

Vermont Probate Records

By Scott Andrew Bartley

On March 24, 1778, the Vermont General Assembly passed an act specifying the boundaries of probate districts, and set the fees to be three times that established by Connecticut law. These two actions established the probate court in the state of Vermont. ^[1] The probate courts were established as the counties were being created. The west side of the Green Mountains was named Bennington and the east side named Unity (changed to Cumberland four days later) on March 17, 1778. Each county was to have four probate districts to be drawn up by committee. ^[2] The rapid creation of new, geographically smaller counties led to new legislation that called for the establishment of no more than two probate courts per county. The southernmost counties (Addison, Bennington, Orange, Rutland, Windham, and Windsor) ended up with two districts of probate. All other counties had one. Addison reverted back to one probate district in 1962 and Orange did the same in 1994.

The probate court is the only court that does “not proceed according to common law,” but under the jurisdiction of statutes. An appeal of equity can go to the county court; however, a point of law goes directly to the Supreme Court. The probate court has “jurisdiction of the probate of wills, the settlement of estates, the appointment of guardians, and of the powers, duties, and rights of guardians and wards.” This includes all adoption cases and any land transfer by descent. ^[3]

Estate records are broken down into two parts: testate (those with wills) and intestate (those without wills). Few people leave wills. It has been estimated that only twenty-five percent of the population in the United States currently benefits from testacy laws. The testate process starts when an interested party (usually the executor/executrix) files a petition for “letters testamentary,” proving to the court that the testator is deceased. This is followed by the presentation of the valid will. In some cases there are codicils to a will, which add to the will without invalidating it, as rewriting a will would do. Witnesses need to verify with the court that the signatures on the will are indeed theirs and that the testator signed the will without coercion. An inventory of the estate is taken and accounting of debts against the estate noted. The decree of distribution, which identifies the recipients of items from the estate, is the final document created. There will be receipts from the people receiving parts of the estate.

In an ideal situation, all of the above documents will survive. Most are considered valuable enough to be recorded in ledger books. These are the records most likely to be microfilmed and used in genealogy research. The all-original “file” papers submitted to the court should be available as well. Things to consider regarding wills:

- You have to be an adult to write a will.
- In the state of Vermont, you must have three witnesses (most of the country only requires two).
- A divorce or remarriage of the testator revokes any will written prior to either event.
- Present law dictates that wills must mention natural and adopted children, grandchildren of deceased children, and the surviving spouse. That was not true in the recent past. For instance, wills before 1950 would not need to follow this rule.

Intestate cases generally allow a surviving spouse to inherit a share for his or her lifetime only. His share is called a curtesy and hers a dower. The share is usually one-third of the estate unless there are no children and then it is one-half of the estate. The principles of intestate distribution date back to the Statute of Distribution of 1670, which states that descendants take first in intestacy estates (children, grandchildren, and/or great grandchildren). If no descendants survive, then the court reaches out collaterally to siblings, nieces, and nephews. Also in the same affinity, but usually considered afterwards, are ancestors (i.e. parents, grandparents, etc.). The closest affinity bars others from taking any share of the estate. If a child survives, then that child’s descendants do not take; if grandchildren survive, then siblings do not take; and so on. If a descendant dies before the decedent, the predeceased person’s heirs take.

Dividing up the interest in real estate is done by representation, either *per stirpes* or *per capita*. Vermont is a common

law state that allows distribution by *per stirpes*, literally “by the root.” It means that the share an heir receives is derived from the top, or root, and distilled downward. Each “branch” of a family receives the same percentage to share among however many people are alive in that branch. The procedures closely follow those of testacy cases and generate many of the same documents. The only difference in older records is intestacy requires the court to determine who all the heirs are, not just the ones that might be named in a will.

It can be beneficial to be familiar with the legal terminology associated with estate cases. The definitions below are interpretations from Henry Campbell Black, *Black’s Law Dictionary* (St. Paul, Minn., 5th ed., 1979) and William M. McGovern Jr. and Sheldon F. Kurtz, *Wills, Trusts and Estates including taxation and future interests* (St. Paul, Minn., 2nd ed., Hornbook Series, 2001).

Abatement The reduction of a devise in a will so that claims made against the estate can be paid.

Abutments The land, highway, buildings, etc., that bound a piece of property.

Administration of estates The management of an intestate estate or of a testate estate where there is no executor. This work is under the supervision of a court and includes collection of assets, payment of debts and/or claims against the estate, payment of taxes, and distribution of the remainder among the heirs of the estate. There are many kinds of administrations. The most common are:

cum testamento annexo (or *c.t.a.*) Literally, “with will annexed,” this is an estate that is managed by a court appointed administrator if the executor(s) named are declared incompetent, are deceased, or refuse to act.

de bonis non (or *d.b.n.*) An administration granted to a part of an estate not previously administered.

de bonis non cum testamento (or *d.b.n.c.t.*) An administration of an estate where the executor dies, leaving part of the estate unadministered.

Administrator A person appointed by the court to administer the real and/or personal