Presidents, and Easie Directions for All Persons, How to Make According to Law, Bonds, Bills, Acquittances, General Releases, Letters of Attorney, Bills of Sale, Wills, &c. Work Most Useful to All Persons, the Like Not Extant, and Now Published for a General Good. With Allowance* (London: Printed for J. Clarke at the Bible and Harp near the hospital gate in West-smith-Field, 1682) p. 10.

[571] An Acte to admytt such persons as are poore to sue in forma pauperis (1495, 11 Hen. VII, c. 12.); The statute of 1495 was repealed by the Statute Law Revision and Civil Procedure Act 1883, although the provisions were continued and were incorporated into one code.; For more see Hugh Chisholm, ed. "*In Forma Pauperis*," *Encyclopædia Britannica* vol. 14, 11th ed. (Cambridge University Press, 1911) p. 556.

[572] Helmholz, *Canon Law and the Law of England*, p. 47.

controversial conciliar tribunals, … which the same proposals attempted to abolish."[573] Although only from 1540s onward does the records show document notations stating 'admittetur in forma pauperis'.[574] However, the conciliar tribunals were not supposed to be involved with property law, or with matters concerning life and death,[575] therefore they will not appear in this work, although it was worth a brief mention to outline the development of in forma pauperis and its various progeny. As is evident form the surviving records in both the church and common law courts, *in forma pauperis* appear in so few records suggesting that most petitioners (generally, across most courts throughout England) were not truly poor, or at least did not claim the right. Helmholz has found some instances, albeit infrequently, in the London and York act books in the starting years of the sixteenth century.[576] Therefore, the development of *in forma pauperis* in England followed a similar trajectory as other areas of law,[577] with a limited adoption of the principle by the common law some centuries later, although it generally remained infrequently

[573] Flannigan, "Litigants in the English 'Court of Poor Men's Causes,' or Court of Requests, 1515–25," p. 312.
[574] For example, TNA PROB REQ2/1/45, 2/3/197, 2/8/221.
[575] This was due to the fact that the conciliar tribunals did not follow the rules of 'due process' required by Magna Carta and its progeny. However, they did eventually gain extensive jurisdictions alongside the courts of law. For more on this see John Baker, "The Conciliar Courts," in *IELH*, pp. 126-34 and Baker, "The Council and Conciliar Courts [1483–1558]," in *OHLE*, pp. 191–207.
[576] Helmholz, *Canon Law and the Law of England*, pp. 44, 47.
[577] Seen for example in many areas of law, both in and outside the purview of testamentary law. One specific example is the adoption of the number of witnesses required for a will to be valid. Another broader example that demonstrates the adoption and eventual dominance of the common law is the influence of canon law on English equity. T.E. Scrutton notes that from 1380 to 1488 all Chancellors of England were clerics, although this changed move forward. Starting in 1530 with Thomas More, a series of lay Chancellors were appointed, drawing upon their common law background. The influence of canon law on the formation of equity cannot be doubted if we remember that the Chancellor's sole guide was natural justice, whose interpretation at that time was the undisputable province of the Catholic Church. A role that was traditionally in the church's area, became in the common law especially apparent in the activities of the Chancery. T.E. Scrutton, "Roman Law Influence in Chancery, Church Courts. Admiralty and Law Merchant", in *Select Essays on Anglo-American Legal Tradition*, vol. 2, Frankfurt, 1968, pp. 214-215.

used throughout canon and common law courts.

15.2. It is important to note that in 1529, Henry VIII formalised the cost for the administration of estates and probates, listed in the table below:[578]

Chapter Six: Table 1[579]

Probate and administration fees upon the passing of 21 Hen. VIII c.5 (1529)

	Value of estate	To the judge	To the registrar
Probate	Under £5 £5-40 Over £40	nil 2*s*. 6*d*. 2*s*. 6*d*.	6*d*. 1*s*. 0*d*. 2*s*. 6*d*. (or 1*d*. per ten lines of the will)
Administration	Under £5 £5-40 Over £40	nil 2*s*. 6*d*. not fixed	nil 2*s*. 6*d*. not fixed

Marchant, *The Church under the Law*, p. 24

Having reviewed all fifteen stages, it is essential to note that these are a modern classification and were not strictly considered as such for contemporaries, and in regard to the testamentary cases, often multiple stages occurring simultaneously. Having outlined the stages of the *curia Ebor* and the practical elements of the courts, five cause papers are considered for their exceptionality, standing out from the records for several reasons. Those reasons include the case is uniquely detailed compared to other similar litigation cases of the same kind; no similar type cases in surrounding decades or, in some instances, centuries; or as outlining critical principles of testamentary law in this period. Specifically,

[578] 21 Hen. VIII c.5 (1529, entitled An Act concerning Fines and Sums of Money to be taken by the Ministers of Bishops and other Ordinaries of Holy Church for the Probate of Testaments); this act builds upon 21 Hen. VIII c.4 (An Act concerning Executors of last Wills and Testaments).
[579] Marchant, *The Church under the Law: Justice Administration and Discipline in the Diocese of York 1560-1640*, p. 24.

these cases demonstrate the use or lack of engagement with the conceptualization of cases surrounding the topic of impediment, and whether the cases overtly maintain the testamentary focus or move beyond it. Bearing this in mind, the first case considered in this chapter came before the *curia Ebor* in 1476, which will be discussed in detail below.

4) York Cause Papers:

1) CP.G.212 (Slater c. Donbigynge, 1476) - Embezzlement

1.1) General Information:

Before discussing the type of litigation and significance of this case, some general information is needed. This testamentary case is related to embezzlement, spanning four documents containing a deposition, libel and sentence. The plaintiff, Slater won in 1477, with the litigation beginning in 1476, although it appears that this case might have continued through an appeal into the 1530s. The main individuals are the plaintiff, Richard Slater[580] who was the executor of the will of Oliver Slater, his brother. The second key individual was the testator, Oliver Slater who is alternatively listed as Oliver Thorner.[581] The next key figure was the defendant William Donbigynge,[582] from Armthorpe or Arnethorp, an ecclesiastical parish in Yorkshire. Both men evidently had enough money to procure proctors to present and defend their cases; the prosecution proctor and notary public was William Biller, and the defence proctor and notary public was Richard Laconer. It is worth noting these two individuals beyond their role as representatives for their clients: their position as notaries public, was a

[580] also know/spelt as - Slater; Slatier; Sklater. Slater will be used throughout.
[581] There is considerably more information regarding several individuals, such as the testator. For example, the testator was from Blyth (an ecclesiastical parish in Nottinghamshire), specifically the township of Ranskill [Ravenstale, Ravenskale, Raneskel].
[582] Also spelt as Donbigyng; Dowbigynge; Dowbyging.

relatively new occurrence in England. It is easy to determine that while Englishmen were aware of notarial practice, the overall institution was alien to England, having been imported from Italy.[583] Since the twelfth century Italian notaries public were licensed either by papal or imperial authority, although their instructions were considered as universally valid.[584] The institution arrived relatively late to England, only appearing into the second half of the thirteenth century; this was remarked upon in 1237 by papal legate Cardinal Otto of Tonengo (c. 1190-1250/51), saying there was no English notaries – *tabellionum usus in regno Anglie non habetur*.[585] It was through John Pecham (c. 1230-1292), archbishop of Canterbury from 1279-1292, that notarial instruments became common after 1279, as Pecham brought with him from Italy an Italian notary public and a papal faculty to create three more notaries public."[586] Professor Cheney agreed that Otto was correct, as no observable notaries by 1237 were in England, this changed with the appearance of one unnamed notary in 1257, one named notary (Thomas of San Germano) was mentioned in 1258, it is unclear if this was the same individual noted in 1257, although it is clear that Thomas was foreign. This possibly changed in 1266, with a potential native Englishman listed as a notary, and that by the 1280s, English notaries "had come to stay."[587] Similarly, across northern and central Europe, the institution of the notary public was gaining hold in many nations.[588]

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583 For more see Christopher R. Cheney, "Notaries public in Italy and England in the later Middle Ages," *Studi Senesi*, 92 (1980): 173-88, specifically pp. 176-7.
584 Pierre Chaplais, "Master John de Branketre and the office of notary in Chancery," *Journal of the Society of Archivists* 4 (1971), pp. 169-199.
585 Christopher R. Cheney, *Notaries Public in England in the Thirteenth and Fourteenth Centuries*, Oxford, U.K.: Oxford University, 1972, p. 12.
586 Cheney, *Notaries Public in England in the Thirteenth and Fourteenth Centuries*, pp. 26, 153-4.
587 Cheney, *Notaries Public in England in the Thirteenth and Fourteenth Centuries*, p. 25; Robert Brentano pointed out that the events of the late 1260s, most notably 1266-68, required much notarial action as a result of the political developments (i.e., Second Baron's War); therefore, this is likely lead to an influx of notary publics.
588 Generally, sealed documents were given significantly more weight in the courts (particularly the common law courts), thus creating a tangible incentive to seal any notarial documents. This was not without problem, as in 1338, Hugh Palmer de Corbridge, notary public, used his *signum* in place of a seal, when dealing with a document addressed to the court of York, as no seal was available.

Having outlined the development of the notary public in England, early notarial activity was likely due to the principal reward in the form of ecclesiastical benefices; however, this transitioned by the early thirteen century with some evidence of monetary payments made to notaries for their work.[589] It is evidently the case by this 1476 case in York, although the majority of evidence of payment in the fourteenth century was from London. Returning to the Slater c. Donbigynge case, the two proctors were also notaries, demonstrating the development of this position. Furthermore, this outlines the nature of the training and employment that Biller and Laconer had, as well as insight into the potential costs incurred by the plaintiff and defendant. This was evidently a massive case demonstrated by the size of documents produced as well as the finical elements of maintaining litigation and eventual appeal, as well as the cost of multiple witnesses. This case has six witnesses, details for all have been listed below:

The first witness is Christopher Wharf, a 60-year-old free man, for which three locations are listed: Chatton in Northumberland, Doddington or Dodyngton – described as an ecclesiastical parish in the document although it is unclear, and the diocese of Lincoln. The second witness is Edmund Atkinson [Atkynson], a thirty-year-old free man with the same three listed locations as witness Wharf. The third witness is Thomas Dawson, a 60-year-old free man, who resides in Blyth – an ecclesiastical parish in Nottinghamshire. The fourth witness is John Glisson [Glyson], another 60-year-old man, although instead of his status being free, it lists free as his type of employment. The nature of employment for all other witnesses is not noted. Why a mention of his employment is included is unclear and another peculiarity of the case. Glisson was also from Blyth in Nottinghamshire, similar to witness three. The fifth witness is Thomas Herd [Hyrd], 60-years-old and free, from the township of Osbaldeston [Osbaldstone] in Blackburn (Lancashire). The sixth and final witness is John Terse, a 40-year-old free

[589] Cheney, *Notaries Public in England in the Thirteenth and Fourteenth Centuries*, p. 25.

male from Blackburn, Lancashire. It is worth mention that the York archivists cannot identify the surname 'Terse' or indeed 'Donbigynge'. Geographically, the witnesses are from Nottinghamshire, Lincoln and Northumberland; the latter being the northernmost county bordering Scotland, while Lincoln (Lincolnshire) and Nottinghamshire are in the East Midlands.[590] The significance of the geographical divide is that the litigation came before the York courts; however, only the defendants location is in Yorkshire, while the testator was listed from two locations Nottinghamshire and Ravenstale within York diocese, while the plaintiff's location is unknown, although presumably also from Ravenstale. The location of the testator's property is the determining fact for why this case came before the York court, instead of remaining in the southern province. The testator had property in Arnethorp and Ravenstale (both in Yorkshire), and made pious bequeaths such as for the repairment of holy images elsewhere – I bequeath towards the repair of the image of the Holy Cross of Asburn 6*s* 8*d*.[591] It is common that witnesses, executors, plaintiffs and defendants had to travel a great distance, even during difficult situations. For example, Sir John Fastolfe (1380–1459) was an influential member of the English gentry and knight who fought in the Hundred Years' War, as well as a prominent sponsor of literature, arts, and strategy. Fastolfe died in November 1459, leaving no natural heirs and a large, diverse estate, that required a long and bitter execution. The main executor of his will, William Worcester, had to travel and administer Fastolfe's will during the War of the Roses (1455–1487). Worcester travelled throughout England, including to many key cities likes Norwich, Cambridge, Buckingham, London, as well as all throughout the midlands. In February 1461, Worcester was traveling through areas that had five major battles in this period, including a siege of London, i.e., the roads would have been busy with marching armies of either side, although Worcester was able to

[590] The East Midlands are one of nine official regions of England.
[591] CP.G.212, document one, line 6: *Item lego ad reparacionem ymaginis sancte Crucis de Asburn vjs viijd.*

continue his work as an executor, with little hindrance.[592] All of this is to demonstrate that the War of the Roses had minimal impact on a large portion of people;[593] while Slater c. Donbigynge was a separate case, it outlines the travel and scope of large-scale testamentary concerns and the geographical perspective. This is reflected in the above analysis of the diverse location of the witnesses, some from within the Southern Province. Even for the locations within the Northern Province, there is considerable distance. There are four significant locations within the Northern Province for this case; Lancashire, Nottinghamshire, Northumberland, and York, the latter being where the case was heard. While all four locations are within the Northern Province of York, they are spread across the whole province; for example, Nottinghamshire is the southernmost point of the province, while Northumberland is the northernmost point of the province. The six witnesses are from all over the northern province: Christopher Wharf and Edmund Atkinson are from Chatton in Northumberland, Thomas Dawson and John Glisson are from Blyth in Nottinghamshire, Thomas Herd and John Terse are from Blackburn in Lancashire. All of these locational elements are in addition to the potential foreign intervention through the appeal to Rome.

Essentially, a key individual in this case is Margaret Frith, daughter of Richard Frith, who is not mentioned in great detail beyond passing notes in Oliver's will to Margaret or by depositions by the witnesses: "It[em] lego Margarete Frith filie Ricardi Frith xl^{5}."[594] Margaret Frith does not appear in the summary document, document two, which outlines the litigation and outcome. This is curious as Margaret Frith appears to have directed the removal of property from the testator against the will of the

[592] Jonathan Rose, "Medieval Estate Planning: The Wills and Testamentary Trials of Sir John Fastolf," in *Laws, Lawyers and Texts: Studies in Medieval Legal History in Honour of Paul Brand*, Susanne Jenks, Jonathan Rose and Christopher Whittick (eds.), (Leiden, Brill: 2012); Thomas Amyot, "Inventory of the effects of John Falstofe," *Archaeologia*, vol. 21 (London, 1827), pp. 232-280.
[593] For more on this see K. B. McFarlane, *The Wars of the Roses: the Raleigh Lecture on History* (British Academy, 1964) and Christine Carpenter, *The Wars of the Roses: Politics and the Constitution in England, c.1437–1509* (Cambridge University Press, 1997).
[594] CP.G.212, document one, line 5-6: "Item, I bequeath to Margaret Frith, daughter of Richard Frith, 40s." Appendix three, p. 329.

executors. The second witness, Edmund Atkinson reported: "the same Willliam and Margaret took away with them against the will and knowledge of the executors of the same Oliver [according to] the true knowledge of this deponent."[595] The third and fourth witness stated: "John Lound, from the mandate of Margaret, now wife of William Dowebygyng, articulate, … loaded the same cart with certain household utensils, which were of the said Oliver …, which utensils then the same John at the mandate of the same Margaret carried from there to the place assigned by the same Margaret …."[596] While the fifth witness appeared to say the same phrase concerning Margaret, although her name is not decipherable due to deterioration and damage on the document. This is contrasted with witness one, Christopher Wharf, who stated that William, accompanied by his wife, Margaret, had permission to remove some cattle:

> the articulate William Dowebygyng, before noon of the same day, together with Margaret, wife of the same man, being personally at Wheisby, aforesaid, received the aforesaid bullocks and cow from the same deponent and took away the same with him, with faith having been first of all given by the same William about saving the same Christopher the deponent indemnified, remaining in the hands of the executors of the said Oliver.[597]

The sixth and final witness – John Terse – appeared on September 24th, two months later than the other five witnesses that testified on the penultimate day of July 1476, made no mention of Margaret. Rather, Terse provided more details about the cattle removed by William and included that they were placed

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[595] CP.G.212, document three, lines 25-30: *presens fuit iuratus ante meridiem eiusdem diei ferialis apud Wheisby infra dominum de Skelynghope situat' v' et qu' Willelmus Dovebyngyng Articulatus et Margareta uxor eiusdem receperunt de Christofero Wherf preconteste suo certa catalla videlicet decim in Numero prec' inter se communi hominum estimacione quatuor librarum decim solidorum et octo denariorum sterlingorum que quidem decim catalla erant Oliveri Sklater Articulati tempore mortis sue et eadem Catalla sic ut premittitur per eosdem Willelmum et Margaretam uxorem suam recepta ijdem Willelmus et Margareta secum abduxerunt preter et contra voluntatem et scienciam exec' eiusdem Oliveri de …* Appendix three, p. 333-39.
[596] CP.G.212, document three, lines 39-57, 57-71. Appendix three, p. 333-39.
[597] CP.G.212, document three, lines 9-12: *super memoratam pasturam depascen' habuisse quo quidem die feriali Willelmus Dowebygyng articulatus ante meridiem eiusdem diei unacum Margareta uxore eiusdem apud Wheisby predict' personaliter existent' receperunt memoratos boviculos et vaccam ab eodem Jurato et eosdem secum abduxerunt prestita primitus fide per eundem Willelmum de servand' eundem Christoferum iuratum penes execut' dict' Oliveri indempnem Interogatus qui fuerunt presentes tempore quo dictus …* Appendix three, p. 333-39.

under the custody of Thomas Hurd. Terre stated that William "took, withdrew and led away six cows, … heifers, two bullocks and one calf, worth between themselves by the common estimation of men £4 21s of sterling of Oliver Sklater, while he was alive, which were found in the custody of the aforesaid Thomas Hyrd there."[598] Crucially, Terse lists the cattle as after they were taken they were later found in another witnesses' custody. The implication of another witness could have been a viable reason to challenge Hurd as a reliable, impartial witness, although no such challenge or dismissal is noted.

The difference between all of these accounts is that an individual incriminated by several witnesses, omitted by one, and supported by one, she does not appear before the court. No mention of her death can be found in the surviving records; Margaret did not participate in the litigation, dispute being named as either assisting or directly involved in the removal of goods that appeared to go against the executorship. This case provides significant insight into conflicting witness accounts, complex administration, all the while considered through the withholding property creating intestacy. Having briefly outlined the circumstances for this case, what follows considers the legal challenges at the centre of this litigation, as well as the outcome and possible appeal.

1.2) Analysis and Outline:

Slater c. Donbigynge is an embezzlement case that has been mistakenly identified as an embezzlement by executors' case, when in fact the embezzlement was not done by the executor, rather the suit was brought forward by the executor. While the case formally came before the *curia Ebor* in early 1476, it is listed as such with the verdict being presented on the 8th day of March 1476.

[598] CP.G.212, document three, line 127-129: *Willelmus Dowebygyng de quo in positionibus principaliter fit mencio sex vacc' t… Invencas duos boviculos et unum vitulum precij inter se communi hominum estimacione quatuor libras xxjs sterlingorum Oliveri Sklater dum vixit que fuerunt in Custodia prefati Thome Hyrd ibidem Invent' cepit abstraxit …* Appendix three, p. 333-39.

Although the will for this case was written in 1472, and notes are made that the case was to continue after the March 1476 verdict in favour of the plaintiff.

Oliver Slater appointed Richard Slater, his brother, as executor and Thomas Wethir as co-executor for the administration of his estate upon his death. Richard Slater brought forth a suit on July 30th, 1476 that he was not able to administer the will due to the embezzlement and withholding of goods and chattels by William Donbigynge from the estate. Interestingly, the litigation is framed around the impediment of administration – "published publicly against those impeding and disturbing pious and last wills and the executors of the same,"[599] – directly stating as *contra impedementes et perturbantes pias*. The case is further complicated with the fact that some of the cattle taken by William was not owned by Oliver, but were in his custody, while the owner was Richard, the plaintiff. The law clerk drafting this litigation clearly took great care in this particular case as several mistakes have been corrected – furthermore, these corrections appear to be the same hand – supporting the idea that it was the same reporter and not fixed at a later date. This litigation garnered a sizable amount of documentation, being spread over four documents, all of which have been transcribed and translated in appendix three. Following the verdict, the defendant is noted in a dorse comment, dated in 1477, to be appealing the case to Rome. Before continuing discussing the case, a breakdown of the location and original will is required.

1.2.a) Contents of the Will:

[599] CP.G.212, document two, lines 29-31: *Dowbygyng in sententiam maioris excommunicacionis auctoritate constitut' sinodal' contra impedementes et perturbantes pias et ultimas voluntates dese… et execut' eorumdem proinde lat' et promulgat' publice pronunciamus decernimus et declaramus sententialiter et diffinitive in hijs scriptis condempnamus …* Appendix three, p. 330-32.

As is typical, the formulaic nature of wills is adhered to in Oliver Slatier's will, as it would have been invalid if the wording was incorrect. Curiously, in Slatier's will there is no indiction, meaning there is a lack of the typical mention of time in regard to the king: i.e., it does not state the year in regard to the year of rule of the king, in this instance Edward IV. Rather, it merely lists in "on the 14th day of the month of May in the year of the lord 1472."[600] One possible explanation for this deviation from the standard indiction is due to the uncertainty of the regal year as a result of the gap in Edward IV's reign, between 3 October 1470—11 April 1471. Baring this potential deviation, the remainder of Slatier's will was typical:

> I, Oliver Thorn *alias* Slatier of Ravenstale, York diocese, sound of mind and of sane memory, then weak in body, found my testament in this manner. First of all, I bequeath my soul to omnipotent God, the blessed Mary and all the saints, and what is just for my mortuary. Item, I will that John Slatier, my eldest son, shall have my two tenements with their appurtenances in the vill and field of Arnethorp. Item, I bequeath to William my son all those my tenements in Ravenskale, which formerly were of John Radcliff, esquire. Item, I bequeath to Henry my son four oxen or the value and four cows or the value. Item, I bequeath to Margaret Frith, daughter of Richard Frith, 40s. Item, I bequeath towards the repair of the image of the Holy Cross of Asburn 6s 8d. Item, I ordain and appoint Richard Slatier, my brother, and Thomas Wethir, my executors so that they dispose for my soul, just as they wish to answer before the highest judge. And I ordain and appoint lord James Harington, knight, as supervisor of this my testament, etc.[601]

The following is written after the death of the testator, on the same document:

> The present will was proved on the 15th day of the month of February in the year of the lord 1475. And the administration was committed to Richard Slatier, the executor, named in the same will, etc, with power reserved of committing a like administration to Thomas Wethir, the other co-executor, named in the said testament, when he shall come in due form to receive it.[602]

The records report that the will was made on May 14th, 1472, and proved on Feb. 15th 1475; therefore, Oliver Slatier[603] died most likely in late 1474. As noted previously in chapter one, the

[600] CP.G.212, document one, line 1. Appendix three, p. 329.
[601] CP.G.212, document one, lines 1-8. Appendix three, p. 329.
[602] CP.G.212, document one, lines 8-11. Appendix three, p. 329.
[603] This name has multiple spellings throughout the documents - Slater; Slatier; Sklater. The testator is also known as Oliver Thorner (also written as Thorn). Every effort to retain the exact spelling in the original transcriptions for each document (see appendix three, starting on p. 329) is taken.

administration of wills usually started relatively quickly following the death of the testator and the proving of the will, the majority of administrations and executorships began within a few months. While the anonymous clerical noted the executorship, no mention was included of lord James Harington, knight, denoted as supervisor of the testament. Indeed, supervisors were rarely noted upon in cause papers, beyond the initial will. In all of the case considered for this work, no supervisor has appeared before the court, neither is any mention of them noted by clerics.[604] There are six witnesses recorded, five witnesses were examined on the penultimate day July 1476, while the one additional witness John Terre was examined on Sept. 24th, 1476. This is a near two-month gap between the first five and sixth witness examinations, it is unknown why there was a gap in the reports of the witnesses – perhaps John Terre could not be found. As noted in the section dedicated to the production of witnesses and depositions, witnesses could appear before the court in the first three terms, if unable to appear earlier without penalty. With the will being made following all requirements (albeit without an indiction – which was extremely typical, although not legally required) and proved, administration was given to Richard Slatier. As is common, Slatier was listed as the executor, while no mention is made of Thomas Wethir through the remainder of the case as his role was co-executor. This position, in most instances, had no significant part in the actual administration of the estate or the subsequent litigation. Crucially, Richard was unable to divide the estate to Oliver's testament due to several goods and chattels being withheld by the defendant, thereby creating moral jeopardy for the soul of the testator.

1.2.b) Essential Legal Argument of the Case:

[604] This extends to more than just the cases discussed in this chapter, this statement holds true for the vast majority of all fifteenth and sixteenth century York cause papers.

Having outlined the background for this testamentary litigation, it is worth noting that what follows was not presented by the plaintiff or defendant, rather their proctors. William Biller, as prosecution proctor and notary public on behalf of Richard Slater presents fourteen arguments as to the nature of the embezzlement and withholding goods, thereby preventing and impeding administration. As mentioned previously, each position was a distinct item and treated as requiring to be proved or defended. The focus on preventing administration is of particular concern for the courts, which frequently give harsh punishments to deter individuals interfering with testate practices, i.e., creating intestacy.[605] The following is a summary of the main points below, while a full transcription and translation are provided in appendix three.[606]

Item three states that "William Doubigyng withdrew, led away, detained and detains in the present certain goods and chattels, formerly of Oliver Slater, while he was alive, and against the will of the said executor, Richard Slater." This expanded upon in the subsequent items, all of which follow the same pattern while listing specific withheld goods: such as a horse, cutlery, etc. Item four states that "William Doubigyng against the will of the said Richard Slater, the executor, assumed and had and still has and detains all the household utensils of the same Oliver, then being at the time of his death within his house, *viz* pots, bowls, sheets, bedding and other utensils of different kinds, to the value of ten marks." Item five denotes that the defendant removed "a certain mare of the colour of bay, worth the sum of 6s 8d"; while item six states "six cows, three heifers, two bullocks and two calves to the value of £4 10s 8d." This pattern is continued in item seven, "nine bullocks and one cow to the value of £5," and item eight, "three oxen against the will of the said executor to the value of 30s." Item nine denotes

[605] For more see Helmholz, *OHLE*, pp. 396-98.
[606] The following is taken from CP.G.212, document four, lines 1-36. Appendix three, starting on p. 341 [Latin] and p. 351 [English].

that "ten stones of wool, being in the custody of the said Thomas Dowson, to the value then of 30s." Noteworthy is that Thomas Dowson is one of the witnesses that was called and appeared before the court. Item ten also discusses the involvement of Dowson, "he puts that the aforesaid Richard Slater, the executor, before said, delivered to the said William Dowbigyng by the hands of the said Thomas Dowson one hundred … … beyond to the value of £10." Item eleven lists that "the said executor delivered to the aforesaid William Doubigyng 25s 2d in money and 9s," item twelve states "that the said executor delivered to the said William Doubigyng one cow to the value of 9s 8d." Item thirteen lists that "William Doubigyng refused and refuses in the present to deliver, pay in full or in any other way make satisfaction to him of all the aforesaid things, taken by him against the will of the aforesaid Richard Slater, the executor, … detained, or the aforesaid sums to the before said Richard Slater, … [although suitably requested], both silently and expressly, … of the said Oliver Sklater." Item fourteen is not a specific detail regarding what was being withheld, rather it outlines that the general "premises are true, public, notorious and manifest in the city and diocese of York."[607]

In regard to item one, only the two individuals were in the will: "Richard Slatier, my brother, and Thomas Wethir, my executors …" There is no mention of Margaret, or any others being made executors, they are listed as receiving goods, but this is in the instance of an heir or beneficiaries. While relict means 'surviving partner,' the exact phrase Oliver used is that "I bequeath to Margaret Frith, daughter of Richard Frith, 40s." The proctor's mention of Margaret as relict, complicates the suit as she (at an unknown point) became the wife of William: witness three states that "Margaret, now wife of William Dowebygyng …" Due to this change in spouse, it appears that Margaret was assisting William to receive goods and chattel (cattle, household utensils, etc), explicitly noted in the statements of witness two and three for example. Throughout the fourteen points, the underlying point

[607] All of the above quotations have been taken from CP.G.212, document four, lines 1-36. Appendix three, starting on p. 341 [Latin] and p. 351 [English].

beyond specific objects and property removed and withheld, was that all of these are impediments to administering the will which brough concerns for the testator's soul. As Charles Gross wrote more than a century ago, "[t]he intestate was regarded with horror as an infamous person who had died unconfessed."[608] This sense is in regard to the following circumstance: without a known valid will, the inference was that the defunct had not received the sacrament of the last rites. It was assumed that if the last rights had been administered, they would have directed the attending priest to draw up the will. The church went to great lengths to prevent this from happening, including death-bed visits to attempt absolution. This was only one facet of the church's approach; the other side was centred on harshly punishing instances of impediment to deter others from following suit. Overall, the fourteen items were fairly common in embezzlement cases. The distinct element within this case is that the ownership of goods was not clearly under the testator's rights and that such a substantial value of goods and chattels were being debated. Similarly, the problem regarding Margaret moving goods between her late husband and new husband is interesting as she does not directly feature in any significant part in the litigation, neither does she appear before the court. William bears full responsibility in the eyes of the court, most likely directing his wife to undertake such actions.

Having discussed document one and four, the will and the items of dispute, document three provides the witnesses testimony in response to all fourteen points, often with a large amount of detail beyond the manner seen in other cause papers – which often provide only he believes, or he does not believe.

1.2.c) Document Three:

[608] Charles Gross, "The Medieval Law of Intestacy," *Harvard Law Review*, 18, no. 2 (1904), p. 120.

The third witness, Thomas Dawson, notes that some of the goods were originally Richard Slaters' complicating who had the rights to them:

> William Dovebygyng received from this deponent at Raneskell against the will[609] of Richard Sklater, articulate, three oxen to the value among themselves by common estimation 27s, and he led the same three oxen with him, one of which three oxen was then of Oliver Sklater at the time of his death, which this deponent had by reason of custody, and the other two were of Richard Sklater, articulate.[610]

This adds another dimension to the case, as some of the goods were also Richard Sklater's in addition to Oliver's cattle, that were allegedly taken by the defendant. Dawson also reports that Maragert directed another individual to take 116 sheep from the estate of the testator; later witnesses five and six – Thomas Hyrd and John Terre – each note how the cattle were removed. John Terre state that they "took, withdrew and led away six cows, … heifers, two bullocks and one calf, worth between themselves by the common estimation of men £4 21s of sterling of Oliver Sklater … which were found in the custody of the aforesaid Thomas Hyrd there, from the true sight and hearing of this deponent."[611] This statement by the sixth and final witness John Terre also implicates the fifth witness, Thomas Hyrd, stating that the cattle taken from Sklater's estate was found in the custody of Hyrd. While no direct mention is made to this factor, it might have been one of the elements that prompted defendant William Donbigynge to seek appeal. Likewise, Terre was the last witness to be examined nearly two months after the other witnesses, possibly coming to light after depositions and subsequent interrogatories. Furthermore, the implication of witnesses Dawson and Hyrd, in addition to Richard having his own personal reason for a suit (on behalf of his own property) as well as his position to administer his brother's taken property provides considerable legal conundrums.

[609] The use of the term 'will' refers to the efforts or intentions of Richard, not his testamentary will.
[610] CP.G.212, document three, lines 53-56. Appendix three, starting p. 334 [Latin] and p. 346 [English].
[611] CP.G.212, document three, lines 127-29. Appendix three, starting p. 334 [Latin] and p. 346 [English].

1.2.d) Outcome of the case:

With the multitude of witness testimony, the plaintiff was successful in his suit, as Richard Slater won against defendant William Donbigynge. The outcome is stated as follows:

> Because by acts, enacted, brought and proposed, we find that the aforesaid Richard Sklater, the party bringing suit, has sufficiently founded and proved its intention, which had been brought before us in judgement. Therefore, we pronounce, decree and declare that the aforesaid William Dowbygyng in the sentence of greater excommunication, appointed by synodal authority, made and published publicly against those impeding and disturbing pious and last wills and the executors of the same, by definitive sentence in these writings. In addition, we condemn the same William Dowbiging in expenses made by the said party, bringing suit, in this cause, with their assessment specially being reserved to us.[612]

Within this decision, the definitive sentence is noted, with no mention being made through out of any interlocutory sentences. The end result was an excommunication and the cost of the expenses incurred by Richard Slater in his suit, as previously discussed in step fifteen of litigation, were likely a significant sum. It is not clear if Donbigynge had to return all of the goods and chattels or their true value - while it does not state this outright, it is assumed to be the case, as it was typical court practice. This case also discusses the removal and continued withholding of goods and chattels in relation to impeding the executor's ability to administer to the will of the testator. As will be demonstrated, this rather favourable approach was not always utilised by plaintiffs.

This is a clear embezzlement case, despite its many peculiarities, that was conceptionally framed around impediment through the withholding of goods and chattels, thereby halting the administration of the testament. The executor brought forth the suit, which is most likely contributing to the case being misunderstood and erroneously noted as embezzlement by the executor. This misidentification was a classification by later archivists, although the exact period in which this

[612] CP.G.212, document two, lines 27-33. Appendix three, starting p. 331 [Latin] and p. 343 [English].

mistake occurred in unknown. Upon the verdict, William Donbigynge aimed to bring an appeal to Rome,[613] which the records note as stating:

> This sentence was read and made by the lord commissary on the 8th day of the month of March in the year of the lord 1476, of which master Richard Lacom, proctor of William Dovebiging, mention of which is made above, appealed to the sacrosanct apostolic seat and our lord pope, directed orally, and he sought letters of appeal firstly, secondly and thirdly, instantly, more instantly and very instantly, and he sought letters of appeal to be given, handed over and delivered to him with effect. Whereupon the commissary assigned to receive letters of appeal to the same Lacom on Thursday next before Palm Sunday next to come in the mother church, sitting judicially in the consistory place of the same.[614]

Furthermore, the dorse written onto the back of this document states:

> ... in the third … … on the 27th day of March in the year of the lord 1477 there were handed over by the lord commissary letters of appeal … to the defendant, within written, and given in the same on Tuesday next after [St] Botolph … to answer … … and to certify points and articles … next following.[615]

It is not known if a decision was reached, as no further records survive relating to this case. The dorse comments suggest that the next session of the *curia Ebor* was to hear more about this appeal. As noted with the discrepancy between witness five and sixth's accounts, one implicating the other, might have been partial grounds to bring about the appeal. This is a rare example of individuals, particularly higher landed gentry, appealing to Rome – English appeals to Rome occurred significantly less than in other neighbouring countries like Scotland.[616] Most attempts were only allowed to go before Canterbury as

[613] CP.G.212, document two, lines 35-37. Appendix three, starting p. 331 and p. 343.; The records state to the 'sacrosanct apostolic seat' and directly to the pope, although it would have most likely gone to the Roman Rota.
[614] CP.G.212, document two, lines 34-39. Appendix three, starting p. 331 and p. 343.
[615] CP.G.212, document two, dorse, lines 1-3. Appendix three, starting p. 331 and p. 343.
[616] Within England appeals could be heard in York or moved to the highest ecclesiastical centre in the country – Canterbury. This most often prevented appeals going beyond England. Whereas, within Scotland, appeals could go to the Roman Rota directly with less interference. The *Sacra Romana Rota* had the ability to hear appeals and cases at first instance, concerning both civil and criminal matters under the church's jurisdiction, throughout Roman Christendom. From the late fifteenth and sixteenth centuries, while litigants were flocking from all over Western Europe to Rome, the one exception was that of England. Statistically, the number of English cases recorded in the Rota archives is insignificant when compared with the volume of cases coming from other countries, including Scotland. The difference between the case ratio between Scottish and English cases, seen for example from 1464 to 1560 is approximately 374 to 20, meaning on average for every 19 Scottish cases 1 English case was heard. For more introductory remarks see James J. Robertson, "Scottish legal research in the Vatican Archives: a preliminary report," *Renaissance Studies*, vol. 2, no. 2, *A Tribute to Denys Hay* (1988): 339-346.; Crowder discovered that for

the highest church court in England, and never made its way to Rome; while the outcome of this appeal is uncertain, it is nevertheless important to note.

There is a great deal of ambiguity remaining in this case, specifically if William was required to pay the value of the goods and chattels removed, or just the expense of the suit (i.e., Richard's costs). Likewise, why there was no suit brought against Margaret, despite being instrumental in this case as wife of the testator and then wife of the defendant, and instructed the removal of chattels, also contributes to the many unanswered questions. What is certain is that CP.G.212 Slater c. Donbigynge, provides a viewpoint into the conceptualisation of litigation around impediment, as well as providing precise details surrounding the appeal process, the gathering of witnesses and the types of litigation that occurred. This case was previously noted as being related to embezzlement by executors and to have occurred in 1476, as has been demonstrated this is incorrect; the embezzlement suit is brought by the executor, but the action of embezzlement was by another, likewise the timeline for this case is more complex. With the will being made in 1472, proved in 1475, the litigation occurring in 1476, notes of an appeal in 1477, and a later note written onto the case. On the dorse of document three, which contains the witnesses' depositions, there is a handwritten note stating "Slater c. Donbigynge, 1531."[617] The meaning of this is unclear, it could be a potential mistake by later archivists who misdated the case, or perhaps that the case did go

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the period between 1464 and 1534, forty-two English cases were appealed to the Rota, compared to the large number coming from Scotland. While many historians have touched upon the English cases at the Rota, this is much remaining work, with many projects being undertaken but most often not being completed due to deaths. As early as the 1950s the works of Christopher M. D. Crowder focused on English appeals to Rome, while Crowder died before completing this project, a portion was recently published based on his notes in 2019, see C. M. D. Crowder and Thomas M. Izbicki, "Judicial relations between England and the Papacy before the Reformation: an appeal to the Rota, 1511-1514," *Rutgers University Libraries* (2019) pp. 1-46; Crowder also collaborated with Edgar Graves on a larger project tracing English litigation before the Roman Rota. Most of their research, including a considerable archive of photographs, transcripts, translations, notes and drafts is available at the Pontifical Institute of Medieval Studies, Toronto. This material is hosted in Room 413, with no call number but they are all marked with Edgar Graves' name. They number about 25 12'' boxes of 4x6 index cards, another 6 archival folders containing Xeroxes of mss. and three bankers boxes of miscellanea.

[617] CP.G.212, document three, dorse, line 1.

before the papal courts (either the pope himself as requested or more likely the Roman rota). Although the latter is unlikely as if it is related to the case, that would signify a fifty-four-year gap between the last record details of the case [1477-1531]. The former is also unlikely given the relatively clear and visible dating throughout the documents, showing the 1470s. The date of 1531 is significant as it was the year that the Ecclesiastical Jurisdiction Act 1531 (23 Hen 8 c 9), which maintained that no person should be cited out of the Diocese where he or she dwelleth, except in certain Cases. This is not to be confused with the significant 1532 act, Ecclesiastical Appeals Act 1532 c. 12 which required appeals to remain within England that would have otherwise been pursued to the See of Rome. The 1531 note is rather peculiar as why would someone write on a several decades old case if it was merely to note that it would not be permitted following the 1531 act. Likewise, the inclusion of the two parties gives rise to the possibility that a decision was rendered in 1531. Ultimately, it is not entirely impossible for a petition to Rome to take a few decades; another York cause paper case took more than thirty years for an appeal to a higher court within England, let along going to Rome. This specific case also coincided with changes occurring in the Roman Rota in 1477.[618]

1.2.e) Conclusion:

Testamentary law and ecclesiastical court practice in York related to embezzlement in Slater c. Donbigynge is a case example of actively engaging with testamentary administration and the

[618] Nikolaus Hilling, "Die Errichtung des Notarkollegiums an der Romanischen Rota durch Sixtus IV im Jahre 1477," in *Festgabe Heinrich Finke zum 7 August 1904 gewidmet von seinem Shulern*, ed. Gottfried Buschbell et al. (Münster: Aschendorff, 1904), pp. 169-94.

effects of embezzlement as a form of impediment to the administration, which caused harm to the defunct's soul. Slater c. Donbigynge also outlines the practice of appealing to Rome, if unhappy with the verdict. Of course, this would not have been permitted post-1533 due to the Ecclesiastical Licences Act. This is also a rare example of someone outside a very small class of individuals that had sufficient means and motivation to seek potential papal redress.

From a practical standpoint, this case outlines the various parties in suits, the stages of court practice and record keeping. The highly detailed records CP.G.212 generated were atypical, providing unusual levels of detail regarding how litigation was structured vis impediment. Furthermore, this case outlines the use of definitive sentences related to halting or preventing administration, which was treated within the greatest level of infamy and injustice in testamentary law. The shaping of the offence relating to impeding the administration is essential, underlying that the court placed great value on the role, hence is frequent consideration as the equivalent to the Roman heir.[619] Notes are made that the case originally came to "court before the venerable man and circumspect master Thomas Pereson, doctor of decrees, commissary-general of the lord official of the court of York", later included material from the "lord official of the court of York in the Exchequer."[620] While this case has received little focus by scholars, it demonstrates how embezzlement suits were practically disputed and conceptually considered, as well as the various officials potentially involved. This paper fortunately contains the decisions and remarks on a potential appeal and show how the local testamentary practice was being applied in practice. The information CP.G.212 contains about how

[619] As discussed in detail in chapter five on legitim.; Lyndwood, *Provinciale*, p. 172a, a.v. *Intestatis*: "Executores universales, qui loco Haeredi sunt." Also see *Provinciale*, p. 170a, a.v. *Commissionem administrationis*, p. 176a, a.v. *Prius*, p. 170b, a.v. *Inventarium*, and p. 179a, a.v. *Propriis suis bonis*.; For more see Brian E. Ferme, "The Testamentary Executor in Lyndwood's *Provinciale*," *Jurist* 49, no. 2 (1989): 636, 639, 660. However, the English executor developed in a more flexible manner than the Roman heir, M. M. Sheehan, *The Will in Medieval England*, p. 216.

[620] CP.G.212, document two, lines 2-3, 20-21. Appendix three, starting on p. 341 [Latin] and p. 351 [English].

the York ecclesiastical courts worked, how conflicts in litigation were resolved, and who were involved (judges, proctors and other officers). Most importantly this case demonstrates one approach to winning litigation through the use of framing the dispute around impeding administration. Not all cases discussed in this chapter used the same approach, despite it usually garnering a strict response from ecclesiastical courts. Having studied this case in full, outlining the successful use of impediment as a prosecution strategy, another case which also demonstrates the active/passive focus on impediment and testamentary law will be discussed. This can be seen in another topic of considerable debate in a case of perjury in the early sixteenth century, CP.G.894: Lidyerd c. West.

2) CP.G.894 (Lidyerd c. West, 1500-50) - Perjury

2.1) General Information:

Before discussing the type of litigation and significance of CP.G.894, some general information is needed. This testamentary case has been classified as relating to perjury by arbitrator, spanning three documents containing a libel, although no deposition or sentence survive. This section will demonstrate that the existing categorisation of this suit as perjury by arbitrator is incorrect. In fact, the treatment of this case is more akin to contractual law, given that it resembles other testamentary litigation surprisingly little. As seen in the previous case, the litigation came before the *Curia Ebor*. As is common for cause papers for this period, the outcome is unknown, as is the exact date, although it is between 1500-1550 (likely in the earlier years of this range). This case had a smaller number of listed individuals, compared to the atypical nature of the previous case, with only three noted individuals; the testator, John Glover; the plaintiff, Robert Lidyerd or Ledyerd; and the defendant, Robert West.

Geographically this case is more confined, with all three parties being affiliated with Howden, also spelt Howeden, which was an ecclesiastical parish in Eastriding, Yorkshire. Robert West is also noted as being from Reedness by Howeden, noted as Ridnes *juxta* or 'near' Howeden. One note of mention is that the plaintiff's surname of Lidyerd does not appear in any known record, meaning there is either a gap in the records, that this family did not appear in the records (perhaps foreign or new to Yorkshire), or that they existed under an alternative name. Curiously, the will of John Glover was not included in this cause paper file;[621] the remaining three documents centre on the litigation.

This case has been selected, firstly as it contains an interesting type of litigation atypical to other cause papers from the surrounding decades. Secondly, there is an interesting clause denoted in the second document pertaining to the jurisdictional conflict experienced in the immediately preceding years: "knowledge of which is notoriously known to pertain to the ecclesiastical forum."[622] More will be discussed in relation to this point below; however, it outlines the interesting nature of this cause paper and its warrant of more in-depth analysis. The most important part of the analysis of the case is that despite the litigation being formally in the jurisdiction of testamentary law, it was presented in a manner that significantly removed the dispute from the law of succession. In addition to the alteration of the typical formulaic style, the content and aims were presented from a contractual perspective rather than restoration of testamentary property and the aims of the testator. When compared to the previous case, differences are seen in the overarching conceptualisation of the legal matter and whether a passive or active consideration is presented via testamentary principles.

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[621] The three documents are in good condition, with the exception of document two with minor burnt/missing corners – it appears that the will was not attached alongside the libel. This is supported by the good condition of the other documents which implies that it either wasn't attached or removed, as the documents are in good shape.

[622] CP.G.894, document two, lines 2-4: *et contra quemcunque pro eodem coram vobis in iudicio legittime comparentem Dicit et in jure proponit Quod licet predictus Robertus West certis ex causis legittimis quarum cognicio ad forum ecclesiasticum notorie dinoscitur pertinere fidem suam promissionem sive iuramentum suum voluntarie prestiterit Ipse tamen Robertus West quamvis per partem predicti Roberti Ledyerd pluries ad hoc fuerat debite requisit …* Appendix three, starting p. 370 [Latin] and p. 374 [English].

2.2) Analysis:

The unnamed proctor on behalf of Robert Lidyerd, states that Robert West had "a certain cause of the violation of faith or perjury."[623] Lidyerd's proctor brings forth twelve items of arguments (positions), firstly stating that "a certain controversy or disagreement arose and was pending between the aforesaid Robert Lidyerd and his wife, who was late the relict and executrix of the testament of John Glover, … Robert West for certain grains to be delivered by the same Robert West and bought from the same man."[624] It is only here that the executrix and relict is noted given the lack of the will, which would have expressly stated this in order for this to be mentioned in the libel. The essence of the argument was brought before four men who were appointed as arbiters by both sides: this group was "compromised [of] John Payn, Ranald Spek, John Canyngworth and William Halton of Hoveden as arbiters or arbitrators chosen by the said parties."[625] The arbiters concluded that Robert West was to pay by a certain day, which came and was not adhered, to the value of "2*s* 4*d* in ready cash."[626] In addition to this fee, West was ordered to

> deliver and pay to the same Robert Lidyerd and his wife half a quarter of wheat and half a quarter of barley at the feast of Easter next following the said decision, and at the feast of St Martin then following half a quarter of wheat and one quarter of barley. And at the feast of the Purification of the Blessed Mary then following one quarter of barley. And he puts separately. And about each quarter of grains up to two quarters, he does not believe.[627]

An interesting point to note is that the wife was included as an individual that should receive the payment alongside Robert West, usually the wife was not listed in similar cases of perjury. Clearly

[623] CP.G.894, document one, line 2. Appendix three, starting p. 368 [Latin] and p. 372 [English].
[624] CP.G.894, document one, line 4. Appendix three, starting p. 368 [Latin] and p. 372 [English].
[625] CP.G.894, document one, lines 7-10. Appendix three, starting p. 368 [Latin] and p. 372 [English].
[626] CP.G.894, document one, line 17. Appendix three, starting p. 368 [Latin] and p. 372 [English].
[627] CP.G.894, document one, lines 18-21. Appendix three, starting p. 368 [Latin] and p. 372 [English].

both the husband and wife were parties to this payment, as the husband is not listed to present both. This supports the hypothesis that Glover's will must have expressly stated the wheat and barley was to go to both Robert Lidyerd and his wife.[628] West was required to find pledges as guarantors of these payments to be made. Item eight then outlines that West failed to pay the 2*s* 4*d* and item nine states that the pledges/guarantors were not provided. West was then given the opportunity to find pledges and pay the fee, which is reported that he did not comply with those orders. Item eleven states that West "refuses to do so, violating his oath and notoriously incurring perjury."[629] Therefore, due to the failure to pay alongside refusing or being unable to produce pledges, West was presented as violating the oath he had taken to pay such costs and to procure pledges, thereby "notoriously incurring perjury."[630] Perjury was an especially determinantal act in this period as England c. 1485–1535 "was a polity and society built around the taking of oaths."[631] Oaths constituted an essential pillar of English society, forming the mode of obedience between all levels; from a citizen to the mayor, a priest to his bishop.[632] Oaths were an inescapable aspect of a large portion of late medieval activities, including law enforcement and courts. Oaths were a fundamental pillar of the early modern economy, especially in any commercial system centred on trust. It was a detrimental marking to denote someone as untrustworthy or a habitual oath-breaking.[633]

In the second document, presented before the "the venerable master lord official of the court of York and your commissary general or another suitable judge …," the proctor states that Robert West,

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[628] Without the collaborating will, this cannot be definitively proven, although it is most likely what occurred, to result in both being named by the arbitrators. It was not common practice to list both the husband and wife otherwise.
[629] CP.G.894, document one, lines 33-34: *Roberto Lidyerd solvere seu satisfacere de eisdem aut fideiussores inducere penitus recusavit et recusat Juramentum suum … violando et periurium notorie* Appendix three, starting p. 368 [Latin] and p. 372 [English].
[630] CP.G.894, document one, line 33, item eleven. Appendix three, starting p. 368 [Latin] and p. 372 [English].
[631] Paul Cavill, "Perjury in Early Tudor England," *Studies in Church History* 56 (2020): 182.
[632] Cavill, "Perjury in Early Tudor England," p. 182.
[633] James Davis, *Medieval Market Morality: Life, Law and Ethics in the English Marketplace, 1200–1500* (New York: Cambridge University Press, 2012), pp. 71-4.

> has not taken care to observe and fulfil this his faith, promise or oath, but has expressly refused to, and being led by no necessity, damnably incurring voluntarily perjury and infamy by the violation of his promise and faith, to the serious danger of his soul and the pernicious example of other Christians and the immoderate prejudice and harm of the aforesaid Robert Ledyerd.[634]

The inclusion about "the knowledge of which [oaths and perjury] is notoriously known to pertain to the ecclesiastical forum," is a distinct point denoting that the jurisdiction of the ecclesiastical courts were well known in this area.[635] As the exact date for this case is unknown, such a clause might have been included in regard to the many changes taking place in the 1530s and onwards in English-church relations. In the quotation above, the overt expression of Christian values as a mention considered in relation to providing a negative example for others, is atypical. While remarks on the danger to the Christian soul is commonplace across all types of testamentary litigation, the mention of setting a negative example is rare and infrequently seen within the Northern Province of York cause paper records.[636] This inclusion implies the potential of a scandal, either in regard to Lidyerd c. West, or perhaps a wider trend before the courts that they were actively trying to combat. A further potential supporting factor for a wider scandal is found in the proctor notes that the case has gained notoriety within the local and neighbouring places: "[these claims] are true, public, notorious and manifest and famous in the city and diocese of York and other neighbouring places and especially in Hoveden and Rednes … and upon these public voice and fame have laboured and are [labouring] there."[637] The use of the phrase, 'true, public, notorious and manifest' is commonplace and a formulaic inclusion; however, the specific insertion that the case is famous within "city and diocese of York and other neighbouring places and especially in Hoveden

[634] CP.G.894, document two, lines 3-6. Appendix three, starting p. 370 [Latin] and p. 374 [English].
[635] CP.G.894, document two, lines 3-4. Appendix three, starting p. 370 [Latin] and p. 374 [English].; As mentioned previously, various areas of law could be potentially justiciable in either secular or ecclesiastical forum. For more on the history of this subject, see Millon, *Select Ecclesiastical Cases from the King's Courts 1272 – 1307*.
[636] For more on this see Smith, *The Court of York 1400-1499* and Smith, *Ecclesiastical cause papers at York*.
[637] CP.G.894, document two, lines 6-7. Appendix three, starting p. 370 [Latin] and p. 374 [English].

and Rednes," distinguishes this as beyond a formulaic insertion. Whether it was truly well known throughout several localities does not survive in the records, again this is seen as the surname Lidyerd cannot be found in any known records, although adding the additional locations by name would suggest that there was some public knowledge. Perhaps due to the nature of the goods and repeated attempts given to West to comply with the court's and arbitrators' instructions. The proctor request of the presiding justice, that

> lord judge by definitive sentence pronounced, decreed and declared [as perjurious and infamous], and also that the same man for such great rashness and excess be forced to undergo corporal penitence according to the form of the sacred penitential canons by your decision, and with effect be compelled, and further to do, decide and decree in the premises and things concerning them what is suitable for the canonical institutions. The said proctor in the name, as above, proposes, seeks and intends to prove the premises, by no means restricting himself to superfluous proof, saving always the benefit of law in all things.[638]

The atypical insertion went beyond common formulaic rhetoric or structure and the mention of corporal penitence through the canonical institutions is also distinct. The typical request of excommunication and repayment of value of goods withheld is usually stated, whereas Lidyerd does not provide any specific request, leaving it exclusively to the judge's decision based on canonical principles.[639] Judicial discretion in the church courts had a complex development, formed especially by the actions of the Fourth Lateran Council which in 1215 banned ordeals, thereby creating increased need for judicial discretion.[640] Of course, the constraints of "due process" remained and limited judicial discretion throughout the principles of the *ius commune*. The reference to judicial discretion, via the lack of a requested punishment, was contentious not just within England but the wider *ius commune*, seen in the remarks of Bonifacius Antelmi (c.

[638] CP.G.894, document two, lines 9-11.
[639] For more on the general principle of medieval ecclesiastical judicial discretion see Richard M. Fraher, "Conviction According to Conscience: The Medieval Jurists' Debate Concerning Judicial Discretion and the Law of Proof," *Law and History Review* 7, no. 1 (1989): 23–88.
[640] J. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Regime* (Chicago: University of Chicago Press, 1977), pp. 6-7.

1320-after 1388).[641] Antelmi wrote at the end of the thirteenth century, although continued to be printed throughout the sixteenth century, that "judges should not presume to act according to their consciences, as many of them do, ignorant of justice and of the law, but according to the laws and the proofs offered to them."[642] This might suggest that such a case was uncommon, therefore the plaintiff referred to the judge's discretion in any uncertainty of punishment. There were many key canonists that supported such discretion, the most influential and prominent was undoubtedly Bartolus. Bartolus wrote that judges had more discretion than they were often given credit for, *"... et sic iudex inquirendo habet magis largas habenas quam credatis*."[643] Indeed, if this case was truly novel, this supports the idea of a scandal that gained wider notoriety, justifiable in seeking judicial discretion for such an atypical situation.

This returns to the point that the case was known throughout the neighbouring locations gives reason to believe that that may have indeed been the case, perhaps due to the infrequency of similar cases. More will be discussed on the existence of other perjury cases later in this subsection. The third and final document is distinct, even when compared to the other cause papers considered within this chapter, as it recaptures the arguments of the case, and the witnesses attestation to the facts, in an uncommon format. In eight items, instead of the original twelve put forward by Robert Lidyerd with various details removed, such as item four which does not list the names of the four arbitrators agreed upon by both Lidyerd and West. In the dorse for document three, the names of three individuals are written with the comment that they are from the place of Howden.[644] In

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641 D. Maffei, "Profilo di Bonifacio Ammannati giurista e cardinale," *Genèse et débuts du grand schisme d'occident* (Bibliotheca eruditorum 1; Paris 1980) pp. 240–41.; there is considerable problems attributing works, specifically between Bonifacius Antelmi, Bonifazio Vitalini and Bonifacius Ammannati – all of which had works circulating and attributed to each other incorrectly.

642 Bonifacius de Vitalinis de Mantua, *Tractatus de maleficiis* (Venice: Filippo Penzi. 1518), *proemium*: *nee presumant iudicare secundum eorum conscientias, ut faciunt multi iuris et iustitie ignari, sed solum secundum leges et iura, et probationes sibi factas.*

643 Bartolus, *In ius universum civile commentaria*, Dig. 48.5.2.5.

644 CP.G.894, document three, dorse [note that no lines exist due to the nature of the written comments on the

document one (the first piece outlines the arguments), the four arbitrators are listed as John Payn, Ranald Spek, John Canyngworth and William Halton of Hoveden, whereas no mention is made of John Payn in the third and presumably latest written document. Compared to the previous case, CP.G.212, which the summary document was presented on top of the file; whereas the third document in CP.G.894, appears to be the summary document and the latest written, and curiously placed at the bottom of the case material. This alternation of record keeping is distinct, both within the cases considered in this chapter and more widely within the Province of York. As previously noted, there is no deposition or interrogatories known for this case, although the alteration might suggest that the subsequent small list of positions or items reflects that some positions had been stricken and not moved forward. This assumes that the defendant (West) had either admitted to them or disproven them through interrogatories of the witnesses/arbitrators, although they do not appear in the records.[645] While documents were often written anew after subsequent interrogatories, the preceding document with the initial list of grievances and claims was almost always attached. Nevertheless, it is curious why this third document was written as it provides a condensed account of the case within which information is removed in order to provide a shortened summary, which was not common practice. Most peculiar is the removal of one arbitrator and witness, John Payn, with no mention of why this occurred, although it does not appear to be a mistake by the reporter(s). This is demonstrated by the considerable care that was taken to write on the dorse the location of the three arbitrators/witnesses, as well as corrections when minor (inconsequential) mistakes were made, so it is likely not a mistake as both the document and dorse comments only list three out of the initial four arbitrators and witnesses.

back of the document].

[645] See section eleven, Exceptions against Witnesses and their Statements, for more information about the process for challenging witnesses, and the previous section on the defendant admitting to positions.

2.3) Conclusion:

There is no surviving sentence or deposition, which leads to an unclear outcome for the case. Despite the missing aspects of the case, it does outline the language surrounding oaths and perjury, the known jurisdiction of ecclesiastical courts, and that this type of perjury suit was atypical. This is supported by the lack of any similar known cases within York having occurred in the surrounding centuries; wherein the surrounding previous centuries records were consulted and the following decades after the case came before the courts. While perjury is a common pre-modern suit, this is the only known testamentary case from the surviving records; twenty-six cause papers related to perjury exist within York, with CP.G.894 the only one related to testaments, with the remainder occurring in the following categories: defamation (six),[646] violation of church rights (one), matrimonial (one), and breach of faith (seventeen).[647]

The significance of this case is twofold; firstly, demonstrating that the previous categorisation of this suit as perjury by arbitrator is incorrect. In fact, the treatment of this case is more akin to contractual law, given that it resembles other testamentary litigation surprisingly little. This case is an example of passive rather than active engagement with testamentary law. Within Lidyerd c. West, the lack of focus on the testamentary intentions of the testator, or even the division and/or administration of the estate is barely noted. As noted throughout, church courts almost always brought cases into consideration through the lens of impending administration which could cause harm to the soul of the defunct, due to an executor being unable to administer the estate, particularly in regard to pious bequests.[648] The focus is

[646] The defamation cases are predominantly related to sexual slander.
[647] Some of the breach of faith cases focus on debt as well as perjury.
[648] Marchant, *The Church under the Law*, pp. 90-96.

on perjury, without mention of withholding goods or its subsequent impeding of the testament administration. It appears that the unnamed relict executed the testators' wishes, and that goods were to be provided to Lidyerd and his wife.[649] There is no mention if these goods (grain and a small sum of money) were a part of the testament. While this case leaves many unanswered questions, due to the limited material surviving such as a deposition or outcome, it does demonstrate that some cases were conceptually removed from testamentary law by contemporaries. Indeed, this occurred in some instances where perhaps presenting it under testamentary terms would have been more favourable for the plaintiff.[650] The ecclesiastical courts, as noted previously, were quicker to act on cases which purported to be preventing an executor to administer a will, thereby jeopardising the soul of the testator, and were in most instances in favour of the plaintiff. Of course, it is generally well known that church courts were notorious for the amount of time cause papers took to pass through the courts to conclusion; however, this criticism is true of all contemporary courts.[651] As is seen in modern courts, a complicated case takes additional time to prepare, even if only heard in court for a relatively short time (such as a day or two). Why this case was conceptually removed from testamentary law perhaps speaks to the mentality of the period and concerns within the specific individual case.[652] Oaths, perjury, and violation of faith were easily within the realm of testamentary law and could have been framed in such a manner as to intertwine the case with the division of the estate – which it might have been, although not stated as such in what little records were generated or survived. This case demonstrates that even suits formally within testamentary law could be significantly removed from the law of succession, to such an extent that they barely resemble the same area of law. Not only was the formulaic styling different for this case, but as

[649] CP.G.894, document one, lines 4-5. Appendix three, starting p. 368 [Latin] and p. 372 [English].
[650] See for example Marchant, *The Church under the Law*, p. 90; and H. Swinburne, *A brief Treatise of Testaments and Last Willes* (1590), pp. 224r-v.
[651] Marchant, *The Church under the Law*, p. 65.
[652] For more general remarks, see Lorraine C. Attreed, "Preparation for Death in Sixteenth Century Northern England," *The Sixteenth Century Journal* 13, no. 3 (1982): 37–66.

noted, the content and aims were contractual in nature rather than restoration of testamentary aims. While the details are not present, this oddity might be explained if one considers, that West owed something to the estate of the defunct, but reached a negotiated settlement on that point by submitted the dispute to arbiters. The decision of the arbiters being pronounced, West swore to abide by the decision. However, in failing to conform his actions to the arbiters' decision, West broke his oath. This would explain why the case is partially removed for the terms of a testamentary case proper, in favour of a more contractual focus. This seems a likely rationale for the apparent differences between this case and other examined cases. Between the two cases discussed, differences emerge in relation to conceptualisation and passive or active consideration under testamentary principles. Another case that exemplifies this divide is CP.G.95.

3) CP.G.18 (Pollington c. Pollington, 1503-04):

This case occurred before the *Curia Ebor* for an instance of reported false inventory in a testamentary litigation. This case is unusually detailed, containing eighteen documents,[653] including a deposition, libel, and sentence. The plaintiff won this case, which was heard between March 14th and April 20th, 1503. There is a large number of individuals noted for this case; Isabel Pollington [Polyngton; Polynton] was the plaintiff and the daughter of the testator, while Alice Pollington was the defendant, widow and executor of the testator. The testator was Robert Pollington, although misidentified as a witness by the Borthwick Institute.[654] There are sixteen witnesses noted,[655] in

[653] As noted in the summary notes for this case in appendix three, there are over thirty documents, although several of which are duplications, similar pages, and blank documents.
[654] Cause Papers in the Diocesan Courts of the Archbishopric of York, 1300-1858: https://www.dhi.ac.uk/causepapers/index.jsp.
[655] For all details on the witnesses, see appendix three (pp. 310-14). Here the names will be noted: John

addition to two proctors: William Wright was the prosecution proctor and a notary public, and John Chapman was the defence proctor and also a notary public. Interestingly, Chapman was noted as a substitute for George Evers, who presumably was initially to appear before the court on behalf of Alice Pollington. Geographically, this case is a demonstration of a surprising amount of homogeneity; all but five witnesses are directly stated to be from or reside in Beverley, St Mary, *Beate Marie Beverlaci*, in Yorkshire. This is surprising compared to other cause papers with similarly large number of witnesses and participants; for example, in CP.G.212 the witnesses are scattered throughout the Northern Province of York. Evidently, to draw upon so many local witnesses would have been an impressive feat, thereby utilising the locality to defend the plaintiff's case.[656] The main legal matter of concern centred on the creation of an inventory of the goods, value and inheritance of the testator's estate. Below is a summary of Robert Pollington's will for context:

> Extract from the will [of Robert Polington] leaving to Alice, his wife: a messuage outside the northern gate ('barras') of Beverley where they lived for one year; four almshouses in Wodlane in Beverley, to hold for life, and after her death to Robert Rosse and John Rumerwhat for their lives, and then to the testator's heirs, all to be used for the good of the poor; a messuage in Beverley opposite the church or chapel of St Mary the Virgin, on the corner of the alley called 'Matfralane', lengthwise from the high street in the east to the land of the sisters of Kynwaldgraves [Killingwoldgraves] to the west, and widthwise between Matfralane to the south to the land of the same sisters to the north, and one garden in the same alley, lying from the garden of St Mary the Virgin to the east to the lands of Richard Boith (?) to the west, and from Matfralane to the north to the land pertaining to the four almshouses, to her and her heirs and assigns in perpetuity, with the intention that she or her executors sell them and use the money to pay Robert's debts. He leaves his daughter Isabelle a mattress and coverlet.[657]

Romethwaite also known as John Bower; Robert Burton; Thomas Simpson; John Gibson [Gybson] also known as John Spicer [Spycer; Spiser]; Thomas Hodgson [Hogeson]; Thomas Coke; Richard Town; John Wright [Wryght]; William Eloris [Elors]; William Clark; Richard Tom [Tome; Tone]; Richard Gainsborough [Gaynesbrugh; Ganesbrughe]; Richard Ireland; Robert Pottinger [Poteger]; John Cawton [of no known relation to the defendant in CP.G.95]; William Ridley.

[656] For more on the important nature of local knowledge in court cases, see Brand and Getzler, *Judges and Judging in the History of the Common Law and Civil Law: From Antiquity to Modern Times*, and Thomas A. Green, *Verdict According to Conscience* (Chicago: University of Chicago Press, 1985), pp. 28-59; Daniel Klerman, "Was the jury ever self-informing?" in Maureen Mulholland and Brian Pullan, eds., *Judicial Tribunals in England and Europe, 1200-1700*: *The trial in history*, volume I (Manchester: Manchester University Press, 2003) pp. 58-80.

[657] CP.G.18, image thirty-three. Appendix three, pp. 311-15.; For this case alone will the use of image rather than document be used due to the many challenges with identifying the exact number of documents due to the manifold problems with the surviving documents that often are copies of earlier pages repeated unnecessarily.

3.1) Specifics and Legal Concerns of the Case:

Within this case there are several complicating concerns, the first of which is the assertation of a fabrication of a false testament.[658] It was seen that a portion of the will reported that testator Robert Pollington had left to his wife Alice, a house in Beverley to only be given under certain conditions; namely, that she sell the house and pay his debts and make bequests for his soul, and donate a *clausuram* or locket[659] worth 3*s* 4*d* to the church of St Mary, Beverley.[660] This amount was to provide for the yearly obit or yearly expenses, in addition to providing 4 almshouses at Alice's disposition. Robert also left to Isabelle one mattress and a coverlet. This is argued to be all false and fabricated and invalid. This was determined to be a fabrication and the provisions as such were cancelled as a perversion of the testators intentions, and Alice is charged for Isabella's expenses. This case is further complicated by Chapman, one of the attorneys, who appealed the case to the official, following the sentence from Thomas Hanyball, doctor of laws, commissary general of the official of the court of York.[661] The conditional nature of the bequest of the house to Alice is peculiar as it also touches on immovable property, therefore aspects of the common law jurisdiction. Alice

[658] CP.G.18, image one. Appendix three, pp. 311-15.
[659] *Clausuram* has multiple translation, perhaps a necklace or locket, although it is of no large importance for the practicalities of the case. The potential minor variations in the translation of this term have been noted in appendix three (pp. 310-14).
[660] This church has a complex and well written upon history – having been established in early 12th century Yorkshire, as a smaller feeder church to Beverley Minster. For more see Nicola Coldstream, *The Decorated Style: Architecture and Ornament 1240–1360* (Toronto: University of Toronto Press, 1994) p. 58 and Nikolaus Pevsner, John Hutchinson, David Neave, and Susan Neave, *Yorkshire: York and the East Riding* (New Haven and London: Yale University Press, 2002) p. 295.
[661] It is possible that this is the same individual known as Thomas Hannibal (d. 1531), who was an English judge and eventual Master of the Rolls between 1523 and 1527. While little it known about him beyond being the thirty-seventh Master of the Rolls, there is some general remarks found in Frederic William Maitland, *English Law and the Renaissance* (Cambridge: Cambridge University Press, 1901), p. 52.

was the widow and executrix, attempting to defraud the heir and daughter, Isabella who is described as Robert's natural and legitimate ('*legitimam*') daughter. Although initially appearing to be a case of a false inventory and testamentary in an effort to defraud by the executrix, it also touches on elements of *legitim*. As the legitimate daughter and heir, no other children are noted, this case also demonstrates an attempt to not provide the one third of the estate constituted for Children. However, as briefly noted in chapter five, the *legitim* share can also apply to widows.

As the deposition of several witnesses note, Alice came to William Clark of Beverley, chaplain, on behalf of Isabelle Polyngton, with a will that they asserted was Robert's, but he thought it was badly written, so he rewrote it, adding certain clauses [as above]. He swore that it was all at the request of Rosse,[662] without any indication that it was the testator's wish. This will was then proved before the dean of Beverley and Alice took the administration as the named executrix. The crux of the legal matter was that this rewritten will was successfully proved by the unnamed dean of Beverley, making it even more difficult to challenge the actions of Alice. This case sets aside the actions of the dean of Beverley, who errored in proving the will, to focus on the initial will that was written and if they had the ability to rewrite the will, which they claimed was in an effort to ensure the will was of a sufficient character to pass the formulaic models and not create an intestacy.

Another witness, Richard Tone, chaplain,[663] stated in their deposition that approximately three or four days after Robert's death, he asked John Wright,[664] parochial chaplain of St Mary, Beverley, who wrote the will, about certain lands and tenements in Beverley. Wright, also a witness, said that Robert had intended not to die seisind of the property (in legal procession of land by freehold), and

[662] Note that they refer to the testator as Robert Rosse, instead of Robert Polyngton, this is presumably a clerical mistake.
[663] More commonly known as Richard Town.; CP.G.18, image three. Appendix three, pp. 311-15.
[664] Not to be confused with William Wright, the persecution proctor and notary public.

would dispose of them separately and not include them in his will.[665] However, Wright claims to have heard Thomas Walker, who was present at the time but not later called before the court, said that he asked Robert why he did not wish to include them in his will, and Robert said that he wished to die seisin, so that his heirs could enjoy the property.[666] These conflicting stated intentions of the testator towards his heirs receiving his property points to either the testator was not of a sound mind, changing his intentions haphazardly, or that one party had altering the testators intentions, presumably for their own gain.

John Wright, chaplain of Kingston upon Hull, aged 60, in his deposition outlined that he wrote the will of Robert, and Robert died on the following Sunday (either one day later or possibly eight days later). Wright affirms that Robert did not leave any lands in his will, and he heard Robert say, eight days before the will was made, that he had another tenement in Beverley, where Thomas Pateson lived, which he did not want to include in his will, denoting that it had come into his possession via his uncle Henry Polyngton's will. Ultimately, when Wright wrote the will on behalf of the weakening Robert, it contained nothing regarding any lands and tenements.[667] Here we have a deposition stating no lands were to be left; however, in the immediately following witness account only some of the property is stated that Robert intended to give to his heirs. Thomas Coke, present when Robert made his will, which was approximately two hours before his death; Coke stated that Robert said he wished to die seised of his lands and tenements, and that nothing was added about them, except that his daughter Isabella and Thomas Symson, which Thomas, by right of his wife, should have the tenement in Beverley, and crucially the they should only hold this land under the

[665] Here is another important legal matter, that he had not wanted to pass his property and wished to not die seined.
[666] CP.G.18, image seven. Appendix three, pp. 311-15.
[667] CP.G.18, image seven. Appendix three, pp. 311-15.

conditions in Henry Polyngton's will that Robert had to abide.[668] Therefore, it presents that possibly some of the lands and tenements, although not all, were to go to his daughter and Thomas Symson, which prompted the fabricated the will of Robert, immediately following Robert's death,[669] and that Alice made administration on the pretext of this false will.

The various depositions continue on in the same pattern, disagreeing between if all or only some of the property was to be seisin. It is worth noting that Thomas Symson was kin of Alice, possibly outlining a motivation for allowing some of the land to pass to him. Interestingly, one witness Richard Gaynesbrugh stated that public opinion in Beverley was that Isabella Polington should have the lands by right.[670] The mention of the wider public opinion is unique to this case, as within the other cause papers, public knowledge is occasionally mentioned often in the context of the notoriety of the crime, whereas this points to a more societal acknowledgment that Isabella should be provided for.[671] This, perhaps, returns to the topic of *legitim* and the intrinsic nature of providing for a child – especially if underage or without possible income. Furthermore, witness Richard Ireland said that John Bower and Thomas Symson are partial towards Alice, for the reasons noted by Gaynesbrught.[672] Ireland was present with Bower and several unnamed others when they proved Robert's will in St John's collegiate church in Beverley eight days after Robert's death, and because the land and tenements of Robert were left in the will as shown, they withdrew without proving anything. Afterwards they made another will, which stated that the land was left as contained in it. This outlines that they withdrew from trying to prove the will to rewrite the will to allow for the land and tenements to be provided. Throughout the depositions, increasingly as the court hearing

[668] CP.G.18, image seven. Appendix three, pp. 311-15.
[669] Directly denoted as around a table after Robert's death: CP.G.18, image seven. Appendix three, pp. 311-15.
[670] CP.G.18, image eight. Appendix three, pp. 311-15.
[671] For more on society and court proceedings, see Green, *Verdict According to Conscience*, chapter 4.
[672] CP.G.18, image eight. Appendix three, pp. 311-15.

progresses, comments were being made in regard to personal character as representative of their nature for deceit. For example, John Spiser is called a base person, to whom no faith is shown between his neighbours,[673] while Wright is a perjuror and corrupt, and is wrong in saying that Robert's will did not mention the lands.[674]

While this continues back and forth, with various additional witnesses called to counter-claim other depositions, the next phase was for additional statement made before the official of the court of York by the proctor of Isabelle Polynton. These statements were against Alice Polyngton of Beverley, and John Bower, Robert Burton, John Spiser and Thomas Symson, witnesses, saying that the witnesses are perjurors, acting on Alice's behalf, and that Robert did not leave the lands in his will to Alice. Continuing to state that the true will did not mention those lands, Robert wishing to die seised so that they passed to his heirs. Isabelle continues her claim and her case.[675] This was responded in kind, before the official of the York court, by the proctor of Alice Polyngton, against Isabelle Polyngton of Beverley, and against Sir John Wright, Sir William Clerk, Sir Richard Tone, priests, and Thomas Cook, witnesses for Isabelle against Alice. The statement claims that the witnesses are biased and perjurors, acting on Alice's behalf, and that Robert left the lands in his will to Alice. They ask that the case of Isabelle be dismissed.[676] This back and forth continued but outlines the nature of how this case was presented, both by defence and prosecutor, in strictly testamentary focus. The shift towards libel as a means of determining the true testamentary intentions of the testator concludes with the request of Isabelle Polynton, natural and legitimate daughter of Robert Polington, against Alice, widow and executor of Robert, stating that the inventory made by Alice, as executor, of the goods of Robert is false and fraudulent. Therefore, so is the will, which was

[673] CP.G.18, image eight. Appendix three, pp. 311-15.
[674] CP.G.18, image twenty-five. Appendix three, pp. 311-15.
[675] CP.G.18, image twenty-one. Appendix three, pp. 311-15.
[676] CP.G.18, image twenty-seven. Appendix three, pp. 311-15.

made and fraudulently sealed four days after Robert's death.[677] She concludes with a request for the court to proceed with the administration of the original will. Therefore, to achieve this aim, Isabella asks that the court order Alice to produce the correct will and a true inventory and pay her expenses. Of course, this is based on the assumption that Alice kept the original will and did not destroy it. If this was to occur, an intestacy would result – despite the conservable efforts Robert had taken to make his intentions known and written down. Fundamentally, this case demonstrates that if a valid will has been destroyed, and if there is a second will, and the second will is a forgery, then the defunct in questions dies intestate. In this scenario, the defunct's estate would have to be administered in conformity with the law of intestate succession. The only positive note, if intestacy would happen, was that the court was evidently aware from the many witnesses of the testator's stated intentions and could attempt to adhere to them, within the confines of the law of intestate succession.

3.2) Conclusion:

Thankfully, the fact that Isabella was noted as having married and is called, Isabella Scorby, now the said wife of John Newren of the parish of Skeffling,[678] had no effect on the wider litigation. Her husband plays no role in the outcome. This case presents depositions made by the proctor on behalf of Isabelle, claiming that Alice produced a false will and a false inventory. It is evidently clear that Robert made his will while still alive, but Alice was made executor of another will made four days later. Being made executrix, Alice was sworn to make an inventory on the basis of the will; however,

[677] CP.G.18, image twenty-nine. Appendix three, pp. 311-15.
[678] CP.G.18, image thirty-one. Appendix three, pp. 311-15.

seeking to disinherit Isabelle, Alice made a false inventory, with false amounts and values. As the natural and legitimate daughter of Robert, Isabella was the heir, and this fact was publicly acknowledged as such. Isabella sought that the true will be shown, and that a true inventory of Robert's goods be made, with the false will and inventory disregarded. Isabella was successful in her suit, winning the case and having a new inventory drafted to the provisions of the original will. Therefore, the defunct did die with a valid will and was testate. The conclusion is that the part of the will that stated that Robert left to his wife Alice a house in Beverley under certain conditions, namely that she sell the house and pay his debts and make bequests for his soul, and a *clausuram* worth 3*s* 4*d* to the church of St Mary, Beverley to pay for a yearly obit. Also, that four almshouses were left at Alice's disposition, and that Robert left to Isabelle one mattress and a coverlet, is all false and fabricated, and is invalid. The sections are cancelled, and Alice is charged for Isabella's expenses.

While the conclusion of this case is noted, there are several aspects worth noting. Interestingly, there is no mention of the difficulties and challenges, although possible, to transfer a freehold estate in land by way of feoffment with livery of seisin. While land could be transferred by livery of seisin without accompanying documents, it was useful to record the transactional terms in a deed.[679] The Statute of Uses transferred seisin of the land to the *cestui que use*.[680] The court was able to mitigate any discussion of this by focusing on the initial production of the will, as well as avoiding the problem of the altered will being erroneously proved by the dean. This case relates to the wider theme of engagement either active or passively with testamentary law. This case does not mention directly about impediment or preventing the administration, although it is clearly a factor. The active

[679] A. W. B. Simpson*, A History of the Land Law* (2nd edn, Oxford: Clarendon Press, 1986) p. 120; Holdsworth, *A History of English Law*, vol 7 (2nd edn) p. 355; After the Statute of Uses (1536) permitted land transfer without livery, deeds became of greater importance.
[680] 27 Hen VIII c. 10; For more see McCunn, *The interpretation of deeds and wills at common law, c.1536–c.1616*, pp. 24, 30, 127, 130.

engagement with the testamentary focus is key, supplemented with later claims of libel, all while engaging with topics that were impediments without directly stating as such. Evidently, this approached worked as the plaintiff won their suit and would have received the property. Nevertheless, the overarching legal matter for this case outlines how the use of impediment was not always necessary to produce a favourable response from the church courts, with their abhorrence of intestacy, although the common law had concerns regarding the abeyance of seisin, because it required that an individual always be seised of land. This is another case example in the York cause papers that demonstrates the diverse nature of litigation, court practices, use of libel, witness and counter-witnesses, as well as the unique approach of utilise public knowledge regarding who had a better testamentary claim or right. Having studied CP.G.18, in addition to the earlier discussion on this case in chapter five, the next litigation before the York courts focuses on exceptions and passively engaging with the testamentary matters of the dispute.

4) CP.G.95 (Willingham c. Cawton, 1520) - Exceptions:

This case was heard before an unidentified court, dated November 17th, 1520. Therefore, it is likely that any other elements of the litigation and will were in the preceding months of 1520. This case has two documents, including a deposition, albeit without surviving libel or sentence, although it is possible that the case was resolved outside the courts and therefore the records end. While the outcome is unknown, it appears to be an acquittal. This case considers the nature of testamentary exceptions only. There are three key individuals is this case, the plaintiff John Willingham [Willyngham], the defendant John Cawton, and the witness John Cory [Corri or Corry], mostly from ecclesiastical parishes in Yorkshire. The central legal subject in this litigation relates to exceptions, *impubes* and minors, as well as the

complexity of discerning the payment of money owed. Once again, this case is an interesting litigation outlining that while testamentary in nature, the testamentary component goes unmentioned, as a conscious decision. The key legal component of this case is the difficulty for John Corry to bring forth a claim - the infraction on his right to the estate was not undertaken when it occurred in 1501, but once John Corry had reached age of maturity, during which nineteen years passed.

4.1) Analysis:

This case came before an unknown court and is only noted as having been heard on Nov. 17th 1520, and is recorded in two documents.[681] Geographically four locations are noted, three of which are in Yorkshire; Barton-le-street,[682] Coxwold, and Thirks, with a fourth location of Newburgh which is unknown. This document is distinct from the first case discussed, CP.G.212 with its focus on impediment, and has some similarities with the second case discussed, CP.G.894 with its focus being removed from strictly testamentary law. In addition, both CP.G.894 and CP.G.95 have limited surviving records. In CP.G.212, every argument was noted with each witnesses response to all items records; in CP.G.894, there appears to be a summary document [number three] that removes some items to provide a concise overview of the main items and facts of the case (albeit with some details being removed that were needed, in the case of the four arbitrator). In CP.G.95, the focus touch on several key topics, such as a near twenty-year gap in the litigation, potentially brought about due the age of John as firstly an *impubes* and later a minor.[683] An *impubes* is under

[681] GB 193, CP.G.95 incorrectly states that three documents survive. Appendix three, pp. 321-324.
[682] An ecclesiastical parish, also spelt as Barton Le Street or simply Barton.
[683] A short description is provided here for both terms, for more see the table of terms at the beginning of this work. *Sui juris* ordinarily means someone of full legal capacity, while *non sui juris* refers to someone with a limited legal and mental capacity.

the age of puberty, either twelve for girls or fourteen for boys. Essentially, an *impubes* lacked mental capacity to conduct their affairs and was *non sui iuris*. A minor was over the age of puberty but under the age of twenty-five. In this instance a curator was usually appointed to protect and manage their property until of age. Determining this is difficult due to confusion distinguishing between the two John's, most likely father and son. What follows will break down the two documents before outlining this case in relation to the other cause papers.

4.2) Content of Document One:

For Willingham c. Cawton, document one is a summary document, stating that "[a]rticles extracted from the exception of John Cawton against John Willyngham."[684] This points to the possibility of other documents, although they either did not survive or were never placed with the other documents of this case. This focus on outlining the exceptions, demonstrates that this document is exclusively based upon section eleven in the court practice stages breakdown noted in this chapter, Exceptions against Witnesses and their Statements. Wherein, only the positions or items that the defendant has contested remain. This document is relatively sparce on details, although it outlines some interesting details like the involvement of master Doctor Machell, then commissary of the venerable court of York, in facilitating the payment of fees. Most importantly, it also outlines the contemporaries considered this case as upon the exception, stating on the dorse as a summary of the case – *super excepcione*.[685] The use of dorse comments as summary notes is infrequently found, although not rare, on cause papers; the cause papers selected for this work

[684] CP.G.95, document one; there are no specific lines for this first document as the text is haphazardly written. Appendix three, p. 321 [Latin] and p. 323 [English].
[685] CP.G.95, document one, dorse. Appendix three, p. 321 [Latin] and p. 323 [English].

have several dorse comments.

4.3) Content of Document Two:

The second document outlines the witness' statement, that John Corry had been present when "John Cawton pay and deliver to the same John Corry, son of John Corry, deceased, 13*s* 4*d* in part of the payment of five marks, which the same John Cawton had in custody in the name of the portion of the same John Corry, in ready cash."[686] Most curiously, Corry notes that this occurred in the sixteenth year of Henry VII's reign, which would be 1501.[687] As noted in the discussion of CP.G.212, the indiction through the year of the king's reign was commonplace and few exceptions are found in the cause papers. The timeline for this case is very long, as it states that the witness, John Corry of Cukwald "was examined from the mandate of the commissioners on the 17th day of November in the year of the lord 1520."[688] This would mean a nineteen-year gap between when the payment occurred that John Corry saw and when he was examined for this case. While this case is categorised for its focus on exceptions, this case might also engage with the right of *legitim* – in that a share of the estate, to that value noted, was left to Willingham and held by Cawton in the meanwhile, due to a young age (as an *impubes*) of Willingham upon the death of an unknown testator.[689] Willingham would have been an *impubes* and not a minor, as if he was a minor he would have reached the necessary age much earlier instead of the full nineteen-year holding period. While it is impossible to

[686] CP.G.95, document two, lines 6-9. Appendix three, p. 322 [Latin] and p. 324 [English].
[687] CP.G.95, document two, line 4: *In Anno decimosexto Regni Reg[is] Henrici septimi*. Appendix three, p. 322 [Latin] and p. 324 [English].
[688] CP.G.95, document two, line 13. Appendix three, p. 322 [Latin] and p. 324 [English].
[689] The identity of the testator is where the case becomes complex, as it might be John Corry (either the son or father of John Corry the witness).

know for sure, given the lack of other surviving documents, it appears that this rather simple case is another example (as seen in CP.G.894), wherein conceptually cases were reframed into alternative aspects under testamentary law.

It is curious in this document, which lists several other present parties they were not listed as witnesses. Such individuals include the following, as John Corry was "together with lord Richard Bradshaw, rector of Barton, otherwise called lord Richard Cardemaker, Alan Storry alias B… of Cukwold, Robert ?Eldmer, the said Alice Danby and Agnes her daughter."[690] Perhaps this returns to the matter of time, having occurred in 1501 and not brough before the courts until 1520, it was likely that some of the others listed above could not be found or had died. Indeed, when one considers this case, it is impressive that after nineteen years John Corry still had such a detailed witness statement of thirteen lines (half a page). Another curious and potentially dubious aspect of Corry's testimony is stated regarding the payment of money: "Having been asked in how much money, he says that in gross and money two pence, and in no other payments, and he says that he counted this …"[691] It is unclear how he would know this information, which is another aspect of difficulty when considering this case and the wider legal concerns it represents. As with all legal matters in late medieval and early modern England, it should be taken with a measure of hesitancy when making wider extrapolations.

The exceptions or summary document, outlines that Cawton paid in the ecclesiastical parish of Thirsk, five marks, "which he had from the goods of John Corry, to be kept to the said John Corry to

[690] CP.G.95, document two, lines 5-6: *unacum domino Ricardo Bradshaw Rectore de Barton alias dictus dominus Ricardus Cardemaker Alano Storry alias B… de Cukwold Roberti ?Eldmer dict' Alicia Danby et Agnete filia sua.* Appendix three, p. 322 [Latin] and p. 324 [English].
[691] CP.G.95, document two, lines 8-9: *Interogatus in quibus pecuniis et dicit quod in gross' et denarijs duorum denariorum et in nullis alijs solucionibus et dicit quod ipse numeravit huuismodi …* Appendix three, p. 322 [Latin] and p. 324 [English].

the use of the same man, a long time before the decease of the same man, 13*s* 4*d*."[692] As John Corry was the stated witness, who's examination is recorded on the second document, the case begins to become more complicated. To understand the complications, more focus on the legal arguments of the case is required.

4.4) Argument of the Case:

Of critical importance to the case was that John Corry witnessed John Cawton pay 13*s* 4*d* in part of the five-mark payment required, he [unsure who this is referring to] paid John Willyngham four marks into the hands of John Cawton, and then [he] was acquitted. It appears that John Corry, the father, was the one to supply the money that John Cawton paid to Willingham. It is important to note that the aforementioned 13*s* 4*d* was paid as a portion of the sum required and owed, not in lieu of the full amount. Regardless, this is a rather confusing case of money spent and held, ultimately the key point was that Corry was an *impubes* and the property and goods left to him via the unnamed testator were held until he reached the required age.

This case is also an example of testamentary cases that occurred decades earlier, with a nineteen-year gap between when the witness was deposed and when the initial payment happened. Complex cases could take a correspondingly long time before the courts; however, it does not appear that this was the case for this litigation. Rather, the litigation could not occur until Corry was of an age to claim his amount owed, which was from that point onward – being withheld, crucially, for the nineteen-year period. As postulated throughout this case, it is conceivable, although unprovable, that the large time frame was in relation to the age of John Corry the younger. John Corry was owed

[692] CP.G.95, document one. Appendix three, p. 321 [Latin] and p. 323 [English].

goods from the estate of his father, John Corry, which were held by John Willyngham, presumably due to his age (potentially as a child born near the death of his father - potentially as a subsequent birth[693]). This case is an example of goods being held by another until a child was able to have the estate, presumably when coming of age. This type of occurrence is an ordinary feature that was essential a type of trust, with the money being held until the legatee reached a certain age. However, this case demonstrates the difficulty for John Corry to bring forth a claim - the infraction on his right to the estate was not undertaken when it occurred in 1501, but once John Corry had reached age of maturity (nineteen years later). Perhaps due to this, the deposition only has one witness, despite legal requirements stating that two witnesses were always required.[694] While there is considerable debate regarding the number of witnesses, generally the foundation was X. 3.26.10; indeed, Durantis argues that the gloss to this decretal is not limited to pious causes but demonstrates that the presence of both a priest and two witnesses is needed for a will to be valid and that two witnesses before the court is needed.[695] There is an addition layer of analysis in regards to John Cawton case, as this case is more complex than initially seems to historians. John Corry is the witness, John Willingham [Willyngham] is the plaintiff, John Cawton is the defendant. While not expressly stated as such, Willingham must be working on the behalf of Corry, to return the amount owed to him, who has reached the age of maturity.

While exceptions are common in this period, this is the only case which the focus was on the exceptions themselves rather than the testamentary and contractual law through the monetary

[693] As discussed extensively in chapter five in relation to *legitim* and the preconditions of implied revocation.
[694] There are a plethora of canonist writings on the requirement of two witnesses, drawing as far back as biblical times. See for example that Paucapalea (c. twelfth century) cited Deuteronomy in which Moses decreed that to ascertain the truth, only two or three witnesses would suffice. This is just one example demonstrating how the rules of the accusatorial procedure required two or more witnesses since antiquity. For the wider *ius commune* see C.2 q.1 of Gratian's *Decretum*. For discussions on female witness see Durantis, *Speculum Juris*, Lib. I, Patric. 4, Rub. *De teste Que possunt contra testes oppni*, n. 15; for priests as witnesses within England see Lyndwood, *Provincale*, p. 174a, a.v. *Probatis*. For more modern studies see Michael M. Sheehan, *The Will*, p. 181f.
[695] For more see Durantis, *Speculum Juris*, *Testamenta qualiter impugnentur*, n.11, p. 231.

elements law. Willingham c. Cawton is the only known testamentary case from the surviving records at York; in total, fifty-eight cause papers expressly relate to exceptions, with CP.G.95 the only one related to testaments in this period, with the remainder occurring in the following categories: defamation (fifteen), violation of church rights (one), matrimonial (fifteen), appeals (two), tithes (six), and undefined (sixteen). In all the surviving records, three exceptions cases occur under testamentary law, in 1573 (CP.G.1645, Bigott or Keighley c. Raysing) and at some point, between 1560-1600 (CP.G.1737, Slater c. Slater[696]) respectively, both of which were before the consistory court.[697] This case demonstrates the difficulty for John Corry to bring forth a claim - the infraction on his right to the estate was not undertaken when it occurred in 1501, but once John Corry had reached age of maturity (nineteen years later) in 1520. Beyond the specific details of this case, it outlines the broader legal matter in question regarding the nature of bringing forth claims' years later, as well as the challenges children faced while attempting to gain their property or money owed having previously been *impubes*.

The discussion surrounding the length of time in this case was in regard to the length of time between when the initial point occurred (i.e., when the individual became defunct) to the point when the item appeared before the court (in this instance when the actual legatee reached a certain age (majority). While the duration of time passed between events and their appearance before the court is not a significant aspect to note for this case; however, it is worth mentioning that compared to the other cases used for this research project (and in the vast majority of all surviving cause papers surveyed for this thesis), such a time length was unusual.[698] Cases typically went before the courts in short

[696] Of no known relation to the other earlier Slater case, who was the plaintiff in Slater c. Donbigynge in 1476 (CP.G.212).
[697] As these cases are outside the period under consideration, only their existence will be noted.
[698] The only other relevant example is found in CP.G.3626. This is a testamentary cause that was appealed and the duration before the courts appears to be over thirty-seven years, 1509-1546. Perhaps this is a useful indicator regarding the timeframe of appeals in the York courts, although further research into the general category of appeals would be required but is outside the scope of this thesis.

succession following the initial breach of rights or privileges, with limited examples of decades passing before the litigation began.

5) CP.G.967 (Thwing c. Beckinsale, 1500-50) - Unpaid Dues to the Estate:

This case also occurred in the early sixteenth century, with an unknown exact date. This is due to the rather unconventional structure of the documents, where no date or indiction is provided. This case was heard in the curia Ebor and has an unknown outcome, generating three documents which include the libel without the sentence or deposition. The legal matter of concern is unpaid dues to the estate. This case engages with the wider theme of this chapter which considers the conceptualisation of cases as actively or passively utilising testamentary law as a cornerstone of the legal defence or prosecution. There are three key actors in this litigation; firstly, the testator Thomas Readman or Redeman, who is noted as a gentleman from Bossall or Bossell which is an ecclesiastical parish in Yorkshire. The next individual is the armiger Marmaduke Thwing [Thweyng; Twyng], the plaintiff and executor of the will of Thomas Readman. Finally, the third individual is the defendant Thomas Beckinsale [Beckinsay; Bekynsay; Beckynsay] also from Bossall. In addition to Bossall, two other locations are noted in the archive records; South Flat [Suth Flat, Soth Flat] and New Flat [New Flatte, Newflatte, Newflat], both of which are fieldnames, with no additional information known. Geographically, this case is confined exclusively to Yorkshire. This case centres on two components, interpretation of the bequest of crops to the legatee and impeding the testamentary administration of the executor, Marmaduke, by the noncompliance of Beckinsale. Here there is a partial return to the focus on impediment of administration as a conceptional strategy, using arguments that impeding the administration of the estate could have a bearing on the well-being of the testator's soul. The consideration for the testator’s

soul ought to compel the proper conduct of executors and third parties.

1. Content of the Documents:

The order of the production of the three documents was written two, three, one, but the summary was placed first, becoming identified as document one. This was not the typical structure for the cleric to compile the documents.[699] Within document one, the first part has a unique section following the formulaic first subsection, which outlines the testator, executor, in the name of God amen, and other such formalities; in this atypical section it states "First of all it is articulated, and if it will be denied, he intends to prove that …".[700] This is not seen in the other three cases considered with this chapter, neither any of the other cases accessible within the entirety of the York cause papers. This inclusion of a pre-emptive clause about if the defendant should deny the positions is a unique approach not previously seen. While it can be assumed if a case was appearing before the court that there was indication that the defendant intended to challenge, it speaks to the nature of the documents. In previous centuries, deviation from the formulaic model would invalidate either a testament or court proceedings; however, this points to a potential trend that allowed for some level of variation previously unseen. Whether this is the emergence of a large trend that allowed for a more lenient approach to the production of documents, a mistake that passed through the watchful eyes of the court (unlikely), or a solitary judge or cleric that allowed this to occur. Any of these options are potential avenues of future study, although the former is the least likely. If such developments were truly occurring for a slightly more lenient formulaic structure, it does not appear in any sufficient

[699] For more on this see Lyndwood, *Provinciale*, Chapter four – The Development of Testamentary Law in England, pp. 55-77, especially 58-68.
[700] CP.G.967, document one, line 4. Appendix three, p. 376 [Latin] and p. 381 [English].

number to determine if such a trend was occurring.[701]

Returning to the specifics of this case, the unique phrasing of a potential rebuttal was followed by four items:

> 1) Thomas Beckynsay had prevented the administration of the estate having "unduly impeded this executor from being able to dispose and administer the goods of the" estate;[702]
>
> 2) That Bekynsay "was requested and called upon often and on repeated occasions on the part of the said executor and by the same man to desist in hindering this executor from being able to fulfil the said will.";[703]
>
> 3) That "Thomas, having been so requested … has denied and refused to abstain from this impeding, and has more duly delayed and delays in the present to the serious danger of his soul and the prejudice and not immoderate damage and harm of the said executor.";[704]
>
> 4) The final position was "that the premises are true, and public voice and fame have laboured and labour upon the same."[705]

The first point outlines the conceptualisation of the issue with a mention of impediment, in consideration for the testator's soul. A quasi-intestacy could temporarily result from impediment, in which the soul of the testator was left in limbo as the will could not be administered. Formally, they would have died with a will, by definition testate, however if the provisions within the will

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[701] For more on this, specifically in regard to the northern province, see Will Coster, *Kinship and Inheritance in Early Modern England: Three Yorkshire Parishes* (York: Borthwick Papers, University of York, 1993).
[702] CP.G.967, document one, lines 10-11: *Item quod ad desistend' ab impedicione huiusmodi executoris quominus dictam voluntatem perimplere valeat ex parte dicti executoris et per eundem sepius et iteratis vicibus predictus Thomas Bekynsay requisitus fuit et interpellatus.* Appendix three, p. 376 [Latin] and p. 381 [English].
[703] CP.G.967, document one, lines 12-13: *Item quod idem Thomas sic ut premittitur requisitus s… ab impedicione huiusmodi abstinere Renuit et recusavit et plus debito distulit et differt in presenti in anime sue grave periculum dictique executoris preiudicium dampnumque non modicum gravamen.* Appendix three, p. 376 [Latin] and p. 381 [English].
[704] CP.G.967, document one, line 12: see footnote above. Appendix three, p. 376 [Latin] and p. 381 [English].
[705] CP.G.967, document one, line 14: *Item quod premissa sunt vera ac de et super eiisdem laborarunt et laborant publica vox et fama.* Appendix three, p. 376 [Latin] and p. 381 [English].

(especially charitable donations) could not be administered, the testator's well-being in the afterlife could be compromised. As such, intestacy could be linked to impediment, a fact that testators were most careful to avoid. The focus on impediment causing potential issues for the well-being of the testator's soul was a common feature, similar to CP.G.212. The second point reaffirms that the defendant is duly aware of the impediment and resulting delays in administering the will to the wishes of the testator which could be suffering for this delay. This point was clearly noted to highlight that the defendant was aware of this well-being concern, preventing any later defence to that matter. This returns to the earlier mentioned significance of such actions, which usually garnered swift actions from the church courts. The third point focuses on the challenge of continued impediment, careful to denote that the defendant had been informed that the actions taken were preventing administration and thereby creating a delay which was against the wishes of the testator and jeopardising their soul. This is an important step, demonstrating that all efforts to prevent and stop the continued impediment have been attempted and the defendant wilfully continues to create potential challenges to Thomas Readman's soul. The fourth and final point was a return to the typical formulaic insertion in all forms of litigation, albeit without mentioning any specific cities like other cause papers.

The first document seems to be a summary libel, following the initial six items laid out in the second document, and refuted in the third document. Contained within the second document, which outlines the positions brought by an unnamed proctor on behalf of the plaintiff (Thwing), more specifics are provided in respect of the six positions or items. The essential components of the six items are as follows:

1) Thwing asserts that he made "a bodily oath to fulfill his [Readman] last will, *viz* to pay his

bequests and debts according to hereditary rights."[706]

2) That the testament was "bequeathed or left to Thomas Beckinsay and William Thweyng one crop of 'warcorn', growing in one 'le flat' in Bossall Felde … [and] a certain place called le Suth Flat and that it was bequeathed to this deponent, William Thewyng and Nicholas Lillee."[707] It is worth noting to clarify that William Thewyng [Thwing] is not formally noted within the records as a distinct party [either as a plaintiff, defendant or witness], and the extent of his role is unknown beyond the fact that he was an alleged co-legatee of the crop bequeathed in the will.
3) Thwing asserts "that the said Thomas Bekynsay, being well aware of the premises, detains and occupies the whole or at least two parts of the said grain, bequeathed, … to him and William Thweyng, against the will of the said Marmaduke the executor and William his co-legatee. He does not believe for the greater part, except that it was bequeathed to him."[708]
    a) Within this third item, the mention of "*contra voluntatem dictorum Marmaduci executoris et Willelmi sui colegatarii*"[709] is an essential component of this wider case. There are few mentions of William, either as a co-legatee or a party to the suit. While the case essentially revolves around his share or right to the share of the bequeathed crops, this issue is closely associated with the claims of the executor that Beckinsale's actions were impeding the administration of the estate.

[706] CP.G.967, document two, lines 11-12: *Item quod ad perimplend' suam ultimam voluntatem videlicet legata et debita sua solvere iuxta viros hereditar' corporale prestitit Juramentum / cred'.* Appendix three, p. 377 [Latin] and p. 382 [English].
[707] CP.G.967, document two, lines 13-16: *Item quod in huiusmodi testamento legat' sive Relict' fuit Thome Beckinsay et Willelmo Thweyng unum le crop de Warcorn crescens in uno le flat in Bossall Feldes vulgariter nuncupat' the newflatte / cred' de quodam loco vocato le suth flat et quod legat' fuit isti deponenti Willelmo Thewyng et Nicholao Lillee.* Appendix three, p. 377 [Latin] and p. 382 [English].
[708] CP.G.967, document two, lines 17-20: *Item quod dictus Thomas Bekynsay premissorum satis sciolus totum seu ad minus duas partes dicti grani ut prefertur sibi et Willelm' Thweyng legati detinet et occupat preter et contra voluntatem dictorum Marmaduci executoris et Willelmi sui colegatarij non cred' de maiori parte nisi quod sibi legatum fuit.* Appendix three, p. 377 [Latin] and p. 382 [English].
[709] CP.G.967, document two, line 19: see footnote above. Appendix three, p. 377 [Latin] and p. 382 [English].

4) Thwing "was requested and called upon by the said Thomas on the part of the same executor or by the same man often and on repeated occasions to deliver or hand over and pay in full the moiety of the said grain into the hands of this executor or the said co-legatee, if he was, otherwise its true value or estimation."[710]

5) Item five argues that having been duly requested, Thomas Beckinsale "has denied and refused the payment, handing over or delivery of a moiety of this grain into the hands of this executor or to the … co-legatee," and that Beckinsale "has more duly delayed and delays in the present to the serious danger of his soul and the prejudice and not immoderate damage and harm of the said executor."[711] Item five passively reasserts that the impediment of the administration of Thomas Readman's will. While it does not directly mention impediment, the notion of 'delaying in the past and present' is a component of typical statements regarding testamentary impediment.

6) Item six is the typical assertion that the claims of the plaintiff are true, without prejudice and known to the public.

Overall, the second document not only outlines the six positions of the case, but also passively reaffirms the previously noted impediment of the administration of the testament by referring to the undue delay in proving the goods or its true value or estimation. This is important as it expands the

[710] CP.G.967, document two, lines 21-23: *Item quod ad deliberand' seu tradend' ac persolvend' dimedietatem dicti grani ad manus executor' huiusmodi seu dicti colegatarij si extiterit alioquin eius verum valorem seu estimacionem ex parte eiusdem executoris seu per eundem sepius et iteratis vicibus a dicto.* Appendix three, p. 377 [Latin] and p. 382 [English].

[711] CP.G.967, document two, lines 25-28: *Item quod dictus Thomas ut premittitur debite Requisitus solucionem tradicionem seu deliberacionem dimedietat' huiusmodi grani ad manus executoris huiusmodi seu ad manus colegatarij sui Renuit et Recusavit ac plus debito distulit et differt in presenti in anime sue grave periculum dictique executoris prejudicium et dampnum non.* Appendix three, p. 377 [Latin] and p. 382 [English].

scope of what qualifies as impediment, beyond merely withholding goods and property, impediment applies to unduly delay in providing estimates of values and other such things. This is something not seen in the earlier cause papers, which when using impediment as a legal argument focus exclusively on physically withholding goods. The use of impediment is not exclusive to these types of litigation, neither to men; for example, in 1423 Eleanor Crasswell wrote the following:

> I will, give, and bequeath to Robert my husband my entire tenement situated within Wallingford together with all its appurtenances for the term of his life under the condition that the same Robert complete the aforesaid last will to his full power. And if he will not do [it], that then without any impediment [emphasise added] let the entire tenement thus situated remain entirely and revert to Joan my daughter and to her right heirs. And if it happens that Joan die without heirs of her body, I will that the tenement be sold and distributed for my soul and for the souls of all my ancestors and all the faithful departed.[712]

Eleanor Crasswell's will is in the context of a conditional bequest, wherein the use of the word 'impediment' is used to refer that the husband will not act as executor, nor receive the tenement, but that the tenement passes to the testator's daughter. The use of the term 'impediment' in this will is distinct from the issue of third parties impeding the administration of an estate by the executor; however, it has been briefly noted to highlight the linguistic usage of the term in legal documentation. Building on this example and the work of McCunn's research on the linguistic terminology, further research into the terms development and contemporary understanding is worth pursuing. This will is from the early fifteenth century, so the linguistic trends might be possible to trace in the development and implementation of the term at law. Returning to the main focus of this section on third parties impeding the administration of an estate, it was worth noting the existence of other usages of the term

[712] Chichele and Jacob, *The register of Henry Chichele, Archbishop of Canterbury, 1414-1443*, pp. 261-62. Translation provided by Teague, *Patterns of Bequest within the Family: Testamentary Evidence from the Ecclesiastical Registers of Canterbury and York c. 1340-1440*, pp. 121, 243: *Item volo, do et lego Roberto viro meo totum illud tenementum meum infra Walyngford' situatum cum omnibus pertinenciis ad totum terminum vite sue, sub hac condicione quod ipse Robertus compleret ultimam voluntatem prescriptam ad suam integram potestatem. Et si non fecerit, quod extunc sine ullo impedimento totum dictum tenementum sic situatum integre remaneat et revertatur Iohanne filie mee predicte et rectis heredibus illius. Et si contingat dictam Iohannam sine herede de copore suo decedere et obire, volo quod dictum tenementum vendatur et distribuatur pro anima mea et pro animabus omnium antecessorum meorum et omnium fidelium defunctorum* [lines 21-23].

and to acknowledge the area for future research beyond the conception of impediment as a serious concern for the church courts and one that the savvy plaintiff and proctor could make use of this importance by shaping the case surrounding impediment.

The third and final document contains a defence submitted by an unnamed proctor on behalf of the defendant, Thomas Beckinsale, responding to each item presented in document two. Most notably, three rebuttals are put forth by the proctor: firstly, that "[the] same bequest [to] the same Thomas the legatee collected and had and has in his hands at present."[713] Secondly, that Beckinsale was "sufficiently informed about the premises" and that this knowledge was "true, public, notorious, manifest and famous equally."[714] Therefore, "this bequest, left and bequeathed to the aforesaid Thomas, and the aforesaid Thomas the legatee was accustomed to be dismissed and absolved from all further wearying, rashness, vexation and disturbance of the said Marmaduke Twyng, the executor."[715] Thirdly, Beckinsale requests that the plaintiff and executor should be "condemned in lawful expenses, made and to be made by the party of the aforesaid Thomas the legatee in this matter."[716] Beckinsale further asks that once Marmaduke had been condemned, "he should be forced and compelled to the due payment of the same canonically by you and your definitive sentence, lord judge."[717]

The first point outlines that Beckinsale claims that he was the sole legatee of the crop, and that the executor has wrongly claimed William Thwing was a co-legatee of the crop. The executor has wrongly included as co-legatee William Thwing, who presumably was related to Marmaduke.

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[713] CP.G.967, document three, lines 14-16: *Quod quidem legatum idem Thomas legatarius ipse ?messin' collegit ac penes se habuit et habet de presenti ut legatum sibi per prefatum Thomam testatorem relictum se in ea parte ab omni facto injurioso seu impedimento libellato posito sive articulato abstinendo prout abstinuit et abstinet de presenti.* Appendix three, p. 379 [Latin] and p. 383 [English].
[714] CP.G.967, document three, lines 16-17: *Que omnia et singula fuerunt et sunt vera publica notoria manifesta pariter et famosa.* Appendix three, p. 379 [Latin] and p. 383 [English].
[715] CP.G.967, document three, lines 22-23.; As this and the following two footnotes overlap in the same material see appendix three for a full translation and transcription (pp. 376-83).
[716] CP.G.967, document three, lines 23-24. Appendix three, p. 379 [Latin] and p. 383 [English].
[717] CP.G.967, document three, lines 24-25. Appendix three, p. 379.

The second point, although formulaic and commonplace, was required to attempt to successfully challenge the plaintiff's positions – that the knowledge was public and known to all parties, as well as the intentions of the testator being known. This point concludes that the items were legally bequeathed and delivered to Beckinsale as legatee and were legally held, meaning that it did not impede the administration in any regard. The third point concludes that the legal fees should be provided by the plaintiff for a baseless suit, as previously noted losing a court case meant payment of the other parties' fees.[718] No figure is provided as it would be determined by the court, although it would include the proctor's appearances before the court and for the production of document copies. As noted within document one, "Thomas Bekynsay was requested and called upon often and on repeated occasions on the part of the said executor and by the same man to desist in hindering this executor from being able to fulfil the said will."[719] By not appearing before the court, the plaintiff's proctor would have likely appeared several times, substantially increasing the fees.

2. Significance of Thwing c. Beckinsale:

Returning to the first document, summarising the accepted positions, summarises that while Beckinsale was bequeathed the crops, it was not intended to be exclusively his, rather to be divided between the two legatees - Beckinsale and William Thwing. It further reads that Beckinsale "impedes [the administration and the executor] in the present, falsely and maliciously interpreting the aforesaid bequest [by the testator] against the will of the same executor and the testament of this deceased man in

[718] See section 15: Taxation and Costs earlier within this chapter for a brief summary of paying fees upon losing in court.
[719] CP.G.967, document one, lines 12-13; Latin text provided in previous footnote. Appendix three, p. 376 [Latin] and p. 381 [English].

this part, by which this bequest was left, as is aforesaid."[720] As noted in this passage, the mention of interpretation in the following passage *premittitur falso et maliciose interpretando,* presents this case as a difference of interpretation of the testament, whether the crops should go to both legatee and co-legatee or just Beckinsale as sole legatee. While no other records for this case survive, it provides a glimpse into a common testamentary dispute, interpreting ambiguity in a will. Both parties agree that the testator left a will to bequeath the crops, this point and the value of the crops is not disputed, merely if one or two individuals were intended to get the aforementioned crops.

This case outlines two broader points; firstly, that considerations into judicial understandings of interpretation is required. Secondly, this case returns to the traditional conceptualisation of framing the suit in relation to impeding the administration of the will, therefore creating undue delays and jeopardising the soul of the testator – "the testament or impediment of the last will of the said deceased."[721] This point is expertly summarized in the first item of the litigation:

> Item, that the aforesaid Thomas Beckynsay, being well aware of the premises, has unduly impeded this executor from being able to dispose and administer the goods of the said deceased and to freely pay the debts and legacies, and he impedes him in the present, falsely and maliciously interpreting the aforesaid bequest against the will of the same executor and the testament of this deceased man in this part, by which this bequest was left, as is aforesaid.[722]

Specifically note the phrase "*valeat indebite Impedivit et impedit in presenti legatum predictum*,"[723] wherein it expressly denotes the hindering or *impedivit* of the administration. As noted previously, impeding administration was a significant offence and frequent decisions in the courts reflected this consideration far more than other cases. Ultimately, Thwing c. Beckinsale outlines another case example of the types of disputes, while also engaging with the wider theme

[720] CP.G.967, document one, lines 8-9; Latin text provided in previous footnote. Appendix three, p. 376 [Latin] and p. 381 [English].
[721] CP.G.967, document one, lines 3-4. Appendix three, p. 376 [Latin] and p. 381 [English].
[722] CP.G.967, document one, lines 7-9. Appendix three, p. 376 [Latin] and p. 381 [English].
[723] CP.G.967, document one, line 8. Appendix three, p. 376 [Latin] and p. 381 [English].

that some cases actively engaged with the testamentary component, frequently in relation to impending administration, while others passively engaged with testamentary law in an adjacent capacity. This case is not a mere copy of CP.G.212, with key differences: the most important of which can be seen in the difference of impediment, beyond the physical withholding of goods and chattels.

5) Concluding Remarks:

This chapter has considered many types of litigation, ranging from the 1470s until the mid-sixteenth century. While these cause papers have provided a wealth of information regarding court practice, the nature of appeals, formulaic structure, the roles of men, women, heirs, executors, arbitrators, and judges, it has also been shaped around one area of particular focus – impediment. The theme of conceptualisation, considers cases where some litigation was overtly focused on testamentary law and others where testamentary concerns were more passive, acting as only a wider context. Impediment of administration is a case example within this area, while many others exist and surely will be studied in future endeavours into English testamentary law in this period. As with all promising areas of research, there are many topics that require further study beyond the scope of this work. The most interesting was noted upon in CP.G.95, where variations to the formulaic model were allowed, and questions remain if this was a singular occurrence or a start to a new slightly more lenient approach.

Overall, the purpose of this chapter has been to consider various types of litigation, both individually and collectively, as a manner of insight into social and legal developments and trends, as well as outlining the legal *mentalité*, the distribution of wealth and legal matters arising. CP.G.212 and 967 outline direct engagement with concerns regarding impediment, while CP.G.95 and 894 represent

case studies that focused on other areas of law, with varying levels of passive acknowledgment of the testamentary component. This chapter has also touched upon several other cases and examples in an effort to demonstrate the value of considering impediment as a valid concerning, primarily for the well-being of the testator's soul, that contemporaries would have known and could use to present their case in the most favourable light. Having studied a large and diverse set of topics surrounding testamentary law in the fifteenth and sixteenth centuries, final remarks for the whole of this work will be noted in the following section.

CHAPTER SEVEN

CONCLUSION

Testamentary law in England from the mid-fifteenth century into the middle of the sixteenth century is an area of law that often provides unusual levels of detail concerning the life and death of individuals, court practices and values of society than wills and cause papers. Indeed, with limited numbers of exceptions, few documents from the late medieval era can match the rich array of information contained in wills and any related litigation. Wills and last testaments provide a vantage point into the lives of individuals, highborn and lowborn alike, and the myriad of issues that came before the courts. Laymen and clergymen have been the prominent focus of this thesis, although the continued importance of further studies into the wills of all women, beyond chapter three's focus on married women, is an area in which further studies could build upon the work of this thesis.

By considering the topic of testamentary law in England, this thesis has presented several key arguments and functions; firstly, this work provides a coherent structure for which wills pasted through various stages including the draft of wills, administration, and litigation. Secondly, it engaged with select groups of authors, some of which have been traditionally overlooked, in favour of male citizens. This was followed by a detailed treatment of the various types of litigations and concerns that could be brought surrounding wills, administration, and the rights of involved parties.

Chapter one provides the context to this research, highlighting many areas that remain to be fully explored, building upon this thesis. Due to the limited space, it was not possible to focus on the practice of the common law courts in any great length, opting instead to focus on advancing the knowledge of ecclesiastical courts, as seen, for example, in church court procedure demonstrated in the first part of

chapter six. Chapter six provides the foundation for future comparative analysis of court procedure and testamentary administration, with particular relevance to Scots law.

In the second chapter, the stages of will administration were highlighted, providing several clarifications that earlier research was not fully engaged with. By providing an in-depth study of the stages, this chapter has provided a conceptual framework upon which discussion surrounding will administration should be adopted into the academic vernacular of legal scholars. The contribution of this chapter to knowledge is that it has provided a step-by-step breakdown of both the procedure and the areas in which most commonly issues arise; this contributes to broadening the historical engagement with will administration which often groups several distinct steps into a monolithic overview.

Shifting from a more procedural approach to a content-based approach, the third chapter began the larger section entitled Wills, Content and Authors. Chapter three considered the wills of married women, focusing on the rights of married women relating to wills, both their ability to draft and leave wills, bequeath and be bequeathed, as well as broader trends in the nature and frequency of leaving wills. This chapter contributes to our knowledge by demonstrating the distinct trends between the northern and southern, urban and rural polities, which highlight a gradual decline in the number of wills made by married women as the decades progressed into the Reformation period. This chapter is of particular useful for further studies, which could study the wider issue of all women's ability to create wills beyond the focus on the subset of women that were married or widowed in this chapter. In particular, the statistical analysis of the trends in frequency according to geographical locations would be a welcome addition to our current legal knowledge of the topic.

Similar to chapter three, which is within the broader section on wills, content and authors, chapter four considered ecclesiastical wills. Chapter four considered the nature and circumstance of

wills written by lower members of the clergy, such as priests, while juxtaposing these findings with a few more detailed wills left by those among the highest ecclesiastical offices in England. By providing this comparative element, future studies can look to expand this chapter to apply these finds to the broader English society. Within this chapter, the nature of the types of material and bequeaths made by lower priests outline various trends that ebbed and followed throughout the decades. Due to the limited space, there are many areas that require further studies; there is a need for a geographically broader sample which would provide more basis for generalization about trends in bequeathments amongst clergy and expand our knowledge of the societal and economic status of lower clergy throughout England.

Turning to the next section of the thesis, which focuses on matters of concern before the law, entitled Section Two: Testamentary Law, the Courts and Challenges, chapter five focuses on issues surrounding *legitim*. This chapter contributed to our knowledge by expanding our understanding of the shift of the right of *legitim* from a national to a regional custom. This chapter presented a significant alteration to the overarching narrative of the progression of English law, demonstrating how rights came and went while remaining (often vehemently) in other locations. This argument outlines that some individuals, potentially only separated by a short distance, could have vastly different rights under the same English legal system. Legitim within England is a topic in which future studies could make use of this chapter, which outlined the development and use in England; however, a wider geographical survey that covers the period until c.1700 would provide additional insight into the enclave of legitim in York and London. Further studies would be likely to provide additional knowledge surrounding the exact date *legitim* ceded to be used in London, as well as why it existed as a separate entity dispute being with the Province of Canterbury. While a challenging topic that was outside the scope of this thesis, such research would be possible given the relative infrequency for which *legitim* is used.

Chapter six continued the focus on areas of dispute and concern by looking at litigation before the York courts, seen through the cause papers. While litigation occurred throughout England, this is a worthwhile case study that was able to provide clarity in regard to both court procedures while ensuring full coverage of material. By focusing on York with its well-preserved records, as well as a selection of interesting and legally distinct cases, the contribution to our knowledge has highlighted the importance of further study into procedural elements as well as regional variations in litigation. These cases were selected for their distinct nature, unique outcomes or legal disputes; within this chapter, such topics include perjury, unpaid dues to the estate, embezzlement, exceptions, and false will and inventory. Within this chapter, the focus of the analysis predominately centred on the problem of impediment, those that framed their litigation around impeding administration and those that did not. Naturally, this brought the focus onto formal definitions of intestacy, which refers to the absence of a legally valid will, either entirely or partially. Therefore, the portion of the estate falling under intestacy must be distributed according to the laws governing intestate succession, rather than following the instructions of a testament. As seen throughout the previously studied cases, some individuals, however, may place more emphasis not on intestacy itself, but rather on the potential repercussions for the deceased person's soul. The various cause papers, wills, and relevant statutes discussed throughout have been provided in both transcription and translation following the analysis of the chapters in the appendix. By providing full-length detailed studies of each and every document, the author hopes further studies of these cases will occur, particularly in regard to comparative jurisdictional studies of court procedure and the stages of litigation.

The significance of this thesis is to outline how in the period between approximately 1450 and 1540, testamentary law and its related court practices within England underwent a significant change that can be categorized and dissected. The changes include shifts from considering rights and customs

from a national to a local or provincial custom. The shift to local custom is particularly visible in cases of *legitim*, children's rights to a portion of the testator's goods and chattels, which saw the custom disappear within the majority of southern England (except for the City of London) but remained for several centuries in northern England. The shift to local customs is often seen along the division of the two provinces of England under canonical administration, the Southern Province of Canterbury and the Northern Province of York. Also, within this period, archival evidence shows that the mannerisms within the content of wills were shifting, especially regarding married women's abilities to write wills and act as executrix.

Perhaps most strikingly, the variety of litigation cases considered throughout this work has demonstrated strategies that defendants and plaintiffs could use, particularly making use of the wider church's adherence to intestacy and how to work minor variations within the formulaic framework of last wills and testaments and court documents. Examples of this are seen through the cause papers discussed, including CP.G.212 (Slater c. Donbigynge, 1476); CP.G.894 (Lidyerd c. West, 1500-50); CP.G.18 (Pollington c. Pollington, 1503-04); CP.G.95 (Willingham c. Cawton, 1520); and CP.G.967 (Thwing c. Beckinsale, 1500-50). The focus on court procedure, both in regard to how a will was administered and the minutiae of court practice concerning litigation, have expanded upon our understanding of ecclesiastical courts and warrants further comparative studies, both to other courts in England (i.e., secular) and to other jurisdictions, such as Scotland and Wales.

The overarching theme this thesis engages with is to what extent the canonical sources written by continental and English jurists reflect the daily testamentary practices found throughout England. To answer this question, a significant portion of this thesis studies primary archival documents, both wills and court cases — seen through various locations, such as York Cause Papers, London Consistory Court testimony, and several other collections. This study provides an evidential foundation upon which to

base hypotheses about the relationship between canonical sources and the influence of the common law in the context of English testamentary law. It is hoped that future readers of this thesis will be inspired to further research the relationship and to expand upon the discoveries put forth in this dissertation. The legal development of testamentary law has previously lacked a coherent effort to bridge the two schools of historical enquiry, one that focuses on legal/jurisdictional disputes and the other that focuses on the content, authorship, and administration of wills. This thesis demonstrates that it is possible to engage with both the legal challenges underpinning testamentary law and provide a comparative treatment of the content of wills, particularly the authorship of wills.

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- X 3.26.1
- X 3.26.3
- X 3.26.5
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APPENDIX ONE

STATUTES, PROVINCIAL AND LEGATINE CONSTIUTIONS

One:

Libertatem extremi (extract)[724]

The executors of testaments, before they shall intermeddle with the administration of the goods, shall make an inventory in the presence of some credible persons, who shall competently understand the value of the deceased's goods; and the same shall exhibit unto the ordinary: and if shall presume to administer, without such inventory made; he shall be punished by the discretion of the ordinary.

[Acton, *Constitutiones Legatinae*, 1679, pp.107-109.]

Two:

13 Edward I, st. 1, c. 19[725]

Whereas after the Death of a Person dying intestate, which is bounden to some other for Debt, the Goods come to the Ordinary to be disposed; the Ordinary from henceforth shall be bound to answer the Debts as far forth as the Goods of the Dead will extend, in such sort as the Executors of the same Party should have been bounden, if he had made a Testament.

[724] Cardinal Othobon, papal legate (1268).
[725] Known as the Intestates' Debts Act 1285.

Three:

Of Testaments: *Statutum bonae memoriae* (1342)[726]

Calling to mind the statute made by Boniface of good memory, once Archbishop of Canterbury, our predecessor, concerning the goods of them that die intestate and the last wills of ascripts and of other men of servile condition whose beginning is Ceterum contingit interdum etc. [1261], which statute of late is called into doubt by many men, we therefore (some things added unto the same and some things taken away as it appeareth by the words ensuing) do ordain the same firmly hereafter to be observed and kept, but it happeneth sometimes that when lay people and clerks, by the hand and judgement of God, depart intestate, the lords of the feods will not suffer the debts of the dead to be paid of their movable goods, neither will suffer the said goods to be distributed in the uses of the wives their children or parents, or that portion which after the custom of the country appertaineth to the dead, otherwise to be bestowed for them at the disposition of the ordinaries. Other there be that letteth, or causeth to be let, the free making of testaments and their executions, and the last wills of ascripts and of other persons of servile condition, of women also both married and unmarried and of their own wives and other men's wives, which things they do as well against the laws as against the customs of the Church hitherto approved, unto the displeasure of the divine majesty and evident hurt and injury of the Church's rights, therefore by authority of this present Council we decree (decernimus) all and singular, that hereafter offend in these things or any of them, to be wrapped in the sentence of the great excommunication : moreover, when testaments be approved and allowed before the ordinaries of the places (to whom it appertaineth), the proving or allowing of such testaments shall in no wise be required or called again of the lay judges, except it be by reason of lay fee, if any happen to be bequeathed in a testament : neither clerks nor lay of whatsoever condition they be shall hinder or let,

[726] John Stratford, archbishop of Canterbury (1342).

but that the testaments and last wills of the dead may go forward and take effect in such things as may be bequeathed by custom or law. And if there be any that dare do hereafter do contrary to these things know they themselves to fall into the sentence of the great court by authority of this present Council. And against them and other which work wickedly in the premises we decree the spiritual sword to be exercised as against violators and disturbers of the Church's liberties. We forbid also any executor of testaments to be suffered to minister the goods of any testator, except a true inventory be first made of the said goods, the funeral expenses and such as shall be spent about the making of such inventory only excepted. And we will this inventory to be delivered to the ordinaries of the places within the time appointed by their discretions, and, after that the testament be proved before the ordinaries according to the manner, the execution, or the administration of such goods shall not be committed unto any but such as can and (if need require) do give sufficient caution and faithful promise to make a due reckoning of their administration, when they shall be conveniently required thereunto by the ordinaries of the places. Also we ordain by authority of this present Council that no religious persons of whatsoever profession they be, may be executors of testaments, except it be granted by the will and licence of their ordinaries and the parish Church receive his accustomed duty of the portion that appertaineth to the dead, we ordain moreover that no executor may take or appropriate unto himself anything of the dead's goods whose testament he executeth either by title or buying, or any other title but that is given unto him of the testator being alive, or is left in his testament or last will, or is approved at the ordinaries' discretion for the labour of the executor, or was owed unto him by the dead, or is due for moderate expenses of his administration, under pain of suspension from Church entry, into which we will them that do the contrary to incur in so doing, whereof they shall not obtain absolution until they have restored the things so taken or unjustly appropriated, and have paid of their own goods unto the fabric of the

Cathedral Church, whereof the dead was subject double the things which they so take or appropriate. All and singular the above written we command solemnly to be published twice every year in every Church throughout our province of Canterbury.

[Lyndwood, *Provinciale*, 1679, pp.171-179; 1929, pp.65-67.]

Four:

32 Henry VIII, c. 1[727]

[The Statute of Wills - 1540]

An act how lands mav be willed bv testament.

Where the king's most royal majesty, in all the time of his most gracious and noble reign, had ever been merciful loving and benevolent and most gracious sovereign lord unto all and single obedient subjects, and by many times past has not only shown and imparted to them, generally by his many often and great beneficial pardons heretofore by authorities of his parliament granted, but also by divers other ways and means, many great and ample grants and benignities, in such wise as all his said subjects been most bound to the uttermost of all their powers and graces by them received of God to render and give unto his majesty their most humble reverence and obedient thanks and services, with their daily and continual prayers to Almighty God for continual preservation of his most royal estate in most kingly honour and prosperity; Yet always his majesty being replete and endowed by God with grace goodness and liberality most tenderly considering that his said obedient and loving subjects cannot use or exercise

[727] The text is from *Statutes of the Realm*, vol. iii, pp. 744-746.

themselves according to their estates degrees faculties and qualities, or to bear themselves in such wise as that they may conveniently keep and maintain their hospitalities and families nor the good educations and bringing up of their lawful generations, which in this realm, laud be to God, is in all parts very great and abundant, but in manner of necessity as by daily experience is manifested and known they shall not be able of their proper goods chattels and other moveable substance to discharge their debts, and after their degrees set further and advance their children and posterities; Wherefore our said sovereign lord most virtuously considering the morality that is to every person at God's will and pleasure most common and uncertain, of his most blessed disposition and liberality, being willing to relieve and help his said subjects in their said necessities and debilities is contented and pleased that it be ordained and enacted by authority of this present parliament in manner and form as hereafter followed that is to say; THAT all and every person and persons, having or which hereafter shall have any manors lands tenements and hereditaments held in socage or in the nature of socage tenure, and not having any manor lands tenements or hereditaments held of the king our sovereign lord by knight's service or by socage tenure in chief or of the nature of socage tenure in chief nor of any other person or persons by knight's service, from the 20th day of July in the year of our lord God 1540, shall have full and free liberty power and authority to give dispose will and devise aswell by his last will and testament in writing, or otherwise by any Act or Acts lawfully executed in his life, all his said manors lands tenements or hereditaments or any of them at his free will and pleasure; any law statute or other thing heretofore had made or used to the contrary notwithstanding; And that all and every person and persons having manors lands tenements held of the king our sovereign lord his heirs or successors in socage or of the nature of socage tenure in chief, and having any other manors lands tenements or hereditaments held of any other person or persons in socage or of the nature of socage tenure, and not having any manors lands tenements or hereditaments held of the king our sovereign lord by knight's service nor of any other lord

or person by like service, from the 20th day of July in the said year of our lord God 1540, shall have hill and free liberty power and authority to give will dispose and devise as well by his last will or testament in writing or otherwise by any act or acts lawfully executed in his life, all his said manors lands tenements and hereditaments or any of them at his free will and pleasure; any law statute custom or other thing heretofore had made or used to the contrary notwithstanding. Saving always and reserving to the king our sovereign lord his heirs and successors all his right title and interest of primer seisin and reliefs, and also all other rights and duties for tenures in socages or of the nature of socage tenure in chief, as heretofore had been used and accustomed; the same manors lands tenements or hereditaments to be taken had and sued out of and from the hands of his highness his heirs and successors, by the person and persons to whom any such manors lands tenements or hereditaments shall be disposed willed or devised, in such and like maimer and form had been used by any heir or heirs before the making of this statute; and saving and reserving also fines for alienations of such manors lands tenements or hereditaments held by the king our sovereign lord in socage or of the nature of socage tenure in chief, whereof there shall be any alteration of free hold or inheritance, made by will or otherwise as is aforesaid.

II. AND it is further enacted by the authority aforesaid that all and single person and persons having any manors lands tenements or hereditaments of estate of inheritance held of the king's highness in chief by knight's service, or of the nature of knight's service in chief, from the said 20th day of July shall have full power and authority, by his last will by writing or otherwise by any Act or Acts lawfully executed in his life, to give dispose will or assign two parts of the same manors lands tenements or hereditaments in three parts to be divided, or else as much of the said manors lands tenements or hereditaments as shall extend or amount to the yearly value of two parts of the same in three parts to be divided in certainty and by special divisions as it may be known in severalty, to and for the advancement

of his wife preferment of his children and payment of his debts, or otherwise at his will and pleasure; any law statute custom or other thing to the contrary notwithstanding. Saving and reserving to the king our sovereign lord the custody wardship and primer seisin or any of them as the case shall require, of as much of the same manors lands tenements or hereditaments as shall amount and extend to the full and clear yearly value of the third part thereof, without any diminution dower fraud covin charge or abridgement of any of the same third part or of the full profits thereof: Saving also and reserving to the king our sovereign lord all fines for alienations of all such manors lands tenements or hereditaments held of the king by knight's service in chief whereof there shall be any alteration of freehold or inheritance made by will or otherwise as is abovesaid.

III. AND be it enacted by the authority aforesaid that all singular person or persons having manors lands tenements or hereditaments of estate of inheritance held of the king in chief by knight's service, and having other manors lands tenements or hereditaments held of the king or of any other person or persons by knight's service, or otherwise, every such person and persons from the said 20th day of July shall have full power and authority to give dispose will or assign, by his last will in writing, or otherwise by any Act or Acts lawfully executed in his life, two parts of the same manors lands tenements or hereditaments in three parts to be divided, or else as much of the same manors lands tenements or hereditaments as shall extend or amount to the yearly value of two parts of the same in three parts to be divided in certainty and by special divisions as it may be known in severalty, to and for the advancement of his wife preferment of his children and payment of his debts, or otherwise at his will and pleasure; any law statute custom or other thing to the contrary thereof notwithstanding: Saving always and reserving to the king our sovereign lord the custody wardship and primer seisin or any of them as the case shall require of as much of the same manors lands tenements or other hereditaments as shall amount and extend to the full and clear yearly value of the third part thereof without any manner of

diminution dower fraud covin charge or substraction of the same third part or of the full profits thereof: Saving also and reserving to our said sovereign lord the king all fines for alienation of any such manors lands tenements or hereditaments held of the king by knight's service in chief whereof there shall be any alteration of freehold or inheritance made by will or otherwise as abovesaid.

IV. BE it further enacted by authority that if any person or persons hold any manors lands tenements or hereditaments, only of any other lord or person than of the king our said sovereign lord, by knight's service, and other lands and tenements in socage or of the nature of socage tenure, that then every such person shall or may give dispose or assure, by this will, or otherwise by any Act or Acts lawfully executed in his life, two parts of the said manors lands tenements held by knight's service, or of as much thereof as shall amount to the full yearly value of two parts in manner and form as is above declared; And also all the lands tenements held by socage or of the nature of socage tenure, at his will and pleasure as is above written. Saving and reserving to the lord of the lands and tenements held by knight's service for his custody and wardship as much of the same lands and tenements as shall extend or amount to the full and clear yearly value of the third part of the same lands and tenements held by knight's service without any diminution dower fraud covin charge or substraction of any portion of that third part or of the clear yearly value thereof in manner and form aforesaid.

V. And be further enacted by the authority abovesaid, that if any person or persons hold any manors lands tenements or hereditaments only of the king our sovereign lord by knight's service and not in chief, or hold any manors lands tenements or hereditaments of our said sovereign lord by knight's service and not in chief and also hold other manors lands tenements or hereditaments of any other person or persons by knight's service, and also hold other manors lands tenements or hereditaments of any other person or persons in socage or of the nature of socage tenure, that then all and every such person and persons shall and may give dispose will devise and assure by his last will, or otherwise by

any Act or Acts lawfully done or executed in life, two parts of the same manors lands tenements or hereditaments held of our sovereign lord the king by knight's service, and two parts of the manors lands tenements or hereditaments held of any other person or persons by knight's service, or as much of either of them as shall amount to the full yearly value of two parts in manner and form as is abovesaid declared, and also of his land and tenements so held in socage or of the nature of socage tenure at his free will and pleasure. Saving and reserving to the king's highness the custody and wardship of as much of the same manors lands tenements or other hereditaments as shall extend and amount to the foil and clear yearly value of the third part of the said manors lands tenements and hereditaments so held of his highness by knight's service, without any diminution dower fraud covin charge or substraction of any portion of that third part or of the foil profits thereof: And also saving and reserving to the lords of whom any of the said manors lands tenements or other hereditaments been held by knight's service for custody and wardship as much of the same manors lands tenements or hereditaments held of them or any of them by knight's service as shall extend and amount to the foil and clear yearly value of the third part of the same without any diminution charge fraud covin or substraction of any portion of that third part or of the clear yearly value of the third part thereof in manner and form above declared.

VI. PROVIDED always and it is further enacted by the authority aforesaid, that if that third part of the manors lands tenements or hereditaments of any of the king's subjects, which in any of the cases abovesaid shall hereafter come to the king's highness his heirs or successors by virtue of this Act as is abovesaid, be not or do not amount to the clear yearly value of the foil third part of all the said manors lands tenements or other hereditaments whereof the king's highness is or shall be entitled to have the custody or primer seisin as is abovesaid, that then our said sovereign lord and his heirs shall and may, at his or their free liberty and pleasure, taken into his or their hands and possession as much of the other two parts of the said manors lands tenements or other hereditaments, as with that of the same manors

lands tenements or hereditaments held remaining in the king's hands, shall make up the clear yearly value of the full third part of the said manors lands and tenements, so to be had to the king's highness in title of wardship and primer seisin or any of them as the case shall require: And like benefit and advantage to be given to every lord and lords of whom any such manors lands tenements or hereditaments been or shall be held by knight's service as is abovesaid, concerning only his third part of or for title of wardship.

VII. PROVIDED always and be further enacted by the authority aforesaid that every person and persons shall sue their liveries for possessions reversions or remainders, and also pay reliefs and heriots after such manner and form as they should or ought to have done before the making of this Act and as if this Act had never been made; And that fines for alienations shall be paid in the king's Chancery, for and upon writs of entry in the post to be obtained in the Court of Chancery after the said 20th of July for common recoveries to be had or suffered of any manors lands tenements or hereditaments held of the King in chief, in like manner and form as is used upon alienations of such manors lands tenements or hereditaments so held in chief by fine or feoffment.

VIII. PROVIDED also and be it enacted by the authority aforesaid that in such cases where fines for alienations shall be paid in the king's Chancery for writs of entry in the post as is aforesaid that then none of the fine shall be paid in the same court for any such writs, any usage or custom to the contrary thereof notwithstanding.

IX. AND be it further enacted by the authority aforesaid that where two or more persons now hold or hereafter shall hold any manors lands tenements or hereditaments, of the king our sovereign lord by knight's service, jointly to them and to the heirs of one of them, and he that has the inheritance thereof dies, his heir being within age, that in every such case the king shall have the ward and marriage of the body of such heir so being within age; the life of the freeholder or freeholders of the said manors

lands tenements or hereditaments so held by knight's service notwithstanding.

X. SAVING and reserving to all and every woman and women all and every such right title and interest of dower as they or any of them ought to have, or be or shall be justly entitled to have claim or demand, of any manors lands tenements or hereditaments by the laws of this realm to be taken and assigned onto them or any of them, out of the two parts of the said manors lands tenements or hereditaments severed and divided from the third part as is abovesaid and not otherwise; and saving also to the king our sovereign lord his heirs and successors the reversions of all such tenants in jointure and dower, immediately after the death of such tenants if they shall happen to die during the minority of the king's wards.

APPENDIX TWO
WILLS

Will Transcriptions

[Sections in italics have been translated from the original Latin. English text has been rendered into modern English spelling, but the original phraseology and word order has been retained. Additional punctuation has been added as appropriate.]

PROB 11/10/95 – will of William Chapman

In the name of God amen, the 8th day of October the year of our lord 1493 //
I, William Chapman, canon and residencer of the cathedral church of Hereford, in my whole //
mind, make my testament and last will in this wise. First, I bequeath my soul to God Al- //
-mighty, to our lady Saint Mary and to all the blessed company of heaven, and my body to be //
buried in the said cathedral church in the north aisle before Saint Thomas's head. Also I will have 8 //
torches and 8 poor men clothed in black to bear the said torches, and 8 tapers, every taper weigh- //
-ing 5lb [of] wax, and 8 poor women clothed in white to bear them. Also I will that my body be had //
into the choir, and that there be said dirige, 'saluter' and mass for my soul and that my //
brethren and other ministers of the choir be rewarded after the old *custom* (*consuetude)* of the said church. //
Also, I will that mine executors and my servants be clothed in black, and all other funeral //
costs and expenses I commit unto the disposition of mine executors. Also, I bequeath unto Mr //
Richard Judde a 'pownced' piece gilt with a cover, also a scarlet gown with the hood. Also, I bequeath //
to Sir William Jonys, otherwise called Sir William Kedward, a piece of silver with a cover like unto a //
rose, and a violet gown ingrain, furred with martrons with the hood. The residue of my //
goods, my debts and funeral costs paid, I leave and bequeath to mine executors to ordain //
and dispose for my soul as they think best to the pleasure of God and the health of my soul and //
discharge of their conscience. And of this my testament and last will I ordain and make mine //
executors Master Richard Judde, canon and residencer of the cathedral church beforesaid, and Sir //
William Jonys, otherwise called Sir William Kedward, petty canon of the same church. In //
witness whereof I have closed this, my testament and last will, and sealed with mine own //
hand and signet. These witnesses: Sir Hugh Gylys, parson of Saint Nicholas, and Sir William Bayly, //
with other persons.

The before-written testament was proved at Lambeth before etc., and at Lambeth on the tenth day of February 1493 [i.e. 1494] *was sworn Master Nicholas Tapp, notary public, proctor, etc., who swore according to the information given to him, etc. And administration of all goods, etc., was committed to the executors named in the same will, in the person of their said proctor, to well etc., and a full inventory etc., before the feast of Easter next, etc., as well as to render a plain and true account, calculation or reckoning on their part. Sworn etc.*

PROB 11/11/568 – Will of Walter Oudeby

In the name of God amen, the 26th day of the month of July in the year of our lord // God 1498 and the 13th year of the reign of King Henry VII, I, Walter // Oudeby, canon and residencer in the cathedral church of Saint Paul in London, loving and // praising be to the Holy Trinity, to our blessed lady, to Saint Paul and to all the saints in // heaven, being of whole mind and good remembrance and reasonably whole of body, make my testament // and last will in this form ensuing. First, I bequeath my soul to the Holy Trinity, unto // our blessed Lady and to all the saints in heaven. My body to be buried in the south aisle of // Paul's afore the image of Saint Wilgefort, otherwise called Saint Uncumber. Item, by // this my present testament I revoke all other wills and testaments made by me afore the // time of this, my present will and testament. Item, I bequeath unto the provostry of Cotterstock // in the county of Northampton, £10, upon that condition that the provost me succeeding give a general // quittance to my executors for dilapidation. Item, unto the same place 2 great iron spits [be]longing // thereto. Item, to the chapel of Glapthorn, 6s 8d, unto the hospital of Pirho, 20s. Item, to // the parish church of Our Lady in Maidwell, 20s. Item, unto the chapel of Kelmarsh, 20s. Item, // unto the vicarage of Stepney, 100s, upon that condition that the vicar me succeeding give to // my executors a general quittance. Item, unto the parish church of Stepney, 13s 4d. Item, to // the chapel of Stratford of the Bowe, 6s 8d. Item, I will that there be delivered unto the // clerk of the revestry of Paul's 20 marks, to the intent that 4d be delivered to every preacher // preaching at Paul's Cross and at Saint Mary Spital by the space of 20 years for to pray // for the souls of me, my father and my mother, Simon Norwick, esquire, and Isabel his wife, // Thomas Ascheby, esquire, and Elizabeth his wife, Master Walter Dowef [?], and for all the souls that I // // am bound to pray for. Item, to the parish church of Saint Gregory next Paul's, 13s 4d. Item, to my sister // Margaret, 20s. Item, unto all my servants, their wages for a quarter of year after my decease. Item, to Richard // Oudeby, if he live until his plain age of 21 years, my great cup of silver and gilt with the shepherds, enamelled, // to that intent that it may continue to him and to my heirs, succeeding to one after another. Item, unto John // Pellyn [Petlyn?] in money or moneyworth, 40s. Item, to John Curles' wife for to find John Flecney so that he bide with // her and do her service, 10 marks. Item, unto the parish church of Oadby in the county of Leicester, 13s 4d. // Item, to the parish church of Gumley, 13s 4d. Item, to the parish church of Lowesby, 13s 4d. Item, to // Thomas Assheby, 40s. Item, unto our lady's work at Lincoln, 20s. Item, to the prior of Saint Neots, 40s. // Item, to the prior of Saint Faith of Horsley[728] in Norfolk, 20s. Item, to the prior of Repton in the county // of Derby, 40s. Item, to the friars observant of Greenwich, 20s. Item, to the Charterhouse of London, 20s. // Item, to the prisoners of Ludgate, 6s 8d. Item, to the prisoners of Newgate, 6s 8d. Item, to the prisoners

[728] Says Horsley, but presumably an error for Horsham, where St Faith's priory lay.

//
of the King's Bench, 6s 8d. Item, to the 'bedred' people[729] in London or at Stepney, 13s 4d. Item, to // Joan Curles, the wife of Thomas Curles, 20 marks. Item, to Sir Thomas Uti and to Sir John Lorymer, to //
either of them, 13s 4d, to the intent that they may be assistant unto me when I am passing out of // this life. Item, to Master Nicholas Curlues, 40s. Item, to John Dethik, 40s, to find him to school. Item, // to his sister Jane Dethik, 40s. Item, to the parish church of Titchmarsh in the county of Northampton, // a banner of 20s price. Item, I bequeath and give the residue of all my goods and chattels unto Thomas // Keble, sergeant of law, William Fyndern, knight, and John Fitzherbert, the king's remembrancer of his Exchequer, //
which Thomas Keble, William Fyndern and John Fitzherbert I ordain and make my executors of this, my //
present testament. In witness whereof to this, my present testament and last will, I have set my seal // in the presence of Sir John Lorymer, priest, Sir Thomas Adyngham, priest, Sir Thomas Smyth, priest, Master Philip //
Dobar, priest, Sir Lawrence Botiller, priest, Sir Thomas Oty, priest, John Copwode and William Plofeld, citizen //
and scrivener of London. Given the day and year abovesaid. //

This is the last will of me, Walter Oudeby, canon and residencer of the cathedral church // of Paul's in London, made the 26th day of the month of July, the year of our lord God 1498 // and the 13th year of the reign of King Henry VII, of all my lands, rents and tenements with their // appurtenances in the counties of Leicester, Rutland and Derby. First I will that my feoffees of the same //
suffer Thomas Assheby, gentleman, to have and rejoice to him and his assigns 2 closes lying in the parish //
of Uppingham in the county of Rutland during his life, and after his decease it to remain to my right // heris. Item, I will that my said feoffees suffer my executors to retain all the rents, revenues and profits // of all the residue of my said lands and tenements during the non-age of Richard Oudeby, my nephew // and next lawful heir, to that intent that my cousin, Thomas Keble, may take the guiding of the said // Richard Oudeby, to find him unto school and at court, and with the remnant for to repair his livelihood // and for to keep to the behoof of the said Richard for his marriage silver. And every year during the said //
season I will that my aforesaid cousin, Thomas Keble, have for his labour 40s. And if the said // Thomas Keble decease afore plain age of the said Richard Oudeby, then I will that my cousin, // Sir William Fynderne, knight, have it under the same form. And if it happen him to decease // afore the said plain age of the said Richard, then I will that my cousin, John Fitzherbert, // have it under the same form. In witness whereof to this, my present last will annexed, I have set // my seal. Given the day of the month and the year of our lord above specified. //

The above-written testament was proved before the lord at Lambeth on the eighteenth day of February 1498 [i.e. 1499], *by the oath of the executors named and approved and recorded in the same testament, etc. And administration of all and singular the goods and debts of the deceased was committed to the aforesaid executors named in the same will, to administer well and faithfully and under their unanimous consent and assent, and to make a full and faithful inventory of all and singular the goods and debts of*

[729] Presumably 'bed-ridden'?

the same, and to show that before the feast of the Annunciation of the Blessed Virgin Mary next, etc., as well as to render a plain and true account, calculation or reckoning, etc. Sworn on the Holy Gospels.

PROB 11/10/6 – will of Sir Roger Townesende

In the name of God amen, the Wednesday being the vigil of the Assumption of our Lady Saint Mary the //
14th day of August in the year of our lord God 1492, and in the 8th year of the reign of //
King Henry VII, I, Roger Townesende, knight, one of the justices of our sovereign lord the king of his // common place, being of whole memory, thanked be Almighty God, under his mercy and protection, annulling //
and revoking all other wills and testaments written and made by me afore this day, make this, my // testament and last will in form following, that is to say: First and principally, I bequeath my soul and // recommend it to Almighty God, my maker and the redeemer of me and all mankind, in the most humbly //
wise that I can, beseeching him, for the merits of his bitter and glorious passion, to have mercy on me // and to take me unto his mercy, which is above all works unto whom it is approputed[730] to have mercy, // as by all holy scripture plainly it appeareth, and that in every hour that the sinner sorroweth his //
sins, the which cometh only of the grace, charity and infinite mercy of our saviour Christ Jesus, of // the which number of contrite sinners I meekly and humbly beseecheth him that I may be one, and come of //
the number predestinate to be saved, and the rather through the means of our most blessed lady mother // and maid, and of all the angels of heaven and patriarchs, prophets, apostles, martyrs, confessors, vir- // -gins and all the holy company of heaven, and in especial of them that I have most in remembrance // now I heartily pray them of their succour and help, that I may be 'pertyner' of the sacraments and merits //
of all holy church and to end my life in the same, to persevere and so finally to be one of the number at //
the dreadful day of doom that shall stand and be one of his right hand, to whom he shall say these // blessed words, *venite benedicti patris mei precipite regnum quod vobis paratum est ab origine mundi amen* //
and my body to be buried in the chapel of Saint Katherine's in the church of Saint Mary, Raynham, // if I fortune to decease there, and if fortune me to die at London, I will that my body be buried //
//
in the Whitefriars church in Fleet Street, before the crucifix there. Item, I bequeath to the high altar of the //
church of Raynham, for tithes negligently forgotten, 40s. Item, I bequeath to the church there £20. Item, I //
bequeath to the church of West Raynham, South Raynham, Hillington and Wellingham, to each of them, 20s. //
Item, I will have my service, placebo, dirige, commendation and mass said and done in 20 towns about // East Raynham aforesaid, and that every priest in the same towns there, being at services, have 4d, // and every clerk reading and singing 2d, and every child 1d, and every poor man in the said towns // dwelling 1d, and to each husband in the said towns, besides the very poor men and children, //
4d, if it may be, or else 2d worth of bread. Item, I bequeath to the ringers of every of the said 20 towns // where as there be 2 bells, 4d, and if there be 3 bells, 6d. Item, I bequeath to every church of the said 20 // towns, 6s 8d, always to pray for me. Item, furthermore I will that it be published in every one of the // said 20 towns keep them at home and keep my service there peaceably and devoutly, if they will have //

[730] The exact nature of this word is unclear, likely an error of the scribe.

my bequest, and else they get nought thereof, but it shall be spent in religious places, and to poor men // to pray for me, and that none of the said 20 towns come to Raynham, but they that be dwellers therein, // for none other shall be there provided for, because they shall have their alms at home, without any // labour. Item, I will that for the waste of every torch had and occupied about the said dirige and // masses, the said townships be recompensed for every torch so wasted 1d. Item, I will that all // this be done upon one day, it seemeth the 7th day best, if it may be. Item, I will have 1000 masses said // and sung for me before the 7th day, if it might be, or else as soon as it may be conveniently done. // Item, I will that all this be done to the honour and worship of Almighty God, our blessed lady, all // angels and saints of heaven, and for the relief, succour and help of my poor soul, my friends // and all the souls that I am bound to pray for, and for the souls that Almighty God would, should before // prayed for, and for all the souls in the pain of purgatory and most need and lost help. Item, I bequeath // to my mother church of Norwich £5, that is to say to the prior there 40d, to the sub-prior 20d, and to // every monk and priest 12d, to do and keep mine obsequies for me as it is said before and the residue // thereof to go to the church. Item, I bequeath to Coxford, Hempton, Castle Acre, West Acre, Pentney, [King's] Lynn, Thetford, //
Creake, Walsingham, Binham, West Dereham, to each of the said places 40s, to the prior 12d, to each // brother 6d, and to keep my service as it is beforesaid, and the residue to go to the use of their churches. Item, I bequeath //
to Blackborough 20s. Item, to Mareham 20d. Item, to the 4 orders of friars in Lynn, the 4 orders of friars in Norwich, //
Burnham and Blakeney, to every of the said orders, 20s, if it may be, that is to say, the prior 6d, and to // every of the said friars 4d for their masses and service, as it is above written, and the residue of the said 20s //
to be spent in lights in their churches as long as it may endure. Item, I bequeath to every house of lepers in //
Norfolk 12d. Item, to every anchor 12d. To the house of Normans in Norwich 20s, to pray for me and others //
as it is aforesaid. Item, I bequeath to my mother Hopton, 40s. Item to Thounsend Woodhouse 40s, and to Dame Agnes //
Townesende 40s, to Amy Townesende 40s, to Anne, my daughter, £200, to Elizabeth Tounessende £200, if they //
be married by the advice and agreement of my wife. Item, I bequeath to Thomas Gigges of Norton, 100s, to //
Thomas Gigges of 'Hetham' 20s, to Robert Gigges of 'Wighton' 20s, to William Wayte 20s, to 'Ginne' 20s //
to Chaundeler 40d, to Sefoule 20s, to Pynon 20s, to Gayton 20s, to 'Wagconer'[?] 20s, to Lowys 6s 8d, //
to Femour 6s 8d, to Botiller 6s 8d, to John Cooke 6s 8d, to Sir Edmund 20s, to Sir Hugh 40s, //
to Master Blakney 6s 8d, to Friar John 20s, to Richard Baxter 20s, to John Stamp 20s, to William // Brown 20s, to Sir Henry Gayton 20s, to every other of my household servants 3s 4d. Item, I bequeath // to Roger Woodhouse 20s, to Eleanor Woodhouse 20s, to Lichfeld 40 sheep. Item to 'Stumy' 6s 8d. Item, //
I bequeath to Eleanor, my wife, all my money, plate and all my other goods, to perform this my last will and to //
help my children, and dispose them in alms, deeds, in relieving of poor folk, meat and drink, and clothe poor //

clerks, poor maidens and my poor kin, and as she thinketh best to the pleasure of God and weal of my // soul, my friends and benefactors and them that God would have prayed for. Item, I will that my household //
be kept still a year after my decease, at the least till Michaelmas next after my decease, and that all my // chattels go still, as it doth now, all that year and longer, by the advice of my wife and friends, and that // //
they be showed and changed as they have been used, and with the profits coming of them, to fulfil this, //
my last will. Item, I will that my wife have the rule of my cattle farms pastures to the fulfilling of my will, //
that is to say that, after a year passed after my decease, my wife to have all my cattle going at East Raynham, West //
Raynham and Helloughton during her life, to her own proper use, and after her decease to leave them to Roger, my son, //
if he be then of reasonable age, discretion and wisdom to guide himself then, and else to put them in to rule of some //
'sadde' man to his use, and also, as for all my other sheep[?], I will that my wife have the rule of them and of all //
them, to take all the issues and profits to and for the keeping of our children's marriages, satisfying any wrongs, //
if any be proved or there I have any conscience/constancy[?], and pay my debts and my bequests, and to dispose for me and her //
and our friends as her wisdom thinketh necessary. I bequeath to the said Eleanor, my wife, all my debts, corns, //
grains and all other goods and chattels, so always that convenient stuff and utensibles of household be kept //
still and go with the same place. Item, I will that after her decease, all the convenient stuff and utensibles of house- //
-hold shall remain to the said Roger, and to the heirs of his body lawfully begotten, and for default of issue //
of him, the remainder thereof to Thomas and his heirs of his body lawfully begotten. Item, I will have 2 priests //
for the term of 80 years to sing and do divine service for me, my wife, our 'mincetery'[?] friends, and principally //
for all those that I and my wife, or either of us, be bound to pray for, and for the souls that we have any //
God of not deserved or against conscience, and those that God would should be prayed for, and for all Christian lives //
and souls. Item, I will that there be given every 'foyday' to 5 poor persons 5d yearly, in the honour of Christ's passion //
and of his 5 wounds. Item, I will that there be 'evyn' every of our Lady's 'evyns' yearly 5d to 5 poor persons in the //
worship of our Lady 5 'joyes' by all the said time of 80 years, weekly and yearly to endure. Item, I will for the //
keeping of mine anniversary's days, my wife's, my father's, my mother's, to be kept all upon a day at Raynham //

aforesaid after the form as my father's anniversary day, on whose soul Jesus have mercy, hath be used to be //
kept in times past, and 5 marks to be spent about the same. The residue of my goods, not given nor bequea- //
-thed, I give freely to Eleanor, my wife, whom I make and ordain sole mine executrix, she to dispose them at //
her own free will. Written the day and year abovesaid. //
Probate [not entered].

SC 8/86/4253[731]

To the king our sovereign lord and to all the lords spiritual and temporal assembled in this present parliament.

Beseecheth full humbly Henry Radclyff, brother unto Sir John Radclyff, knight, whom God absolve, that whereas the same Sir John was withheld with our sovereign lord to be seneschal of Guyenne and constable of Bordeaux, and to have the governance of //

diverse castles and towns in those parts with d[iverse] soldiers at his retinue, and how the said Henry, amongst others, was retained with certain persons in his fellowship with the said Sir John, and had all the governance of the said parts in [the] //

absence of the said Sir John, unto the time that the said Sir John was discharged, the which Henry is behind, unpaid, for him and his said fellowship by cause of the same retinue the sum of 2000 marks, to his great hurt and hindering without grace be showed, //

that it please your noble grace to grant by authority of this present parliament that a writ of proclamation may be made and direct unto the sheriff of the shire of Norfolk that he, upon pain of £100 to forfeit to your sovereign lord within 15 days of //

the writ delivered to him, make proclamation and proclaim at Attleborough and 'Wotton' in the said shire that Robert Lethum of the said county, gentleman, whom the said Sir John made his executor of his testament, and which Robert hath received //

of your sovereign lordship since his death notable sums for to content with the said Henry and his said fellowship and other of their wages so unpaid for the said retainer and keepeth it still to his own use and will not content the said Henry and [...] //

in no wise, that he, within 15 days after the said proclamation so made, be before the barons of the court of the Exchequer to make his account before the auditors or auditor there of the said sums so by him of you severally received [...] //

and that he, by the rule of your said barons, pay, agree and content to the said Henry, for him and his said fellowship abovesaid, for their wages being behind, unpaid, for the time of the retainer abovesaid, and in case he will not content the said Henry //

for him and his fellowship abovesaid of their said wages, that then the said barons have power by the authority abovesaid to commit the said Robert to the prison of the Fleet, there to abide until he has contented the said Henry of his wages abovesaid for him //

and his fellowship abovesaid. //

Memorandum that Henry Radclyff, junior, of the county of Lancaster, gentleman, and Robert Glover of the county of Kent, yeoman, appeared personally before us in our Chancery, 2 June in the 28th year of the aforesaid king, and stood surety for the aforesaid Henry Radclyff, senior, that he will satisfy Robert for any costs and expenses he might sustain should Henry Radclyff senior not prove the truth of the matters contained in this bill, according to the form of the statute.

[Note on dorse referring to the return of a writ at the quindene of Trinity [no year].]

[731] Nature of endorsement: [On face] Be it remembered that Henry Radclyff junior of Lancashire, gentleman, and Robert Glover of Kent, yeoman, appearing in person before us in our Chancery on 2 June in the King's twenty-eighth year, stood mainprise for the aforesaid Henry Radclyff, senior, that he would satisfy the same Robert for all the [costs] and expenses that the aforesaid Robert will bear in this matter, in the case that the aforesaid Henry Radclyff senior cannot prove the material contained in this bill to be true, according to the form of the statute made and provided for this. [On dorse] A writ of the King on this at the quinzaine of Trinity.

PROB 11/1/220 – grant of administration of the goods of Sir Thomas Maxfeld

Memorandum that on 27 August 1451 administration of the goods of Sir Thomas Maxfeld, canon of the cathedral church of Lichfield, who died intestate, was committed to the discrete men Master John Arundell and Sir John Andever [?], chaplain, sworn in the form of law etc. And they are to show an inventory here on the morrow of Michaelmas next following.

PROB 11/11/356 – will of William Stevyns

In the name of God, Amen. 20 February 1497. I, William Stevyns, canon of the cathedral church of Lincoln, rector of the parochial church of Girton, Ely diocese, and rector of the parochial church of Abbots Ripton, Lincoln diocese, being of full mind and true memory, make this my testament and last will in this form. Firstly, I commend my soul to Almighty God, the blessed Virgin Mary and all the saints, and my body to be buried in the churchyard of my church of Girton, next to the tomb of Master William Malster, former rector there. Item, I give and bequeath, for the decoration of the holy altar of the same church of Girton, my baudekin hangings hanging in my oratory within my rectory there, and if they are too short, I wish that more of similar cloth should be bought in order to make them longer, according to the length of the said altar of the church, and they should remain in the custody of the parishioners for the same use. Item, I leave to the same altar one velvet cushion and one bedspread ('lecti cooportorium') of tapestry work for spreading upon the top step before the said altar on the eight principal feasts of the year, but if the parishioners do not do this then my executors should take it back and dispose of it at their discretion. Item, I will that one tablecloth of diaper should be divided through the middle and that one part should remain as a cloth for the said altar, and that a half part of one long diaper towel should remain in the said church for the use of the parishioners at Easter. Item, I leave to the parochial church of Abbots Ripton a half part of the said divided sheet for a cloth for the high altar there, and a half part of the said towel for the use of the parishioners there at Easter, one bedspread of tapestry work for spreading upon the top step before the high altar there on the principal feasts, one vestment of baudekin with alb and amice for the same, one psalter with hymns and one printed legendary bought for the same church. Item, I leave to my free chapel of Allerton [Chapel Allerton, Somerset], Bath and Wells diocese, one vestment of green colour and a mantle for the same. Item, I leave to the cathedral church of Lincoln 6s 8d. Item, I leave to the cathedral church of Ely 6s 8d. Item, I leave to the lord abbot of Ramsey my mantle furred with grey miniver above the hide and one kerchief, my best rosary, in English 'beads'. Item, I leave to Doctor James Whitstone, my second rosary. Item, I leave to the abbot of Sawtry 20s, and to his convent 20s, for celebrating exequies and masses for my soul. Item, I leave to the prior and monastery of St Neots 20s, and to his convent 20s, for celebrating exequies and masses for my soul. Item I leave to Thomas Stevyn,[732] my brother, and his wife, my three best gowns, with the hoods of the same, and my two best belts, my second horse with the saddle, bit and apparatus of the same, and all money due to me remaining in their hands from the revenues of my said chapel of Allerton aforesaid. Item, I leave to Master Richard Quynby my best gown after the three bequeathed above, and five marks of legal money of England, to be paid to the same as quickly as conveniently possible after the proving of this my testament. Item, I leave to Master John Toppyng my best gown after the four bequeathed above, and 4 marks of legal money of England. Item, I leave to Sir John Stokke, chaplain, my best gown after the five bequeathed above, and 20s of money. Item, I leave to William Kyng, my nephew, one silver bowl, one feather bed with a bolster, one cushion, two pairs of sheets of harden, one pair of sheets, one bedspread, with the canopy and curtains which are in the small chamber, one portable breviary, one chest, one small chest, one chair, one cupboard, and ten marks of legal money of England remaining in the custody of the said lord abbot of Ramsey and Sir William Giddyng, sacrist there, for the sustenance of the same William Kyng. Item, I will that if the said Simon Lane should wish to give to Sir William Lane his breviary, then the same Sir Simon should have my breviary divided into two parts, otherwise the same William should have the said divided breviary. Item, I leave to the same Sir William Lane one book which is called 'Festinale', written in English words on paper. Item, I leave to John Lane 100s of money, one psalter with a silver and gilt clasp and my portable

[732] Looks more like Bevyn, but presumably Steven or Stevyns, given the clear name of the testator.

organ. Item, I leave to John May, my servant, 10 marks of legal money of England, one of my horses, one saddle with bit, my second best pot from the better ones and two other lesser brass pots, two whole sheets, namely one of the better ones and another of the lesser ones, five old silver rings, one feather bed in which the same John lies, with the bolster, one pair of blankets, two pairs of sheets of harden, one bedspread, with a canopy for the same bed, six pewter serving dishes, six dishes and six pewter salts and two of the best candlesticks. Item, I leave to Thomas son of John Hulton for buying a cap or another ornament for him 6s 8d. Item, I leave to John Mynster Chambur, my godson, 6s 8d. Item, I leave to William Burton, my godson, 6s 8d. Item, I leave to each of my other godsons and goddaughters, 3s 4d. Item, I leave to William Colyns 3s 4d. Item, to Agnes, his sister, 3s 4d. Item, I leave to Alice Stevens, widow, 5s and one short gown of violet. Item, I leave to each of the four orders of friars of Cambridge 20s. Item, I will that the brothers of the order of Saint Augustine of Oxford should have again the six silver spoons pledged to me by Brother Henry Hervy for a sum of 13s 4d, without any repayment for the same. Item, I leave to Doctor Thomas Hutton my best horse besides that which I was accustomed to ride, with the intention that he should be of good counsel and assistance to my executors in matters concerning the probate of my testament and other arduous matters if necessary. Item, I leave to Doctor Stokdale, vice-chancellor of the university of Cambridge, one gold sovereign. Item, I leave to Doctor William Chubbes, one gold sovereign. Item, I leave to Master William Atkynson one gold sovereign. Item, I will that Sir John of Godmanchester should retain to himself 13s 4d from the last payment payable for one ?barn sold there. Item, I leave to Clement Stile, my servant, one feather bed in which Robert Coke, lies with the bolster, after the death of the same Robert, a pair of canvas sheets, one pair of blankets in which the same Clement lies, and the covering of the same bed, my small gelding with saddle and bit, and 13s 4d in money of England, and one brass pot. Item, I leave to John Coke one pair of canvas sheets. Item, I leave to John his son, one undoubled short gown[733] for making a gown and tunic for him, and 20d in silver. Item, I leave to John Colman, the drier of my malt, 3s 4d, and to his wife 3s 4d. Item, I leave to the library in the monastery of Ramsey one book of dogma (‘decertorum’) and another of decretals, and a third called ‘parvum volumen’.[734] Item, I leave to Richard Grynge 3 books, namely a repertory upon Cheselden, ‘prosodos[...]’,[735] and the third on various labours, and 6s 8d. Item, I leave to the said William Kynge 3 books, of which one is called ‘Fascilus morum’,[736] another is the book of thirteen sermons, and the third is called ‘pupilla oculi’. Item, that these should remain in the custody of Master John Spenser until the same William should be promoted to the priesthood, and if he should not be promoted to the priesthood, or if he should die before that happens, then they should remain to the said Master John Spenser. Item, I leave to the same William all my other books of both civil and canon law. And I will that he should not sell any of those books, but should dispose of them to other scholars after his decease. Item, I will that all my other books not bequeathed should be divided by my executors between the said Master Richard Quynby and Master John Toppyng. Item, I leave to William Colyns, John Thresher, clerk, John Wright and Robert Scryvener, or to each of them, 3s 4d, for assisting my executors in the business and labours on the day of my burial, on the seventh day and on the thirtieth day. Item, I will that the sum of thirty pounds owed to me by William Greg of Abbots Ripton, should be levied if possible and the said abbot of Ramsey should receive the same sum and spend it in the way shown[737] by the sacrist of the same place. Item, I will that Robert Coke, my servant, should have from my goods 7d each week for term of his life, and his necessary [...].[738] Item, I leave to

[733] Uncertain, as the word after ‘togam’ is not clear. May refer to a short doublet?
[734] The first word of the title is unclear.
[735] The end of this word is difficult to decipher, and I don’t know what it might have been.
[736] Presumably ‘Fasciculus Morum’.
[737] Word unclear, but probably ‘ostendi’.
[738] Word unclear. Presumably refers to board and/or lodgings, but not identified.

William Miller junior, my godson, all the money pertaining to me from my prebend for the year ending at the feast of St Michael the Archangel last past. Item, I will that the bundles or sheaves of maslin in my granary should be divided between the paupers of my parishes. Item, I give and commit to each of my executors licence to buy such parcels of my goods not bequeathed as they wish to have, at the appropriate price, after those goods have been valued. Item, I will that marble stone should be bought for the paving of that place where my body will be buried. I bequeath the disposition of the remainder of all my goods and chattels not bequeathed to William Gyddyng, sacrist of Ramsey, Master John Spenser of Huntingdon and John May, my servant, who I ordain, make and constitute my true executors, and I leave to each of them for their labour 20 shillings. These being witnesses: Master Richard Quynby, Master John Toppyng, Sir John Stok and others. Dated at Girton the day and year abovesaid.
The above-written testament was proved before the lord at Lambeth on the 28th day of the month of March in the year of the lord 1498, by the oath of Master Robert Smyth, notary public, proctor, etc., entered, etc. And administration of all and singular goods, etc., was committed to the executors named in the same testament, to well and faithfully and by their unanimous consent [to administer] etc., and [to make] a full and faithful inventory of all and singular goods etc. before the first day of the month of May next to come, etc., as well as to [make] a full and truthful account, calculation, etc., [sworn] on the Holy Gospels, etc.

PROB 11/11/564 – will of John Austell

In the name of God, Amen. The 17th day of the month of December in the year of the lord 1498, I, John Austell, canon residentiary of the cathedral church of Saint Andrew of Welles, being of sound mind and perfect memory, make this my testament containing my last will in this manner. Firstly, I leave my soul to Almighty God, the blessed Virgin Mary, his mother and all the saints, and my body to be buried in the chapel of the Holy Spirit in the aforesaid cathedral church, situated to the north of the high altar of the same cathedral church. Item, I leave to the fabric of the cathedral church 20s. Item, I leave to the library of the said cathedral church one bible printed in two volumes and another book called 'Lyra' printed in 4 volumes. Item, I leave to the aforesaid chapel of the Holy Spirit one printed book called 'Augustine: On the Trinity and The City of God' in one volume. Item, I leave to the same chapel another printed book called 'Titus Livius' and another printed book 'Plinius'.[739] Item, I leave to the chapel of the vicars choral of the aforesaid cathedral church, situated at the end of the close of the aforesaid vicars, one book named 'Polychronicon' and another book called 'Valerius Maximus' with printed comment. Item, I leave to the master of the scholars of the aforementioned cathedral church, to the use of the school there, printed books Catholic and 'gutrimun'.[740] Item, I leave to the choristers of the aforesaid cathedral church one scarlet hood for the use of the same at a certain time of year, as custom dictates. Item, I leave to the parish church of Winford one pair of vestments of blue velvet and one hand-written portable breviary in two volumes. Item, I leave to Richard Smyth, my servant, one brass pot of the better sort and one of the best dishes, one silver spoon, one horn with silver and gilt binding and 40s in money. Item, I leave to Andrew, my servant, one good brass pot, one dish, one silver spoon, and 40s in money. Item, I leave to Thomas, my other servant, one brass pot and one dish, one silver spoon and 40s in money. Item, I leave to Sir John Fox, my vicar choral, one small silver salt with a silver cover. Item, I leave to Emota, my sister, wife of Thomas Browne, one gown of scarlet, one silver goblet and 40s in money. Item, I leave to Edmund Seyntlo, esquire, my kinsman, one silver goblet and 40s in money. Item, I leave to Nicholas Kelly one gown and 20s in money. Item, I leave to John, son of the said Edmund Seyntlo, 12 sheep. Item, I leave to Walter Seyntlo one book called 'Chronica Chronicarum' and another book called 'Marcianus de nuptiis philologie', one small manuscript bible and one book of decretals. Item, I leave Margaret Awne, wife of Thomas Awne of the city of Wells, one gown, one silver spoon and 6s 8d in money. Item, I leave to Isabelle Hert one gown of tawny, which is at my benefice of Winford aforesaid. Item, I leave to Master Thomas Awstell, my brother, canon residentiary of the cathedral church aforesaid, one silver goblet with its cover and 4 marks in money. Item, I leave to John Seyntlo, knight, one silver goblet with its cover and 4 marks in money. Item, I leave to Sir William Longe, my chaplain, one silver goblet and 4 marks in money. The residue of all my goods not bequeathed above nor disposed of by me I give and leave to the aforesaid Thomas Awstell, John Seyntlo and William Long, who I name, ordain, make and constitute executors of me and of this my testament and last will by these presents, such that they will dispose of all and singular my goods not otherwise bequeathed or disposed of by me for the salvation of my soul, as shall seem best to them according to their discretion. In witness of which I have affixed my seal to these presents. Present then and there at the making of this my testament and last will, Master John Standewik, by apostolic authority notary public, and John Tiler of the city of Wells aforesaid, learned man, called and invited as witnesses to this. Dated the day, month and year of the lord above-written.

The above-written testament was proved before the lord at Lambeth on the 15th day of the month of February 1498 [i.e. 1499], by the oath of Master John Coplande, notary public, proctor, etc., and

[739] i.e. Pliny.

[740] Transcription uncertain and meaning unknown.

approved and entered, etc. And administration was committed to the executors named in the same testament in the person of the said proctor, [to administer] well and faithfully and under their unanimous consent, etc., showing a full and faithful inventory before the feast of St David the bishop next to come, etc., as well as a plain and true account, calculation or reckoning, etc. Sworn on the Holy Gospels.

PROB 11/11/172 – will of Richard Lichefield

In the name of the holy and undivided Trinity, the father and the son and the holy spirit, Amen. The seventeenth day of the month of October in the year of the lord 1496, and the twelfth year of the reign of King Henry VII, I, Richard Lichefild, doctor of laws, archdeacon of Middlesex and canon residentiary in the cathedral church of St Paul, London, of sound mind and perfect memory, mindful that death, the end of all flesh, is not far away from me, by mature deliberation, ordain, make and compose my testament containing my last will in the following form. Firstly, I leave [my] soul to Almighty God, my creator, returning to him that which he created, and to the faithful judgment of the most blessed and most glorious Virgin Mary, the blessed Archangel Michael, the blessed apostles Peter and Paul, St Andrew the apostle and all the celestial host, and my body to be buried in the cathedral church of St Paul aforesaid, under the image of the salutation of the Blessed Virgin Mary, situated to the south of the choir of the same cathedral church. Item, I will that a thousand masses should be celebrated for my soul, and for the soul of the reverend father Sir Thomas Kempe, formerly bishop of London, and for the souls of my parents and all my benefactors, as soon as they can be conveniently celebrated after my death. And I leave to each of the thousand priests celebrating those masses, for their labours, four pence. Item, I will that all and singular my debts should be fully paid. Item, I will that three honest priests, neither beneficed nor employed, should celebrate mass in the university of Oxford for seven years immediately after my death, for my soul and the souls abovesaid, each of them to receive annually for their stipend five marks, such that each of them should celebrate four times every week, in person or by another or others not promoted [to a benefice] or employed as aforesaid, and I will that each of them should say placebo and dirige on all Wednesdays and Fridays for my soul and the souls aforesaid. Item, I leave for the repair of the house or priory of Saint Frideswide in the university of Oxford aforesaid ten marks, with the intention that the prior of the same and his spiritual brothers should pray for my soul and the souls abovesaid. Item, I leave in the same manner, for the repair of the monastery of Malmesbury, 10 marks. Item, I leave to the Carthusian house of Sheen, for praying as above, 40s. Item, I leave for the repair of the Carthusian house of London, to pray as above, 50s. Item, I leave to the four orders of friars in the city of London, namely the Preachers, Augustinians, Carmelites and Minor, to bring my body for burial and to say exequies and requiem mass in their churches for my soul and those aforesaid, £4, to be equally distributed between them, to pray for my soul and the souls aforesaid. And to the Observant friars of Greenwich, 20s, to say exequies and requiem mass and other prayers. Item, I leave to the recluse next to the church of All Hallows, London Wall (‘in muro London’), to pray as above, 6s 8d. Item, I leave to Sir John Syngelton, my chaplain and my most beloved kinsman, my best gown with a hood chosen for the same, and three old nobles. Item, I leave to Sir Reginald Bray, knight, my short goblet of silver and gilt with roses on the top, and I ask the same Sir Reginald Bray that he assists my executors in executing my will. Item, I will that Master William Lichefeld, my nephew, should have my house which he previously inhabited, during the term for which the same was granted to me, under this condition, that he should pay or make to pay the following charges, namely the annual charge of 20s to the principal lord of the same for the rent, and also four nobles annually during the aforesaid term to the aforesaid cathedral church of St Paul, for celebrating my obit in the same cathedral church. Item, I leave to my godchildren raised by me from the holy font, to each of them 20d. Item, I leave to each place of general incarceration within London and the suburbs of the same 10s, for the profit and use of those incarcerated in the same, given into the hands of those prisoners. Item, I leave to Master Walter Knyghtley my second best purse of black velvet. Item, I leave to Thomas Hauntemewute(?), my servant, ten marks and one gown of crimson colour being at Navestock. Item, I leave to Master Richard FitzJames my beautiful book of hours (‘jornale’) covered with red cloth of gold. Item, I will that the

said[741] Robert, my nephew, rector of Checkendon, or another, should have 13s 4d to visit abroad Master John Shorn, according to my intention, as soon as he is conveniently able to do so. Item, I leave to Isabella, my sister, my gown of blue colour. Item, I leave to John, my nephew of Newington, my gown of black colour without a hood. Item, I leave to Master John Smyth a rosary of large ?size.[742] Item, I leave to Master Chapman a rosary of silver and gilt. Item, I leave to Master Bretayn on small ring of gold. Item, I leave to Sir John Chirche, minor canon of the aforesaid cathedral church, one Prussian pouch made in the Roman style with silk, and one old noble. Item, I leave to the community of minor canons of the aforesaid cathedral church of St Paul one pair of carving knives. Item, I leave to Master William, my nephew, my most beautiful bible. Item, I leave to Master Peter of the house of the friars preacher of London, one old noble. Item, I leave to the novice boys of the same house 6s 8d for singing well the mass of the Blessed Virgin Mary for my soul on the day of my death. And for celebrating mass 8d. Item, I leave to Richard Pikenotte, my servant, 40s beyond the wages owed to him. Item, I leave to Thomas Marris, my old servant, 40s. Item, I leave to the abbess of Syon, 2 old nobles. And to the father of the same house one old noble. And to each of the friars preacher 6s 8d. And to those others not preaching 3s 4d. And to each of the lay brothers 12d. And to Lady Scrope, treasuress of the house of Syon, one old noble. And to the prior of the Carthusian order next to Smithfield, one old noble. Item, to Sir Robert, proctor of the Carthusian house near Sheen, one old noble. And similarly to Master Tracy, one noble. Item, I leave to the prior of the hospital of St Mary without Bishopsgate, one old noble. The remainder of all my goods not bequeathed above I give and leave to Master Walter Knyghley and Master William Lichefild, canons of the said cathedral church of St Paul, who I ordain and constitute executors of me and of this my testament. These being witnesses: Sir John Syngelton and Thomas Taverner. Dated the day and year abovesaid.

The above-written testament was proved before the lord at Lambeth on the 3rd day of the month of March 1496 [i.e. 1497], by the oath of the executors, etc. And approved and entered, etc. And administration of all and singular the goods and debts of the deceased was committed to the executors named in this same testament, [to administer] well and faithfully and under their unanimous consent, etc., showing a full and faithful inventory etc. before the feast of Easter next to come, etc., as well as a plain and true account, etc. Sworn in legal form.

[741] Possibly a transcription error for dominus, as Robert had not previously been mentioned.
[742] Looks like ‘grete’, ‘geete’ or ‘gerte’, but unclear. Possibly a variant of ‘girthum’, i.e. width/size?

PROB 11/27/436 – will of Edward Foxe, bishop of Hereford

In the name of god amen. The 8th day of May in the year of our lord god a thousand //
five hundred and 38, I, Edward Foxe, bishop of Hereford, whole of memory, bequeath my soul unto almighty god, and //
my body to be buried in the parish church of Saint Mary Mounthaw in London. Item, to Master Frytz, ten pounds. Item, to William,[743] //
ten pounds. Item, to George Watson, ten pounds, besides their wages and board for a quarter of a year after my departure, and //
black liveries. Item, to every of my older servants, their wages for a quarter of a year after my departure and their board, //
wages and coats of black. Item, to the King's College in Cambridge, for such sums of money as I have borrowed of them, //
I will that they shall have an obligation wherein my Lord Admiral is bound unto me for the payment of seven score //
and ten weight of right bay salt, and that my said Lord Admiral shall be bound unto me, the said bishop, and //
my successors, provosts of the said college, and the vice-provost, fellows and scholars of the same, to deliver them the said //
salt, at what time and whensoever he shall be by them required. Item, to my brother John Bridges and sister, Joan //
Austen, all the residue of my goods, my debts paid and funeral expenses deducted, to be divided by even portions between //
them, and my said brother to have the first choice, and my said sister the other part. And the said John Bridges and Joan Austen //
I make my executors of this, my said testament, and my good lord privy seal my supervisor, unto whom I give a //
standing bowl with a cover gilt and a black horse called Black Wolf, beseeching to be good lord to my said brother and sister and //
mine other servants, and help that they may be bestowed, as he shall of his goodness think most convenient. These being //
witness: Nicholas Wilson, priest and George Watson. //

The testament of the above-written deceased, having while he lived etc., was proved on the twentieth day of March in the year of the lord 1538 [i.e. 1539] at London before the lord, on the authority of our lord the king, etc., by the oath of John Bruges, executor named in this testament, in the person of John Kydde, notary public, his proctor, etc., and administration of all and singular the goods, rights and credits of the said deceased was committed to the aforesaid executor, in the person of the said proctor, to administer well and faithfully and to show a full and faithful inventory before the second day after the feast of the Annunciation of the Blessed Virgin Mary next to come, as well as to render a plain and true account, swearing on the Holy Gospels in due form, reserving power to the other executor named in this testament for when they should come, etc. Afterwards, on the ninth day of the month of May in the year of the lord 1539, similar administration was committed to Joan Austen, executrix also sworn.

[743] No surname given. Possibly a scribal error, but the following text suggests he was one of Foxe's servants.

PROB 11/27/548 – will of Nicholas Metcalfe, clerk, archdeacon of Rochester

In the name of god Amen. AD 1539. I, Nicholas Metcalfe, clerk, archdeacon //
of Rochester, of whole mind and perfect memory, make this my testament and last will in manner and form //
following. First, I bequeath my soul to Almighty God, and my body to be buried in the church of Woodham Ferrers. //
Item, I bequeath to Southfleet church, two table cloths of satin to hang afore the altars. Item, I bequeath to //
Woodham Ferrers church all such ornaments as is in it already of mine. Item, my best table cloth of diaper to //
the high altar. Item, I bequeath to Saint John's College in Cambridge 40s for a dirige and a mass. //
//
Item, I bequeath to my sister Elizabeth and my sister Alice, each of them, 26s 8d, and that I will that Lucas Metcalf //
pay yearly during their lives, upon an obligation between him and me. Item, I bequeath to my sister Jane //
26s 8d. Item, I bequeath to my nephew Mr Cuthbert Metcalfe 26s 8d yearly, to be paid to him so long as he //
is not beneficed and continue in his college. Also, I will that this 26s 8d Lucas pay of the same //
obligation during the said time. Item, I will that Lucas pay or cause to be paid to my executors //
immediately after my decease twenty pounds, the which sum, if he refuse to pay, I will them, my executors, //
to take the advantage of my obligation. Item, I bequeath to my cousin Oswald 40s. Item, I bequeath to Master //
Tennand £4. Item, I bequeath to Robert Lankyne 40s. Item, I bequeath to John Coskenny [?], servant, 10s. Item, I //
bequeath to Mr parson of East Hanningfield my clock and the table of the crucifix in the hall. Item, I bequeath //
to Michael Howse 10s. Item, I bequeath to Mr parson of West Hanningfield the table of Saint John Baptist in the hall. //
The residue of my goods, my will and legacies discharged, to be distributed among poor scholars of name //
coming to Cambridge for learning, to help to maintain them with all after the discretion of my executors, //
which shall be these following: Mr Tennande and Mr Cuthbert Metcalfe, and Mr parson of East Hanningfield //
supervisor of this my will, and he to have for his labour 20s. *By me Nicholas Metcalfe, clerk.* These //
witnesses: John Prest, William Lucas, John Clarke, clerk. *By me Robert Lambkyn.* //

The above-written testament was proved before the lord at London on the 16th day of the month of October in the year of the lord 1539, by the oath of Henry Bouffell,[744] *notary public, proctor of the executors named in this testament, and approved and recorded, and administration of all and singular the goods, rights and credits of the said deceased was committed to the aforesaid executors, to well etc.,*

[744] Uncertain. Possibly Boussell or similar variant.

and to show a full and faithful inventory etc., as well as to render a plain and true account etc., sworn on the Holy Gospels in the person of the said proctor.

APPENDIX THREE[745]
CAUSE PAPERS

CP.G.18[746]

Images 1-2 - blank

Image 3
Sentence from Thomas Hanyball, doctor of laws, commissary general of the official of the court of York, on a case of the fabrication of a false testament of Robert Polyngton, formerly of Beverley, between Isabella Polyngton, Robert's natural and legitimate ('legitimam') daughter, and Alice Polyngton, Robert's widow and executrix. Record of proctors.
Found that the part of the will that stated that Robert left to his wife Alice a house in Beverley under certain conditions, namely that she sell the house and pay his debts and make bequests for his soul, and a ?locket (clausuram) worth 3s 4d to the church of St Mary, Beverley to pay for a yearly obit, and 4 almshouses at Alice's disposition, and that Robert left to Isabelle one mattress and a coverlet, is all false and fabricated, and is invalid. The sections are cancelled, and Alice is charged for Isabella's expenses. Sentence read on 14 March 1503 [witnesses named]. Chapman, one of the attorneys, appealed the case to the official.

Images 4-6 blank, except one archival note of the case

Image 7
Deposition of William Clark of Beverley, chaplain, on behalf of Isabelle Polyngton, said that after Robert's death, Robert Rosse [hole in ms] and Alice came to him with a will that they asserted was Robert's, but he thought it was badly written, so he rewrote it, adding certain clauses [as above]. He swore that it was all at the request of Rosse, without any indication that it was the testator's wish. This will was then proved before the dean of Beverley. Alice took the administration.
Deposition of Richard Tone, chaplain, who says that three or four days after Robert's death, he asked John Wright, parochial chaplain of St Mary, Beverley, who wrote the will, about certain lands and tenements in Beverley, who said that Robert did not want to die seised of the property, and would dispose of them separately and not include them in his will. He also heard that Thomas Walker, who was present at the time, said that he asked Robert why he did not wish to include them in his will, and Robert said that he wished to die seised, so that his heirs could enjoy the property.
Deposition of John Wright, chaplain of Kingston upon Hull, aged 60, who says that he wrote the will of Robert, on a certain Saturday, and Robert died on the following Sunday, and he did not leave any lands in his will, and he heard Robert say, before the will was made and not at that time, that he had a close called 'Paradyse' and wished to agree with the wardens of the church of St Mary in Beverley whether they would have the close as an annual obit. He also heard Robert say, eight days before the will was made, that he had another tenement in Beverley, where Thomas Pateson lived, which he did not want to include in his will, as Henry Polyngton, his uncle ('avunculus'),[747] left it to him in his will [details].

[745] The York Cause papers have been listed in appendix three (starting on p. 310) based on their assigned case number. Where relevant, the Latin is placed with an English translation followed.
[746] Note that the information provided for CP.G.18 is a summary translation; all other cases are a direct transcription and translation. CP.G.18 is very large and had multiple blank or repeat pages, therefore a summary translation/details have been provided.
[747] This word can have various translations.

When he wrote the will, it contained nothing regarding any lands and tenements.
Deposition of Thomas Coke of Beverley, aged 54, says he was present when Robert made his will, two hours before his death, and Robert said he wished to die seised of his lands and tenements, and that nothing was added about them, except that his daughter Isabella and Thomas Symson, which Thomas, by right of his wife, should have the tenement in Beverley [next to 'Ley Bukyng'?] under the conditions in Henry Polyngton's will. And he heard William Clarke say that he, at the request of Robert Rosse, wrote and fabricated the will of Robert around a table after Robert's death, and Alice made administration on the pretext of this false will.

Image 8 – draft copy of image 10, without the dates.
Deposition of Richard Gaynesbrugh of Beverley, aged 30+, witness for Isabella against those for Alice, says that he believes John Bower and Thomas Symson to be partial towards Alice, because they intended to have the lands if they can disinherit Isabella, as Bower was a feoffee in the lands, and Symson married a kinswoman of Alice. He says that he was with John Watkyn of Beverley in his inner parlour when he was dying, and he heard him say that he was present when Robert made his will, and heard him say that he did not want to leave his tenements and lands in his will, but wished to leave them to his heirs. Watson, within three hours of his death, asked him, William Riddeley, William Hunter and many others then present to testify this for him. He says that public opinion in Beverley was that Isabella Polington should have the lands by right.
Deposition of Richard Ireland of Beverley, aged 57, who said that John Bower and Thomas Symson are partial towards Alice, for the reasons noted by Gaynesbrught. He adds that other witnesses were procured to depose as they have. He states that he was with Bower and others when they proved Robert's will in St John's collegiate church in Beverley eight days after Robert's death, and because the land and tenements of Robert were left in the will as shown, they withdrew without proving anything, and afterwards made another will, which stated that the land was left as contained in it. John Spiser is a base person, to whom no faith is shown between his neighbours.
Robert Poteger? of Beverley, aged 30+, agrees with Gaynesbrught, adding that Symson kept evidences of the lands of Robert, intending to have the profit after Alice's death. Spiser is a base person, in tongue and manner, to whom no faith is shown between his neighbours. He heard William Ridley, who married the daughter of John Watkyn, say that he heard Watkyn say, at the time he was near death, the words which Gaynesbrught deposed, and that Richard Watkyn asked him to testify so that Alice should not be unjustly disinherited.
John Cawton, aged 60+, says agrees with Gaynesbrugh, and also that he heard John Spaldyng and John Watkyn, both near death, that they were present when Robert made his will, and heard him say that he did not wish to leave the lands, but wished to die seised, so that his heirs should have them. And he says that Spaldyng and Watkyn asked him and others then present to depose this. Spiser is of no reputation, as Poteger said, and adds that Symson asked him not to testify about what he heard Spaldyng say.
He made these statements on 23 January 1503 [1504]
William Ridlee/Riddeley, aged 30+, says that other witnesses were favourable towards Isabella,[748] and particularly that Bower hoped to succeed to the lands if Isabella should win her case. Says that John Watkyn, his father-in-law, just before he died and at other times, told him that he was called to witness Robert's will, and at that time he heard Robert say that he did not wish to leave his lands and tenements, but he wished to die seised, so that his heirs should enjoy them after his death, and said that Watson charged him to testify to this as requested.
He made these statements on 27 January 1503 [1504]

[748] Says Alice on image 10, which makes more sense, suggesting there was a scribal error.

Image 9 – blank except for note
Image 10 – copy of 8
Image 11 – blank

Image 12
Deposition of William Black of Beverley, chaplain, witness for Isabella against Alice, said that one month after Robert's death, Robert Rosse, son of Alice, came to him with a certain will, claiming it to be that of Robert and that the priest who wrote it did so negligently, and he therefore added various things, including that Robert left a house in Beverley to his wife under the condition that she sell it to pay his debts and make his bequests; a ?locket worth 3s 4d to the church of St Mary in Beverley for an annual obit; 4 almshouses to be at Alice's disposition; and that Robert left his daughter Isabelle a mattress and coverlet. These were all the things he added at Rosse's request, and this was the will proved before the dean of Beverley. Alice then took administration.
Richard Tone, chaplain, said that 3 or 4 days after Robert Polyngton's death he asked John Wryght, parochial chaplain of St Mary, Beverley, who wrote the will, about certain lands and tenements in Beverley, and Wryght said that he asked Robert about the property, and Robert said that he did not want to include them, and would dispose of them himself. He then heard Thomas Walker, who was then present, ask Robert why he did not want to include them, and he replied that he wished to die seised, so that his heirs should enjoy them after his death. He knows no more.

Image 13 – blank
Image 14 – damaged draft copy of same text at image 19 below, dated 18 July 1503.
Image 15 – blank except for note of content, about witnesses produced for Isabella.
Image 16 – blank
Image 17 – further copies of depositions of John Wright and Thomas Coke, with dates of 20 April and 6 May 1503 respectively (as image 7)
Image 18 – blank

Image 19 – fair copy of image 14 above.
John Romethwaite alias Bower of Beverley, aged 60+, produced as a witness for Alice against the witnesses produced for Isabella, says that Thomas Coke is very favourable towards Isabelle. Says John Wryght and others are perjurors, and that Robert, on the day he died, made his will, leaving the lands to Alice as claimed. Says John Wright, Robert Burton, Thomas Hogeson, Thomas Symson and John Spicer were present at the making of the will. Says the will is true, and was made between 2 and 3 in the afternoon, on the day noted, and Robert died the same day, between 5 and 6. He says the will is true, he is not following instructions, and is not a kinsman of Alice.
Robert Burton of Beverley, aged 40+, agrees, saying that Robert was in sane mind at the time the will was made, and the will as shown was written after Robert's death according to the form written and the depositions of the witnesses who were present. He is not a kinsman.
Thomas Symson of Beverley, aged 40+, agrees with Burton, adding that the will was written according to the wishes of the testator, as in the will now produced, but the scribe did not know the bounds of the lands and did not see the charters until afterwards.
John Gibson of Bevereley, aged 36, agrees with Symson, and he is not a kinsman.

Image 20 - Blank except for notes

Image 21
Statement before the official of the court of York of the proctor of Isabelle Polynton, against Alice Polyngton of Beverley, and John Bower, Robert Burton, John Spiser and Thomas Symson, witnesses, saying that the witnesses are perjurors, acting on Alice's behalf, and that Robert did not leave the lands in his will to Alice, and the true will did not mention those lands, Robert wishing to die seised so that they passed to his heirs. Isabelle continues her claim and her case.

Image 22 – Blank
Image 23 – copy of image 21
Image 24 – Blank

Image 25
Note that the attached articles were made by the proctors of Alice Polington against the witnesses, John Wright, William Elors, Richard Town, chaplain, and Thomas Coke, on behalf of Isabella and against Alice.
The witnesses are partial towards Isabella.
Wright is a perjuror and corrupt, and is wrong in saying that Robert's will did not mention the lands. the present will is correct, and publicly known in Beverley and elsewhere.

Image 26 – blank apart from names of witnesses – John Bower, Robert Burton, John Spicer and Thomas Symson.

Image 27
Response before the official of the court of York of the proctor of Alice Polyngton, against Isabelle Polyngton of Beverley, and against Sir John Wright, Sir William Clerk, Sir Richard Tone, priests, and Thomas Cook, witnesses for Isabelle against Alice, saying that the witnesses are biased and perjurors, acting on Alice's behalf, and that Robert left the lands in his will to Alice. They ask that the case of Isabelle be dismissed.

Image 28 – blank

Image 29
Libel before the official of the court of York of the proctor of Isabelle Polynton, natural and legitimate daughter of Robert Polington, against Alice, widow and executor of Robert, stating that the inventory made by Alice, as executor, of the goods of Robert is false and fraudulent, and so is the will, which was made and fraudulently sealed four days after Robert's death. She asks that the court order her to produce the correct will and a true inventory, and pay her expenses.

Image 30 - draft version of image 29

Image 31
Blank apart from notes.
Libel in the testamentary case between Polington and Polington of Beverley.
Isabella Scorby, now the said wife of John ?Newren of the parish of Skeffling.
Against Alice Polington of Beverley [unsure of abbreviations]

Image 32 – blank

Image 33
Extract from the will [of Robert Polington] leaving to Alice, his wife: a messuage outside the northern gate (‘barras’) of Beverley where they lived for one year; four almshouses in Wodlane in Beverley, to hold for life, and after her death to Robert Rosse and John Rumerwhat for their lives, and then to the testator’s heirs, all to be used for the good of the poor; a messuage in Beverley opposite the church or chapel of St Mary the Virgin, on the corner of the alley called ‘Matfralane’, lengthwise from the high street in the east to the land of the sisters of Kynwaldgraves [Killingwoldgraves] to the west, and widthwise between Matfralane to the south to the land of the same sisters to the north, and one garden in the same alley, lying from the garden of St Mary the Virgin to the east to the lands of Richard Boith (?) to the west, and from Matfralane to the north to the land pertaining to the four almshouses, to her and her heirs and assigns in perpetuity, with the intention that she or her executors sell them and use the money to pay Robert’s debts. He leaves his daughter Isabelle a mattress and coverlet.

Image 34 – blank except for notes of the names of witnesses, produced on ?Saturday after St Matthew for Alice Polyngton.

Image 35 - Draft and very rough copy of image 36 (see below)

Image 36 - Fair copy of Image 35 above
Depositions made by proctor of Isabelle, claiming that Alice produced a false will and a false inventory.
Robert made his will while still alive, but Alice was made executor of another will made four days later.
Alice was sworn to make an inventory on the basis of this will.
Seeking to disinherit Isabelle, Alice made a false inventory, with false amounts and values.
Isabella is the natural and legitimate daughter of Robert, and was publicly acknowledged as such.
Isabella sought that the true will be shown, and that a true inventory of Robert’s goods be made.

Images 37-8 – blank.

CP.G.44

1. … … … publicum Instrume[n]tum cunctis Appareat evid… …
2. … … … …tesimo octavo Indictione duodecima pontificatus
3. … … … et domin… … d[omi]ni Julij divina providencia Huius no[min]is pape secundi Anno sext…
4. … … [F]ebruarij die duodecimo in domo Roberti Tekell scissoris in me… notar… …
5. … … … subscriptorum p[re]sencia infra univ[er]sitatem Oxon' situat' Constitutus p[er]sonalit[er]
6. … … … Johannes Willingham Ebor' dioc[es'] Quoddam testamentum ut asseruit Joh[an]nis
7. … … Alias Corye sciscoris nup[er] in dicta universitate co[m]morantis coram nobis
8. … … Cuius quidem testamenti tenor sequitur et est talis In dei No[m]i[n]e Amen
9. vicesimo quinto die mensis Augusti Anno d[omi]ni Mill[esi]mo Quingentismo septimo Ego
10. Johannes Richerson compos mentis saneq[ue] memorie egrotus tamen corpore meum
11. in hunc modum ordino facio et constituo testamentum In primis do et lego a[n]i[m]am meam
12. deo om[n]ipotenti beate marie virgini Ac omnibus sanctis eius corpusq[ue] meum sepiliend[um] in
13. Cimiterio eccl[es]ie p[ar]ochialis om[n]iu[m] Sanctor[um] ville Oxonie Item do et lego eccl[es]ie om[n]iu[m] Sanct[orum]
14. p[re]dict' Ad fabricac[i]o[n]em novi sepulcri sive ad nova organa emend' vj^{s} viij^{d} Item volo
15. vj^{s} et octo den[ar]ios discretim in exequijs missa et ceteris misericordie operibus pro
16. salute anime Item do et lego Johanni Richardson Avunculo meo xx^{s} Item do et lego
17. magistro Ricardo Cartewright patri meo sp[irit]uali sive curato ut pro salute anim[e]
18. mee deo preces funderet tres solidos et quatuor den[ar]ios Residuum vero om[n]iu[m] et sing[u]lo[rum]
19. bonorum meorum et debitorum superius non legatorum do et lego executoribus matris
20. mee Hijs Testibus magistro Ricardo Cartwright Roberto Tekell Johanne Symson
21. et Alijs Quos quidem testes in p[re]fato testamento nu[n]cupatos Idem Johannes Willingh[a]m coram
22. me notario publico et testibus subscriptis introduxit qui p[ri]mitus recepto ab eis et
23. eorum quolibet corp[or]ali Juramento coram nobis deposuerunt p[re]dictum testamentum fuisse et
24. esse verum et ultimu[m] testamentum p[re]dicti Johannis Richerdson nup[er] defuncti Super
25. quibus om[n]ibus et sing[u]lis memoratus Johannes Willingh[a]m rogavit et requisivit me
26. notarium publicum sibi conficere et scribere publicum instrumentum Acta sunt hec p[ro]ut
27. sup[ra]scribuntur et recitantur sub Anno d[omi]ni Indictione pont' mense die et loco p[re]dictis
28. P[rese]ntibus tunc et ib[ide]m discretis Hugone Hende et Thoma Malere testibus Ad p[re]miss[a]
29. vocatis rogatis et sp[ec]ialiter requisitis // Et Ego Johannes Copland Clericus
30. Ebor' dioc[es'] publicusq[ue] Auct[oritat]e Ap[osto]lica notarius p[re]missor[um] testium deposic[i]oni Ceterisq[ue] om[n]ib[us]
31. et sing[u]lis dum sic ut p[re]mittitur sub Anno d[omi]ni Indictione pont' mense die et loco p[re]dictis
32. Agebantur et fiebant unacum preno[m]i[n]atis testibus p[rese]ns p[er]so[nalite]r int[er]fui eaq[ue] omnia
33. et sing[u]la sic fieri vidi et Audivi manuq[ue] mea p[ro]pria scripsi publicavi et in hanc public[am]

34. forma[m] redegi signoq[ue] et no[m]i[n]e meis p[ro]prijs solitis et consuetis signavi rogatus et requisit[us]
35. in fidem et testimonium o[m]niu[m] et sing[u]lor[um] p[re]missor[um] Et constat michi notario sup[ra]dicto de
36. int[er]leniac[i]one har[um] dictionu[m] alias Corye inter tercia[m] linea[m] et quartam
37. num[er]and' a capite
38. Johannes Withers Artium magister canonicus in eccl[es]ijs Cath[edral'] Sancti Pauli
39. London' et Sar[um] Ac S[ca]cc[ar]ij Rev[er]endissimi in [Christ]o patris et d[omi]ni d[omi]ni [Christ]oferi dei gr[ati]a Ebor'
40. Archiep[iscop]i Anglie p[ri]matis et Ap[osto]lice sedis legati co[m]missarius et receptor gen[er]alis dil[ect]o
41. nobis in [Christ]o Johanni Willingh[a]m de Threske salutem in d[omi]no de tuis fidelitate et industria
42. circumspectis plenius confidentes Admi[ni]strac[i]o[n]em o[m]niu[m] bonor[um] que fuerunt Joh[an]nis Cory
43. nup[er] de Oxonia ab intestato decedent' infra Jurisdictionem dicti Rev[er]endissimi patris existen[t']
44. tibi in d[omi]no plenariam co[m]mittimus teq[ue] Admi[ni]stratorem in bonis p[re]dictis p[re]ficimus ordinam[us]
45. et deputamus per p[rese]ntes onerantes te in virtute Juramenti tui coram nobis in hac p[ar]t[e]
46. p[re]stiti quatenus plenum verum et fidele Inventarium in et de bonis p[re]dictis conficias et
47. nobis exhibeas legataq[ue]et debita ip[s]ius defuncti in quibus mortis sue temp[or]e effectualit[er]
48. tenebatur p[er]solvas si et quatenus bona h[uius]mo[d]i ad id sufficere valeant facta si oporteat defalca-
49. -c[i]one L[egi]tima Necno[n] prefatum Rev[er]endissimu[m] p[at]rem et eius officiarios quoscumq[ue] ratione
50. Admi[ni]strac[i]o[n]is h[uius]mo[d]i in bonis p[re]dictis indempnem et indempnes conserves ulteriusq[ue] exequa-
51. -ris que in hoc casu fuerint exequend' Ita q[uod] de Admi[ni]strac[i]one tua vera p[re]dicta nobis fidel[em]
52. compotum sive ratiocinum reddas cum sup[er] hoc co[n]grue fueris requisitus Dat' sub Sigillo offic[ii]
53. nostri p[re]dicti secondo die mensis Decembris Anno d[omi]ni mill[esi]mo Quingentesimo nono
54. Noverint univ[er]si per p[rese]ntes q[uo]d Audito coram nobis Johanne Withers
55. Artium magistro canonico in eccl[es]ijs Cath[edral'] Sancti Pauli London' et Sar[um] Ac S[ca]cc[ar]ij Rev[er]en-
56. -dissimi in [Christ]o patris et d[omi]ni d[omi]ni Cristoferi dei gr[ati]a Ebor' Archiep[iscop]i Anglie p[ri]matis
57. et Ap[osto]lice sedis legati co[m]missario et receptore gen[er]ali compoto Johannis Willingh[a]m
58. de Thrisk Admi[ni]stratoris o[m]niu[m] bonor[um] que fuerunt Johannis Cory
59. nup[er] de Oxonia ab intestato decedentis Quia Invenimus dictum Admi[ni]stratorem bona
60. que fuerunt ip[s]ius defuncti bene et fideliter Admi[ni]strasse debitaq[ue] et legata eiusdem
61. defuncti p[er]solvisse nobisq[ue] compotum sive ratiocinum sup[er] Admi[ni]strac[i]one h[uius]mo[d]i
62. reddidisse ip[su]m Admi[ni]stratorem ab omni on[er]e ulterioris compoti redditionis qua[n]tum

63. ad Nos Attinet et de iure possumus salvo Jure cuiuscumq[ue] in hac p[ar]te dimisimus et
64. dimittimus p[er] p[rese]ntes Dat' duodecimo die mensis Decembris Anno d[omi]ni mill[esi]mo
65. quingentesimo nono
66. Facta Collac[i]o[n]e concordat cum Originali B. Lewty notarius pu[bli]cus

CP.G.44

… ... … public instrument may appear evident to all men … … … [150]8 in the 12th indiction of the pontificate … … … of lord Julius, by divine providence the second pope of this name, in the sixth year … … … of February on the 12th day, in the house of Robert Tekell, tailor, … … in the presence …, underwritten, situated within the university of Oxford, personally appointed, … ... … John Willingham of York diocese, a certain testament, as he asserted, of John … … *alias* Corye, tailor, lately living in the said university, before us … … … The tenor of which same testament follows and is such. In the name of God, Amen, on the 25th day of the month of August in the year of the lord 1507, I, John Richerson, sound of mind and of same memory, but weak in body, ordain, make and constitute my testament in this manner. First of all, I give and bequeath my soul to omnipotent God, the Blessed Virgin Mary and all the saints, and my body to be buried in the churchyard of the parish church of All Saints in the town of Oxford. Item, I give and bequeath to the church of All Saints, aforesaid, towards the building of a new tomb or towards mending the new organs 6s 8d. Item, I will 6s 8d separately in a funeral, mass and other works of pity for the salvation of my soul. Item, I give and bequeath to John Richardson, my uncle, 20s. Item, I give and bequeath to master Richard Cartewright, my spiritual father or curate, so that he pours forth prayers to God for the salvation of my soul, 3s 4d. The rest, indeed, of all and singular my goods and debts, not bequeathed above, I give and bequeath to the executors of my mother. With these witnesses: master Richard Cartwright, Robert Tekell, John Symson and others. Which same witnesses, named in the aforesaid testament, the same John Willingham introduced before me, notary public, and the witnesses, below written. Who first of all deposed before us, once a bodily oath had been received by them and each one of them, that the aforesaid testament was and is the true and last testament of the aforesaid John Richerdson, lately deceased. Upon all and singular which, the aforesaid John Willingham asked and requested that I, the notary public, complete and write to him a public instrument. These things were acted, as they are written above and recited, in the year of the lord, the indiction of the pontificate, the month, day and place, aforesaid, in the presence then and there the discreet Hugh Hende and Thomas Malere, witnesses, called, asked and specially requested to the premises. And I, John Copland, clerk of York diocese, and public notary by apostolic authority, was personally present at the deposition of the witnesses and at all and singular the other things, while they were being so acted and done, as is aforesaid, in the year of the lord, indiction of the pontificate, month, day and place, aforesaid, together with the aforenamed witnesses, and I saw and heard all and singular those things so being done, and I wrote, published and reduced them into this public form by my own hand, and by my own accustomed mark and name I signed them, having been asked and requested, as faith and testimony of all and singular the premises. And it is made known to me, the abovesaid notary, about the interlineation of these words ‘alias Corye’ between the third line and the fourth, to be counted from the top.

John Withers, master of arts, canon in the cathedral churches of St Paul, London, and Salisbury, and commissary and receiver-general of the Exchequer of the most reverend father in Christ and lord Christopher, by the grace of God archbishop of York, primate of England and legate of the apostolic seat, to the beloved to us in Christ John Willingham of Threske, greetings in the lord. Being more fully confident in your circumspect loyalty and industry, we commit to you full administration of all the goods, which were of John Cory, late of Oxford, dying intestate, being within the jurisdiction of the said most reverend father, and we put you in charge, and ordain and appoint you as administrator in the aforesaid goods, charging you by virtue of your oath, taken before us in this matter, that you complete and exhibit to us a full, true and faithful inventory in and about the aforesaid goods, and you pay in full the bequests

and debts of the same deceased, in which he was effectively held at the time of his death, if and as far as these goods have sufficient value for this, with lawful defalcation having been made, if it is suitable. And also you are to keep indemnified the aforesaid most reverend father and any his officials by reason of this administration in the aforesaid goods, and you are to execute further what should be executed in this case, in such a way that from your true aforesaid administration you render to us a faithful account or reckoning, when you will be suitably requested upon this. Dated under the seal of our aforesaid office on the second day of the month of December in the year of the lord 1509.

Know all men by these presents that, there having been heard before us, John Withers, master of arts, canon in the cathedral churches of St Paul, London, and Salisbury, and commissary and receiver-general of the Exchequer of the most reverend father in Christ and lord Christopher, by the grace of God archbishop of York, primate of England and legate of the apostolic seat, the account of John Willingham of Thrisk, administrator of all the goods, which were of John Cory, late of Oxford, dying intestate. Because we have found that the said administrator had administrated the goods, which were of the same deceased, well and faithfully, and had paid in full the debts and legacies of the same deceased, and had rendered to us an account or reckoning concerning this administration, we have dismissed and we dismiss by these presents the same administrator from all charge of rendering a further account, as far as it attains to us and we are able lawfully to do, saving the right of whomsoever in this matter. Dated on the 12th day of the month of December in the year of the lord 1509.

After collation had been made, it concords with the original, B. Lewty, notary public.

Borthwick Institute GB 193: CP.G.95 [two documents]

Document 1

Artic[u]li ab excepc[i]one Joh[ann]is Cawton extract' [contra]
Joh[ann]em Willyngh[a]m

In p[ri]mis Arti[culatu]r q[uo]d p[re]fat[us] Joh[a]nnes Cawton p[ri]mo solvit ap[u]d Thirsk de qui[n]q[ue] m[ar]cis quas h[ab]uit de bonis Joh[ann]is // Corry ad usu[m] eiusd[e]m custodiend' d[i]c[t]o Joh[ann]i Corri diu ant[e] decessu[m] eiusd[e]m xiij^{s} iiij^{d}

It[e]m solvit et lib[er]avit coram m[agistro] Doctore Machell adtu[n]c Com[m]iss[ar]io ven[erabi]lis Cur[ie] Ebor' p[re]fat' Joh[ann]i Willyngh[a]m // quatuor m[ar]cis in plena[m] soluc[i]o[ne]m omn[ium] et sing[u]lor[um] bonor[um] et rer[um] existen[t'] in manib[us] ip[s]ius Joh[ann]is Cawton // et sup[er] hoc h[ab]uit billa[m] acquietan[cie] p[er] dict[um] doctore[m] sibi liberavit

It[e]m q[uo]d p[re]missi fueru[n]t et su[n]t vera pu[bli]ca notoria et manifest[a] et c[etera]

Dorse:

Cawton [contra] }
Willyngh[a]m }Sup[er] excepc[i]o[n]e

Joh[an]nes Corri p[ar]o[c][hie] de Cokwold

Document 2

1. Joh[ann]es Corry de Cukwald etat[is] c[ir]cit[er] L Annor[um] lib[er]e condicion[is] test[is] sup[er] ar[ticu]lis in quad[a]m excep[io]ne p[er] p[ar]tem mi[ni]strat'
2. p[er] Joh[ann]em Cawton [contra] Joh[ann]em Willyngh[a]m extract' p[ro]duct' admiss' iurat' et sup[er] p[ri]mo ar[ticu]lo dat' ex[aminatus] di[ci]t q[uod] p[rese]ns
3. erat in domo Alicie Danby vidue apud Newburgh quod[a]m die de q[uo] certitudina[li]t[er] no[n] recolit ad p[rese]ns
4. int[er] festa Na[tivita]tis s[an]c[t]i Joh[ann]is Bapt[ist]e et s[an]c[t]i Petri Advinc[u]la In Anno decimosexto Regni Reg[is] Henrici septimi
5. unacu[m] d[omi]no Ric[ard]o Bradshaw R[e]c[t]ore de Barton al[ia]s dict[us] d[omin]us Ric[ardus] Cardemaker Alano Storry al[ia]s B…
6. de Cukwold Roberti ?Eldm[er] dict' Alicia Danby et Agnete filia sua. Et tu[n]c et ib[ide]m vidit Joh[ann]em Cawton solv[er]e
7. et delib[er]are eid[e]m Joh[ann]i Corry filio Joh[ann]is Corry defunct' xiij^{s} iiij^{d} in p[ar]tem soluc[i]o[n]is quinq[ue] m[ar]car[um] que id[e]m Joh[ann]es
8. Cawton h[ab]uit in custodia no[m]i[n]e porc[i]o[n]is ip[s]ius Joh[annis] Corry in pecu[n]ia num[er]ata. Int[er]ogat[us] in quibus pecuniis et di[ci]t q[uod] in gross'
9. et den[ar]ijs duor[um] den[ar]ior[um] et in nullis alijs soluc[i]o[n]ib[us] et di[ci]t q[uod] ip[s]e numeravit hu[uis]mo[d]i … Sup[er] s[e]c[un]do ar[ticu]lo ex[aminatus] dicit q[uod] nescit deponere. Sup[er] fama ex[aminatus] di[ci]t
10. q[uod] sup[er] deposit' laborat et e[st] pu[bli]ca vox et fama ap[u]d Newbrugh et alijs loc[is] vicinis et sic a diu laboravit et
11. alit[er] ut dicit nescit depon[er]e. Et int[er]ogat[us] di[ci]t q[uo]d non e[st] [con]sang[ui]ne[us] nec affinis alicui p[ar]tiu[m] p[re]dict' nec e[st] doct[us]
12. nec instruct[us] ad depo[nen]d' p[ro]ut deposuit nec curat de Victoria ?du[m]mo[do] fiat iusticia
13. Ex[aminatus] fuit iste test[is] de mandat' de Co[m]miss' xvij^{o} die Novembr[is] Anno d[omi]ni 1520

CP.G.95 - English Translations
Document 1

Articles extracted from the exception of John Cawton against John Willyngham.

First of all, it is articulated that the aforesaid John Cawton firstly paid at Thirsk from five marks, which he had from the goods of John Corry, to be kept to the said John Corry to the use of the same man, a long time before the decease of the same man, 13s 4d.

Item, he paid and delivered before master Doctor Machell, then commissary of the venerable court of York, to the aforesaid John Willyngham four marks in full payment of all and singular the goods and things, being in the hands of the same John Cawton, and upon this he had a bill of acquittance, delivered to him by the said doctor.

Item, that the premises were and are true, public, notorious and manifest, etc.

Dorse:

Cawton against Willyngham: upon the exception.
John Corri of the parish of Cokwold.

Document 2

John Corry of Cukwald, aged about 50 years, of free condition, a witness, extracted, produced, admitted and sworn upon the articles, administered in a certain exception by John Cawton against John Willyngham, and having been examined upon the first article, he says that he was present in the house of Alice Danby, widow, at Newburgh on a certain day, which he does not remember for certain at present, between the feasts of the Nativity of St John the Baptist and St Peter at Chains in the 16th year of the reign of King Henry VII, together with lord Richard Bradshaw, rector of Barton, otherwise called lord Richard Cardemaker, Alan Storry *alias* B… of Cukwold, Robert ?Eldmer, the said Alice Danby and Agnes her daughter. And then and there he saw John Cawton pay and deliver to the same John Corry, son of John Corry, deceased, 13s 4d in part of the payment of five marks, which the same John Cawton had in custody in the name of the portion of the same John Corry, in ready cash. Having been asked in how much money, he says that in gross and money two pence, and in no other payments, and he says that he counted this … Having been examined upon the second article, he says that he does not know anything to depose. Having been examined upon the fame, he says that voice labours upon the deposition and is public, and fame labours at Newbrugh and other neighbouring places and so has laboured for a long time, and otherwise, as he says, he does not know anything to depose. And having been asked, he says that he is not a kinsman or related to any of the aforesaid parties, nor has he been taught or instructed on what to depose, just as he has deposed, nor does he care about victory, provided that justice is done. This witness was examined from the mandate of the commissioners on the 17th day of November in the year of the lord 1520.

CP.G.147

Articula ex p[ar]te Joh[ann]is Litst[er] p[ar]o[chi]e de Bradforth cont[ra] et Adv[er]sus Isabella[m] Wilton de ead[em]

In primis Articulat[ur] q[uo]d p[re]dict[a] Isabella habet et in p[rese]nti occupat nonnullas res catalla utensilia domus ac bona // mobilia et inmobilia p[ro]p[ri]a extenden[t'] co[mmun]i homi[num] exstimac[i]one ad valore[m] sive su[m]ma[m] qui[n]q[ue] librar[um] et // Ar[ticula]tur de quali[be]t su[m]ma maior[i] sive minor[i] usq[ue] ad su[m]ma[m] xl^{ta} solidor[um] et Ar[ticula]tur con[juncti]m et di[visi]m ac de quoli[be]t

It[e]m Ar[ticula]tur q[uo]d ead[em] Isabella habet et occupat in p[rese]nti seu salte[m] ad firma[m] dimittit terras seu tenimen[ta] ex hereditate sua p[ro]pria Ad Annu[am] // valore[m] sive firma[m] xxvj^{s} iiij^{d} p[er] Annu[m] et Ar[ticula]tur de su[m]ma minori qualib[e]t ad xx^{s}

It[e]m q[uo]d p[re]missa o[mn]ia et singula fueru[n]t et su[n]t vera pub[li]ca notoria et manifesta p[ar]it[er] famosa Ac de et sup[er] // eisd[e]m laborat et est pub[li]ca vox et fama

1. Will[el]mus Thorneton p[ar]och[ie] de Bradforth etat[is] l annoru[m] et ultra testis ex p[ar]te Joh[ann]is Lytster de Bradforth ad p[ro]band'
2. valentiam in bonis Isabelle Wylton product[us] Juratus admissus et diligenter exa[m]i[n]at[us] Et p[ri]mo de noticia p[ar]tiu[m] exa[m]i[n]at[us] dicit q[uo]d
3. dict' Joh[ann]em Lytster p[er] viginti Annos Et Isabellam Wylton p[er] totidem Annos bene novit Sup[er] p[ri]mo et secondo Articulis
4. sibi divisim exposit[is] exa[m]i[n]atus dicit ~~ut sequitur~~ q[uo]d continent in se veritate[m] de causa scientie sue dicit ~~q[uo]d~~
5. ut sequit[ur] that this deponent is nebur to Isabell Wyllton and dothe dwell within fowre howses where
6. she dwellyth And sa[i]th that he doth daly se that the said Isabell hath a cowe two qwyes and a swyne
7. And in howsehold stuffe as beddyng as pannys and pottes and other thyng to the valur of fowrtye shyllyng And
8. corne And haye to the valur of vj^{s} viij^{d} ~~And~~ Et dicit that this deponent hath bene in her howse and sene
9. her howsehold and cattell with corne and haye ~~hand~~ And wold gyf so myche money for hit if it were to be
10. solde Et dicit q[uo]d dicta Isabella habet terras ex hereditate ad annua[m] valorem xx^{s} et sic iste deponens voluit sibi dare pro firma eiusd[e]m co[mmun]ibus Annis et ulterius nescit depon[er]e Sup[er] fama ex[amina]t[us] dicit q[uo]d sup[er] p[er] eum deposit' laborat et est publica vox et fama
11. Et dicit q[uo]d ~~est affinis dicto Joh[ann]i Lytster tercio et quarto~~ dict[us] Joh[ann]es Lytster duxit in uxorem consanguineam istius deponent[is]
12. in tercio et quarto gradibus consanguinitat[is] Et dicit q[uo]d no[n] est doct[us] nec instruct[us] nec corruptus p[re]ce nec p[re]cio nec curat de victoria
13. dummo[d]o h[ab]eat[ur] Justicia
14. Jacobus Smythes p[ar]o[chi]e de Bradforth etat[is] xxx Annor[um] et ultra lib[er]e ut ass[er]uit co[n]dic[i]onis test[is] ut sup[ra] p[ro]duct[us] jurat[us] et
15. diligent[er] exa[m]i[n]at[us] ~~dicit q[uo]d utramq[ue] p[ar]te~~ Et p[ri]mo de noticia p[ar]tiu[m] exa[m]i[n]atus dicit q[uo]d utramq[ue] p[ar]tem p[er]
16. decem Annos novit Sup[er] p[ri]mo et secu[n]do Articulis ex[amina]t[us] dicit ~~that this deponent is next nebur to~~
17. ~~Isabell Wylton within one howse~~ q[uo]d continent in se veritatem de causa scientie sue ex[amina]t[us] dicit ~~q[uo]d~~
18. that this deponent is next nebur to Isabell Wylton within one howse And dothe daly when he is at home
19. se a cowe and two qwyes of the said Isabell comyng to her dores And that the said Isabell hath
20. A swyne and other howsehold stuff as beddyng and pannes and pottes to the valur of fowrtie shyllynges
21. in her howse And he saith that he hath sene the said goods And wold with good wyll gyf somyche
22. for it Et ulterius dicit that she hath and occupieth lande of her owne hereditement to the
23. yerely valur of twenty shyllyns And that this deponent wold gyf unto her the said Isabell
24. yerely twenty shyllyng in farme for the occupying of the said land Et ulterius exa[m]i[n]atus dicit

25. q[uo]d nescit depon[er]e alit[er] q[uam] sup[er]ius deposuit Et dicit q[uo]d no[n] est consanguineus nec affinis
26. Alicui p[ar]ti Nec doct[us] nec Instruct[us] nec curat de Victoria du[m]modo habeat[ur] Justicia
27. Exa[m]i[n]at[i] fueru[n]t isti duo testes sup[ra]script' p[er] m[agistrum] Joh[ann]em Sheffeld
28. In decret[is] baccallariu[m] ultimo die mensis Junij Anno D[omi]ni
29. Mill[esi]mo qui[n]gentesimo trigesimo

CP.G.147

Articles on the part of John Litster of the parish of Bradforth contrary and against Isabel Wilton of the same.

First of all, it is articulated that the aforesaid Isabel has and in the present occupies several of her own things, chattels, utensils, houses and goods, moveable and immoveable, extending by the common estimation of men to the value or sum of £5, and it is articulated about every sum, greater or lesser, up to the sum of 40s, and it is articulated jointly and separately, and about each point.

Item, it is articulated that the same Isabel has and occupies in the present or at least demised at farm lands or tenements from his own inheritance to the yearly value or farm of 26s 4d a year, and it is articulated about any lesser sum at 20s.

Item, that all and singular the premises were and are true, public, notorious and manifest and famous equally. And about the upon the same public voice and fame labours and is public.

William Thorneton of the parish of Bradforth, aged 50 years and more, a witness, produced, sworn, admitted and diligently examined on the part of John Lytster of Bradforth to prove the value in the goods of Isabel Wylton. And being firstly examined about his knowledge of the parties, he says that he has known well the said John Lytster throughout 20 years and Isabel Wylton throughout so many years. Examined upon the first and second articles, laid out separately to him, he says that they contain in themselves the truth. About the reason of his knowledge he says, as follows: [*Section in English*]. And he says: [*Section in English*]. And he says that the said Isabel has lands from inheritance to the yearly value of 20s, and so this deponent was willing to give to her for the fee farm of the same in common years, and further he does not anything to depose. Examined upon the fame, he says that concerning the things deposed by him, voice and fame labours and is public. And he says that the said John Lytster married the kinswoman of this deponent in the third and fourth grades of consanguinity. And he says that he is not taught, or instructed, or corrupted by gain or reward, nor does he care about victory, provided that justice is had.

James Smythes of the parish of Bradforth, aged 30 years and more, of free condition, as he asserts, a witness, produced, sworn and diligently examined, as above. And being firstly examined about his knowledge of the parties, he says that he has known both parties throughout ten years. Examined upon the first and second articles, he says that they contain in themselves the truth. Examined about the reason of his knowledge, he says: [*Section in English*]. And he says further: [*Section, in English*]. And being further examined, he says that he does not know anything to depose, other than he has deposed above. And he says that he is not a a kinsman or relation to any of the parties, nor is he taught or instructed, nor does he care about victory, provided that justice is had.

These two witnesses, above-written, were examined by master John Sheffeld, bachelor in decrees, on the last day of the month of June in the year of the lord 1530.

Borthwick Institute GB 193: CP.G.212 [four documents]

Document 1

1. In dei nomi[n]e Amen Quartodecimo die Mensis Maij Anno d[omi]ni Mill[es]imo cccc^{mo}lxx^{mo} secondo Ego Oliverus Thorn al[ia]s Slatier de
2. Ravenstale Ebor' dioc[es'] compos ment[is] et sane memorie tu[m] eger corpore condo test[amentu]m meu[m] in hu[n]c modum In p[ri]mis lego a[n]i[m]am mea[m]
3. deo om[m]ipotent' b[ea]te Marie et om[n]ib[us] s[an]c[t]is et q[uo]d justu[m] est p[ro] meo mortuario It[e]m volo q[uo]d Johannes Slatier filius meus senior h[ab]eat
4. duo ten[ementa] mea cum p[er]tin[enciis] suis in villa et campo de Arnethorp It[e]m lego Will[el]mo filio meo om[n]ia illa ten[ementa] mea in Ravenskale que quond[am]
5. fuerunt Joh[ann]is Radcliff Armigeri It[e]m lego Henrico filio meo iiij^{or} boves vel valorem et iiij^{or} vaccas vel valorem It[em] lego Mar-
6. -garete Frith filie Ricardi Frith xl^{s} It[e]m lego ad reparac[i]o[ne]m ymaginis sancte Cruc[is] de Asburn vj^{s} viij^{d} It[e]m ordino et con-
7. -stituo Ric[ardu]m Slatier Fr[atr]em meu[m] et Thomam Wethir meos executores ut dispona[n]t p[ro] a[n]i[m]a mea p[ro]ut volunt cora[m] sum[m]o Judice r[espo]ndere
8. Et ordino ac co[n]stituo d[omin]um Jacobu[m] Harington militem huius test[ament]i mei sup[er]visorem et c[etera]. Probat[um] fuit p[rese]ns test[amentu]m xv^{o} die mens[is]
9. Febr[uarii] Anno D[om]ini Mill[es]imo cccc^{mo}lxx^{mo} quinto Et co[m]missa admi[ni]strac[i]o Ricardo Slatier executori in eod[e]m test[ament]o no[m]i[n]at' et c[etera] Res[er]vat'
10. p[otes]tate consi[mi]lem adm[ini]st[ra]c[i]o[ne]m co[m]mittend' Thome Wethir al[io] coexecutor' in dict[o] test[ament]o nomi[n]at' cu[m] ven[er]it eam in forma iuris
11. receptur'

Document 2

1. In dei No[m]i[n]e Amen discussis pleni[us] et intellect[is] merit[is] cause testamentar[ie] sive ultime voluntat[is]
2. Oliveri Sklatt[er] nup[er] de Raneskel defunct[i] impedimenti primo cora[m] ven[erabi]li viro et circu[m]specto viro m[agis]tro Thoma Pereson decretor[um] doctore d[omi]ni offic'
3. Cur' Ebor' Co[m]missar[io] gen[er]ali[749] in d[i]c[t]a Cur[ia] mote et penden[t'] indecis' int[er] Ric[ardu]m Sklat[er] execut[orem] test[ament]i p[re]fati
4. Oliveri Sklat[er] defunct[i] p[ar]tem actricem p[er] mag[ist]r[u]m Will[elmu]m Biller p[ar]te ex una et Will[elmu]m Dowbygyng
5. p[ar]oc[hie] de Arnethorp Ebor' dioc[es'] p[ar]tem ream p[er] M[agistrum] Ric[ardu]m Lacom' Notarios pu[blic]os d[i]c[t]e Cur[ie] Ebor' p[ro]curatores
6. gen[er]ales p[ro]curatores suos sufficient' constitutos coram nobis in iudic[i]o comparen[t'] ex altra oblato p[er] d[i]c[t]am
7. p[ar]tem actricem libello et copia eiusdem d[i]c[t]e p[ar]ti reo liberata in hu[n]c modu[m] In dei No[m]i[n]e amen et c[etera] Et
8. h[ab]etur lib[ell]us ille hic p[ro] lect' liteq[ue] ad eundem libellu[m] p[er] ip[s]am p[ar]tem rea[m] negati[v]e contestat' ac Juramento de
9. calu[m]pnia et de v[er]itate dicend' p[er] ip[s]as p[ar]tes hinc et inde dat[o]q[ue] t[er]mino eidem p[ar]ti actrici ad ponend'
10. tm' quo t[er]mino adveniente tradit' p[er] d[i]c[tu]m Biller quibusd[em] posic[i]o[n]ib[us] in script[is] ac ip[s]is eatenus
11. quatenus de iure fu[er]unt admittende et non alit[er] n[e]c alio modo admissis ac cert[is] r[espo]nsionib[us] ad h[uius]mo[d]i petic[i]ones
12. fact' p[er] d[i]c[tu]m Will[elmu]m Dowbygyng p[ar]tem rea[m] postmodu[m] secut' prout in eisdem pleni[us] co[n]tinet[ur] publi[ca]t[is]q[ue]
13. r[espo]nsionib[us] h[uius]mo[d]i ac copijs ear[um]d[em] d[i]c[t]is p[ar]tib[us] decret' hinc et inde deinde q' t[erm]i[n]o ad artic[u]land' et testes p[ro]duce[n]d'
14. d[i]c[t]e p[ar]ti actrici assignato quo t[er]mino advenient' Invocat' p[er] eand' posic[i]o[n]ib[us] negat' loco Artic[u]lor[um] et p[ro]
15. artic[u]lis cert[is]q[ue] testib[us] p[ro]duct' quib[us] admiss' iurat' et exa[m]i[n]at' eor[um]q[ue] d[i]c[t]is publi[ca]t' ac copijs attestac[i]onu[m]
16. eor[um]d[em] p[ar]tib[us] p[re]d[i]c[t]is decret' hinc et inde ac t[er]mino p[re]fate p[ar]ti ree ad dicend' in testes h[uius]mo[d]i et eor[um]
17. d[i]c[t]a assignat' ip[s]oq[ue] t[er]mino adveniente excepto oretenus p[er] ip[s]am p[ar]tem ream q[uod] testes et eor[um] d[i]c[t]a si et
18. quatenus recolligi pot[er]it ex eisd[em] et non alit[er] n[e]c alio modo t[er]minoq[ue] ad p[ro]ponend' om[n]ia in f[a]c[t]o et iure
19. consistenc' p[er] nos d[i]c[t]is p[ar]tib[us] assignato ac ip[s]o t[er]mino adveniente exhi[bi]t' p[er] ip[s]am p[ar]tem actricem

[749] Presumably the text in the margin should be inserted here but it is mostly illegible, due to damage and smudges.

20. quada[m] scriptura test[amenti] p[re]fati Oliveri Sklat[er] ac p[ro]bac[i]onem et insumac[i]onem eiusd[em] p[er] d[ominu]m offic'
21. Cur' Ebor' in S[ca]cc[ar]io Co[m]missariu[m] gen[er]ale ut apparuit fact' in se co[n]tinent' ac copia eiusdem
22. scripture d[i]c[tu]m test[amentu]m continent' p[er] d[i]c[tu]m Lacom petit' et judicialit[er] decreta ?deumq[ue] p[er] nos cu[m] p[ar]te
23. actrice concludente in ead[em] c[aus]a judicialit[er] concluso ac t[er]mino d[i]c[t]is p[ar]tib[us] ad audiend' s[e]n[tent]iam in ead[em]
24. fulminand' iudici[ali]t[er] assignat' quo t[er]mino advenient' p[ar]tib[us] p[ro]duc' p[er] p[ro]curatores suos suprad[i]c[t]os
25. cora[m] nobis in iudicio comparen[t'] ac justicia[m] fieri et s[e]n[tent]iam ferri postulan[t'] Invocata p[er] nos
26. sp[iritu]s s[an]c[t]i gr[ati]a ad s[e]n[tent]iam n[ost]ram diffiniti[v]am p[ro]cedim[us] in hunc modu[m] In dei Nomine Amen
27. Quia p[er] acta inactitata deducta et p[ro]posita Invenim[us] p[re]fatu[m] Ric[ardu]m Sklat[er] p[ar]tem actrice[m]
28. intensionem sua[m] cora[m] nobis in judicio deduct' sufficient' fundasse et p[ro]basse. idcirco p[re]fatu[m] W[illelmu]m
29. Dowbygyng in s[e]n[tent]iam maioris exco[mmun]icac[i]onis auct[oritat]e constitut' sinodal' contra impede[m]e[n]tes
30. et p[er]turbantes pias et ulti[m]as voluntates dese… et execut' eor[um]d[em] proinde lat' et p[ro]mulgat'
31. pu[bli]ce p[ro]nu[n]c[i]am[us] dec[er]nim[us] et declaram[us] s[e]n[tent]ialit[er] et diffiniti[v]e in hijs script[is] condempnam[us]
32. insup[er] eund[em] W[illelmu]m Dowbiging in expens[is] p[er] d[i]c[t]am p[ar]tem actrice[m] in hac ca[usa] fact' ear[um] taxac[i]one
33. nobis sp[ec]ialit[er] res[er]vat'
34. Lecta et lata fuit ista s[e]n[tent]ia p[er] d[omi]nu[m] Co[m]missariu[m] viij^{o} die mensis Martij Anno D[omi]ni M^{o} CCCClxxvi^{to}
35. de qua m[agister] Ric[ard]us Lacom p[ro]cur[ator] W[illelmi] Dovebiging de quo sup[er]i[us] sit me[n]c[i]o ad sac[ro]s[anc]tam sede[m] ap[osto]licam et
36. d[omi]num n[ost]rum papa[m] vive voc' direct' appellavit ?ap[osto]losq[ue] petijt p[rimo] s[e]c[un]do et t[er]cio instant[er] insta[n]ci[us] et insta[n]tissi[m]e
37. ac iteru[m] petijt ?ap[osto]los s[ibi] dari tradi et lib[er]ari cu[m] eff[e]c[t]u unde Co[m]missari[us] ad recipiend' ?ap[ostu]los eid[em] Lacom'
38. die Jovis p[ro]x[im'] an[te] D[omi]nic[am] in Ramispalmar[um] p[ro]x[im'] futur' in ma[tric]i eccl[es]ia sed' loco consistor' eiusd[e]m
39. iudi[ciali]t[er] assignavit

Dorse:

1. … in t[er]cia sex' xl … xxvij die Marci A[nn]o D[omini] m^{o} CCCClxxvii tradit' p[er] d[omin]um Co[m]missar[ium]

2. ?app[osto]li rev[er]enc’ ree infrascript’ et dat’ in eisd[em] m[ar]t’ p[ro]x[im’] post Botulphi allat’ ad r[es]pond[end’] et ?art’
3. pos’ art[icu]lis exec’ p[ro]x[im’] sequen[t’] ad certificand’

Document 3

1. [Christ]oferus Wharf p[ar]o[chie] de Dodyngton Lincoln' dioc[es'] Etat[is] lx Annor[um] et Amplius lib[er]e condic[i]onis honeste fame nulli p[ar]tiu[m] … …
2. affi[ni]s domesticus vel familiar[is] ut di[ci]t test[is] p[ro]duct[us] admiss[us] iurat[us] et sup[er] posic[i]o[n]ib[us] negat[is] p[rese]ntib[us] Annex[atis] vi[delicet] sup[er] p[ri]ma et sec[unda] …
3. expo[s]it[is] exa[mina]t[us] dicit easd[em] veras esse q[uia] sic Audivit dici A Margareta Relict[a] Oliveri Sklat[er] Ar[ticula]ti necnon de W[illelm]o Atkynson ac alijs
4. pl[u]rib[us] de quor[um] no[m]i[n]ib[us] non recolit in p[rese]nti et alit[er] sup[er] ist[is] posic[i]o[n]ib[us] negat[is] exa[mina]t[us] dicit se nescire dicere Sup[er] iij^{o} iiij^{o} v^{to} et vj^{to}
5. posic[i]o[n]ib[us] negat[is] si[bi] di[vis]im expo[s]it[is] exa[mina]tus dicit se nescire depon[er]e n[isi] ex Relac[i]one alior[um] Sup[er] vij^{o} posic[i]one negata exa[mina]t[us] dicit
6. ip[s]am posic[i]onem fore vera[m] Int[errogatus] p[er] quid scit di[ci]t q[uo]d quod die feriali contingente int[er] festa Natal' d[omi]ni et Pur[ificationem] b[ea]te Marie ad
7. duos Annos ult[imo] p[re]t[er]it' stetit iste iurat[us] firmarius cuiusd[am] pastur[e] de Whesby vulgarit[er] nu[n]cupat' infra dominu[m] de
8. Skelynghope notorie situat' p[ro]ut stat in p[rese]nti et contingebat ip[su]m iuratu[m] tempore mort[is] d[i]c[t]i Oliveri novem boviculos et una[m] vacca[m]
9. in posic[i]o[n]ib[us] negat[is] consc[ri]pt[is] de bonis et catallis eiusd[em] defuncti c[aus]a custodie sup[er] memorata[m] pastura[m] depascen' h[ab]uisse quo quid[em]
10. die feriali W[illelmus] Dowebygyng arti[cula]tus an[te] m[er]idiem eiusd[em] diei unacu[m] Margareta ux[ore] eiusd[em] ap[u]d Wheisby p[re]dict' p[er]so[nalite]r
11. existen[t'] receperu[n]t memoratos boviculos et vacca[m] ab eod[em] Jurato et eosd[em] secu[m] abduxeru[n]t p[re]stita p[ri]mitus fide p[er] eund[em] W[illelmu]m
12. de s[er]vand' eund[em] [Christ]oferu[m] iuratu[m] penes execut' dict' Oliveri indempne[m] Int[er]ogat[us] qui fueru[n]t p[rese]ntes temp[or]e quo d[i]c[t]us
13. W[illelmus] Dowbygyng recepit sepedict' bovic[u]los et vacc' di[ci]t q[uo]d Joh[ann]es Gybson Gilbertus Houeson Walterus Barton
14. Edmu[n]d[us] Atkynson et alij de quor[um] no[m]i[ni]b[us] non recolit in p[rese]nti Int[er]ogat[us] ult[erius] de valore dict[orum] bovic[u]lor[um] et vacc' dicit q[uo]d
15. s[e]c[un]d[u]m co[mmun]em homi[num] estimac[i]onem tu[m] valueru[n]t int[er] se quatuor libris decim solid' et octo denar' st[er]lingor[um] et alit[er] sup[er]
16. ist[is] posic[i]o[n]ib[us] negat[is] exa[mina]t[us] de se nescire dicere Sup[er] viij ix x xj et xij posic[i]o[n]ib[us] negat[is] si[bi] di[vis]im expo[s]it[is] exa[mina]t[us]
17. q[uo]d nescit depon[er]e nisi ex relac[i]one Alior[um] Et sup[er] xiij po[sition]e negata exa[mina]t[us] q[uo]d di[ci]t q[uo]d credit eam fore veram Sup[er] ult[ima]
18. posic[i]one negata exa[mina]t[us] di[ci]t q[uo]d p[re]miss[a] p[er] ip[su]m sup[er]ius depo[s]ita fueru[n]t et su[n]t vera Notaria et famosa in villis et loc[is]
19. p[re]dict[is] et sup[er] hijs ib[ide]m laborat et est pu[bli]ca vox et fama Et no[n] est corrupt[us] instruct[us] vel informat[us] ad deponend'
20. p[ro]ut sup[er]ius deposuit nec curat q[uod] p[ar]s vincat in c[aus]a du[m]mo[d]o fiet justicie compleme[n]tu[m].

21. Edmund[us] Atkynson p[ar]o[chi]e de Dodington Lincoln' dioc[es]' etat[is] xxx Annor[um] et Amplius lib[er]e condic[i]onis honeste fame null'
22. p[ar]tiu[m] consanguinius affi[ni]s domesticus vel famuliaris ut di[ci]t test[is] p[ro]duct[us] Admissus Jurat[us] et sup[er] posic[i]o[n]ib[us] negat[is]
23. vi[delicet] sup[er] j ij iij iiij v et vj posic[i]o[n]ib[us] si[bi] di[vis]im expo[s]it[is] exa[mina]t[us] dicit se nescire dicere n[isi] ex relac[i]one Alior[um] Sup[er] vij
24. posic[i]one negata exa[mina]t[us] di[ci]t eand[em] fore vera[m] quia quod die de quo certitudinalit[er] no[n] recolit ferali tu[m] int[er] fest[a]
25. Natal' d[omi]ni et Pur[ificationem] b[ea]te Marie v[ir]g[inis] ad duos Annos ult[imos] p[re]t[er]it[os] contingen[t'] p[rese]ns fuit iurat[us] an[te] meridiem eiusd[em]
26. diei ferialis ap[u]d Wheisby infra dominu[m] de Skelynghope situat' v' et qu' W[illelmus] Dovebyngyng Arti[cula]t[us] et
27. Margareta ux[or] eiusd[em] receperu[n]t de [Christ]ofero Wherf p[re]conteste suo certa catalla vi[delicet] decim in Num[er]o p[re]c' int[er] se
28. co[mmun]i homi[num] estimac[i]one quatuor lib[rarum] decim solid[orum] et octo denar[iorum] sterlingor[um] que quid[em] decim catalla erant
29. Oliveri Sklat[er] Arti[cula]ti temp[or]e mort[is] sue et ead[em] Catalla sic ut p[re]mittit[ur] p[er] eosd[em] W[illelmu]m et Margareta[m] ux[or]em suam
30. recepta ijd[em] W[illelmus] et Margareta secu[m] abduxeru[n]t p[re]t[er] et contra voluntate[m] et sciencia[m] exec' eiusd[em] Oliveri de …
31. vera sci[enti]a istius iurati Int[errogatus] qui fueru[n]t p[rese]ntes temp[or]e recepc[i]onis et abducc[i]onis d[i]c[t]or[um] cattallor[um] dicit q[uo]d ip[s]emet
32. iurat[us] [Christ]oferus Wherf et alij de quib[us] non recolit in p[rese]nti et alit[er] sup[er] ead[em] posic[i]one negat' exa[mina]t[us] di[ci]t se
33. nescir[e] depon[er]e Sup[er] viij ix x xj xij xiij posic[i]o[n]ib[us] negat[is] exa[mina]t[us] di[ci]t se nescire dic[er]e n[ichil] ex d[i]c[t]is
34. alior[um] credit tu[m] veracit[er] q[uo]d d[i]c[t]us W[illelmus] Dovebygyng ad delib[er]and' h[uius]mo[d]i catalla debite requisit[us] p[er] p[ar]tem et ex p[ar]t…
35. d[i]c[t]i Oliveri Sklat[er] exec' sic fac[er]e seu p[ro] eisd[em] compon[er]e recusavit et recusat in p[rese]nti Sup[er] ulti[m]a po[sition]e negata
36. exa[mina]t[us] di[ci]t q[uo]d p[re]missa p[er] ip[su]m sup[er]ius depo[s]ita fueru[n]t et su[n]t vera notoria et famosa in villis et locis p[re]dict[is] ac sup[er]
37. hijs ib[ide]m laborat et est pu[bli]ca vox et fama Et no[n] curat q[uod] p[ar]s vincat … du[m] in ea fit justicia Nec e[st]
38. no[n] corrupt[us] instruct[us] vel informat[us] ad deponend' p[ro]ut sup[er]ius deposuit ut dicit in jurame[n]to suo
39. Thomas Dawson p[ar]o[chi]e de Blyth etat[is] lx Annor[um] et amplius lib[er]e condic[i]onis honeste fame nulli p[ar]tiu[m] consangu…
40. affinis domestic[us] vel famuliaris ut di[ci]t test[is] p[ro]duct[us] admissus iurat[us] et sup[er] posic[i]o[n]ib[us] negat[is] exa[mina]t[us] vi[delicet] sup[er] j et ij
41. po[sition]ib[us] exa[mina]t[us] dicit se nescire dicere nisi ex Relac[i]one Alior[um] Sup[er] iij iiij et v posic[i]o[n]ib[us] exa[mina]t[us] di[ci]t q[uo]d scit easd[em] ver[as]

42. e[ss]e Int[errogatus] de c[aus]a sue sci[enti]e in hac p[ar]te dicit q[uo]d quod die feriali de quo no[n] recolit certitudinalit[er] in p[rese]nti int[er]
43. festa Pasche et S[an]c[t]i Petri q[uo]d d[icitu]r Advinc[u]la A[nn]o D[omi]ni morte[m] dict[i] Oliveri Art[icula]ti im[m]ediate sequen[t'] p[rese]ns fuit iste …
44. iurat[us] ap[u]d Faueskel v' et qu[od] vidit iste iurat[us] Joh[ann]em Lounde de Lov[er]sall cu[m] biga sua qui quid[em] Joh[ann]es Lound…
45. ex mandato Margarete nu[n]c ux[or]is W[illielm]i Dowebygyng Art[iculat]i tunc ib[ide]m p[er]so[nali]t[er] existen[t'] on[er]avit eand[em] biga[m] …
46. cu[m] cert[is] domor[um] utensilib[us] que fueru[n]t d[i]c[t]i Oliveri temp[or]e mort[is] sue que deniq[ue] utensilia id[em] Joh[ann]es …
47. de mandato eiusd[em] Margarete ad locu[m] p[er] eand[em] Margareta[m] assignatu[m] abhinc cariavit de veris visu et
48. Auditu istius iurati sed de valore eor[um]d[em] exa[mina]t[us] di[ci]t se nescire dicere Sed quo ad valorem eque Artic[u]lati qua[m]
49. id[em] Joh[ann]es Lounde de mandato memorate Margarete secu[m] abduxit eod[em] die de ver[is] visu et Auditu ...
50. Jurati dicit q[uo]d b[e]n[e] valuit co[mmun]i estimac[i]one homin[um] qui[n]q[ue] solid' et alit[er] sup[er] eisd[em] posic[i]o[n]ib[us] negat[is] exa[mina]t[us] di[ci]t se
51. nescire dic[er]e Sup[er] vj et vij p[ositio]nib[us] negat[is] si[bi] di[vis]im expo[s]it[is] exa[mina]t[us] dicit se nescire depon[er]e n[isi] ex relac[i]one alior[um]
52. Sup[er] viij[a] tu[m] posic[i]one negata exa[mina]t[us] di[ci]t eand[em] fore vera[m] Int[errogatus] p[er] quid scit di[ci]t q[uo]d quod die feriali int[er]
53. festa Pas[c]he et Michaelis vi[delice]t iste temp[or]e ad duos Annos ult[imos] p[re]t[er]it[os] contingen[t'] W[illelmus] Dovebygyng recepit ab isto
54. iurato ap]u]d Raneskell contra voluntate[m] Ric[ard]i Sklat[er] Arti[cula]ti tres boves ad valorem int[er] se co[mmun]i estimac[i]one h[uius]mo[d]i
55. xxvij[s] et eosd[em] tres boves secu[m] duxit quor[um] deniq[ue] t[ri]u[m] bov' un[us] erat Oliveri Sklat[er] temp[or]e mort[is] sue que[m] c[aus]a
56. custodie iste iurat[us] h[ab]uit et Alij duo erant Ric[ard]i Sklat[er] Artic[ula]t[i] Int[errogatus] qui p[rese]ntes fu[er]unt temp[or]e quo id[em] W[illelmus]
57. Dovekyging dict[os] boves ab isto iurato recepit di[ci]t q[uo]d ip[s]emet iurat[us] Joh[ann]es Glyson Edmu[n]d[us] Spryng
58. et Ric[ard]us Dawson ac alij de quor[um] no[m]i[ni]b[us] non recolit p[rese]nti et alit[er] exa[mina]t[us] sup[er] ista posic[i]one negata dicit se nescire dicere
59. Sup[er] ix et x po[sition]ib[us] negat[is] exa[mina]t[us] dicit illas veras e[ss]e Int[errogatus] p[er] quid scit dicit q[uo]d div[er]sis et repetit[is] vicib[us] int[er] f[est]a
60. Pasche et Michaelis Anno d[omi]ni mortem memorati Oliveri im[m]ediate sequen[t'] Margareta uxor W[illelmi]
61. Dovebygyng recepit ab isto iurato septem petr[as] lane ad valorem int[er] se s[ecundu]m co[mmun]em estimac[i]onem homi[num]
62. xvj[s] iiij[d] quas h[ab]uit in custodia de bonis Oliveri Sklat[er] Arti[cula]ti et quod alio die de quo certitudinalit[er] no[n] recolit

63. in eod[em] Anno contingen[t'] ead[em] Margareta cepit ab isto eod[em] iurato centu[m] xvj^{cim} oves que fueru[n]t Oliveri Sklat[er]
64. temp[or]e mort[is] sue p[re]c' int[er] se s[ecundu]m co[mmun]em estimac[i]o[n]em homin[um] Sex libr[as] decim solid' et octo denar' st[er]lingor[um] et
65. easd[em] secu[m] abduxit p[re]t[er] et contra volu[n]tatem exec' dict[i] Oliveri de ver[is] visu et Auditu isti[us] iurati Int[er]ogat[us] qui
66. fueru[n]t p[rese]ntes temp[or]e recepc[i]onis h[uius]mo[d]i lane et omn[ium] di[ci]t q[uo]d ip[s]emet iurat[us] Joh[ann]es Glyson Edmu[n]d[us] Spryng
67. Ric[ard]us Daweson et alij de quor[um] no[m]i[n]ib[us] non recolit in p[rese]nti Et alit[er] sup[er] ist[is] posic[i]o[n]ib[us] negat[is] exa[mina]t[us] di[ci]t se nescire
68. dicere Sup[er] xi xij et xiij posic[i]o[n]ib[us] si[bi] di[vis]im expo[s]it[is] exa[mina]t[us] di[ci]t se nescire depon[er]e n[isi] ex relac[i]one alior[um] Sup[er] ult[ima]
69. posic[i]one exa[mina]t[us] dicit q[uo]d p[re]missa p[er] ip[su]m sup[er]ius deposita su[n]t vera et ma[n]ifesta in villis et loc[is] p[re]d[i]c[t]is et sup[er] hijs
70. ib[ide]m laborat et e[st] pu[bli]ca vox et fama Et no[n] est corrupt[us] instruct[us] n[ec] informat[us] ad deponend' p[ro]ut sup[er]ius
71. deposuit nec curat q' p[ar]s victoria[m] h[ab]eat in c[aus]a q[uo]d in ead[em] fiat justic[ia]
72. Joh[ann]es Glyson p[ar]o[chi]e de Blyth etat[is] lx Annor[um] et Amplius lib[er]e condic[i]onis honeste fame nulli p[ar]tiu[m]
73. consangui[n]us affi[ni]s domestic[us] vel famuliar[is] ut dicit test[is] p[ro]duct]us] admissus iurat[us] et sup[er] posic[i]o[n]ib[us] negat[is]
74. vi[delicet] p[rese]ntib[us] Annex[atis] Sup[er] j et ij posit[i]o[n]ib[us] si[bi] di[vis]im expo[s]it[is] exa[mina]t[us] di[ci]t se nescire depon[er]e n[isi] ex relac[i]one alior[um] Sup[er]
75. iij iiij et v posic[i]o[n]ib[us] negat[is] si[bi] di[vis]im expo[s]it[is] exa[mina]t[us] di[ci]t easd[em] veras esse Int[errogatus] de c[aus]a sue sci[enti]e in ea p[ar]te di[ci]t
76. q[uo]d quod die feriali de quo non recolit in p[rese]nti int[er] festa Pasche et s[an]c[t]i Petri q[uo]d d[icitu]r Advinc[u]la A[nn]o D[omi]ni morte[m]
77. dicti Oliveri Sklat[er] imediat[e] sequen[t'] p[rese]ns fuit iste iurat[us] ap[u]d Raneskell v' et qu' vidit iste iurat[us] Joh[ann]em
78. Londe de Lov[er]sal cu[m] biga sua qui quid[em] Joh[ann]es Lond ex mandato Margarete nu[n]c uxor[is] W[illelmi] Dovebygyng
79. Arti[cula]ti tu[n]c ib[ide]m p[er]so[nali]t[er] existen' on[er]avit eand[em] bigam sua[m] sive plaustru[m] cu[m] cert[is] domor[um] utensilib[us] que fueru[n]t
80. d[i]c[t]i Oliveri temp[or]e mort[is] sue que quid[em] utensilia et equu[m] no[m]i[n]atu[m] in posic[i]o[n]ib[us] negat[is] p[re]cij v[idelicet] qui[n]q[ue]
81. solid' co[mmun]i estimac[i]one homi[num] id[em] J[o]h[ann]es Lounde de mandato eiusd[em] Margarete ad locu[m] p[er] eand[em] M[ar]gareta[m]
82. assignatu[m] vi[delicet] ad domu[m] h[ab]itac[i]onis eiusd[em] ap[u]d Arnthorp situat' ut credit abhinc cariavit de
83. veris visu Auditu et noticia istius iurati Int[er]og[atus] de valore hui[usm]o[d]i utensilior[um] di[ci]t q[uo]d ?tu[m] valueru[n]t
84. co[mmun]i homi[num] estimac[i]one octo marc' sterlingor[um] et alit[er] sup[er] ist[is] posic[i]o[n]ib[us] negat[is] exa[m]i[na]t[us] di[ci]t se

85. nescire dic[er]e Sup[er] vj et vij po[s]i[tioni]b[us] negat[is] exa[mina]t[us] dicit se nescire dic[er]e nisi ex Relac[i]one alior[um]
86. Sup[er] viij^{a} ix^{a} et x^{a} posic[i]o[n]ib[us] negat[is] si[bi] di[vis]im expo[s]it[is] diligent[er] exa[mina]t[us] di[ci]t q[uo]d quod die feriali int[er] f[est]a
87. Pasche et Michael[is] ad duos Annos ult[im'] p[re]t[er]it' contingen[t'] p[rese]ns fuit iste … … …
88. una cu[m] Thoma Dawson Edmu[n]do Spring Ric[ard]o Dawson et alijs de quor[um] no[m]i[ni]b[us] non recolit
89. p[rese]nti v' et qu' vidit W[illelmu]m Dowebyging recipiente[m] p[e]r manus Thome Dawson cont[ra] volu[n]tatem ?Ric[ard]i
90. Sklat[er] Art[iculat]i tres boves p[re]c[ii] int[er] se co[mmun]i estimac[i]one homi[num] xxvij^{s} quos secu[m] abduxit quor[um] deniq[ue]
91. t[ri]u[m] bov' un[us] erat Oliver[i] Sklat[er] temp[or]e mort[is] sue in Custodia d[i]c[t]i Thome Dawson existen[t'] et
92. alij duo erant d[i]c[t]i Ric[ard]i Sklat[er] et quo ad centu[m] xvj^{cim} oves de quib[us] in posic[i]o[n]ib[us] fit menc[i]o exa[mina]t[us] dicit
93. q[uo]d uno die de quo non recolit in eod[em] tu[m] Anno contingen[t'] p[rese]ns fuit id[em] iurat[us] ap[u]d Ranskell p[re]dict'
94. una cu[m] p[re]no[m]i[n]at[is] Thoma Dawson Ed[mund]o Spring Ric[ard]o Dawson et alijs v' et qu' vidit Margareta[m]
95. uxorem p[ro]tunc d[i]c[t]i W[illelmi] Dowebyging recepisse A d[i]c[t]o Thoma Dawson centu[m] xvj^{cim} oves Oliveri
96. Sklat[er] du[m] vixit p[re]cij int[er] se sex li[brarum] decim solid[orum] et octo denar[iorum] sterlingor[um] quas secu[m] a[b]duxit
97. de veris visu et noticia istius iurati Et quo ad septem petr[as] lane in posic[i]o[n]ib[us] negat[is] consc[ri]pt'
98. exa[mina]t[us] di[ci]t se nescire depon[er]e n[isi] ex Relac[i]o[n]is p[re]fat' Thome Dawson qui ass[er]uit se easd[em] petr[as] lane
99. v[idelicet] septem p[re]cij int[er] se xvj^{s} iiij^{d} lib[er]asse Margarete uxori eiusd[em] W[illelmi] Dowebyging Et alit[er]
100. ist[is] posic[i]o[n]ib[us] negat[is] exa[mina]t[us] di[ci]t se nescire depon[er]e Sup[er] xj xij xiij et xiiij posic[i]o[n]ib[us]
101. negat[is] s[ibi] di[vis]im expo[s]it[is] exa[mina]t[us] dicit q[uo]d p[re]missa p[e]r ip[su]m sup[er]ius depo[s]ita fueru[n]t et su[n]t vera
102. et famosa in villis et loc[is] p[re]dict[is] ac sup[er] hijs ib[ide]m laborat et e[st] pu[bli]ca vox et fama Et no[n] est
103. instruct[us] corrupt[us] vel informat[us] ad deponend' p[ro]ut sup[er]ius deposuit Nec curat q[uod] pars vi[ncat]
104. in c[aus]a d[ummodo] in ead[em] fit justic[ia] ut di[ci]t in …ento suo
105. Thom[a]s Hyrd de Osbaldstone etat[is] lx Annor[um] et Amplius lib[er]e condic[i]onis hones[t'] …
106. nulli p[ar]tiu[m] consanguinus affi[ni]s domestic[us] vel famuliar[is] ut dicit test[is] p[ro]duct[us] … …

107. et sup[er] posic[i]o[n]ib[us] negat[is] p[rese]ntib[us] Annex[at'] exa[mina]t[us] vi[delicet] sup[er] j ij iij iiij et v posic[i]o[n]ib[us] negat… …
108. expo[s]it[is] exa[mina]t[us] di[ci]t se nescire dic[er]e n[isi] ex relac[i]one alior[um] Sup[er] vj posic[i]one negata …
109. dicit eand[em] vera[m] esse Int[er]rog[atus] de c[aus]a sue sc[ient]ie hac in p[ar]te di[ci]t q[uo]d in f[est]o S[an]c[t]i Luc…
110. ad duos Annos ult[imo] p[re]t[er]it'] contingen[t'] venit W[illielmus] Dowebyging ad Osbaldston et ib[ide]m … …
111. tres juvencas duos bovic[u]los et unu[m] vitulu[m] p[re]cij int[er] se co[mmun]i homi[num] estimac[i]one quatuor … …
112. sterlingor[um] Oliveri Sklat[er] du[m] vixit que fueru[n]t in Custodia istius iurati invent' … …
113. [*Dorse*] et abduxit p[rese]ntib[us] tu[n]c ib[ide]m isto iurato … Will[el]mo Cap[ella]no di[vin]a celebranti in Capella de Osbald…
114. Georgio Yreland Joh[ann]e Terre et alijs de quor[um] no[m]i[ni]b[us] non recolit in p[rese]nti Et alit[er] sup[er] ista po[sitio]ne …
115. dicit se nescire depon[er]e Sup[er] vij viij ix x xj xij xiij po[sitio]nib[us] negat[is] si[bi] di[vis]im expo[s]it' exa[mina]t[us] diligent[er] …
116. … nisi ex relac[i]one alior[um] Sup[er] ulti[m]a po[sitio]ne negata exa[mina]t[us] di[ci]t q[uo]d p[re]miss[a] p[e]r ip[su]m sup[er]ius depo[s]ita su[nt] …
117. notoria et famosa in villis et locis p[re]dict[is] et sup[er] hijs ib[ide]m laborat et est pu[bli]ca vox et fama Et non Curat …
118. in c[aus]a du[mmodo] in ea fiat justic[ia] Et no[n] est corruptus instruct[us] vel informat[us] ad deponend' p[ro]ut sup[er]ius …
119. ut dicit in iuramento suo
120. Exa[mina]ti fueru[n]t isti qui[n]q[ue] testes penulti[m]o die mens[is] Julij Anno D[omi]ni M^{o} cccclxxvi^{to}
121. Joh[ann]es Terre de Osbaldestone etat[is] xl Annor[um] et amplius lib[er]e condic[i]onis honeste fame nulli p[ar]tiu[m] co[n]sang…
122. affi[ni]s domesticus vel familiar[is] ut di[ci]t test[is] p[ro]duct[us] admissus juratus et sup[er] po[sitio]nib[us] negat[is] … …
123. annex[at'] vi[delicet] sup[er] j ij iij iiij et v s[ibi] di[vis]im expo[s]it[is] exa[mina]t[us] dicit se nescire dic[er]e nisi ex Auditu Sup[er] … …
124. negata exa[mina]t[us] dicit eand[em] in se [con]tinere v[er]itatem quia dicit q[uo]d in f[est]o S[an]c[t]i Luce Evang[e]l[ist]i … …
125. Annos ult[imos] p[re]t[er]it[os] contingen[t'] p[rese]ns fuit iste iurat[us] ap[u]d Osbaldstone p[re]dict' una cu[m] Thoma H… …
126. p[re]conteste suo d[omi]no W[illelm]o Cap[ella]no di[vin]a celebran[t'] in Capella ib[ide]m Georgio Yreland et alijs de quib[us] … …
127. memoria[m] non h[ab]et v' et qu' W[illelmus] Dowebygyng de quo in po[sitio]nib[us] p[ri]ncipalit[er] fit menc[i]o sex vacc' t…
128. Invencas duos bovic[u]los et unu[m] vitulu[m] p[re]cij int[er] se co[mmun]i homi[num] estimac[i]one quatuor li[bras] xxj^{s}

129. sterling[orum] Oliveri Sklat[er] du[m] vixit que fueru[n]t in Custodia p[re]fati Thome Hyrd ib[ide]m Invent' cepit abstraxit
130. et abduxit de veris visu et Auditu istius iurati Et alit[er] sup[er] ista po[sitio]ne negata exa[mina]t[us] dicit
131. se nescire dicere Nec Sup[er] vij viij ix x xj xij xiij po[sitio]nib[us] negat[is] si[bi] di[vis]im expo[s]it[is] exa[mina]t[us] dicit se
132. nescire dic[er]e nisi ex Relac[i]one alior[um] Sup[er] ult[ima] po[sitio]ne negata exa[mina]t[us] dicit q[uo]d p[re]miss[a] p[er] ip[su]m sup[er]ius
133. depo[s]ita fueru[n]t et su[n]t vera notoria et famosa in villis et locis p[re]dict[is] Et sup[er] hijs ib[ide]m laborat et e[st] pu[bli]ca
134. vox et fama Et non est instruct[us] corrupt[us] vel informat[us] ad deponend' p[ro]ut sup[er]ius deposuit nec
135. curat q' pars vincat in c[aus]a ut di[ci]t in suo iuramento du[mmodo] fiat justicie complementu[m]
136. Exa[mina]t[us] fuit iste test[is] xxiiij^{to} die Mensis Septembr[is] A[nn]o D[omi]ni M^{o} cccclxxvi^{to}

Dorse:
1. Slater c. Donbigynge, 1531

Document 4

1. In dei Nomine Amen Posiciones et articulos infrascript' ac contenta in eisdem facit dat exhibet ac probare intendit Procurator et p[ro]curator' no[m]i[n]e discreti viri
2. Ricardi Slater Executor[is] testamenti sive ultime voluntatis Oliveri Slater nup[er]ime defunct[i] contra Will[elmu]m Doubigyng et contra quemli[be]t pro eod[e]m
3. coram vobis in iudicio l[egi]time comp[ar]entem a libello ... ... impedimento ultime voluntatis prefati defuncti int[er] p[ar]tes pred[i]c[t]as cora[m] vobis domine Judex
4. mot' et pendent' oblat' elicit' et extract' Et qui ... ... multiplices eas ponit divisim Et sic petit eisd[e]m p[er]sonalit[er] p[er] p[re]fatu[m] Will[elmu]m Doubigyng
5. mediante suo iuramento r[espo]nderi
6. [1] In primis ponit ac probare intendit d[i]c[t]us procurator nomi[n]e ... ... q[uo]d d[i]c[t]us Oliverus Slater dum vixit suu[m] testamentu[m] sive ulti[m]am voluntate[m] condidit ...
7. et p[re]fatum Ricardu[m] Slater fr[atr]em suu[m] carnale[m] et Thoma ... ... et non plures n[e]c p[er]sonas alias omn[ium] bonor[um] suorum executores constituit et deputavit Et
8. ponit divisim et de quoli[be]t cr'... ... q[uo]d exec' fecit eosd[em] et Margareta[m] Relict' ...
9. [2] It[e]m ponit q[uo]d prefat[um] testamentum coram Judice competent' y[m]mo verius Judicib[us] competentib[us] fuit probatum approbatu[m] et insinuatu[m] co[m]missaq[ue] fuit eid[em] Ricardo Slater
10. fr[atr]i d[i]c[t]i testatoris defunct[i] p[er] eund[em] administrac[i]o omn[ium] bonor[um] d[i]c[t]i defuncti et p[er] ip[su]m realit[er] admiss' ac iux[ta] constituc[i]o[ne]m legat' edit' ... . p[ar]te iuratus ... consimili
11. p[otes]tate reservata al[io] executori si veniret co[m]mittend' No[n] cr' ut po'
12. [3] It[e]m ponit q[uo]d Will[el]m[u]s Doubigyng certa bona et catalla subtraxit adduxit detinuit et detinet in p[rese]nti quond[am] Oliveri Slater dum vixit p[re]t[er] et cont[ra] voluntate[m]
13. dict' executoris Ric[ard]i Slater admissi iurati et onus administrac[i]o[nis] bonorum fr[atr]is sui defuncti in se sument' Et ponit ut sup[ra] No[n] cr'
14. [4] It[e]m ponit q[uo]d dictus Will[el]m[u]s Doubigyng pret[er] et contra voluntatem dict[i] Ric[ard]i Slater executoris sumpsit et h[ab]uit ac ad huc h[ab]et et detinet om[n]ia utensilia
15. domus ip[s]ius Oliveri temp[or]e sue mortis infra domu[m] sua[m] ad tunc existen[t'] vi[delicet] ollas patellas linthiamnia lectissima et cet[er]a alia utensilia div[er]se sp[ec]iei ad valorem
16. decem mar[car[um] et ponit divisim et de quoli[be]t Et petit ut sup[ra] No[n] cr'
17. [5] It[e]m ponit q[uo]d dictus Will[el]m[u]s Doubigyng pret[er] et contra voluntatem premissi Ric[ard]i Slater executoris abstraxit et abduxit ab predict[a] domo Oliveri
18. seped[i]c[t]i defunct[i] quamdam equam coloris badij valent' ad su[m]ma[m] sex solidor[um] et octo den[ar]ior[um] et ponit ut sup]ra] no[n] cr'
19. [6] It[e]m ponit q[uo]d d[i]c[t]us Will[el]m[u]s Doubigyng abstraxit et abduxit p[re]ter et contra voluntate[m] d[i]c[t]i executoris ut p[re]mittit[ur] ab Osbaldstone sex vaccas tres Juvencas
20. duos boviculos et duos vitulos ad valorem quatuor librar[um] dece[m] solidor[um] et octo den[ar]ior[um] Et petit ut sup[ra] No[n] cr'
21. [7] It[e]m ponit q[uo]d dictus Will[el]m[u]s Doubigyng a [Christ]ofero Wherf de Wheisby p[re]t[er] et contra voluntate[m] d[i]c[t]i executoris novem boviculos et unam vacca[m]

22. ad valorem quinq[ue] librar[um] Et ponit petitq[ue] ut sup[ra] dicit q[uo]d accep[i]t sed p[ro]p[ri]a erant bona
23. [8] It[e]m ponit q[uo]d d[i]c[t]us Will[el]m[u]s Doubigyng abduxit a Thoma Dowson de Ravenskell tres boves p[re]t[er] et contra voluntate[m] d[i]c[t]i executor[is] ad valore[m] xxx^{s}
24. Et ponit divisim et de quoli[be]t et petit ut sup[ra] No[n] cr'
25. [9] It[e]m ponit q[uo]d d[i]c[t]us Will[el]m[u]s Doubigyng subtilit[er] subtraxit a dict' executore decem lapides lane existent' in custodia d[i]c[t]i Thome Dowson ad valore[m]
26. ad tunc xxx^{s} Et petit ut supra No[n] cr'
27. [10] Item ponit q[uo]d prefatus Ric[ard]us Slater executor an[te]d[i]c[t]us deliberavit d[i]c[t]o Will[el]mo Dowbigyng p[er] manus d[i]c[t]i Thome Dowson Centu[m] ... ...
28. ultra ad valorem decem librar[um] Et petit ut sup[ra] No[n] cr'
29. [11] It[e]m ponit q[uo]d dictus executor deliberavit p[re]fato Will[el]mo Doubigyng xxv^{s} ij^{d} in pecunia et ix^{s} No[n] cr'
30. [12] Ite[m] ponit dictus executor deliberavit d[i]c[t]o Will[el]mo Doubigyng una[m] vacca[m] ad valore[m] ix^{s} et viij^{d} No[n] cr'
31. [13] It[e]m ponit q[uo]d d[i]c[t]us Will[el]m[u]s Doubigyng om[n]ia predict[a] p[er] ip[su]m p[re]ter et contra voluntate[m] p[re]fati Ric[ard]i Slater executoris capta ab... ...
32. detenta seu su[m]mas pred[i]c[t]as an[te]d[i]c[t]o Ric[ard]o Slater executori deliberare p[er]solvere seu modo quovis alio sibi satisfacere de eisdem ... ...
33. congrue requisit' recusavit et recusat in p[rese]nti tam tacite q[ua]m expresse piam et ultima[m] d[i]c[t]i Oliveri Sklater ... ...
34. Sinodalis Ebor' edit' in hac p[ar]te latam notorie incurrendo Et petit ut sup[ra] No[n] cr'
35. [14] It[e]m ponit q[uo]d Premissa sunt vera pu[bli]ca notor[ia] et manifesta in Civitate et dioc' Ebor' ac ... de Blyth et ... ...
36. ac super hijs ib[ide]m laborarunt et laborant pu[bli]ca vox et fama cr' de cr' et negat de negat'

CP.G.212 - English Translations
Document 1

In the name of God, Amen, on the 14th day of the month of May in the year of the lord 1472, I, Oliver Thorn *alias* Slatier of Ravenstale, York diocese, sound of mind and of sane memory, then weak in body, found my testament in this manner. First of all, I bequeath my soul to omnipotent God, the blessed Mary and all the saints, and what is just for my mortuary. Item, I will that John Slatier, my eldest son, shall have my two tenements with their appurtenances in the vill and field of Arnethorp. Item, I bequeath to William my son all those my tenements in Ravenskale, which formerly were of John Radcliff, esquire. Item, I bequeath to Henry my son four oxen or the value and four cows or the value. Item, I bequeath to Margaret Frith, daughter of Richard Frith, 40s. Item, I bequeath towards the repair of the image of the Holy Cross of Asburn 6s 8d. Item, I ordain and appoint Richard Slatier, my brother, and Thomas Wethir, my executors so that they dispose for my soul, just as they wish to answer before the highest judge. And I ordain and appoint lord James Harington, knight, as supervisor of this my testament, etc. The present will was proved on the 15th day of the month of February in the year of the lord 1475. And the administration was committed to Richard Slatier, the executor, named in the same will, etc, with power reserved of committing a like administration to Thomas Wethir, the other co-executor, named in the said testament, when he shall come in due form to receive it.

Document 2

In the name of God, Amen, there having been fully discussed and understood the merits of a cause of the testament or the impediment of the last will of Oliver Sklatter, late of Raneskel, deceased, firstly moved in the said court before the venerable man and circumspect master Thomas Pereson, doctor of decrees, commissary-general of the lord official of the court of York, and pending and undecided, between Richard Sklater, the executor of the testament of the aforesaid Oliver Sklater, deceased, the party acting, by master Wiliam Biller, the party on the one side, and William Dowbygyng of the parish of Arnethorp, York diocese, the party defending, by master Richard Lacom, notaries public of the said court of York, proctors, their proctors, sufficiently appointed, appearing before us in judgement, after a libel had been offered by the said party bringing suit, and a copy of the same delivered to the said party defending in this manner. In the name of God, Amen, etc. And that libel is had here as read, and the lawsuit relating to the same libel being negatively contested by the same party defending, and an oath having been made by both parties on both sides about a challenge and speaking the truth, and a term having been given to the same party bringing suit to make points. Which term arriving, there having been handed over by the said Biller certain points in writing, and the same having been admitted, as far as the same were to be admitted lawfully and not otherwise in any other way, and certain answers having been made to these petitions by the said William Dowbygyng, the party defending, afterwards the suit followed, just as is more fully contained in the same. And these answers had been published and copies of the same had been decreed to the said parties on both sides, with a term having been assigned to the party bringing suit to draw up articles and produce witnesses. Which term arriving, points of denial had been invoked by the same party in the place of articles and as articles, and certain witnesses had been produced, who were admitted, sworn and examined, and their said words had been published and copies of attestation of the same had been decreed to the aforesaid parties on both sides, and a term had been assigned to the aforesaid party defending to produce witnesses to speak and their words. And the same term arriving, an exception was made orally by the same party defending regarding the witnesses and their words, if and as far as could be recollected from the same men and not otherwise and not in another way, and a term had been assigned by us to the aforesaid parties to put forward all things, standing in fact and lawfully. And the same term arriving, there was exhibited by the same party bringing suit a certain writing of the testament of the aforesaid Oliver Sklater, containing in itself the probate and registration of the same, made by the lord official of the court of York in the Exchequer, the commissary general, as it appeared, and the copy of the same writing, containing the said testament, sought by the said Lacom, and judicially decreed, … … had been concluded judicially by us with the party bringing suit concluding in the same cause. And a term had been assigned to the said parties to hear sentence in the same judicially. Which term arriving, with the parties appearing by their proctors, abovesaid, before is in judgement, and demanding justice to be done and sentence to be made, and there having been invoked by us the grace of the holy spirit, we proceed to our definitive sentence in this manner. In the name of God, Amen. Because by acts, enacted, brought and proposed, we find that the aforesaid Richard Sklater, the party bringing suit, has sufficiently founded and proved its intention, which had been brought before us in judgement. Therefore, we pronounce, decree and declare that the aforesaid William Dowbygyng in the sentence of greater excommunication, appointed by synodal authority, made and published publicly against those impeding and disturbing pious and last wills and the executors of the same, by definitive sentence in these writings. In addition, we condemn the same William Dowbiging in expenses made by the said party, bringing suit, in this cause, with their assessment specially being reserved to us.

This sentence was read and made by the lord commissary on the 8th day of the month of March in the year

of the lord 1476, of which master Richard Lacom, proctor of William Dovebiging, mention of which is made above, appealed to the sacrosanct apostolic seat and our lord pope, directed orally, and he sought letters of appeal firstly, secondly and thirdly, instantly, more instantly and very instantly, and he sought letters of appeal to be given, handed over and delivered to him with effect. Whereupon the commissary assigned to receive letters of appeal to the same Lacom on Thursday next before Palm Sunday next to come in the mother church, sitting judicially in the consistory place of the same.

Dorse:
… in the third … … on the 27th day of March in the year of the lord 1477 there were handed over by the lord commissary letters of appeal … to the defendant, within written, and given in the same on Tuesday next after [St] Botolph … to answer … … and to certify points and articles … next following.

Document 3

Christopher Wharf of the parish of Dodyngton, Lincoln diocese, aged 60 years and more, of free condition, of honourable reputation, not being a kinsman, relation, servant or member of the household of any of the parties, as he says, a witness, produced, admitted, sworn and examined upon the points of denial, annexed to these present, *viz* upon the first and second points, which have been laid out [to him separately], he says that the same are true, because he so heard it being said by Margaret, relict of Oliver Sklater, articulate, and also from William Atkynson and several others, whose names he does not remember at present, and otherwise examined upon these points of denial, he says that he does not know anything to say. Having been examined upon the third, fourth, fifth and sixth points of denial, which have been laid out separately to him, he says that he does not know anything to depose except form the account of others. Examined upon the seventh point of denial, he says that the same point is true. Having been asked how he knows this, he says that on the feast day, falling between the feasts of the birth of the lord and the Purification of the Blessed Mary two years last past, this deponent stood as farmer of a certain pasture commonly called Whesby notoriously situated within the lordship of Skelynghope, just as he stands at present, and it happened that the same deponent at the time of the death of the said Oliver had had nine bullocks and one cow in the points that are denied, gained from the goods and chattels of the same deceased, by reason of custody, pasturing upon the aforesaid pasture. On which same feast day, the articulate William Dowebygyng, before noon of the same day, together with Margaret, wife of the same man, being personally at Wheisby, aforesaid, received the aforesaid bullocks and cow from the same deponent and took away the same with him, with faith having been first of all given by the same William about saving the same Christopher the deponent indemnified, remaining in the hands of the executors of the said Oliver. Having been asked who were present at the time, when the said William Dowbygyng received the often-said bullocks and cow, he says that John Gybson, Gilbert Houeson, Walter Barton, Edmund Atkynson and others, whose names he does not remember at present. Having been asked further about the value of the same bullocks and cow, he says that according to the common estimation of men, they were then worth amongst themselves £4 10s 8d of sterling, and having been examined otherwise upon these points of denial, he does not know anything to depose. Having been examined upon the 8th, 9th, 10th, 11th and 12th points of denial, which have been laid out separately to him, he does not know anything to depose, except from the account of others. And examined upon the 13th point of denial, he says that he believes the same to be true. Examined upon the last point that is denied, he says that the premises deposed by him above were and are true, notorious and famous in the aforesaid towns and places, and upon these voice and fame labour there and are public. And he is not corrupt, instructed or informed as to what to depose, just as he has deposed above, nor does he care which party wins in the cause, provided that the fulfilment of justice is done.

Edmund Atkynson of the parish of Dodington, Lincoln diocese, aged 30 years and more, of free condition, honourable reputation, not a kinsman, relation, servant or member of the household of any of the parties, as he says, a witness produced, admitted and sworn, and being examined upon the positions of denial, *viz* upon the 1st, 2nd, 3rd, 4th, 5th and 6th points, laid out separately to him, he says that he does not know anything to say, except from the account of others. Examined upon the 7th points of denial, he says that the same is true, because on a feast day, which he does not remember for certain, falling between the feasts of the birth of the lord and the Purification of the Blessed Virgin Mary two years last past, he, this deponent, was present before midday of the same feast day at Wheisby, situated within the lordship of Skelynghope. And the articulate William Dovebyngyng and Margaret his wife received from Christopher

Wherf, his fellow witness, certain cattle, *viz* ten in number, worth between themselves by the common estimation of men £4 10s 8d of sterling. Which same ten cattle were of Oliver Sklater, articulate, at the time of his death, and the same cattle, so received, as is aforesaid, by the same William and Margaret his wife, the same Willliam and Margaret took away with them against the will and knowledge of the executors of the same Oliver [according to] the true knowledge of this deponent. Having been asked who were present at the time of the receiving and taking away of the said cattle, he says that he, this deponent, Christopher Wherf, and others, whom he does not remember at present, and examined otherwise upon the same point of denial, he says that he does not know anything to depose. Examined upon the 8th, 9th, 10th, 11th, 12th and 13th points of denial, he says that he does not know anything to say. From the words of others, he believes truly that the said William Dovebygyng, having been duly requested to deliver these cattle by the party and from the party of the said Oliver Sklater, the executor, has refused and refuses in the present to so do or make composition for the same. Examined upon the last point of denial, he says that the premises, deposed by him above, were and are true, notorious and famous in the aforesaid vills and places, and upon this voice and fame labour and are public. And he does not care which party wins, provided that justice is done in this [cause]. Nor he is corrupt, instructed or informed as to what to depose, just as he has deposed above, as he says, on his oath.

Thomas Dawson of the parish of Blyth, aged 60 years and more, of free condition, honourable reputation, being no kinsman, relation, servant or member of the household of any of the parties, as he says, a witness produced, admitted, sworn and examined upon the points of denial. *Viz*, having been examined upon the first and second points he says that he does not know anything to say, except from the account of others. Examined upon the 3rd, 4th and 5th points, he says that he knows the same to be true. Having been asked about the reason of his knowledge in this matter, he says that on a feast day, which he does not remember for certain at present, between the feasts of Easter and St Peter, which is called at Chains, in the year of the lord immediately following the death of the said Oliver, articulate, this deponent was present at Faveskel, and that this deponent saw John Lounde of Loversall with his cart. Which same John Lound, from the mandate of Margaret, now wife of William Dowebygyng, articulate, being then and there personally, loaded the same cart with certain household utensils, which were of the said Oliver at the time of his death, which utensils then the same John at the mandate of the same Margaret carried from there to the place assigned by the same Margaret, from the true sight and hearing of this deponent. But having been examined about the value of the same, he does not know anything to say. But as to the value of the horse, articulate, which the same John Lounde, from the mandate of the aforesaid Margaret, took away with him on the same day, from the true sight and hearing of this deponent, was worth by common estimation of men 5s, and otherwise having been examined upon the same points of denial, he says that he does not know anything to say. Having been examined upon the 6th and 7th points of denial, which have been laid out separately to him, he says that he does not know anything to depose, except from the account of others. Examined upon the 8th point of denial, he says that the same is true. Having been asked how he knows, he says that on the feast day falling between the feasts of Easter and Michael, *viz* at that time two years last past, William Dovebygyng received from this deponent at Raneskell against the will of Richard Sklater, articulate, three oxen to the value among themselves by common estimation 27s, and he led the same three oxen with him, one of which three oxen was then of Oliver Sklater at the time of his death, which this deponent had by reason of custody, and the other two were of Richard Sklater, articulate. Having been asked who were present at the time when the same William Dovekyging received the said oxen from this deponent, he says that he, this deponent, John Glyson, Edmund Spryng and Richard Dawson and others, whose names he does not remember at present, and examined otherwise upon this point of denial, he says that he does not know anything to say. Being examined upon the 9th and 10th points

of denial, he says that those are true. Having been asked how he knows this, he says that on diverse and repeated occasions between the feasts of Easter and Michaelmas in the year of lord immediately following the death of the aforesaid Oliver, Margaret, wife of William Dovebygyng received from this deponent seven stones of wool to the value between them according to the common estimation of men of 16s 4d, which he had in custody from the goods of Oliver Sklater, articulate, and that on other day, which he does not remember for certain, falling in the same year, the same Margaret took from this same deponent 116 sheep, which were of Oliver Sklater at the time of his death, worth between them according to the common estimation of men £6 10s 8d of sterling, and he took them away with him against the will of the executors of the said Oliver, from the true sight and hearing of this deponent. Having been asked who were present at the time of the receiving of this wool, he says that he, this deponent, John Glyson, Edmund Spryng, Richard Daweson and others, whose named he does not remember at present. And being examined otherwise upon those points of denial, he says that he does not know anything to say. Having been examined upon the 11th, 12th, and 13th points, laid out to him separately, he says that he does not know anything to depose, except from the account of others. Being examined upon the last point, he says that the premises, deposed by him above, are true and manifest in the aforesaid vills and places, and upon these voice and fame labour there and are public. And he is not corrupt, instructed or informed as to what to depose, just as he deposed above, nor does he take care as to which party has victory in the cause, provided that justice is done in the same.

John Glyson of the parish of Blyth, aged 60 years and more, of free condition and honourable reputation, being no kinsman, relation, servant or member of the household of any of the parties, as he says, a witness produced, admitted, sworn and examined upon the points of denial, *viz* those annexed to these presents. Having been examined upon the first and second points, laid out separately to him, he says that he does not know anything to depose, except from the account of others. Examined upon the second, third, fourth and fifth points of denial, which have been laid out separately to him, he says that the same are true. Having been asked the reason of his knowledge in this matter, he says that on a feast day, which he does not remember at present, falling between the feasts of Easter and St Peter, which is called at Chains, in the year of the lord immediately following the death of the said Oliver Sklater, this deponent was present at Raneskell, and this deponent saw John Londe of Loversal with his cart. Which same John Londe from the mandate of Margaret, now wife of William Dovebygyng, articulate, being personally then and there, loaded his same cart or wagon with certain household utensils, which were of the said Oliver at the time of his death. Which same utensils and the horse, named in the points of denial, worth 5s by the common estimation of men, the same John Lounde, from the mandate of the same Margaret, carried from there to the place assigned by the same Margaret, *viz* to the dwelling house of the same man situated at Arntorp, as he believes, from the true sight, hearing and notice of this deponent. Having been asked about the value of these utensils, he says that they were then worth by the common estimation of men eight marks of sterling, and otherwise examined upon those points of denial, he says that he does not know anything to say. Examined upon the 6th and 7th points of denial, he says that he does not know anything to say, except from the account of others. Having been diligently examined upon the 8th, 9th and 10th points of denial, which have been laid out separately to him, he says that on the feast day, falling between the feasts of Easter and Michael two years last past, this [deponent] was present together with Thomas Dawson, Edmund Spring, Richard Dawson and others, whose names he does not remember at present, and he saw William Dowebyging receiving by the hands of Thomas Dawson against the will of ?Richard Sklater, articulate, three oxen, worth between themselves by the common estimation of men 27s, which he took away with him, one of which three oxen was then of Oliver Sklater at the time of his death, being in the custody of the said Thomas Dawson, and the other two were of the said Richard Sklater. And having been

examined about the 116 sheep, mention of which is made in the points, he says that on one day, which he does not remember, falling then in the same year, this same deponent was present at Ranskell, aforesaid, together with the aforenamed Thomas Dawson, Edmund Spring, Richard Dawson and others, and he saw Margaret, then wife of the said William Dowebyging had received from the said Thomas Dawson 116 sheep of Oliver Sklater, while he was alive, worth between themselves £6 10s 8d of sterling, which he took away with him, from the true sight and knowledge of this deponent. And having been examined as regards the seven stones of wool, written about in the points of denial, he says that he does not know anything to depose except from the account of the aforesaid Thomas Dawson, who stated that he had delivered the same stones of wool, *viz* seven worth between themselves 16s 4d, to Margaret, wife of the same William Dowebyging. And otherwise examined upon those points of denial, he says that he does not know anything to depose. Upon the 11th, 12th, 13th and 14th points of denial, which have been laid out separately to him, he says that the premises, deposed by him above, were and are true and famous in the aforesaid vills and places, and upon this voice and fame labour and are public. And he is not instructed, corrupt or informed about what to depose, just as he has deposed above, nor does he care which party wins in the cause, provided that justice is done in the same, as he says on his [oath].

Thomas Hyrd of Osbaldstone, aged 60 years and more, of free condition and honest [reputation] …, being not a kinsman, relation, servant or member of the household of any of the parties, as he says, a witness, produced … … and examined upon the points of denial, being annexed to these presents. *Viz* having been examined upon the first, second, third, fourth and fifth points of denial, laid out [to him separately], he says that he does not know anything to say, except from the account of others. Upon he sixth point of denial, he says that the same is true. Having been asked about the reason of his knowledge in this matter, he says that on the feast of St Luke ... falling two years last past, there came William Dowebyging at Osbaldston, and there … … three heifers, two bullocks and one calf, worth between themselves by the common estimation of men, four … … of sterling of Oliver Sklater, while he was alive, which were found in the custody of this deponent, … … and he carried them away in the presence then and there of this deponent …, William the chaplain, celebrating divine services in the chapel of Osbald[ston], George Yreland, John Terre and others, whose names he does not remember at present. And [examined] otherwise upon this point, he says that he does not know anything to depose. Having been diligently examined upon the 7th, 8th, 9th, 10th, 11th, 12th and 13th points of denial, which have been laid out to him separately, … ... … except from the account of others. Examined upon the last point of denial, he says that the premises, deposed by him above, are [true], notorious and famous in the aforesaid vills and places, and upon these voice and fame labour and are public. And he does not care [which party wins] in the cause, provided that justice is done in this. And he is not corrupt, instructed or informed as to what to depose, just as [he has deposed] above, as he says on his oath.

These five witnesses were examined on the penultimate day of the month of July in the year of the lord 1476.

John Terre of Osbaldestone, aged 40 years and more, of free condition and honest reputation, being no kinsman, relation, servant or member of the household of any of the parties, as he says, a witness produced, admitted, sworn and examined upon the points of denial, annexed [to these presents]. *Viz*, being examined upon the first, second, third, fourth and fifth [points], which have been laid out separately to him, he says that he does not know anything to say, except from hearing. Being examined upon … … [point] of denial, he says that the same contains in itself the truth, because he says that on the feast of St Luke the Evangelist … … falling two years last past, this deponent was present at Osbaldstone, aforesaid, together with

Thomas H…, his fellow witness, lord William the Chaplain, celebrating divine services in the chapel there, George Yreland and others, memory of whom he does not have, and that Wiliam Dowebygyng, about whom mention is made principally in the points, took, withdrew and led away six cows, … heifers, two bullocks and one calf, worth between themselves by the common estimation of men £4 21s of sterling of Oliver Sklater, while he was alive, which were found in the custody of the aforesaid Thomas Hyrd there, from the true sight and hearing of this deponent. And having been examined otherwise upon this point of denial, he says that he does not know anything to depose. Upon the 7th, 8th, 9th, 10th, 11th, 12th and 13th points of denial, which have been separately laid out to him, he says that he does not know anything to say except from the account of others. Examined upon the last point of denial, he says that the premises, deposed by him above were and are true, notorious and famous in the aforesaid vills and places. And upon these voice and fame labour and are public. And he is not instructed, corrupt or informed on what to depose, just as he has deposed above, nor does he care which party wins in the cause, as he says on his oath, provided that the fulfilment of justice is done.

This witness was examined on the 24th day of the month of September in the year of the lord 1476.

Dorse:
Slater c. Donbigynge, 1531

Document 4

In the name of God, Amen, the proctor, as proctor on behalf of the discreet man Richard Slater, executor of the testament or last will of Oliver Slater, lately deceased, makes, gives, exhibits and intends to prove the points and articles, within written, and the things contained in the same, against William Doubigyng and against anyone lawfully appearing for the same man before you in judgement, moved and pending, offered, drawn and extracted from the libel … … … impediment of the last will of the aforesaid deceased, between the aforesaid parties before you, lord judge. And [if there are] multiple ones, he puts them separately. And so he seeks that answer is made to the same personally by the aforesaid William Doubigyng on his oath.

1. First of all, the said proctor in the name … … puts and intends to prove that the said Oliver Slater, while he was alive, founded his testament or last will … and appointed and deputed the aforesaid Richard Slater, his brother, and Thomas … and several other persons as executors of all his goods. And he puts separately and about each one. He believes … … that he made the same men and Margaret the relict executors …
2. Item, he puts that the aforesaid testament was proved, approved and registered before a suitable judge or suitable judges, and the administration of all the goods of the said deceased was committed to the same Richard Slater, brother of the said testator, deceased, by the same man, and was admitted in reality by the same man, and bequeathed according to the appointment … … on the part of the deponent … ..., with like power reserved to be committed the other executor, if he comes. He does not believe, as he puts.
3. Item, he puts that William Doubigyng withdrew, led away, detained and detains in the present certain goods and chattels, formerly of Oliver Slater, while he was alive, and against the will of the said executor, Richard Slater, who had been admitted and sworn and taken upon himself the burden of the administration of the goods of his deceased brother. And he puts, as above. He does not believe.
4. Item, he puts that the said William Doubigyng against the will of the said Richard Slater, the executor, assumed and had and still has and detains all the household utensils of the same Oliver, then being at the time of his death within his house, *viz* pots, bowls, sheets, bedding and other utensils of different kinds, to the value of ten marks, and he puts separately and about each one. And he seeks, as above. He does not believe.
5. Item, he puts that the said William Doubigyng against the will of the aforesaid Richard Slater, the executor, withdrew and led away from the aforesaid house of the often-said Oliver, deceased, a certain mare of the colour of bay, worth the sum of 6s 8d, and he puts, as above. He does not believe.
6. Item, he puts that the said William Doubigyng withdrew and led away against the will of the said executor, as is aforesaid, from Osbaldstone six cows, three heifers, two bullocks and two calves to the value of £4 10s 8d. And he seeks, as above. He does not believe.
7. Item, he puts that the said William Doubigyng [accepted] from Christopher Wherf of Wheisby against the will of the said executor nine bullocks and one cow to the value of £5. And he puts and seeks, as above. He says that he accepted them, but that they were his own goods.
8. Item, he puts that the said Willlliam Doubigyng led away from Thomas Dowson of Ravenskell three oxen against the will of the said executor to the value of 30s. And he puts separately and about each one, and he seeks, as above. He does not believe.
9. Item, he puts that the said William Doubigyng subtly withdrew from the said executor ten stones of wool, being in the custody of the said Thomas Dowson, to the value then of 30s. And he seeks, as above. He does not believe.
10. Item, he puts that the aforesaid Richard Slater, the executor, before said, delivered to the said William Dowbigyng by the hands of the said Thomas Dowson one hundred … … beyond to the value of £10. And

he seeks, as above. He does not believe.
11. Item, he puts that the said executor delivered to the aforesaid William Doubigyng 25s 2d in money and 9s. He does not believe.
12. Item, he puts that the said executor delivered to the said William Doubigyng one cow to the value of 9s 8d. He does not believe.
13. Item, he puts that the said William Doubigyng refused and refuses in the present to deliver, pay in full or in any other way make satisfaction to him of all the aforesaid things, taken by him against the will of the aforesaid Richard Slater, the executor, … … detained, or the aforesaid sums to the before said Richard Slater, the executor … … [although suitably requested], both silently and expressly, … … of the said Oliver Sklater … … … synodals of York issued in this regard … notoriously incurring … … And he seeks, as above. He does not believe.
14. Item, he puts that the premises are true, public, notorious and manifest in the city and diocese of York and … of Blyth and … … and upon these public voice and fame have laboured and labour there. He believes the things to be believed and denies the things to be denied.

CP.G.444 transcription

Posic[i]ones ex p[ar]te Margarete Pye contra
Robertum Baledon et Edw[ar]du[m] Baledon

In Primis ponit ac si negat' fu[er]it p[ro]bare Intendit pars dicte Margate q[uo]d Joh[ann]es Baledon // du[m] vixit de Dancaster Ebor[um] dioces' decimo die mensis Septembris Anno D[omi]ni mill[es]imo qui[n]gen[tesi]mo // vicesimo sexto ... ... die ante eius morte[m] suu[m] condidit testamentu[m] ac suam ultimam voluntate[m] ordinavit seu declaravit et ponit // ... et de quolib[e]t credit Robertus credit Edwardus

It[e]m ponit q[uo]d dictus Joh[ann]es Baledon In suo h[uius]mo[d]i test[ament]o seu ultima voluntate legavit dicte Margarete // Pye viginti libras monet[e] Anglie ut ip[s]o test[ament]o inspecto liquide apparet et ponit ut sup[ra] cred[i]t Robertus // Edwardus credit

It[e]m ponit q[uo]d id[e]m Joh[ann]es Baledon legavit dicte Margarete in test[ament]o suo p[re]dict[o] on girdle and two // sylver sponys et ponit ut sup[ra] credit Robertus co[n]tent' in hac posic[i]one Edwardus credit

It[e]m q[uo]d legavit dicte Margaret[e] in eod[em] test[ament]o qui[n]q[ue] marcas ut eod[e]m test[ament]o viso eciam apparet // et ponit ut sup[ra] no[n] credit Robertus non credit Edwardus

It[e]m ponit q[uo]d legavit dicte Margare Pye unu[m] lez masser et ponit ut sup[ra] credit Robertus // no[n] credit Edwardus

It[e]m ponit q[uo]d dict[us] Joh[ann]es Baledon fecit no[m]i[n]avit ordinavit et constituit p[re]dictos Robertu[m] Baledon // et Edwardu[m] Baledon sui h[uius]mo[d]i testament[i] executores et ponit ut sup[ra] credit Robertus Edwardus // credit

It[e]m ponit q[uo]d dict[i] Robertus et Edwardus su[n]t occupatores seu admi[ni]stratores bonoru[m] que fueru[n]t // dict[i] defuncti et ponit ut sup[ra] credit Rob[er]t[us] credit Edwardus

It[e]m q[uo]d id[e]m Robertus et Edwardus de fidelit[er] admi[ni]strand[o] et legat[a] eiusd[e]m defunct[i] p[er]solvendo // virtute Iuramentoru[m] suor[um] p[er] eos et eoru[m] utru[m]q[ue] realit[er] p[re]stitor[um] su[n]t astricti // credit Edward[us] ~~Rob[er]tus~~ q[uo]d sunt jurat' in quant[um] bona sufficebant // et ponit ut sup[ra] credit Robert[us] quat[enus] ad co[n]tent' bonor[um] et non alit[er] s[ed] bona no[n] fueru[n]t sufficientes ad solvend[um] debit[a] defunct[i]

It[e]m ponit q[uo]d dict[us] Robertus et Edwardus ad tradend' et delib[er]and' dicte Margarete p[re]dict[a] legata sepius // et itterat[is] vicibus fueru[n]t congrue requisit' et interpellat' et ponit ut sup[ra] non cred[i]t Rob[er]t[us] no[n] credit Ed-//-wardus

It[e]m ponit q[uo]d p[re]dict[i] Robertus et Edwardus sic ut p[re]mittit[ur] requisit[i] et Interpellat[i] h[uius]mo[d]i legat[a] seu maiore[m] p[ar]te[m] eoru[m]d[e]m dicte // Margarete p[er]solv[er]e aut delib[er]are recusaru[n]t p[ro]ut recusant et eoru[m] uterq[ue] recusat min[us] juste in p[rese]nti // et

ponit ut sup[ra] no[n] cred[i]t Rob[er]t[us] no[n] credit Edwardus

It[e]m ponit q[uo]d p[re]miss[a] o[mn]ia et sing[u]la fueru[n]t et su[n]t vera publica notoria manifesta p[ar]iterq[ue] et // famos[a] ac desup[er] infra villam de Dancast[er] ac alijs loc[is] convicinis laboraru[n]t et laborant // publica vox et fama et ponit ut sup[ra] non cred[i]t Rob[er]t[us] sed Edwardus no[n] credit

It[e]m ponit q[uo]d p[ro]curator dicte Margarete Pye in curia consistoriali Ebor[um] quand[am] // petic[i]onem in script[is] p[ro] exhibic[i]one h[uius]mo[d]i test[ament]i una cu[m] Inventario bonor[um] eiusd[e]m defunct[i] in p[rese]ntia m[agistri] // Briani Lewtie p[ro]curatoris p[re]dictoru[m] Roberti et Edwardi realit[er] exhibuit et ponit ut sup[ra] // dubitat Rob[er]t[us] Edwardus dubitat

It[e]m ponit q[uo]d p[re]dictus m[agister] Brian[us] Lewtie p[ro]curator antedict[us] in termi[n]o ad r[esp]ondend' h[uius]mo[d]i // petic[i]oni acceptavit terminu[m] ad exhibend' h[uius]mo[d]i test[amentu]m unacu[m] Inventario bonor[um] eiusd[e]m defunct[i] // confitens saltem tacite h[uius]mo[d]i test[amentu]m coram judice eccl[es]iastico fuisse ac l[egi]time approbatu[m] // ac cu[m] eisd[e]m Roberto et Edward[o] remansisse et residisse et ponit ut sup[ra] dubit' Rob[er]t[us] // Edwardus dubitat

It[e]m ponit q[uo]d de facto test[amentu]m p[re]dict[i] Joh[ann]is Baledon coram judice eccl[es]iastico erat l[egi]time p[ro]batu[m] // et Insinuatu[m] et ponit ut sup[ra] non cred[i]t Rob[er]t[us] no[n] credit Edwardus

It[e]m ponit q[uo]d admi[ni]strac[i]o o[m]niu[m] bonor[um] eiusd[e]m defunct[i] erat dict[is] Roberto et Edwardo comiss[a] cred[i]t Rob[ertus] // Edwardus credit

It[e]m ponit q[uo]d eciam p[re]miss[a] su[n]t vera desup[er]q[u[e] laborant publica vox et fama et ponit // ut sup[ra] credit Rob[er]t[us] de credit' et negat de negat' Edwardus credit de credit' et negat // negat'

Posic[i]ones ex p[ar]te honeste mulieris Margaret[e] Pye al[ia]s Thomson [contra]
Rob[er]tum Baledon et Edwardu[m] Baledon mi[ni]strat[e]

1. In p[ri]mis ponit q[uo]d Joh[ann]es Baledon dum vixit de Dancaster Ebor' dioces' decimo die mens[is] Decembris Anno D[omi]ni Mill[es]imo qui[n]gen[tesi]mo xxvj^{to} // seu alio die ante eius mortem suum condidit testamentu[m] ac suam ultima[m] voluntatem Ordinavit seu declaravit et // ponit con[juncti]m et divisim

2. It[e]m q[uo]d dictus Joh[ann]es Baledon In suo h[uius]mo[d]i test[ament]o seu ultima voluntate legavit dicte Margarete Pye viginti libras // monete Anglie ut ip[s]o test[ament]o inspecto liquide apparet et ponit ut sup[ra]

3. It[e]m q[uo]d Id[e]m Joh[ann]es legavit eid[e]m Margarete in test[ament]o suo p[re]dicto one gyrdle and two sylv[er] spones et ponit ut sup[ra]

4. It[e]m q[uo]d legavit d[i]ct[e] Margaret[e] qui[n]q[ue] marc[as] et unu[m] lez Masser et ponit ut sup[ra]

5. It[e]m q[uo]d dictus Joh[ann]es Baledon defunct[us] no[m]i[n]avit ordinavit fecit et constituit p[re]dictos Rob[er]tum et Edwardu[m] Baledon sui h[uius]mo[d]i // testamenti executores et ponit ut sup[ra]

6. It[e]m q[uo]d dicti Rob[er]tus et Edwardus su[n]t occupatores seu admi[ni]stratores bonoru[m] que fueru[n]t dicti defuncti et ponit ut sup[ra]

7. It[e]m q[uo]d dicti Rob[er]tus et Edwardus de fidelit[er] admi[ni]strand[o] et legat[a] eiusd[e]m defunct[i] p[er]solvend[o] virtut[e] juramentoru[m] suor[um] // p[er] eos et eoru[m] utru[m]q[ue] p[re]stitoru[m] su[n]t astricti et ponit ut sup[ra]

8. It[e]m q[uo]d dicti Rob[er]tus et Edwardus ad tradend' et delib[er]and' dicte Margaret[e] p[re]dicta legata sepius ante xj diem Marcij // Anno D[omi]ni Mill[esi]mo qui[n]gen[tesi]mo xxviij^{o} ex p[ar]te et p[er] p[ar]tem eiusd[e]m Margaret[e] fuerunt congrue requisit[i] et interpellat[i] // et ponit ut sup[ra]

9. It[e]m q[uo]d dicti Rob[er]tus et Edwardus sic ut p[re]mittit[ur] requisit[i] et interpellat[i] h[uius]mo[d]i legat[a] seu maiorem p[ar]tem eoru[n]d[e]m dicte // Margarete solv[er]e tradere aut delib[er]are recusaru[n]t p[ro]ut recusant et eoru[m] uterq[ue] recusat min[us] iuste in p[rese]nti et ponit con[juncti]m et divisim

10. It[e]m ponit q[uo]d de facto h[uius]mo[d]i testamentu[m] coram judice eccl[es]iastico erat l[egi]time p[ro]batu[m] et insinuatu[m]

11. It[e]m q[uo]d Admi[ni]straci[o] o[m]niu[m] bonoru[m] eiusd[e]m defunct[i] erat dict[is] Edwardo et Rob[er]to de soluc[i]one debitor[um] et legat[orum] p[ri]us iurat[is] co[m]missa // et ponit ut sup[ra]

12. It[e]m q[uo]d p[re]missa o[mn]ia et sing[u]la fueru[n]t et su[n]t vera publica notoria manifesta p[ar]iterq[ue] et famos[a] ac de et sup[er] eisd[e]m // infra villa[m] de Dancast[er] ac alijs loc[is]

convicinis laboraru[n]t et laborant publica vox et fama et ponit ut sup[ra]

1. In dei No[m]i[n]e Amen Coram vobis D[omi]ni Officialis Alme Curie Ebor' Co[m]missario gen[er]ali Aut alio judice in hac
2. p[ar]te competen[t'] quocu[n]q[ue] p[ar]s honeste mulieris Margaret[e] Pye p[ar]och[ie] de Dancast[er] Ebor' dioces' Ebor' dioces' contra et adv[er]sus
3. Rob[er]tu[m] Baledon et Edwardu[m] Baledon executores test[ament]i seu ultime voluntat[is] Joh[ann]is Baledon du[m] vixit de Dancaster
4. p[re]dict' seu admi[ni]stratores bonor[um] eiusd[e]m Ac Contra quemcu[n]q[ue] Aliu[m] p[ro] eisd[e]m coram vobis in Judic[i]o l[egi]time comp[ar]entem
5. dicit Alligat et in hijs script[is] In Jure p[ro]ponit Q[uo]d licet p[re]fatus Joh[ann]es Baledon du[m] vixit suu[m] condiderit test[amentu]m
6. ac suam ultima[m] voluntate[m] ordinavit et declaravit et in suo test[ament]o h[uius]mo[d]i predictos Rob[er]tu[m] et Edwardu[m] suos
7. ordinavit ac no[m]i[n]avit executores Quibus eciam Admi[ni]strac[i]o o[m]niu[m] bonor[um] dicti defunct[i] auctoritate sufficienti fu[er]it
8. co[m]missa et p[er] eosd[e]m Rob[er]tum et Edwardu[m] in forma Juris Admissa In quo qu[i]d[e]m test[ament]o seu ultima voluntate
9. p[re]fatus Joh[ann]es Testator p[re]fate Margaret[e] Pye int[er] alia vigint' libras legal[is] monet[e] Anglie It[em] A lez gyrdle
10. It[e]m two sylv[er] spones It[e]m A lez Masser ut ip[s]o test[ament]o viso ac ut p[er] R[esp]onc[i]ones ac confessiones eoru[n]d[e]m Rob[er]ti
11. et Edwardi quibusd[a]m posic[i]onib[us] alias contra ip[s]os mi[ni]strat' Judicialit[er] factas liqueri poterit et constare
12. Reliquerit et legavit Ip[s]i tame[n] Rob[er]tus et Edwardus h[uius]mo[d]i legat[a] q[uam]vis ex p[ar]te et p[er] p[ar]tem dicte Marga[re]te
13. ad hoc sepius fuera[n]t requisit[i] et interpellat[i] eid[e]m Margarete solv[er]e aut delib[er]are recusav[er]int p[ro]ut
14. recusant et eoru[m] uterq[ue] recusat min[us] Juste in p[rese]nti in a[n]i[m]ar[um] suaru[m] grave p[er]iculu[m] dicteq[ue] Margarete
15. p[re]judiciu[m] dampnu[m]q[ue] no[n] modicu[m] et gravame[n] Ac ultime voluntat[is] dicti defunct[i] Impedimentu[m] Manifestu[m]
16. S[e]n[tent]iam ex[communication]is maioris in sacrista[m] Sinod Ebor' contra Impedientes pias et ultimas decedentiu[m] voluntates
17. p[ro]vid' lat' ei debite p[ro]vulgat' ac p[er]iuriu[m] in ea p[ar]te voluntariu[m] damp' Incurrendo Quare p[ro]bat' de
18. Jure in hac p[ar]te p[ro]band' petit p[ar]s dicte Margaret[e] Pye p[re]fatos Rob[er]tu[m] et Edwardu[m] in s[ente]n[t]iam exco[mmun]icac[i]onis
19. maioris h[uius]mo[d]i ac p[er]iuriu[m] Incidisse et incurrisse p[ro]nu[n]ciari Ac Ip[s]os Rob[er]tu[m] et Edwardu[m] exco[mmun]icatos et p[er]iuros
20. declarari Necno[n] in expensis dicte Margarete in hac p[ar]te fact[is] et p[ro]testat[ur] de faciend' ac in dict'
21. legat' eid[e]m Margaret' solvend' s[ente]n[t]ialit[er] et diffiniti[v]e condemp[na]ri ac ad earu[m] soluc[i]onem et legatoru[m] h[uius]mo[d]i
22. delib[er]ac[i]onem seu qua[m]lib[e]t p[ar]cella[m] earu[m]d[e]m cano[ni]ce cogi compelli et coherceri Ulteriusq[ue] sibi fieri statim
23. et decerni in p[re]missis et ea concernen[t'] in o[mn]ibus q[uo]d est Justu[m] hec dic[i]t alligat petit ac p[ro]bare

24. intendit p[ar]s d[i]c[t]e Margaret[e] Pye con[junti]m et divisim Non Artans se ad o[mn]ia et sing[u]la p[re]missa p[ro]band’
25. nec ad on[us] sup[er]flue p[ro]bac[i]onis de quo p[ro]testat[ur] Sed qua[n]tus p[ro]bavit in p[re]missis eaten[us] obtineat
26. in petit’ Juris benefic’ in o[mn]ibus semp[er] salvo v[est]ru[m] offic[ium] humilit[er] Implorand’
27. Salvo Jure et c[etera]
28. Et p[ro]test[atur] et c[etera]

1. In dei no[m]i[n]e Amen coram vobis d[omi]no offic[i]o alme curie Ebor' v[est]rove co[m]missario gen[er]ali aut alio Judice in hac p[ar]te
2. co[m]petenti quocu[n]q[ue] p[ar]s honeste mulieris Margarete Pye p[ar]och' de Dancast[er] defunct' Contra et adv[er]sus Rob[er]tu[m]
3. Baledon armigeru[m] et Edwardum Baledon Ebor' dioces' executores testamenti seu ultime voluntat[is] Joh[ann]is Baledon
4. nup[er] de Dancast[er] defunct[i] administratores seu occupatores bonor[um] eiusdem ad exhibend' judicialit[er] cora[m] vobis verum
5. testamentum p[re]fati Joh[ann]is cu[m] fideli inventario o[m]niu[m] bonor[um] qui nup[er] fuerunt dict[i] Joh[ann]is tempore mort[is] sue que quid[em]
6. testamentum et inventariu[m] penes eos seu eor[um] alt[e]ru[m] resident et de Jure residere debent vel p[er] ip[s]os stat q...
7. minus resideant p[ro] eo vi[delicet] et ex eo q[uod] dicte Margarete Pye ex caus[is] licit[is] et honestis atq[ue] Justis necessaris
8. intersit ut h[uius]mo[d]i testamentu[m] et inventariu[m] Judicialit[er] exhibeant[ur] ut ip[s]is visis et suspect' ac exhibit' cognit' ...
9. intellect' de legato seu legat[is]' in dict[o] test[ament]o co[n]tent[is] ac dict[e] Margarete iusto et debito interesse certidudinalit[er]
10. liqueri poterit et co[n]stari p[er] vos d[omi]ne Judex antedict' cano[ni]ce co[m]pelli et coherceri ult[er]iusq[ue] sibi fieri statui et
11. des[er]vi in p[re]miss' et ea co[n]cernen[t'] in o[mn]ibus q[uo]d est Justu[m] hec dic[i]t allegat petit fieri ac p[ro]bare intendit
12. p[ar]s dicte Margarete con[juncti]m et di[visi]m p[er] via[m] sumariu[m] simplicit[er] et de plano absq[ue] strepitu et figura Judicij v[est]r[u]m
13. offic' humilit[er] implorand' ad p[ro]bac[i]onem sup[er]flua[m] se nullatenus astringendo
14. Salvo Jure et c[etera]
15. et p[ro]testat' et c[etera]

1. In dei no[m]i[n]e Amen Coram vobis honorabili viro d[omi]no Officiali Alme Curie Ebor' v[est]rove Co[m]missario gen[er]ali aut alio Judice in hac p[ar]te competen[t']
2. quocu[m]q[ue] pars honestor[um] viror[um] Robert[i] Bayldon et Edwardi Bayldon contra et adv[er]sus Margareta[m] Pye p[ar]o[chi]e de Doncastre Ebor' dioc[es'] ac cont[ra]
3. que[m]cu[m]q[ue] p[ro] ead[e]m coram vobis in judicio l[egi]time Int[er]venien[t'] necnon contra que[m]d[a]m p[rese]ns' libellum in quad[a]m p[rese]ns' causa legati ex p[ar]te eiusd[em] Margaret[e] [contra]
4. p[re]fat[os] Rob[er]tum et Edwardu[m] defact' p[ro]posit' vimq[ue] forma[m] et effectu[m] eiusd[em] ac totalem ip[s]ius Margaret[e] intenc[i]o[n]em in eod[em] deduct' via juris meliori qua
5. poterit excipiendo dicit allegat et in hijs script[is] [conjunc]tim et di[visi]m in jure p[ro]ponit Q[uod] si Joh[ann]es Bayldon defunctus aliquod test[amentu]m in vita sua fecerat
6. sive ip[s]os Rob[er]tu[m] et Edwardu[m] suos executores no[m]i[n]av[er]at aut aliqua legata p[re]fate Margaret[e] legaverat q[uod] no[n] fatet[ur] pars ista excipiens s[ed] exp[re]sse diffitet[ur]
7. illud tamen testamentu[m] nu[n]q[uam] sortieba[tur] eff[e]c[tu]m s[ed] p[er] ip[s]os Rob[er]tu[m] et Edwardu[m] renu[n]ciatu[m] p[ro] eo q[uod] conditu[m] erat contra off[i]ciu[m] pietat[is] dict[us] quoq[ue] Joh[ann]es
8. Bayldon erat pro abintestato decedente p[er] judice[m] competen[tem] decretus et p[ro]nu[n]ciatus bonaq[ue] eiusd[e]m Joh[ann]is Bayldon sic abintestato decedent' no[n] sufficiebant
9. ad soluc[i]o[n]em debitor[um] ip[s]ius Joh[ann]is in quib[us] tempore mort[is] et vite sue eff[e]c[t]ualit[er] teneba[tur] Et sup[er] hoc dict[i] Rob[er]tus et Edwardus Baildon fueru[n]t
10. on[er]ati ad soluc[i]o[n]em debitor[um] dict[i] defunct[i] quaten[us] bona defunct[i] ad id sufficient' et no[n] aliter nec alio modo p[ro]ut in co[m]missione eis co[m]missa
11. et Apud Acta hui[us] Curie judi[ciali]t[er] oblat' lucidissime apparere poterit cuili[be]t intuenti ad qua[m] se refert p[ar]s ista p[ro]pone[n]s ijd[e]m ecia[m] Rob[er]tus et Edwardus
12. om[n]ia et sing[u]la bona que fueru[n]t dict[i] Joh[ann]is defunct[i] ad man[us] eor[um] p[er]venien[t'] creditorib[us] eiusd[e]m defunct[i] venien[t'] peten[t'] et p[ro]bantib[us]
13. iuxta Juris exigentia[m] salt[e]m iuxta rata[m] porcionu[m] plene et fidelit[er] admi[ni]straru[n]t et p[er]solveru[n]t iuxta tenore[m] Auctoritat[is] eis co[m]misse absq[ue] hoc
14. q[uod] p[re]fat[a] Margaret[a] aliquod debitu[m] sibi petijt vel vendicavit ab eis unde dict' de p[re]miss' salt[e]m q[ua]ntu[m] sufficit in hac p[ar]te ac f[a]c[t]a fide de
15. iure requisit' ad qua[m] faciend' offert pars p[ro]pone[n]s se prompta[m] et parat[am] / no[n] est p[er] vos d[omin]um Judice[m] an[te]dict' decernend' p[ro]nu[n]ciand'
16. condempnand' neq[ue] cogend' seu quicquid aliud faciend' p[ro]ut in h[uius]mo[d]i p[rese]ns' li[bel]lo ip[s]ius Margarete extitit et est licet min[us] vere petitu[m] s[ed] est
17. pars an[te]dict[orum] Rob[er]ti et Edwardi Baildon ab impetic[i]o[n]e vexac[i]o[n]e et instancia p[re]fat[e] Margarete penit[us] dimittenda et absolvenda est q[uod]
18. pars p[re]fat[e] Margaret[e] in expens[is] an[te]dict[orum] Rob[er]ti et Edwardi condempnand' eisd[em] q' solv[er]e compellend' p[er] vos et v[est]ram s[e]n[tent]iam diffiniti[v]am
19. sive finale decretu[m] D[omi]ne Judex an[te]dict' ult[er]iusq[ue] est faciend' et decernend' ac statuend' in p[re]miss' p[ro]ut ius exigit et requirit p[re]missa p[ro]ponit et
20. fieri petit pars dict[orum] Roberti et Edwardi [conjunc]tim et di[visi]m no[n] Artans se ad om[n]ia et sing[u]la p[re]missa p[ro]band' nec ad onus sup[er]flue p[ro]bac[i]o[n]is de

21. quo p[ro]testa[tur] s[ed] quaten[us] p[ro]bav[er]it in p[re]missis eaten[us] obtineat in petit' Juris b[e]n[e]ficio in om[n]ib[us] semp[er] salvo v[est]r[u]m officiu[m] hu[mili]t[er] implorando
22. Savlo Jure et c[etera]
23. Et p[ro]testa[tur] et c[etera]

CP.G.444 translation

Points on the part of Margaret Pye against Robert Baledon and Edward Baledon.

First of all, the party of the said Margaret puts, and if it will be denied, intends to prove, that John Baledon, while he was alive, of Dancaster, York diocese, on the 10th day of the month of September in the year of the lord 1526 … … day before his death, made his testament and ordained or declared his last will, and he puts … and about each one. Robert believes. Edward believes.

Item, he puts that the said John Baledon in this his testament or last will bequeathed to the said Margaret Pye £20 of money of England, as it clearly appears on inspection of the same testament, and he puts, as above. Robert believes. Edward believes.

Item, he puts that the same John Baledon bequeathed to the said Margaret in his aforesaid testament one girdle and two silver spoons, and he puts, as above. Robert believes the contents in this point. Edward believes.

Item, that he bequeathed to the said Margaret in the same testament five marks, as it also appears after seeing the same testament, and he puts, as above. Robert does not believe. Edward does not believe.

Item, he puts that that he bequeathed to the said Margaret Pye one mazer, and he puts, as above. Robert believes. Edward does not believe.

Item, he puts that the said John Baledon made, named, ordained and appointed the aforesaid Robert Baledon and Edward Baledon as executors of this his will, and he puts, as above. Robert believes. Edward believes.

Item, he puts that the said Robert and Edward are occupiers or administrators of the goods, which were of the said deceased, and he puts, as above. Robert believes. Edward believes.

Item, that the same Robert and Edward were bound about faithfully administrating and paying the bequests of the same deceased by virtue of their oaths, actually offered by them and each of them. Edward believes that they are sworn in as far as the goods were sufficient, and he puts, as above. Robert believes as far as the contents of the goods and not otherwise, but the goods were not sufficient to pay the debts of the deceased.

Item, he puts that the said Robert and Edward were suitably requested and called upon to hand over and deliver to the said Margaret the aforesaid bequests often and on repeated occasions, and he puts, as above. Robert does not believe. Edward does not believe.

Item, he puts that the aforesaid Robert and Edward, so as is aforesaid, having been requested or called upon to pay or deliver these bequests or the majority of the same to the said Margaret, refused, just as they refuse, and each one of them refuses less justly in the present, and he puts, as above. Robert does not believe. Edward does not believe.

Item, he puts that all and singular the premises were and are true, public, notorious, manifest and equally famous, and in addition within the vill of Dancaster and other neighbouring places public voice and fame have laboured and labour, and he puts, as above. Robert does not believe, but Edward does not believe.

Item, he puts that the proctor of the said Margaret Pye in the consistory court of York actually exhibited a certain petition in writing for the exhibition of this testament, together with the inventory of the goods of the same deceased, in the presence of master Brian Lewtie, proctor of the aforesaid Robert and Edward, and he puts, as above. Robert doubts. Edward doubts.

Item, he puts that the aforesaid master Brian Lewtie, the proctor, before said, in the term to answer to this petition, accepted the term to exhibit this testament together with the inventory of the goods of the same deceased, acknowledging at least silently this testament had been lawfully approved before an ecclesiastical judge, and had remained and resided with the same Robert and Edward, and he puts, as above. Robert doubts. Edward doubts.

Item, he puts that the testament of the aforesaid John Baledon was *de facto* proved and registered lawfully before an ecclesiastical judge, and he puts, as above. Robert does not believe. Edward does not believe.

Item, he puts that the administration of all the goods of the same deceased was committed to the said Robert and Edward. Robert believes. Edward believes.

Item, he puts that the premises are also true, and in addition, public voice and fame labour, and he puts, as above. Robert believes the things believed and denies the things denied. Edward believes the things believed and denies the things denied.

Points administered on the part of the honourable woman Margaret Pye *alias* Thomson against Robert Baledon and Edward Baledon.

1. First of all, he puts that John Baledon, while he was alive, of Dancaster, York diocese, on the 10th day of the month of December in the year of the lord 1526, or on another day before his death, made his testament and ordained or declared his last will, and he puts jointly and separately.

2. Item, that the said John Baledon in this his testament or last will bequeathed to the said Margaret Pye £20 of money of England, as it clearly appears on inspection of the same testament, and he puts, as above.

3. Item, that the same John bequeathed to the same Margaret in his aforesaid testament one girdle and two silver spoons, and he puts, as above.

4. Item, that he bequeathed to the said Margaret five marks and one mazer, and he puts, as above.

5. Item, that the said John Baledon, deceased, named, ordained, made and appointed the aforesaid Robert and Edward Baledon as executors of this his testament, and he puts, as above.

6. Item, that the said Robert and Edward are occupiers or administrators of the goods, which were of the said deceased, and he puts, as above.

7. Item, that the said Robert and Edward were bound about faithfully administrating and paying the bequests of the same deceased by virtue of their oaths, offered by them and each of them, and he puts, as above.

8. Item, that the said Robert and Edward were suitably requested and called upon to hand over and deliver to the said Margaret the aforesaid bequests often before the 11th day of March in the year of the lord 1528 on the part and by the party of the same Margaret, and he puts, as above.

9. Item, that the said Robert and Edward, so as is aforesaid, having been requested and called upon to pay, hand over or deliver these bequests or the majority of same to the said Margaret, refused, just as they refuse, and each one of them refuses, less justly in the present, and he puts jointly and separately.

10. Item, he puts that this testament was lawfully proved and registered before the ecclesiastical judge *de facto*.

11. Item, that the administration of all the goods of the same deceased was committed to the said Edward and Robert, who were first sworn about the payment of the debts and bequests, and he puts, as above.

12. Item, that all and singular the premises were and are true, public, notorious, manifest and equally famous, and about and upon the same within the vill of Dancaster and other neighbouring places public voice and fame have laboured and labour, and he puts, as above.

In the name of God. Amen, before you, commissary-general of the lord official of the court of York, or any other judge suitable in this matter, the party of the honourable woman Margaret :Pye of the parish of Dancaster, York diocese, against and opposing Robert Baledon and Edward Baledon, executors of the testament or last will of John Baledon, while he was alive, of Dancaster, aforesaid, or administrators of the goods of the same, and against anyone else lawfully appearing for the same men before you in judgement, says, alleges and proposes lawfully in these writings that, although the aforesaid John Baledon, while he was alive, made his testament and ordained and declared his last will, and ordained and named in this his testament the aforesaid Robert and Edward as his executors. To whom also the administration of all the goods of the said deceased by sufficient authority will have been committed and admitted by the same Robert and Edward in form of law, in which same testament or last will, the aforesaid John, the testator, left and bequeathed to the aforesaid Margaret Pye amongst other things £20 of lawful money of England, likewise a girdle, likewise two silver spoons, likewise a mazer, as it can be made clear and established on inspection of the same testament and by answers and confessions of the same Robert and Edward, made judicially to certain points otherwise administered against them. Nevertheless, the same Robert and Edward, have refused to pay or deliver these bequests, although they had been often requested and called upon on the part and by the party of the said Margaret to do this, just as they refuse and each one of them refuses, less justly in the present, to the serious danger of their souls and the prejudice of the said Margaret and the not immoderate damage and harm, and the manifest impediment of the last will of the said deceased, incurring the sentence of greater excommunication, provided, brought and duly proclaimed in the sacristy of the synod of York, against those impeding the pious and last wills of those deceasing, and voluntary perjury in this matter. Whereupon there having been proved what should be proved lawfully in this matter, the party of the said Margaret Pye seeks that the aforesaid Robert and Edward should be pronounced to have fallen upon and incurred this sentence of greater excommunication and perjury, and that the same Robert and Edward should be declared as excommunicated and perjurious, and also by way of sentence and definitively be condemned in the expenses of the said Margaret, made in this matter, and he protests about making and paying the bequests in the said [will] to the same Margaret, and that they should be forced, compelled and coerced to their payment and the delivery of these bequests or any parcel of the same canonically. And further the party of the said Margaret Pye says, alleges, seeks and intends to prove that whatever is just should be done and decreed to it immediately in the premises and concerning them in all things, jointly and separately, not restricting itself to proving all and singular the premises, or to the burden of a superfluous proof, about what it is protesting. But as much as he proves in the premises, as he obtains in petitions, saving always the benefit of law in all things, humbly imploring your office. Saving the right, etc. And he protests, etc.

In the name of God, Amen, before you, lord official of the court of York or your commissary-general or any other judge, suitable in this matter, the party of the honourable woman Margaret Pye of the parish of Dancaster, deceased, against and opposing Robert Baledon, esquire, and Edward Baledon, York diocese, the executors of the testament or last will of John Baledon, late of Dancaster, deceased, administrators or occupiers of the goods of the same man, to exhibit judicially before you the true testament of the aforesaid john with a faithful inventory of all the goods, which were late of the said John at the time of his death. Which same testament and inventory reside in their hands or in the hands of one of them and ought lawfully to reside, or stands by them … from residing, on account of and for the reason that it concerns the said Margaret Pye for lawful and honourable causes and just necessities that this testament and inventory are lawfully exhibited, just as , once they have been seen and inspected, and exhibited, acknowledged and understood, about the bequest or bequests contained in the said testament, and what is just and due to the said Margaret, it can be certainly made clear and established, and whatever is just be canonically compelled and coerced and further be done, decided and decreed by you, lord judge, before said, in the premises and concerning them in all things. This party of the said Margaret jointly and separately says, alleges, seeks to be done and intends to prove, by way of summary, simply and plainly, without noise and figure of judgement, humbly imploring your office, by no means binding itself to superfluous proof. Saving lawfully, etc, and it protests, etc.

In the name of God, Amen, before you, the honourable master lord official of the court of York or your commissary-general, or any other judge suitable in this matter, the party of the honourable men Robert Bayldon and Edward Bayldon against and opposing Margaret Pye of the parish of Doncastre, York diocese, and against anyone lawfully intervening for the same woman before you in judgement, and also against a certain present libel in a certain present cause of a bequest, proposed *de facto* on the part of the same Margaret against the aforesaid Robert and Edward, and excepting the force, form and effect of the same and the whole intention of the same Margaret brought in the same, by all better way of law, by which it can, says, alleges and in these writings proposes lawfully jointly and separately that, if John Bayldon, deceased, had made any testament in his life, or had named the same Robert and Edward as his executors, or bequeathed any bequests to the aforesaid Margaret, that this party, excepting, does not acknowledge this, but expressly denies it, nevertheless, [and says that] the testament was never cast in effect, but was renounced by the same Robert and Edward, on account that it was made contrary to the office of piety. And also that the said John Bayldon had been decreed and pronounced as deceasing intestate by a suitable judge, and the goods of the same John Baydon, so dying intestate, were not sufficient for the payment of the debts of the same John, in which he was effectively held at the time of his death and in his lifetime. And upon this the said Robert and Edward Baildon were charged towards the payment of the debts of the said deceased as far as the goods of the deceased were sufficient for this, and not otherwise, nor in any way, just as it could most clearly appear in the commission committed to them and among the acts of this court, offered judicially, to anyone watching, to which this party, proposing, refers itself. And also that the same Robert and Edward administered and paid all and singular the goods, which were of the said John, deceased, coming into their hands, coming, being sought and proved by the creditors of the same deceased, according to the exigence of law, at least according to the rate of the portions, fully and faithfully, according to the tenor of the authority committed to them. Without that that the aforesaid Margaret sought or claimed any debt for herself from them. Whereupon it says about the premises at least, as far as is sufficient in this matter and an oath having lawfully made and requested, towards doing which, the party, proposing, offers itself ready and prepared, it should not be decreed, pronounced, condemned or forced by you, lord judge, before said, or anything else be done, as is and is clear in this present libel of the same Margaret, and is less truly sought, but the party of the before said Robert and Edward Baildon should be completely dismissed and absolved from the charge, vexation and instance of the aforesaid Margaret, and that the party of the aforesaid Margaret should be condemned in the expenses of the before said Robert and Edward and forced to pay them to the same men by you and your definitive sentence or final decree, lord judge, before said, and there should be further done and decreed and decided in the premises, just as the law demands and requires. The party of the said Robert and Edward jointly and separately proposes the premises and seeks them to be done, not restricting itself to proving all and singular the premises, nor to the superfluous charge of the proof, about which it is protesting, but as much as it will prove in the premises, as it may obtain in the petitions, always saving the benefit of law in all things, by humbly imploring your office. Saving the right, etc. And it protests, etc.

Borthwick Institute GB 193: CP.G.894 [three documents]

Document 1

1. In dei no[m]i[n]e Amen po[sitio]nes infrascript' ac content' in eisd[e]m facit dat et exhibet p[ro]cu[ra]tor et p[ro]cu[ra]torio no[m]i[n]e Rob[er]ti Lidyerd de Hoveden a quod[a]m … …
2. in quad[a]m causa fidei violac[i]o[n]is sive p[er]iurij contra Rob[er]tum West coram vobis judicialit[er] mot' et penden[t'] indecis' exhibit' elicit' et extract…
3. Et si que po[siti]ones sunt multiplices eas ponit divisim et sic petit eisd[e]m r[espo]nderi suo juramento mediante
4. j. In primis ponit dict' p[ro]cu[ra]tor no[m]i[n]e quo sup[ra] q[uo]d qued[a]m contraversia sive discordia oriebat[ur] et dependebat int[er] p[re]fat[um] Rob[er]tum Lidyerd
5. et uxor[em] sua[m] que nup[er] erat Relict[a] et executrix testamenti Joh[ann]is Glover nup[er] de Hoveden defuncti ac Rob[er]tu[m] West p[ro] cert[is] granis p[er] eund[em] Rob[er]tum
6. West lib[er]and' et ab eod[em] empt' cr'
7. ij. It[e]m q[uo]d tand[e]m motu et labore diversar[um] p[er]sonar[um] ijd[e]m Rob[er]tus Lidyerd p[ro] se et uxore sue ex una parte et Rob[er]tum
8. West parte ex alt[er]a de et sup[er] dict' contraversia et discordia In Joh[ann]em Payn Ranaldu[m] Spek Joh[ann]em
9. Canyngworth et Will[elmu]m Halton de Hoveden arbitros sive arbitratores p[er] dict' partes electos compromiseru[n]t
10. cr'
11. iij. It[e]m q[uo]d dict' Rob[er]tus Lidyerd et Rob[er]tus West fide eor[um] media ac eor[um] Juramento stare obedire et p[er]implere
12. laudo arbitrio et Judicio d[i]c[t]or[um] iiij^{or} arbitrator[um] se firmit[er] astrinxeru[n]t et obligaru[n]t ac eor[um] uterq[ue] se astrinxit
13. et obligavit non cr'
14. iiij. It[e]m q[uo]d dict' arbitri sive arbitratores auditis utriusq[ue] part' allegac[i]o[n]ib[us] et p[ro]posit' laudum arbitriu[m] et Judiciu[m]
15. de contrav[er]sia et discordijs int[er] partes p[re]dict[as] et in ear[um] p[rese]ncia tuleru[n]t et finem Imposueru[n]t non cr'
16. v. It[e]m q[uo]d dicti arbitri sive arbitratores laudaru[n]t et judicaru[n]t q[uo]d p[re]fatus Rob[er]tus West solve[n]t seu solvi faceret eid[e]m
17. Rob[er]to Lidyerd ad certu[m] t[er]minu[m] sive die[m] iam elapsu[m] ij^{s} iiij^{d} in pecunia num[er]ata non cr'
18. vj. It[e]m q[uo]d p[re]fat' arbitri sive arbitratores laudaru[n]t et judicaru[n]t q[uo]d p[re]fatus Rob[er]tus West liberaret et solveret eid[e]m
19. Rob[er]to Lidyerd et ux[or]i sue di[mid'] q[ua]rt' frumenti et di[mid'] q[ua]rt' ordij ad festu[m] Pasche d[i]c[tu]m arbitriu[m] p[ro]x[im'] sequens et
20. ad festu[m] S[an]c[t]i Martini extu[n]c sequens di[mid'] q[ua]rt' frumenti et unu[m] q[ua]rt' ordij Et ad f[estu]m Purificac[i]o[n]is b[ea]te Marie

21. extu[n]c sequens unu[m] q[ua]rt' ordij Et po[ni]t di[vis]im Et de quoli[be]t quart[er]io granor[um] usq[ue] ad ij q[ua]rt' non cr'
22. vij. It[em] q[uo]d laudaru[n]t et judicaru[n]t q[uo]d dict[us] Rob[er]tus West inveniret et induceret sufficientes fideiussores
23. p[ro] securitate soluc[i]o[n]is dicte su[m]me pecuniar[um] ac specialit[er] p[ro] liberac[i]one granor[um] p[re]dict' eid[em] Rob[er]to Lidyerd faciend'
24. ut p[er]mittit[ur] infra certu[m] die[m] iam elapsu[m] non cr'
25. viij. It[e]m q[uo]d id[e]m Rob[er]tus West non solvit ij^{s} iiij^{d} eid[e]m Rob[er]to Lidyerd s[ecundu]m vim forma[m] et arbitriu[m] sive judiciu[m] d[i]c[t]or[um]
26. arbitror[um] sive arbitratror[um] ad diem iam elaps' et p[er] eosd[em] arbitros solvi assignat' cr' q[uia] non di[ci]t q[uod] non debet
27. ix. It[em] q[uo]d id[e]m Rob[er]tus West s[e]c[un]d[u]m laudum arbitriu[m] et judiciu[m] d[i]c[t]or[um] arbitror[um] sive arbitratoru[m] fideiussores sufficientes
28. infra t[er]minu[m] eid[em] assignat' et iam elaps' ad inducend' eosd[em] p[ro] solucione et lib[er]ac[i]one d[i]c[t]or[um] granor[um] forma ut p[re]mittit[ur] liberand' non
29. induxit cr' quia di[ci]t q[uod] non debet
30. x. It[em] q[uo]d id[e]m Rob[er]tus West ad p[er]implend' dict' laudu[m] et arbitriu[m] et ad solvend' dict' ij^{s} iiij^{d} ad t[er]minu[m] iam elaps'
31. et fideiussores inducend' debit' fuit requisitus di[ci]t q[uo]d Arbitriu[m] nec sit lat'
32. xj. It[em] q[uo]d non obstante requisic[i]o[n]e h[uius]mo[d]i Id[e]m Rob[er]tus West sup[ra]dict' laudum arbitriu[m] et judiciu[m] p[er]implere seu dict'
33. ij^{s} iiij^{d} eid[em] Rob[er]to Lidyerd solv[er]e seu satisfac[er]e de eisd[em] aut fideiussores inducere penitus recusavit
34. et recusat Juramentu[m] suu[m] … violando et p[er]iuriu[m] notorie Incurrendo dicit q[uo]d Arbitriu[m] nec sit lat'
35. xij. It[e]m q[uo]d p[re]missa su[n]t vera pu[bli]ca

Dorse:

Ledyerd v West

Document 2

1. In dei no[m]i[n]e Amen Coram Vobis Ven[er]abili viro D[omi]no Officiali Cur[ie] Ebor' v[est]rove Com[m]issario gen[er]ali aut alio iudice competente … … …
2. honesti viri Rob[er]ti Ledyerd p[ar]o[chi]e de Hoveden contra Rob[er]tum West de Rednes iuxta Hoveden p[re]dict' et contra quemcu[n]q[ue] p[ro] eod[e]m coram vobis in iudicio legittime
3. comparentem Dicit et in jure p[ro]ponit Q[uo]d licet p[re]dict[us] Rob[er]tus West certis ex causis legittimis quar[um] cognicio ad forum eccl[es]iasticu[m] notorie dinoscitur p[er]tiner[e]
4. fidem suam p[ro]missionem sive iura[men]tum suu[m] voluntarie p[re]stit[er]it Ip[s]e tamen Rob[er]tus West qua[m]vis p[er] partem p[re]dict[i] Rob[er]ti Ledyerd pluries ad hoc fuerat debite requisit…
5. fidem sua[m] p[ro]missione[m] sive jura[men]tu[m] suu[m] h[uius]mo[d]i obs[er]vare ac p[er]implere non curavit sed expresse recusavit nullaq[ue] ductus necessitate p[er]iuriu[m] voluntarie p[ro]missionis
6. fideiq[ue] sue violac[i]oni ac infamiam dampnabilit[er] incurrendo In anime sue grave p[er]ic[u]l[u]m alior[um]q[ue] [Chris]ti fideliu[m] exemplu[m] p[er]niciosu[m] ac p[re]dicti Rob[er]ti Ledyerd p[re]judiciu[m]
7. immodicu[m] et gravamen Que su[n]t vera pu[bli]ca notoria et manifesta ac famosa in civitate et dioc[es'] Ebor' alijsq[ue] locis circu[m]vicinis et sp[ec]ialit[er] in Hoveden et Rednes
8. … et sup[er] hijs ib[ide]m laboravit et est pu[bli]ca vox et fama Quar[e] facta fide in hac parte de jure requisita petit dictus p[ro]cu[ra]tor no[m]i[n]e quo sup[ra] p[re]dict[um] Rob[er]tu[m]
9. … p[ro]missione[m] sua[m] fidem aut juramentu[m] suu[m] h[uius]mo[d]i tem[er]e violasse voluntarieq[ue] p[er]iuriu[m] et infamia[m] damp[ni]t[er] incurrasse ac p[er]iuriu[m] et infamiam fuisse et esse
10. p[er] vos D[omi]ne p[er] vos D[omi]ne Judex s[entent]ialit[er] et diffiniti[v]e p[ro]nunciari decerni et declarari Necnon eund[em] p[ro] tante temeritat' excessu ad p[er]agend' p[e]n[itent]iam
11. corporalem iuxta forma[m] sacror[um] canonu[m] pentencialiu[m] v[est]ro arbitrio mediante compellend' fore et cu[m] eff[e]c[t]u compelli ult[er]iusq[ue] sibi fieri statui
12. et decerni in p[re]miss[is] et ea concernen[t'] quod canonicis convenit institut' p[re]missa p[ro]ponit petit ac p[ro]bar[e] intendit d[i]c[t]us p[ro]cu[ra]tor no[m]i[n]e quo sup[ra]
13. …bac[i]o[ne]m sup[er]fluv' se nullatenus astringendo juris b[e]n[e]ficio in om[n]ib[us] semp[er] salvo

Dorse:
P[ro]cessus int[er] Leydyerd et West cu[m] s[ente]n[t]ia

Document 3

1. In dei no[m]i[n]e Amen po[sitio]nes et c[etera] int[er] Lidyerd et West
2. j. In p[ri]mis q[uo]d dict[us] Rob[er]tus Lidyerd et Rob[er]tus West fide eor[um] media et eor[um] iura[men]to stare obedire et p[er]implere laudo arbitrio
3. et judicio iiij^{or} arbitratror[um] se firmit[er] astrinxeru[n]t et obligaru[n]t ac eor[um] uterq[ue] se astrinx[i]t et obligavit
4. ij. It[e]m q[uo]d dicti arbitri sive arbitratores Audit' utriusq[ue] part' allegac[i]o[n]ib[us] et p[ro]posit' laudum arbitriu[m] et judicium
5. de contraversia et discordijs int[er] partes p[re]dict[as] et in ear[um] p[rese]ncia tuleru[n]t et finem Imposueru[n]t
6. iij. It[e]m q[uo]d dict[i] arbitri sive arbitratores laudaru[n]t et judicaru[n]t q[uo]d p[re]fatus Rob[er]tus West solveret sive solv[ere]
7. fac[er]et eid[e]m Rob[er]to Lidyerd ad certu[m] t[er]minu[m] sive die[m]
8. iam elaps' ij^{s} iiij^{d} in pecunia num[er]ata
9. iiij. It[e]m q[uo]d dicti arbitri sive arbitratores laudaru[n]t et iudicaru[n]t q[uo]d p[re]fatus Rob[er]tus West liberaret et solveret eid[em] Rob[er]to
10. Lidyerd et ux[or]i sue di[mid'] q[ua]rt' frumenti et un' q[ua]rt' ordij ad f[estu]m Pasche D[i]c[tu]m arbitriu[m] p[ro]x[im'] sequens et ad f[estu]m S[an]c[t]i Martini
11. extu[n]c seque[n]s' di[mid'] q[ua]rt' fru[men]ti et vij q[ua]rt' ordij Et ad f[estu]m Purific[ationis] b[ea]te Marie Virg[inis] extu[n]c sequens un[de] q[ua]rt' ordij
12. v. It[em] laudaru[n]t et judicaru[n]t q[uo]d dictus Rob[er]tus West inveniret et induceret sufficientes fideiussores p[ro] Securitate
13. solu[i]c[i]onis d[i]c[t]e pecuniar[um] su[m]me ac specialit[er] p[ro] lib[er]ac[i]o[n]e granor[um] p[re]dict' eid[em] Rob[er]ti Lidyerd faciend' ut p[re]mittit[ur]
14. infra cert[um] die[m] iam elaps'
15. vj. It[em] q[uo]d id[e]m Rob[er]tus West no[n] solvit ij^{s} iiij^{d} eid[e]m Rob[er]to Lidyerd s[ecundu]m vim forma[m] et arbitriu[m] sive judiciu[m] d[i]c[t]or[um]
16. arbitror[um] sive arbitrator[um] ad die[m] elaps' nec lib[er]avit di[mid'] q[ua]rt' frumenti et un' q[ua]rt' ordij ad fest[um] Pasche ultimo
17. p[re]t[er]it' debit' et p[er] eosd[em] arbitros solvi et liberari assignat'
18. vij. It[em] q[uo]d id[e]m Rob[er]tus West s[e]c[un]d[u]m laudu[m] arbitriu[m] et judiciu[m] d[i]c[t]or[um] arbitror[um] sive arbitrator[um] fideiussores sufficientes
19. infra t[er]minu[m] eid[em] assign[at'] et iam elaps' ad inducend' eosd[em] p[ro] soluc[i]o[n]e et lib[er]ac[i]one d[i]c[t]or[um] granor[um] forma ut p[re]mittit[ur]
20. liberand' no[n] induxit
21. viij. It[e]m q[uo]d id[e]m Rob[er]tus West ad p[er]implend' dict' laudum et arbitriu[m]

Dorse:

Ranaldus Spek }
Joh[an]nes Conyngworth }de Honeden
Will[el]m[u]s Halton }

CP.G.894 - English Translations
Document 1

In the name of God, Amen, the proctor, as proctor in the name of Robert Lidyerd of Hoveden, makes, gives and exhibits the points, within written, and the things contained in the same, from a certain … … exhibited, drawn and extracted in a certain cause of the violation of faith or perjury, judicially moved before you against Robert West, and pending and undecided ... And if there are more than one point, he puts them separately, and so he seeks that an answer is given to the same [by him] on his oath.

1. First of all, the said proctor in the name, as above, puts that a certain controversy or disagreement arose and was pending between the aforesaid Robert Lidyerd and his wife, who was late the relict and executrix of the testament of John Glover, late of Hoveden, deceased, and Robert West for certain grains to be delivered by the same Robert West and bought from the same man. He believes.
2. Item, that at length by the motivation and labour of diverse persons, the same Robert Lidyerd for himself and his wife on the one part and Robert West on the other part, about and upon the said controversy and discord compromised John Payn, Ranald Spek, John Canyngworth and William Halton of Hoveden as arbiters or arbitrators chosen by the said parties. He believes.
3. Item, that the said Robert Lidyerd and Robert West, and each of them, bound and obliged themselves firmly by their faith and their oath to stand, be obedient and fulfil the decision and judgement of the said four arbitrators. He does not believe.
4. Item, that the said arbiters or arbitrators, once the allegations and propositions of both parties had been heard, brought the decision and judgement about the controversy and disagreements between the aforesaid parties and in their presence, and imposed a fine. He does not believe.
5. Item, that the said arbiters or arbitrators appraised and judged that the aforesaid Robert West pay or cause to be made to the same Robert Lidyerd at a certain term or day now past 2s 4d in ready cash. He does not believe.
6. Item, that the aforesaid arbiters or arbitrators have appraised and judged that the aforesaid Robert West deliver and pay to the same Robert Lidyerd and his wife half a quarter of wheat and half a quarter of barley at the feast of Easter next following the said decision, and at the feast of St Martin then following half a quarter of wheat and one quarter of barley. And at the feast of the Purification of the Blessed Mary then following one quarter of barley. And he puts separately. And about each quarter of grains up to two quarters, he does not believe.
7. Item, that they appraised and judged that the said Robert West find and introduce sufficient pledges for the security of the payment of the said sum of money and especially for the delivery of the aforesaid grains to be made to the same Robert Lidyerd, as is aforesaid, within a certain day now past. He does not believe.
8. Item, that the same Robert West did not pay 2s 4d to the same Robert Lidyerd according to the force, form and arbitration or judgement of the said arbiters or arbitrators at the day now past and assigned to be paid by the same arbiters. He believes, because he does not say that he does not owe.
9. Item, that the same Robert West according to the decision and judgement of the said arbiters or arbitrators did not introduce sufficient pledges within the term assigned to the same man and now past, to introduce the same men for the payment and delivery of the said grains to be delivered in the form, as is aforesaid. He believes, because he says that he does not owe.
10. Item, that the same Robert West was duly requested to fulfil the said decision and to pay the said 2s 4d at the term now past and to introduce pledges. He says that the decision was not made.
11. Item, that notwithstanding this request, the same Robert West, completely refused to fulfil the abovesaid decision and judgement or to pay the said 2s 4d to the same Robert Lidyerd or make satisfaction for the same or to introduce pledges, and refuses to do so, violating his oath and notoriously incurring

perjury. He says that the decision was not made.
12. Item, that the premises are true, public, etc.

Dorse:
Ledyerd v West

Document 2

In the name of God, Amen, before you, the venerable master lord official of the court of York and your commissary general or another suitable judge … … … of the honourable master Robert Ledyerd of the parish of Hoveden against Robert West of Rednes by Hoveden, aforesaid, and against anyone lawfully appearing for the same man before you in judgement, he says and proposes in law that, although the aforesaid Robert West, for certain legitimate reasons, the knowledge of which is notoriously known to pertain to the ecclesiastical forum, has offered his faith, promise or oath voluntarily, nevertheless, the same Robert West, although he had been duly requested by the party of the aforesaid Robert Ledyerd several times, has not taken care to observe and fulfil this his faith, promise or oath, but has expressly refused to, and being led by no necessity, damnably incurring voluntarily perjury and infamy by the violation of his promise and faith, to the serious danger of his soul and the pernicious example of other Christians and the immoderate prejudice and harm of the aforesaid Robert Ledyerd. Which are true, public, notorious and manifest and famous in the city and diocese of York and other neighbouring places and especially in Hoveden and Rednes … and upon these public voice and fame have laboured and are [labouring] there. Whereupon faith having been made in this matter, which has been lawfully requested, the said proctor seeks in the name, as above, that the aforesaid Robert had rashly violated this his promise, faith or oath and voluntarily had incurred perjury and infamy damnably, and was and is perjurious and infamous, and to be by you, lord, by you, lord judge by definitive sentence pronounced, decreed and declared [as perjurious and infamous], and also that the same man for such great rashness and excess be forced to undergo corporal penitence according to the form of the sacred penitential canons by your decision, and with effect be compelled, and further to do, decide and decree in the premises and things concerning them what is suitable for the canonical institutions. The said proctor in the name, as above, proposes, seeks and intends to prove the premises, by no means restricting himself to superfluous proof, saving always the benefit of law in all things.

Dorse:
Process between Ledyerd and West with sentence.

Document 3

In the name of God, Amen, the points, etc, between Lidyerd and West.
1. First of all, that the said Robert Lidyerd and Robert West, by their faith and on their oath, and each of them, have firmly bound and obliged themselves to stand, be obedient and fulfil to the decision and judgement of four arbitrators.
2. Item, that the said arbiters or arbitrators, having heard the allegations and propositions of both parties, have brought a decision and judgement about the controversy and disagreements between the aforesaid parties and in their presence, and they imposed a fine.
3. Item, that the said arbiters or arbitrators have appraised and judged that the aforesaid Robert West should pay or cause to be paid to the same Robert Lidyerd at a certain term or day now past 2s 4d in ready cash.
4. Item, that the said arbiters or arbitrators have appraised and judged that the aforesaid Robert West should deliver and pay to the same Robert Lidyerd and his wife half a quarter of wheat and one quarter of barley at the feast of Easter next following the said decision, and at the feast of St Martin then following half a quarter of wheat, and seven quarters of barley, and at the feast of the Purification of the Blessed Virgin Mary then following four quarters.
5. Item, they have appraised and adjudged that the said Robert West should fine and introduce sufficient pledges for the security of the payment of the said sum of money and especially for the delivery of the aforesaid grains to be made to the same Robert Lidyerd, as is aforesaid, within a certain day now past.
6. Item, that the same Robert West has not paid 2s 4d to the same Robert Lidyerd according to the force, form and decision or judgement of the said arbiters or arbitrators at the day past, nor has he delivered half a quarter of wheat and one quarter of barley at the feast of Easter last past, due and assigned to be paid and delivered by the same arbiters.
7. Item, that the same Robert West, according to the decision and judgement of the said arbiters or arbitrators, has not introduced sufficient pledges within the term assigned to him and now past, to introduce the same for the payment and delivery of the said grains to be delivered in the form, as is aforesaid.
8. Item, that the same Robert West to fulfil the said decision

Dorse:

Ranaldus Spek }
Joh[an]nes Conyngworth }from Howden (Howeden)
Will[el]m[u]s Halton }

Borthwick Institute GB 193: CP.G.967 [three documents]

Document 1

1. In dei no[m]i[n]e amen ar[ticu]los infrascriptos ac om[n]ia et singula in eis contenta dat facit exhibet et mi[ni]strat p[ro]cu[ra]tor et eo no[m]i[n]e honesti ac p[ro]bi viri magistri
2. M[ar]maduci Twheyng armigeri executor[is] test[ament]i Thome Redeman Armigeri defu[n]cti nup[er] de Bossall a quad[a]m libello in quad[a]m c[aus]a testame[n]tar' sive Impe[dimen]ti
3. ulti[m]e voluntat[is] d[i]c[t]i defu[n]cti [contra] Thoma[m] Bekynsay p[ar]ochie pred[i]c[t]e judi[ciali]t[er] exhibito elicit' et extract'
4. In p[ri]mis articulat[ur] et si negatu[m] fu[er]it p[ro]bare intendit q[uod] in test[ament]o p[re]fati Thome Redeman in quo pred[i]c[tu]s M[ar]maduc[us] fuit et est executor no[m]i[n]at[us] et suffi[cien]t[er]
5. admiss[us] legat' sive relict' fuit Thome Bekynsay et W[illelm]o Twheyng unu[m] le crope de ware corne crescens in uno le flatte in Bossall Feldes vulga[ri]t[er]
6. nu[n]cupat' the newflatte
7. It[e]m q[uod] p[re]fat[us] Thomas Beckynsay p[re]missor[um] sat[is] sciol[us] executore[m] h[uius]mo[d]i quomin[us] bona d[i]c[t]i defu[n]cti dispon[er]e et admi[ni]strare ac eius debita et legata
8. solv[er]e lib[er]e valeat indebit[e] Impedivit et impedit in p[rese]nti legatu[m] p[re]d[i]c[tu]m p[re]t[er] et [contra] eiusd[em] executor[is] voluntate[m] ac test[amentu]m h[uius]mo[d]i
9. defu[n]cti in ea p[ar]te qua legat' h[uius]mo[d]i Relict' est ut p[re]mittit[ur] falso et malic[i]ose int[er]pretando
10. It[e]m q[uod] ad desistend' ab impedic[i]o[n]e h[uius]mo[d]i executor[is] quomin[us] d[i]c[t]a[m] voluntatem p[er]implere valeat
11. ex p[ar]te d[i]c[t]i executor[is] et p[er] eunde[m] sepius et iterat[is] vicib[us] p[re]d[i]c[tu]s Thomas Bekynsay requisit[us] fuit et int[er]pellat[us]
12. It[e]m q[uod] idem Thomas sic ut p[re]mittit[ur] requisit[us] s… ab impedic[i]o[n]e h[uius]mo[d]i abstinere
13. Renuit et recusavit et plus debito distulit et differt in p[rese]nti in a[n]i[m]e sue g[ra]ve p[er]ic[u]l[u]m d[i]c[t]iq[ue] executor[is] p[re]iudiciu[m] dampnu[m]q[ue] no[n] modicu[m] g[ra]vame[n]
14. It[e]m q[uod] p[re]missa sunt vera ac de et super eiisdem laborarunt et laborant pu[bli]ca vox et fama
15. Et p[ro]testat[ur] et c[etera]

Document 2

1. In dei no[m]i[n]e Amen posic[i]o[n]es et ar[ticu]los infrascript' ac om[n]ia et sing[u]la in eis co[n]tenta
2. dat facit exhibet et mi[ni]strat p[ro]cu[ra]tor et eo no[m]i[n]e honesti ac p[ro]bi viri m[agistri] Marmadu-
3. -ci Thweyng armigeri executor[is] test[ament]i Thome Reidman gen[er]osi defuncti nup[er]
4. de Bossall a quod[a]m lib[ell]o in quad[a]m c[aus]a testamentar' sive Impe[dimen]ti ultime volu[n]-
5. -tat[is] d[i]c[t]i defu[n]cti [contra] Thoma[m] Beckinsay p[ar]och' de Bossall iudi[ciali]t[er] exhibit' elicit'
6. et extract' Et si que sint multiplices eas ponit di[vis]im Et sic petit eisde[m]
7. p[er] eunde[m] Thoma[m] R[esp]onderi suo median[t'] Jura[men]to
8. In p[ri]mis ponit et si negatu[m] fu[er]it p[ro]bare intendit q[uod] p[re]dict[us] m[agister] M[ar]maduc[us]
9. fuit et est executor test[ament]i sive ulti[m]e volu[n]tat[is] Thome Redeman p[re]dicti
10. auct[oritat]e ordinar' suffic[ien]t[er] deputat[us] / cred'
11. It[e]m q[uod] ad p[er]implend' sua[m] ulti[m]a[m] volu[n]tate[m] vi[delicet] legata et debita sua solv[er]e iux[ta]
12. viros hereditar' corp[or]ale p[re]stitit Jura[men]tu[m] / cred'
13. It[e]m q[uod] in h[uius]mo[d]i test[ament]o legat' sive Relict' fuit Thome Beckinsay et W[illelm]o Thwey-
14. -ng unu[m] le crop de Warcorn crescens in uno le flat in Bossall Feldes vulga[ri]t[er]
15. nu[n]cupat' the newflatte / cred' de quod[am] loco voc[ato] le suth flat et q[uo]d legat'
16. fuit isti deponenti W[illelm]o Thewyng et Nich[ola]o Lillee
17. It[e]m q[uod] dict[us] Thomas Bekynsay p[re]missor[um] sat[is] sciolus totu[m] seu ad min[us] duas
18. p[ar]tes dicti grani ut p[re]fert[ur] sibi et W[illelm'] Thweyng legati detinet et occupat
19. p[re]t[er] et con[tra] volu[n]tate[m] dictor[um] M[ar]maduci executor[is] et Will[el]mi sui colegatarij
20. non cred' de maiori p[ar]te nisi q[uo]d sibi legatu[m] fuit
21. It[e]m q[uod] ad deliberand' seu tradend' ac p[er]solvend' dimedietate[m] dicti g[ra]ni ad
22. man[us] executor' h[uius]mo[d]i seu d[i]c[t]i colegatarij si extiterit alioquin eius ver[um] valore[m] seu estimac[i]o-
23. -ne[m] ex p[ar]te eiusde[m] executoris seu p[er] eunde[m] sepius et iterat[is] vicib[us] a d[i]c[t]o
24. Thoma Requisit' fuit et Interpellat' / non cred'
25. It[e]m q[uod] dict[us] Thomas ut p[re]mittit[ur] debite Requisit[us] soluc[i]o[n]em tradic[i]o-
26. -nem seu deliberac[i]o[n]em dimedietat' h[uius]mo[d]i grani ad manus executoris h[uius]mo[d]i seu
27. ad man[us] colegatarij sui Renuit et Recusavit ac plus debito distulit et
28. differt in p[rese]nti in a[n]i[m]e sue g[ra]ve p[er]ic[u]l[u]m dictiq[ue] executor[is] p[re]judiciu[m] et da[m]pnu[m] no[n]

29. modicu[m] et g[ra]vamen / cred’ detenc[i]o[n]em s[ed] non cr[edit] requisic[ionem]
30. It[e]m q[uod] p[re]missa su[n]t vera et de et sup[er] eissde[m] laboraru[n]t et labora[n]t pu[bli]ca vox et
31. fama / cred’ de cred’ et negat de negat’
32. Et p[ro]testat[ur] et c[etera]

Dorse:
Thweng v Bekensay[750]

[750] This appears twice on the same dorse for document 2.

Document 3[751]

1. In dei no[m]i[n]e amen Cora[m] vobis ven[erabi]li viro d[omi]no offic' Curie Ebor' v[est]rove Co[m]miss[ari]o gen[era]li p[ro]testat[ur]
2. p[ro]cu[ra]tor et eo no[m]i[n]e honesti viri Thome Bekynsay de Bossall Ebor' dioc[es'] p[ar]tis sue q[uod] si que sint
3. aut co[n]tineant[ur] in quibusda[m] lib[ello] po[sitioni]b[us]ve sive artic[u]lis ex eod[e]m extract' et elicit' ex adv[er]so et p[er] p[ar]tem
4. Marmaduci Twyng executor[is] test[ament]i Thome Redeman nup[er] de Bossall defu[n]cti datis et exhi[bi]t'
5. que q[uo]q[uo] modo facia[n]t seu fac[er]e videant[ur] p[ro] d[i]c[t]o Thoma Bekynsay et con[tra] eund[em] Marmaducu[m]
6. Twyng adv[er]sariu[m] illa in ea p[ar]te du[m]taxat no[n] impugnat neq[ue] impugner[e] intendit Im[m]ymo
7. ea recipit et admittit in vim salt[e]m et p[er] modu[m] tacite [con]fessus in q[ua]ntu[m] v[er]o p[ro] p[ar]te adv[er]sa et con[tra]
8. p[ar]te[m] sua[m] facia[n]t extu[n]c p[ro]cu[ra]tor om[n]ib[us] meliorib[us] modo via iure c[aus]a stilo et forma quib[us] melius pot'
9. et debet dicit q[uod] p[re]no[m]i[n]at[us] Thomas Redeman testator defu[n]ct[us] du[m] vixit in sua sana memoria
10. existe[n]s suu[m] co[n]didit rite et l[egi]time test[amentu]m sua[m] in se co[n]tine[n]s ultima[m] volu[n]tate[m] In q[uo] quidem
11. test[ament]o int[er] cet[era] p[er] eu[m] pie disposita relicta et legata id[e]m testator p[re]no[m]i[n]ato Thome Bekynsay
12. legatario unu[m] le crop grani seget[is] sive frug[is] crescen[t'] sup[er] le Sothflat al[ia]s dicto le Newflat in ca[m]pis de Bossall
13. v[idelicet] from the grene barly land yestward ad venella[m] in oriente dedit reliquit et legavit
14. Q[uo]d quide[m] legatu[m] id[e]m Thomas legatarius ip[s]e ?messin' collegit ac penes se h[ab]uit et h[ab]et de
15. p[rese]nti ut legatu[m] sibi p[er] p[re]fatu[m] Thoma[m] testatore[m] relictu[m] se in ea p[ar]te ab om[n]i facto injurioso
16. seu impedime[n]to libellato posito sive artic[u]lato abstine[n]do p[ro]ut abstinuit et abstinet de p[rese]nti Que
17. o[mn]ia et sing[u]la fu[er]u[n]t et su[n]t v[er]a pub[li]ca notoria manifesta p[ar]it[er] et famosa. Ac de et sup[er] eisd[e]m
18. laboraru[n]t p[ro]ut de p[rese]nti labora[n]t pub[li]ca vox et fama inf[ra] civitate[m] Ebor' p[ar]ochiaq[ue] de Bossall
19. et alibi inf[ra] dioc[es'] Ebor' Unde suffi[cien]t[er] docto de p[re]miss' Non est p[ro]nu[n]tiand' decernendum

[751] Please note that there is a large portion of the bottom left-hand corner of document three that has been lost/torn.

20. et declarand’ seu quicq[uam] aliud faciend’ p[ro]ut in lib[ell]o h[uius]mo[d]i petitu[m] est S[ed] est p[ro] valore legati
21. h[uius]mo[d]i p[re]fato Thome relicto et legato p[ro]nu[n]tiand’ statuendu[m] et dec[er]nend’ p[re]fatusq[ue] Thomas
22. legatarius ab om[n]i ult[er]iori fatigac[i]o[n]e tem[er]aria vexac[i]o[n]e et p[er]turbac[i]o[n]e solebat Marmaduci
23. Twyng executor[is] dimittend’ et absolvendos Ac memoratus Marmaduc[us] executor in exp[e]ns[is]
24. l[egit]imis p[er] p[ar]te[m] p[re]fati Thome legatorij in hac p[ar]te fact’ et p[ro]testa[ntu]r de faciend’ insup[er] [con]de[m]pnand’
25. ac [con]dempnat’ ad debita[m] soluc[i]o[ne]m ear[um]d[e]m ca[noni]ce cogend’ et co[m]pelland’ p[er] vos et v[est]ram s[entent]iam diffi[nitiv]am
26. d[omi]ne Judex an[te]dict’ Ult[er]ius q[uod] faciend’ statuend’ et decernendu[m] in p[re]miss’ et ea co[n]cernen[t’]
27. quibuscu[m]q[ue] iur[is] fu[er]it et rac[i]o[n]is Que p[ro]po[ni]t et fieri petit p[ar]s d[i]c[t]i Thome
28. legatarij con[junct]im et di[visi]m no[n] artas se ad o[mn]ia et sing[u]la p[re]miss’ p[ro]band’
29. nec ad onus sup[er]flue p[ro]bac[i]o[n]is de q[uo] p[ro]testa[tu]r s[ed] q[ua]t[en]us p[ro]ba…
30. in p[re]miss[is] eat[en]us obtineat in petit’ jur[is] b[e]n[e]fic[i]o in o[mn’]
31. semp[er] salvo v[est]r[u]m officiu[m] d[omi]ne judex an[te]dict…
32. humil[ite]r implorando
33. Salvo Jur[is] et c[etera]
34. Et p[ro]testa[tu]r et c[etera]

CP.G.967 - English Translations
Document 1

In the name of God, Amen, the proctor gives, makes, exhibits and administers the articles, within written, and all and singular the things contained in them, and in the name of the honourable and upright master Marmaduke Twheyng, esquire, executor of the will of Thomas Redeman, esquire, deceased, late of Bossall, drawn and extracted from a certain libel in a certain cause about the testament or impediment of the last will of the said deceased, judicially exhibited against Thomas Bekynsay of the aforesaid parish.
First of all it is articulated, and if it will be denied, he intends to prove that in the testament of the aforesaid Thomas Redeman, in which the aforesaid Marmaduke was and is named as executor and sufficient admitted, there was bequeathed or left to Thomas Bekynsay and William Twheyng one crop of 'warecorne', growing in one 'le flatte' in Bossall Feldes commonly called the Newflatte.
Item, that the aforesaid Thomas Beckynsay, being well aware of the premises, has unduly impeded this executor from being able to dispose and administer the goods of the said deceased and to freely pay the debts and legacies, and he impedes him in the present, falsely and maliciously interpreting the aforesaid bequest against the will of the same executor and the testament of this deceased man in this part, by which this bequest was left, as is aforesaid.
Item, that the aforesaid Thomas Bekynsay was requested and called upon often and on repeated occasions on the part of the said executor and by the same man to desist in hindering this executor from being able to fulfil the said will.
Item, that the same Thomas, having been so requested, as is aforesaid, has denied and refused to abstain from this impeding, and has more duly delayed and delays in the present to the serious danger of his soul and the prejudice and not immoderate damage and harm of the said executor.
Item, that the premises are true, and public voice and fame have laboured and labour upon the same.
And he protests, etc.

Document 2

In the name of God, Amen, the proctor gives, makes, exhibits and administers the points and articles, within written, and all and singular the things contained in them, and in the name of the honourable and upright master Marmaduke Thweyng, esquire, executor of the will of Thomas Reidman, gentleman, deceased, late of Bossall, drawn and extracted from a certain libel in a certain cause about the testament or impediment of the last will of the said deceased, judicially exhibited against Thomas Beckinsay of the parish of Bossall. And if there are multiple points, he puts these separately. And so he seeks that same be answered to by the same Thomas on his oath.

First of all, he puts, and if it will be denied, he intends to prove, that the aforesaid master Marmaduke was and is the executor of the testament or last will of Thomas Redeman, aforesaid, sufficiently appointed by ordinary authority. He believes.

Item, that he offered a bodily oath to fulfill his last will, *viz* to pay his bequests and debts according to hereditary rights. He believes.

Item, that in this testament there was bequeathed or left to Thomas Beckinsay and William Thweyng one crop of 'warcorn', growing in one 'le flat' in Bossall Feldes, commonly called the Newflatte. He believes. About a certain place called le Suth Flat and that it was bequeathed to this deponent, William Thewyng and Nicholas Lillee.

Item, that the said Thomas Bekynsay, being well aware of the premises, detains and occupies the whole or at least two parts of the said grain, bequeathed, as is aforesaid, to him and William Thweyng, against the will of the said Marmaduke the executor and William his co-legatee. He does not believe for the greater part, except that it was bequeathed to him.

Item, that he was requested and called upon by the said Thomas on the part of the same executor or by the same man often and on repeated occasions to deliver or hand over and pay in full the moiety of the said grain into the hands of this executor or the said co-legatee, if he was, otherwise its true value or estimation. He believes.

Item, that the said Thomas, having been duly requested, as is aforesaid, has denied and refused the payment, handing over or delivery of a moiety of this grain into the hands of this executor or to the hands of his co-legatee, and has more duly delayed and delays in the present to the serious danger of his soul and the prejudice and not immoderate damage and harm of the said executor. He believes the detention but does not believe the request.

Item, that the premises are true, and about and upon the same, public voice and fame have laboured and labour. He believes the things to be believed and denies the things to be denied.

And he testifies, etc.

Dorse:
Thweng v Bekensay

Document 3

In the name of God, Amen, before you, the venerable master lord official of the court of York and your commissary-general, the proctor protests and in the name of the honourable master Thomas Bekynsay of Bossall, York diocese, his party, that, if those things, which are or are contained in a certain libel, points or articles, extracted and drawn from the same man, given and exhibited from and by the party of Marmaduke Twyng, executor of the will of Thomas Redeman, late of Bossall, deceased, which make in any way or seem to make in favour of the said Thomas Bekynsay and against the same Marmaduke Twyng, the adversary in this matter, provided that he does not criticize or intend to criticize them, he completely receives and admits them in force at least and by manner, having confessed silently, in as much as they indeed make in favour of the opposing party and against his party. Then the proctor in all better ways, manners, causes, styles and forms, as he can and ought to, says that the aforenamed Thomas Redeman, the testator, deceased, while he was alive, being in his sane memory, duly and lawfully founded his testament, containing in itself his last will. In which same testament amongst other things piously disposed, left and bequeathed by him, the same testator gave, left and bequeathed to the afore-named Thomas Bekynsay, the legatee, one crop of grain, draff or fruit growing upon le Sothflat otherwise called le Newflat in the fields of Bossall, *viz* from the 'grene barly land yestward' to the lane in the east. Which same bequest the same Thomas the legatee collected and had and has in his hands at present, as the bequest left to him by the aforesaid Thomas the testator, abstaining himself in this matter from all injurious action or impediment, which has been libelled, put or articulated, just as he has abstained and abstains in the present. All and singular which were and are true, public, notorious, manifest and famous equally. And of and upon the same public voice and fame have laboured, just as they labour at the present, within the city of York and the parish of Bossall and elsewhere within the diocese of York. Whereupon having been sufficiently informed about the premises, nothing else is to be pronounced, decreed and declared or done, just as in this libel is sought. But it is to be pronounced, decided and decreed in favour of the value of this bequest, left and bequeathed to the aforesaid Thomas, and the aforesaid Thomas the legatee was accustomed to be dismissed and absolved from all further wearying, rashness, vexation and disturbance of the said Marmaduke Twyng, the executor. And the aforesaid Marmaduke, the executor, is to be condemned in lawful expenses, made and to be made by the party of the aforesaid Thomas the legatee in this matter, and in addition, once he has been condemned, he should be forced and compelled to the due payment of the same canonically by you and your definitive sentence, lord judge, before said; and further to do, decide and decree in the premises and anything concerning them what will be right and reasonable. The party of the said Thomas the legatee proposes and seeks that action be taken jointly and separately, not restricting itself to proving all and singular the premises or to the superfluous burden of the probate, about which it is protesting,[752] but as far as it proves in the premises as it obtains in the things being sought, always saving the benefit of law in all things, humbly imploring your office, lord judge, before said. Saving the right, etc. And he protests, etc.

[752] It is unclear what thing he is claiming in this instance.

APPENDIX FOUR
LONDON CONSISTORY COURT

LMA DL-C-0206 f. 110v

Respon[sio]nes M[ar]gerie Calv[er]ley p[er]so[nali]t[er] facte x^{mo} die me[n]s[is] Februarij cora[m] d[omi]no offi[cia]li posic[i]o[n]ib[us] // p[er] p[ar]te[m] d[omi]ni Roberti Doddes mi[ni]strat[is]

Ad p[ri]ma[m] s[e]c[un]ndam t[er]cia[m] et iiij$^{ta[m]}$ po[s]i[tio]nes R[espo]ndet affir[mativ]e

Ad qui[n]ta[m] posic[i]one[m] R[espo]ndet et fate[tu]r ista iurata q[uod] Joh[ann]es Calv[er]ley quo[n]d[am] // maritus suus ia[m] defunct[us] i[n] suo test[ament]o legavit Radulpho Calv[er]ley // filio dicti sui mariti usq[ue] ad valorem vj^{li} vj^{s} et iiij^{or} den[ar]ior[um] // i[n] denarijs et alijs bonis vi[delicet] an[gli]ce in peny and penyworth et no[n] al[ite]r

Ad vj$^{ta[m]}$ posic[i]onem R[espo]ndet et credit eand[em] et dicit q[uod] nullu[m] potuit // condere testa[men]tu[m] quia dictus Radulphus decessit i[n] octavo // a[n]no etat[is] sue et sic erat p[ro]p[ter] defectu[m] etat[is] intestabilis ut et c[etera]

Ad vij$^{ma[m]}$ dicit et credit eand[em] et dicit q[uod] dictus d[omi]n[u]s Robertus // erat av[u]nculus dicti Radulphi

Ad viij$^{va[m]}$ po[s]ic[io]ne[m] credit q[uod] dictus d[omi]n[u]s Robertus Doddes no[n] du[m] // admi[ni]strav[i]t aliq[ua] bona dicti Radulphi defu[n]cti quia nulla p[er]veneru[n]t // ad ei[us] man[us] admi[ni]stra[n]d' credit tamen q[uod] vellet admi[ni]strare // su[m]ma[m] p[re]dicta[m] si posset ea[m] app[re]hendere. licet nullu[m] ius h[ab]eat // i[n] hac p[ar]te ut credit

Ad ix$^{na[m]}$ et x$^{ma[m]}$ posiciones credit easd[em]

Ad xj$^{ma[m]}$ et duodeci[m]am posic[i]ones dicit q[uod] post morte[m] dicti Radulphi // dictus d[omi]n[u]s Robertus Doddes ad demediu[m] a[n]ni elapsu[m] requisivit // ab ista iurata legat' h[uius]mo[d]i quod ip[s]a recusabat sibi // solvere quia no[n] novit ut dicit q[uod] dictus d[omi]n[u]s Robertus // h[ab]uit aliquod ius illud exigendi s[ed] no[n] credit ut dicit q[uod] // p[er] recusac[i]one[m] h[uius]mo[d]i ip[s]a impedit volun[ta]te dicti Joh[ann]is // Calv[er]ley mariti sui n[e]c q[uod] e[st] eo p[re]textu sic exco[mmun]icata. p[ro] eo q[uod] // dict[us] Radulphus erat ta[m] temere et minoris etat[is] qua[n]do decessit

Ad xiij$^{cia[m]}$ R[espo]ndet affir[mativ]e

Ad xiiij$^{ta[m]}$ et xv$^{ta[m]}$ posiciones R[espo]ndet q[uod] credit credita et negat negata / fama[m] negat libellata[m][753]

[753] These last two words are somewhat smudged and therefore difficult to decipher.

LMA DL-C-0206 f. 110v

The answers of Margery Calverley, personally made on the 10th day of the month of February before the lord official, to the points administered by the party of lord Robert Doddes.

To the first, second, third and fourth points she answers affirmatively.

To the fifth point this deponent answers and says that John Calverley, late her husband, now deceased, made bequests in his will to Ralph Calverley, son of her said husband, up to the value of £6 6s 4d in money and other goods, *viz* in English in penny and pennyworth, and not otherwise.

To the sixth point she answers and believes the same and she says that he could not make any will, because the said Ralph deceased in the eighth year of his age and so he was without a will on account of default of age, etc.

To the seventh she says and believes the same and says that the said lord Robert was the uncle of the said Ralph.

To the eighth point she believes that the said lord Robert Doddes has not yet administered any goods of the said Ralph, deceased, because none have come to his hands to be administered, but she believes that he wants to administer the aforesaid sum, if he can apprehend it, although he has no right in this matter, as she believes.

To the ninth and tenth points she believes the same.

To the eleventh and twelfth points she says that after the death of the said Ralph the said lord Robert Doddes half a year ago requested from this deponent these sort of bequests, and that she refused to pay to him, because she did not know, as she says, that the said lord Robert had any right to exact that, but she does not believe, as she says, that by this refusal she impedes the will of the said John Calverley, her husband, nor that it is by this reason she should excommunicated, on account that the sad Ralph was of so tender and minor age, when he deceased.

To the 13th she answers affirmatively.

To the 14th and 15th points she answers that she believes the things that are believed and denies the things that are denied. She denies the fame that has been libelled.

LMA DL-C-0206 f. 234v

Testes p[ro] p[ar]te Ricardi Langstone:

1. Will[el]mus Hews p[ar]ochie s[anc]te marie magdale[n]e i[n] veteri piscaria civi[ta]tis London' l^{ti}
2. annor[um] etat[is] et ult[ra] libere ut dicit condic[i]o[n]is testis de et sup[er] su[m]ma[ri]o ar[ticu]lo p[er] Ricardu[m]
3. Langstone con[tra] d[omi]nos Robertu[m] Tenet et Joh[ann]em Butler cap[ella]nos admi[ni]stratores bonor[um]
4. d[omi]ni Will[elm]i Jely nup[er] custod[is] de Gildhall London' p[ro]po[si]t' / p[ro]ductus admiss[us] iuratus
5. secreteq[ue] et singillati[m] examinatus / dicit q[uod] Joha[n]na uxor Ricardi Langstone mod[er]na
6. p[ar]rochie s[an]c[t]i Petri iux[ta] le Powlles Warff civit[atis] p[re]dict' circa duos dies p[re]cedentes festu[m]
7. advi[n]c[u]la s[an]c[t]i Petri ult[imum] iam preterit[um] que[m] die[m] aliter nescit speci[fica]re vel ia[m] exp[ri]mere
8. ut dicit in domo habitac[i]o[n]is sue et mariti sui an[te]dicti in p[ar]rochia s[an]c[t]i Petri iux[ta] Powlles
9. Warff p[re]dict' situat' tradidit et liberavit d[omi]no Will[el]mo Jely tunc custodi collegij
10. b[ea]te M[ar]ie de Gild Hall viij^{li} sterlyng' vi[delicet] iiij^{or} libras i[n] auro i[n] nobilib[us] sive angelis
11. viginti solidos in duob[us] regalib[us] aureis et tres libras i[n] alba moneta / ad effectu[m]
12. et intentu[m] in h[uius]mo[d]i su[m]mario ar[ticu]lo expressu[m] et speci[fica]tu[m] per ipsum d[omin]um Will[el]mu[m]
13. custodiendas et deponit de visu et sciencia suis / quia tu[n]c ib[ide]m p[er]so[nali]t[er] int[er]fuit
14. et h[uius]mo[d]i tradic[i]onem et liberac[i]onem pecunie sic fieri vidit ut dicit p[re]sente tu[n]c ib[ide]m
15. ecia[m] cu[m] eisd[em] Joha[n]na et d[omi]no Will[el]mo ac isto iurato quodam Will[el]mo
16. Oxenden teste inferius exa[mina]to ulterius exa[min]at[us] iste iuratus dicit q[uod] conve[n]tu[m]
17. et dictu[m] erat tu[n]c ib[ide]m int[er] eosdem Joha[n]na[m] et d[omin]um Will[el]mum q[uod] qu[ando]cu[n]q[ue]
18. ip[s]a requireret eand[am] su[m]ma[m] pecunie a dicto d[omi]no Will[el]mo rehaberet p[ro]misit
19. q[uod] dictus d[omin]us Will[el]m[us] q[uo]d conv[er]teret ip[s]am pecunia[m] alba[m] i[n] auru[m] ut dicit

1. Will[el]m[us] Oxenden p[ar]rochie b[ea]te M[ari]e Magdalene p[re]dict' xxvij$^{te[m]}$ a[n]nor[um] etat[is]
2. libere ut asseruit condic[i]o[n]is testis de et sup[er] ar[ticu]lo memo[rat]o productus
3. admissus iuratus et c[etera] deq[ue] content' i[n] eod[em] exa[mina]t[us] / dicit q[uod] die Jovis p[ro]x[im']
4. p[re]cedenti festu[m] s[an]c[t]i Petri quod dicit[ur] advi[n]c[u]la s[an]c[t]i Petri ult[imo] preterito
5. ut recolit p[re]sens fuit in domo habitac[i]o[n]is Ricardi Langston p[re]dict' in q[ua]da[m]

p[ar]lura ib[ide]m ubi et qua[n]do Johanna Langston uxor mod[er]na p[re]fati
Ricardi tunc aliqualit[er] infirma tradidit dicto d[omi]no Will[el]mo
Jely nup[er] custodi collegij Gild Hall London' octo libras custodiend'
ad effectu[m] p[ro]ut Will[el]m[us] Hews p[re]contestis suus dixit et deposuit et
in ceteris o[mn]ib[us] et sin[gu]lis cu[m] eo concordat. Et deponit de visu et scie[n]cia
suis p[re]sente tu[n]c ib[ide]m cu[m] isto iurato et dict[is] d[omi]no Will[el]mo
et Johanna an[te]fat' Will[el]mo Hews p[re]conteste suo ut dicit

LMA DL-C-0206 f. 234v

Witnesses on the part of Richard Langstone:
William Hews of the parish of St Mary Magdalene in the old fishery of the city of London, aged 50 years and more, of free condition, as he says, a witness about and upon the main article, proposed by Richard Langstone against the lord Robert Tenet and John Butler, chaplains, administrators of the goods of lord William Jely, late keeper of the Guildhall, London, produced, admitted, sworn and secretly and singly examined, says that Joan, the current wife of Richard Langstone of the parish of St Peter by le Powlles Warff of the aforesaid city, about two days preceding the feast of St Peter at Chains now last past, which day he does not know otherwise to specify or now express, as he says, in the house of her habitation and her before-said husband, situated in the parish of St Peter by Powlles Warff, aforesaid, handed over and delivered to lord William Jely, then warden of the college of the Blessed Mary of the Guildhall, £8 of sterling, viz £4 in gold in nobles or angels, 20s in two gold ryals and £3 in white money to the effect and intent, expressed and specified in this main article, to be kept by the same lord William, and he deposes from his sight and knowledge, because he was then and there personally present and saw this handing over and delivery of money so being made, as he says, with there being present then and there also with the same Joan and lord William and this deponent a certain William Oxenden, the witness examined below. Being further examined, this deponent says that it was agreed and said then and there between the same Joan and lord William that, whenever she asked to have back the same sum of money from the lord William, she promised that the said lord William would convert the same white money into gold, as he says.

William Oxenden of the parish of St Mary Magdalene, aforesaid, aged 27 years, of free condition, as he asserted, produced, admitted, sworn, etc, about and upon the aforesaid article, and being examined about the things contained in the same, says that on Thursday next preceding the feast of St Peter, which is called St Peter at Chains, last past, as he remembers, was present in the house of habitation of Richard Langston, aforesaid, in a certain parlour there, where and when Joan Langston, the current wife of the aforesaid Richard, being then infirm for some time, handed over to the said lord William Jely, late warden of the college of the Guildhall, London, £8 to be kept to the effect, just as William Hews, his fellow deponent, said and deposed, and he agrees with him in all and singular the other things. And he deposes from his sight and knowledge, there being then and there present with this deponent and the said lord William and Joan, the aforesaid William Hews, his fellow deponent, as he says.

The following material relates to the Cecily Burges c. Joan Cardiff testimony (1512-07-29 to 1513-07-08) spread across the following folios: 157v-158r, 179v-180r, 221r-222r.

LMA DL/C/206

[folio 157v]

Burges [contra] Cardiff

Responsiones p[er]so[na]les Joha[n]ne Cardiff facte cora[m] d[omi]no offi[cia]li xxix^{o}
Julij posic[i]o[n]ib[us] p[er] p[ar]tem Cecilie Burges mi[ni]stratis i[n] loco cons[istor']

Ad p[ri]ma[m] s[e]c[un]da[m] tercia[m] iiij$^{ta[m]}$ et v$^{ta[m]}$ posic[i]ones R[espo]ndet affir[mativ]e

Ad vj$^{ta[m]}$ R[espo]ndet et dicit q[uod] maritus suus defunctus condidit d[omi]no
testamenta in quor[um] p[ri]mo reliquit et legavit Cecilie Burges
p[ar]ticulas in scedula li[bel]lo in hac p[ar]te porrect' a[n]nexa contentas
sub hac condic[i]o[n]e si ip[s]a Cecilia rediisset ad p[ar]tes
p[ro]prias et ib[ide]m int[er] amicos et consang[ui]neos suos fuisset maritata
que sic no[n] fuit ut dicit / deinde in s[an]c[t]o testamento et ulti[m]o
eiusd[em] Joh[ann]is Yong mariti hui[us] iurate / ip[s]e reliquit dicte
Cecilie xx^{li} st[er]ling' sub hac condic[i]o[n]e si ip[s]a
fuisset sive esset maritata libero h[uiusm]o[d]i civit[atis] London' i[n]fra
p[re]cinctu[m] civit[atis] co[m]moranti / que sic no[n] fuit s[ed] cuida[m] Thome
Jonys tu[n]c famulo et s[er]vienti hui[us] iurate
qui tempore maritagij cu[m] ead[em] Cecilia p[er] ip[su]m facti non
erat liber nec h[ab]uit franchesiam sive libertate[m] civit[atis]
p[re]dict[e] s[ed] postea p[er] sex septi[m]as ut dicit / Fate[tur] tamen
q[uod] tempore maritagij h[uius]mo[d]i ide[m] Thomas moraba[tur] cu[m]
ista iurata tu[n]c d[omi]na et mag[ist]ra sua i[n]fra p[ar]rochia[m]
s[an]c[t]i Laurencij in veteri iudaismo civit[atis] London' Et dicit
q[uod] cit[ra] mortem dicti mariti sui / ip[s]a solvit eid[em] Cecilie
dicta[m] su[m]ma[m] xx^{ti} quando erat marita[tur] / iux[ta] ultim[um]
testa[men]tu[m] sive ulti[m]am volun[ta]te[m] eiusd[em] mariti sui / p[ri]ori test[ament]o
h[uius]mo[d]i p[er] posteri[us] revo[ca]to ut dicit

[folio 158r]

Ad vij$^{ma[m]}$ posic[i]o[n]e[m] R[espo]ndet et fate[tur] requisic[i]o[n]em fuisse sibi fact[am] circa
fest[um] Purificac[i]o[n]is b[ea]te Marie v[ir]g[in]is ult[imo] preterit[o]

Ad viij$^{ma[m]}$ po[sitio]nem dicit q[uod] recusavit solvere h[uius]mo[d]i petita i[n] scedula p[re]dicta
con[ten]ta pro eo q[uod] no[n] tenebat[ur] ip[s]a[m] solvere ut dicit occasione p[re]missor[um]

Ad ix$^{na[m]}$ R[espo]ndet affir[mativ]e

Ad x$^{ma[m]}$ dicit q[uod] credit credita / et negat negata . Fama[m]
negat libellata[m]

[folio 179v]

Repetitus cora[m] m[agistro] Horsey offi[cial]i i[n] p[re]senc[ia] mei T. G. Reg[ist]r[ar'] xxviij^{o}
Januar[ii]

M[agiste]r Joh[ann]es Reve no[ta]rius pub[li]c[us] de p[ar]roch[ia] s[an]c[t]i Olavi in vet[er]i iudaismo
ubi mora[m] fecit p[er] dimidiu[m] ann[um] et ult[ra] et ante illud temp[us] in p[ar]roch[ia] o[m]niu[m]
s[an]c[t]or[um] maior' civit[atis] London' p[er] x$^{ce[m]}$ a[n]nos xxxv a[n]nor[um] etat[is] libere
ut dicit condic[i]o[n]is / testis de et sup[er] li[bel]lo p[er] p[ar]tem Cecilie Burges
con[tra] Joha[n]na[m] Cardiff al[ia]s Yong p[ro]duct[us] admiss[us] iuratus et c[etera]
Et p[ri]mo de noticia p[er]sonar[um] exa[mina]t[us] dicit q[uod] novit Cecilia[m]
Burges p[er] a[n]nu[m] cu[m] di[midi]o et Joha[n]na[m] Cardiff al[ia]s Yong p[er] octo
vel nove[m] a[n]nos b[e]n[e] nov[i]t

Ad p[ri]mu[m] et ij$^{du[m]}$ ar[ticu]los dicti li[bel]li dicit q[uod] in se continent
veritatem de visu auditu et sciencia suis quia ip[s]e
concepit et sc[ri]psit testame[n]tu[m] h[uius]mo[d]i addendo ad ij$^{tu[m]}$ ar[ticu]lu[m] dicit testator
h[uius]mo[d]i no[m]i[n]avit et fecit dicta[m] Joha[n]na[m] tu[n]c sua[m] uxore[m] una cu[m]
alijs i[n] eod[em] testame[n]to no[m]i[n]at[is] sua[m] executrice[m]

Ad t[er]ciu[m] et iiij$^{tu[m]}$ ar[ticu]los dicit q[uod] nescit deponere
nisi ex alior[um] relacione

Ad v$^{tu[m]}$ dicit q[uod] c[er]titudinal[ite]r nescit deponere et
firmiter credit q[uod] i[n] se veritate[m] continet

Ad vj$^{tu[m]}$ ar[ticu]lu[m] dicti li[bel]li et ad scedula[m] a[n]nex[at]a[m] eide[m] dicit
iste iuratus q[uod] veritate[m] continent / Et ecia[m] dicit
q[uod] p[re]t[er] et ult[ra] contenta in ead[em] scedula ide[m] testator i[n] eod[em]
suo testame[n]to reliquit et legavit eid[em] Cecilie
sub hac forma vi[delicet] and if the same Cecily abide
still and be marid in the citie of London to A
Fre man of the same citie that is and shall be
willyng to thriffe then I beqweth to the same Cecilie

[folio 180r]

xx^{ti} li[br'] in money to be payed by myne executors
at hire mariage / ov[er] and besides the Forsaid bequestes by me
to hire beqwethid Et depon[i]t de visu auditu et scie[n]tia suis
i[n] hac p[ar]te ut dicit / ex eo q[uod] h[uius]mo[d]i testame[n]tu[m] ut p[re]fert[ur]

concepit et scribi fecit

Ad vij$^{u[m]}$ et viij$^{u[m]}$ ar[ticu]los nescit deponere ut dicit

Ad ix$^{nu[m]}$ ar[ticul]u[m] dicit q[uod] veritate[m] continet

Ad x$^{mu[m]}$ dicit q[uod] p[er] eu[m] p[re]deposita sunt v[er]a et q[uod] de et
sup[er] eisd[em] labora[n]t pu[bli]ca vox et fama

[folio 221r]

Repet[itus] cora[m] m[agistro] Horsey officiali in p[rese]n[t]ia mei Thome Gotson no[ta]rij et
Reg[ist]rarij viij^{o} Julij

Ex p[ar]te Cardiff [contra] Burges sup[er] excepc[i]o[n]ib[us]:
D[omin]us Joh[ann]es Gedge cap[ella]n[us] in eccl[es]ia p[ar]ochiali s[an]c[t]i Laurencij in veteri
iudaismo divina
celebrans ubi stetit et mora[m] fecit p[er] xij$^{ci[m]}$ a[n]nos circit[er] lx^{ta} annos etat[is] libere
condic[i]o[n]is testis de et sup[er] excepc[i]o[n]ib[us] p[er] p[ar]tem Joha[n]ne Yong al[ia]s Cardyff
con[tra]
Ceciliam Burges et Joh[ann]em Ryve testem p[er] eam productu[m] p[ro]posit' et mi[ni]strat'
p[ro]duct[us] admissus iuratus et c[etera] et p[ri]mo de et sup[er] noticia p[er]sonar[um] exami[n]at[us]
dicit q[uod] Joha[n]na[m] Yong al[ia]s Cardyff p[er] xij$^{ci[m]}$ a[n]nos et Ceciliam Burges p[er] tres
a[n]nos vel circiter bene novit M[agist]r[u]m Joh[ann]em Reve non novit ut dicit

Ad p[ri]mam excepc[i]onem h[uius]mo[d]i dicit q[uod] Non novit quid et qualit[er] m[agister]
Joha[n]nes Reve testis p[er] p[ar]tem p[re]fate Cecilie Burges al[ia]s p[ro]ductus dixit et
deposuit S[ed] quantu[m] ad istam p[ri]ma[m] excepc[i]onem dicit q[uod] Johannes
Yong quonda[m] maritus p[re]fate Joha[n]ne Yong ali[a]s Cardiff reliquit legatu[m]
condicionale Cecilie Burges hoc modo: vi[delicet] si p[re]fata Cecilia
esset maritata alicui libero ho[min]i vigenti civit[atis] London' h[ab]eret viginti
libras maritagio suo cu[m] tali ho[m]i[n]e et no[n] alit[er] neq[ue] ult[ra] / Et si dicta Cecilia
exiret urbem London' no[n] maritata et ad p[ro]p[ri]am patria[m] remearet
ubi fuit oriunda tunc h[ab]eret nisi c[er]tas res et p[ar]ticulas in scedula a[n]nexa libello
p[er] p[ar]tem memo[ra]te Cecilie p[ro]posito speci[fica]tas Ita q[uod] can' quo dicta Cecilia
iniret co[n]iugiu[m] et maritagiu[m] cu[m] libero ho[min]e civit[atis] London' tu[n]c tantu[m] h[ab]eret
ex legato dicti Joha[n]nis Yong defuncti dictas xx^{ti} libras et nichil a[m]pli[us]
Et hoc dicit se scire quia p[rese]ns fuit cu[m] dicto testatore et int[er]fuit quando ide[m]
testator sic ut p[re]fert[ur] et no[n] aliter legavit voluit et disposuit ad bieniu[m] elapsu[m] i[n] domo
h[ab]itac[i]o[n]is dict[i] Joh[ann]is Yong i[n] p[ar]rochia p[re]dicta situat[a] p[re]sentib[us]
tu[n]c ib[ide]m Robert[o] Hargod Joh[ann]e Gigges et Rogero Hall ut recolit cu[m]
alijs et alit[er] nescit deponere de content[is] in hac excepc[i]o[n]e ut dicit

Ad ij$^{da[m]}$ excepcionem dicit q[uod] nescit depon[er]e de content[is] in eade[m] salvo
eo quod dixit et deposuit ad p[ri]ma[m] excepc[i]one[m] ut p[re]fert[ur] Et dicit q[uod] si

idem Joh[ann]es Reve alit[er] sc[ri]pserit testa[men]tu[m] q[uod] iste iurat[us] sup[ra] deposuit falsu[m] sc[ri]psit

Ad iij$^{cia[m]}$ excepc[i]one[m] dicit q[uod] p[er] eum p[re]deposita sunt vera pu[bli]ca notoria manifesta et famosa et q[uod] de et sup[er] eissdem labora[n]t pu[bli]ca vox et fa[ma]

[folio 221v]

Repetitus cu[m] d[omi]no Joh[ann]e Gedge ut sup[ra]:
Joh[ann]es Gygges m[er]cerus de p[ar]roch[ie] p[re]dict[a] ubi mora[m] fecit p[er] xx^{ti} duos a[n]nos l^{ta} annor[um] etatis libere [con]dic[i]onis testis et c[etera] de noticia p[er]sonar[um] exa[mina]t[us] dicit q[uod] Cecilia[m] Burges p[er] duos vel tres Joha[n]na[m] Cardiff al[ia]s Yong p[er] vj vel septem a[n]nos bene novit et Joha[n]nem Reve p[er] duos aut tres a[n]nos ecia[m] novit

Ad p[ri]ma[m] excepc[i]onem dicit et deponit iste iuratus i[n] vim sui p[re]stiti iuramenti q[uod] p[re]sens fuit iste iuratus in hospicio sive domo h[ab]itac[i]o[n]is Joha[n]nis Yong ia[m] defuncti Bosonis In vulga[ri]t[er] nu[n]cupat' infra p[ar]rochia[m] s[an]c[t]i Laurencij i[n] veteri Judaismo situat' circit[er] bienniu[m] ia[m] elapsu[m] ubi et qua[n]do dict[us] Joha[n]nes Yong i[n] testam[en]to suo reliquit et legavit v[er]bo saltem recitavit eidem Cecilie Burges condicionalit[er] p[ro]ut in hac excepc[i]o[n]e continent[ur]
Et no[n] alit[er] ita q[uod] mens illi[us] testatoris fuit ut dicit p[ro]ut ecia[m] dixit et exp[re]ssis q[uod] si dicta Cecilia mat[ri]mo[niu]m contraheret et maritagiu[m] subiret cu[m] libero ho[m]i[n]e civit[atis] London' q[uod] tu[n]c tantu[m] h[ab]eret xx^{li} ex legato suo et no[n] p[ar]tic[u]las speci[fica]tas in scedula li[bel]lo memorato a[n]nexa / et si ad p[ro]p[ri]as p[ar]tes remearet ad [con]sanguineos et notos suos illicq[ue] mat[ri]mot' cuiq[ua]m cop[u]laret[ur] tu[n]c tantu[m] esset contenta cu[m] h[uius]mo[d]i p[ar]ticulis Et de deponit de auditu et scie[n]cia suis quia p[re]sens fuit cu[m] dicto Joh[ann]e testatore et audivit quando sic dixit reliquit et legavit p[re]sentib[us] secum ib[ide]m d[omi]no Joh[ann]e Gedge cap[ella]no Rogero Hall et Roberto Haregode testib[us] i[n] hac p[ar]te secu[m] product' Et dicit q[uod] no[n] fuit mens n[e]c intencio p[re]fati defuncti p[ro]ut ex ei[us] v[er]bis p[er]cip[er]e potuit q[uod] dicta Cecilia i[n] uno et eodem can' ut[rum]q[ue] h[ab]eret vi[delice]t et xx^{li} et res sive p[ar]ticulas memo[ra]tas

Ad ij$^{da[m]}$ excepc[i]onem dicit q[uod] nescit alit[er] deponere nisi p[ro]ut ad p[ri]ma[m] excepcione[m] iam dixit et deposuit

Ad terciam excepcionem dicit q[uo]d p[er] eu[m] p[re]deposita sunt vera et q[uod] de et sup[er] eisdem labora[n]t pu[bli]ca vox et fama

[folio 222r]

Repet[itus] cu[m] d[omi]no Joh[ann]e Gedge:
Rogerus Hall de p[ar]rochia s[an]c[t]i Laurencij p[re]dict' grocerus ubi mora[m] fecit xxvj a[n]nis lx^{ta} annor[um] etatis et ultra libere ut dicit [con]dicc[i]onis test' et c[etera] de et

sup[er] noticia p[ar]tiu[m] exa[mina]t[us] dicit q[uod] Cecilia[m] Burges p[er] bienniu[m] et
Joha[n]na[m]
Yong al[ia]s Cardyff p[er] vij$^{te[m]}$ vel octo a[n]nos bene novit Joh[ann]em Reve ...
no[n] novit ut dicit

Ad p[ri]ma[m] excepc[i]onem de contentis q[ue] in eadem exa[mina]t[us] dicit q[uod]
Joh[ann]es Yong voluit et legavit Joha[n]ne Burges xx^{li} sterling' can'
quo esset matrimo[ni]c[e] cop[u]lata alicui libero ho[min]i civit[atis] London' Et si ac
can' quo sic ac tali ho[min]i non fu[er]it maritata s[ed] rediret ad p[ar]tes p[ro]p[ri]as
ad notos et [con]sa[n]guineos et int[er] eos foret maritata / tu[n]c dicta Cecilia
de bonis p[re]fati Joha[n]nis Yong h[ab]eret c[er]tas res sive p[ar]tic[u]las vi[delicet] lectu[m]
et toga[m] et al[ia]s res / de quib[us] o[mn]ib[us] et sing[u]lis nu[n]c no[n] recolit / ut
dicit Ita q[uod] Cecilia et xl^{li} et res sive p[ar]tic[u]las h[uius]mo[d]i sic no[n] h[ab]eret
can' q[uo] fu[er]it London' ut p[re]fert[ur] maritata. S[ed] vel unu[m] vel alteru[m]
secundu[m] div[er]sitatem casuu[m] p[re]sc[ri]ptor[um] tantu[m] h[ab]eret et sic esset [con]tenta
ut dicit Et hoc dicit se scire quia p[re]sens fuit iste iurat[us] cu[m] dicto
Joha[n]ne Yong i[n] hospicio sive domo habitac[ionis] ip[s]ius defuncti
vi[delicet] in Bosonis In ad bienniu[m] ia[m] elapsu[m] qua[n]do audivit eu[m]
sic dicentem recitantem et disponentem p[re]sentib[us] tu[n]c ib[ide]m p[re]fat'
d[omi]no Joha[n]ne Gedge Joh[ann]e Gygges et Roberto Haregod cu[m] alijs. Et
alit[er] nescit deponere ut dicit

Ad ij$^{da[m]}$ excepc[i]onem nescit deponere / nisi ut sup[ra] deposuit ut dicit

Ad iij$^{cia[m]}$ excepcione[m] dicit q[uod] p[er] eu[m] p[re]deposita sunt vera et q[uod]
pu[bli]ca vox et fama sup[er] eisdem labora[n]t

Repet[itus] cu[m] d[omi]no Joh[ann]e Gedge:
Robertus Hargod de eadem p[ar]rochia aurifaber ubi mora[m] fecit p[er] xl^{ta} a[n]nos
a p[ri]mo ad ultim[a] lx^{ta} a[n]nor[um] etat[is] libere [con]dic[i]o[n]is testis et c[etera] ut sup[ra]
p[ro]duct[us]
admiss[us] iurat[us] et c[etera] Dicit Cecilia[m] Burges p[er] tres et Joha[n]na[m] Yong al[ia]s Cardiff
p[er] x$^{ce[m]}$ a[n]nos bene novit Joh[ann]em Reve notariu[m] no[n] novit ut dicit

Ad p[ri]ma[m] secunda[m] et tercia[m] excepciones / deq[ue] et sup[er] con[ten]t' in eisdem
exa[mina]t[us] dicit et concordat i[n] o[mn]ib[us] cu[m] Rogero Hall p[re]contesto suo superius
exa[mina]to de auditu et sciencia suis p[re]sentib[us] p[re]contestib[us] suis superius
exa[mina]t'

[folio 157v]

Burges against Cardiff.

The personal answers of Joan Cardiff, made before the lord official on the 29th day of July, to the points administered by the party of Cecily Burges in the consistory place.

To the first, second, third, fourth and fifth points she answers affirmatively.

To the sixth she answers and says that her husband, deceased, made to the lord testaments, in the first of which he left and bequeathed to Cecily Burges the particulars, contained in the schedule, annexed to the libel, made in this matter, under this condition, if the same Cecily had retuned to her own parts and had been married there among her friends and kinsfolk, this was not so, as she says. Then in the holy testament and last [will] of the same John Yong, husband of this deponent, the same man left to the said Cecily £20 of sterling on this condition, if the same woman had been or was married to a freeman of this city of London, living within the precinct of the city, this was not so, but [she was married] to a certain Thomas Jonys, then assistant and servant of this deponent. Who, at the time of the marriage, made by him with the same Cecily, had not been free, nor had the franchise or liberty of the aforesaid city, but afterwards through six weeks, as she says. Nevertheless, she confesses that at the time of this marriage, the same Thomas was living with this deponent, then his lady and mistress, within the parish of St Lawrence in the Old Jewry of the city of London. And she says that since the death of her said husband, she has paid to the same Cecily the said sum of £20, when she was married, according to the last testament or last will of her same husband, this earlier testatament having been afterwards revoked, as she says.

[folio 158r]

To the seventh point she answers and confesses that the request had been made to her around the feast of the Purification of the Blessed Virgin Mary last past.

To the eighth point she says that she refused to pay these things sought, contained in the aforesaid schedule, on account that she was not held to pay them, as she says, by occasion of the premises.

To the ninth she answers affirmatively.

To the tenth she says that she believes the things believed and denies the things denied. She denies the fame that is libelled.

[folio 179v]

Repeated before master Horsey, official, in the presence of me, T. G, registrar, on the 28th of January.

Master John Reve, notary public, of the parish of St Olave in the Old Jewry, where he has lived throughout half a year and more, and before that time in the parish of All Hallows the Great in London city throughout ten years, aged 35 years, of free condition, as he says, a witness, produced, admitted, sworn, etc, about and upon a libel by the party of Cecily Burges against Joan Cardiff *alias* Yong. And being firstly examined about his knowledge of the persons, he says that he has known Cecily Burges throughout a year and a half and he has known well Joan Cardiff *alias* Yong for eight or nine years.

To the first and second articles of the said libel, he says that they contain in themselves the truth from his sight, hearing and knowledge, because he conceived and wrote this testament, adding to the second article, he says that this testator named and made the said Joan, then his wife, together with others, named in the same testament, his executrix.

To the third and fourth articles he says that he does not know anything to depose, except from the account of others.

To the fifth he says that he does know for certain anything to depose and firmly believes that it contains the truth in itself.

To the sixth article of the said libel and to the schedule annexed to the same, this deponent says that they contain the truth. And he also says that in addition to and beyond the contents in the same schedule, the same testator in his same testament left and bequeathed to the same Cecily in this form, *viz*:

[*Section in English*]

And he deposes from his sight, hearing and knowledge in this matter, as he says, on account that he conceived this will, as is aforesaid, and caused it to be written.

To the seventh and eighth articles he does not know anything to depose, as he says.

To the ninth article he says that it contains the truth.

To the tenth he says that the things deposed by him before are true, and that public voice and fame labour about and upon the same.

[folio 221r]

Repeated before master Horsey, official, in the presence of me, Thomas Gotson, notrary and registrar, on the 8th of July.

On the part of Cardiff against Burges upon the exceptions.
Lord John Gedge, chaplain in the parish church of St Lawrence in the Old Jewry, celebrating divine services, where he has stood and lived for 12 years, aged about 60, of free condition, a witness, produced, admitted, sworn, etc, about and upon the exceptions, proposed and administered by the party of Joan Yong *alias* Cardyff against Cecily Burges and John Ryve, a witness produced by her, and firstly being examined about and upon the knowledge of the persons, he says that he has known well Joan Yong *alias* Cardyff 12 years and Cecily Burgess three years or thereabouts, and does not know Master John Reve well, as he says.

To this first exception he says that he does not know what and how master John Reve, a witness, otherwise produced by the party of the aforesaid Cecily Burges, said and deposed, but as to this first exception, he says that John Yong, late husband of the aforesaid Joan Yong *alias* Cardiff, left a conditional bequest to Cecily Burges in this manner, *viz* that, if the aforesaid Cecily had been married to any free man living in the city of London, she might have £20 in her marriage with such a man, and not otherwise and no more. And if the said Cecily went out of the city of London not married and returned to her own country, where she was born, then she should have only certain things and particulars, specified in the schedule annexed to the libel proposed by the party of the aforesaid Cecily. In such a way that the said Cecily entered marriage with a free man of the city of London, then she might have only from the bequest of the said John Yong, deceased, the said £20 and nothing more. And this he says that he knows, because he was present with the said testator and was there when the same testator, so as is aforesaid, and not otherwise, bequeathed, willed and disposed two years ago in the house of habitation of the said John Yong, situated in the aforesaid parish, in the presence then and there of Robert Hargod, John Gigges and Roger Hall, as he remembers, with others, and otherwise he does not know anything to depose about the contents in this exception, as he says.

To the second exception he says that he does not know anything to depose about the contents in the same, saving what he said and deposed to the first exception, as is aforesaid. And he says that if the same John Reve otherwise wrote the testament, which this deponent deposed above, he wrote a false one.

To the third exception he says that the things, deposed before by him, are true, public, notorious, manifest and famous, and that public voice and fame labour about and upon the same.

[folio 221r]

Repeated with lord John Gedge, as above.
John Gygges, mercer, of the aforesaid parish, where he has lived throughout 22 years, aged 50 years, of free condition, a witness, etc, examined about the knowledge of the persons, says that he has known well Cecily Burges for two or three years, Joan Cardiff *alias* Yong for six or seven years, and he has also known John Reve for two or three years.

To the first exception this deponent says and deposes in force of his oath that he has taken that he, this

deponent, was sworn in the lodgings or house of habitation of John Yong, now deceased, commonly called Bosonis In, situated within the parish of St Lawrence in the Old Jewry, around two years now past, where and when the said John Yong left and bequeathed in his testament, and by word at least recited, to the same Cecily Burges conditionally, just as are contained in this exception. And not otherwise in such a way that the mind of that testator was, as he says, just as he has also said and expressed, that, if the said Cecily contracted matrimony and underwent marriage with a free man of the city of London, that then she would only have £20 from her bequest and not the particulars, specified in the schedule, annexed to the aforesaid libel. And if she returned to her own parts to her kinsfolk and acquaintances, and married anyone there, then she should only be content with these particulars. And he deposes from his hearing and knowledge, because he was present with the said John the testator and he heard, when he so said, left and bequeathed them, in the presence with him there of lord John Gedge, chaplain, Roger Hall and Robert Haregode, witnesses, produced with him in this matter. And he says that it was not the mind or intention of the aforesaid deceased, just as he could perceive from his words, that the said Cecily in one and the same … whether she should have £20 and the things or particulars mentioned.

To the second exception he says that he does not know anything to depose except as he has already said and deposed to the first exception.

To the third exception he says that the things, deposed by him, are true, and that public voice and fame labour about and upon the same.

[folio 222r]

Repeated with lord John Gedge.
Roger Hall of the parish of St Lawrence, aforesaid, grocer, where he has lived for 26 years, aged 60 years and more, of free condition, as he says, a witness, etc, examined about and upon his knowledge of the parties, says that he has known well Cecily Burges for two years and Joan Yong *alias* Cardyff for seven or eight years, and he has not known John Reve, as he says.

To the first exception, being examined about the contents, which are in the same, he says that John Yong willed and bequeathed to Joan Burgess £20 of sterling, as if she was joined in matrimony to any freeman of the city of London. And if and whether she was not so married to such a man but returned to her own parts to her acquaintances and kinsfolk and was married among them, then the said Cecily should have from the goods of the aforesaid John Yong certain things or particulars, *viz* a bed and gown and other items, about all and singular which he does not remember, as he says. In such a way that Cecily should not so have the £20 and these things or particulars, for the reason that she was married at London, as is aforesaid. But she should have only one or the other according to the diversity of the aforesaid cases and she should so be contented, as he says. And this he says that he knows, because this deponent was present with the said John Yong in the lodgings or house of habitation of the same deceased, *viz* in Bosonis In, for two years now past, when he heard him so saying, reciting and disposing in the presence then and there of the aforesaid lord John Gedge, John Gygges and Robert Haregod with others. And otherwise he does not know anything to depose, as he says.

To the second exception he does not anything to depose, except as he has deposed, as above, as he says.

To the third exception he says that the things deposed by him above are true and that public voice and

fame labour upon the same.

Repeated with lord John Gedge.
Robert Hargod of the same parish, goldsmith, where he has lived for 40 years, from first to last, aged 60 years, of free condition, a witness, etc, produced, admitted, sworn, etc, as above, says that he has known well Cecily Burges for three years and Joan Yong *alias* Cardiff for 10 years, and does not know John Reve, notary, as he says.

To the first, second and third exceptions and examined about the contents in the same, he says and concords in all things with Roger Hall, his fellow deponent, who was examined above, about his hearing and knowledge, in the presence of his fellow deponents, examined, as above.

APPENDIX FIVE[754]
NOTES REGARDING THE WILLS OF P.C.C. CLERGYMEN

Wills from Prerogative Court of Canterbury

15th century wills of canons:[755]

- PROB 11/1/220 - 1451, Will of Sir Thomas MaxFeld
- PROB 11/10/95 - 1494, Will of William Chapman
- PROB 11/11/172 - 1497, Will of Richard Lichefield
- PROB 11/11/356 - 1498, Will of William Stenyns
- PROB 11/11/564 - 1499, Will of John Austell
- PROB 11/11/568 - 1499, Will of Walter Oudeby

16th century wills of canons:[756]

This is a significant increase in the survival of canons records; six wills in the forty-nine years from 1450-99, and twenty-nine in the thirty-nine years from 1500-40. It is unclear if this is an untick in the writing of wills or the survival of more documents. Several more wills survive in PROB 11/27, especially for the year 1537 onward (specifically in the type of clerical role known as parsons: A parson is an ordained Christian person responsible for a small area, typically a parish.) Also mention of priests from 1537 onward. See for example:

- Will of William Cobbe, Master, Parson of Tichmarsh, Northamptonshire (PROB 11/27/15)

[754] All Known Relevant P.C.C. Wills. The following list provides all currently known cases within the Prerogative Court of Canterbury records held by The National Archives located by the author of this thesis. The following exclusively denotes the wills of canons, as noted elsewhere other groupings of clerical wills could not reliably be discerned.
[755] There are six wills for the period of 1450-1499.
[756] There are twenty-nine wills for the period of 1500-1540.

- Will of Sir Thomas Browne, Priest of Walsoken, Norfolk (PROB 11/27/27)
- Will of William Stathn or Statham, Clerk and Vicar of Bromsgrove, Worcestershire (PROB 11/27/52)
- Will of Thomas Sloper or Slooper, Clerk, Vicar of Bishops Cannings, Wiltshire (PROB 11/27/55)
- Will of John Cheswryght or Chesewright, Clerk, Vicar of Wisbech, Cambridgeshire (PROB 11/27/58)
- Will of John Kyte, Archbishop of Thebes and Pomendatary Perpetual of the Cathedral Church of Karhell (PROB 11/27/77)
- Will of Thomas Bodley, Vicar of South Weald, Essex (PROB 11/27/81)
- Will of Richard Wolliman, Priest (PROB 11/27/113)
- Will of John Payne, Doctor, Parson of Cottesmore, Rutland (PROB 11/27/5)
- Will of John Algar, Priest and Prebendary in the College at Kings Chapel within the Palace at Westminster (PROB 11/27/9)
- Will of John Whetholme, Parson of Leverington, Cambridgeshire (PROB 11/27/106)
- Will of Mighell Puckering, Parson of Cluer, Berkshire (PROB 11/27/126)
- Will of Lawrance Sybanck, Vicar of Soning, Berkshire (PROB 11/27/128)
- Will of Sir John Wilkynson, Priest of Leverington, Cambridgeshire (PROB 11/27/134)
- Will of Sir Edward Russhebury, Vicar of Mamble, Worcestershire (PROB 11/27/145)
- Will of John Blackden, Priest (PROB 11/27/159)[757]
- Will of Sir Robert Clemens, Priest of Sevenoaks, Kent (PROB 11/27/181)

[757] All previous listed cases were just from the year 1537, what remains is from 1538.

- Will of Edward Wetton, Vicar of Lechlade, Gloucestershire (PROB 11/27/186)
- Will of William Leson, Parson of Newton Regis, Warwickshire (PROB 11/27/235)
- Will of John Underhyll, Priest of Saint Stephen Westminter, Middlesex (PROB 11/27/262)
- Will of Robert Clyff, Priest (PROB 11/27/272)
- Will of William Skelton, Clerk and late Vicar of Hinton, Cambridgeshire (PROB 11/27/270)
- Will of John Waren, Clerk and Vicar of Herne, Kent (PROB 11/27/286)
- Will of William Clerk, Priest (PROB 11/27/291)
- Will of John Nase, Priest (PROB 11/27/298)
- Will of Henry White, Priest (PROB 11/27/317)
- Will of William Carre, Priest of Saint Paul, City of London (PROB 11/27/318)
- Will of Richard Hoore or Hore, Parson of North Tuddenham, Norfolk (PROB 11/27/350)
- Will of Sir Richard Lytleforde, Vicar of Teynham, Kent (PROB 11/27/393)
- Will of Sampson Lorde, Priest (PROB 11/27/404)
- Will of Sir William Geffrey, Parson of Withyham, Sussex (PROB 11/27/418)
- Will of Edward Fox, Bishop of Hereford (PROB 11/27/436) - 1539
- Will of George Botts or Boots, Clerk and Vicar of Dagenham, Essex (PROB 11/27/439)
- Will of John Wayte, Master of Arts, Parson of the Parish Church of Newbury (PROB 11/27/475)
- Will of John Lytelskell or Litelstell, Priest (PROB 11/27/497)
- Will of Thomas Slade, Priest (PROB 11/27/506)

- Will of Thomas Lee, Priest (PROB 11/27/523)
- Will of Nicholas Metcalfe or Metcalf, Clerk, Archdeacon of Rochester of Wooham Ferrers, Essex (PROB 11/27/548) - 1539
- Will of Thomas Leson, Clerk, Parson of Ash Castle, Northamptonshire (PROB 11/27/559)[758]

15th century wills of judge/justices:[759]

- PROB 11/10/6 - 1493, Will of Sir Roger Townesende

16th century wills of judge/justices:[760]

- Will of Thome Wode, Simple Justice of the Common Pleas, PROB 11/13/345 - 1502
- Will of William Greville, Kings Justice of the Common Pleas of Cheltenham, Gloucestershire, PROB 11/17/358 - 1513
- Will of Sir Robert Rede or Reed, Chief Justice of the Pleas, PROB 11/19/190 - 1519
- Will of Sir John Erneley, late Chief Justice of Alfreston, Sussex, PROB 11/20/23 - 1520
- Will of John Erneley, Chief Justice of Sidlesham, Sussex, PROB 11/20/32 - 1520
- Will of Sir Richard Elyot, King's Justice of the Common Bench of Salisbury, Wiltshire, PROB 11/20/334 - 1522

[758] This is the final will written by an identifiable churchman in 1539, the next surviving will written by a church official is not found until 1558 in the will of Robert Perfey Bishop of Hereford (PROB 11/40/27). It is, perhaps, worth further analysis why there was a sudden multi-year gap relating to wills of church officials in this period, as well as why they suddenly appeared in significant numbers only in 1537.

[759] There is only one identifiable surviving will under the term of judge, no will under the title of justice from 1450-1499 is discernible in the records held by TNA.

[760] There are twelve wills from 1500-1540. From 1500-1540, there is no individual will under the term judge, rather twelve wills exist under the term justice. This is different than the fifteenth century wills which appear under the term judge (albeit in only one instance). Again, the inclusion of this material is to highlight future areas of research, as the variation between years can often be striking, warranting further questioning why the discrepancies can be so vast.

- Will of Sir John More, Justice of the King's Bench, PROB 11/23/381 - 1530
- Will of Sir Robert Brudenell or Brudenel, Chief Justice of Dene, Northamptonshire, PROB 11/24/19 - 1531 [i.e. 1532]
- Will of Sir Robert Norwyche, Chief Justice of the Common Pleas, PROB 11/25/317 - 1535
- Will of Sir Thomas Englefeld, King's Justice of Englefield, Berkshire, PROB 11/27/152 - 1537
- Will of Sir John Porte or Port, one of the Kings Justice of His Bench of Pleas of Etwall, Derbyshire, PROB 11/28/58 - 1540
- Will of William Conyngesby, one of the King Justice at the Pleas, PROB 11/28/238 - 1540

15th century petition to the king and council (relating to wills):

- SC 8/86/4253[761]

This is a special case of an appeal to the king (Hen. VI) and parliament by petitioner Henry Radclyff, dated 1449-1450. The nature of request focused on Henry Radclyff, who was appointed as the lieutenant of his late brother, John Radclyff, as Seneschal of Guyenne and Constable of Bordeaux. Henry Radclyff states that his pay, for himself and his men, is in arrears, and that Robert Lethum, the executor of John's testament, is withholding the money. Henry requests a writ of proclamation to the Sheriff of Norfolk, to make proclamation that Robert is to account with the Barons of the Exchequer

[761] The reference is SC 8/86/4253; the former reference for this plea was originally titled Parliamentary Petition 7046. It is currently held by The National Archives. The endorsement on the face states that the mainprise took place on 2 June, 28 Henry VI (1450). This petition would therefore have been presented to the parliament initially assembled on 6 November 1449 and adjourned several times to June 1450. This is a special case of an appeal to the king (Hen. VI) and parliament by petitioner Henry Radclyff, dated 1449-1450.

for these sums within fifteen days of the proclamation, and to pay Henry and his men. This case illustrates a claim against an executor from the creditors of the defunct, which is quite routine in executry administrations, albeit the debt here is owed outside of England. This case is an example of the types of testamentary law that was heard within England but involved foreign property. While such claims against an executor from the creditors of the defunct is commonplace, it is worth noting that the property was held abroad in Calais. This is the only instance found throughout this period of this thesis, that pertains to foreign property, most of the landed Englishmen had lost their foreign holdings during the hundred years war. As an area for future research, this case has been provided, to allow for study of this unquie case, which is not feasible within the confines of this thesis.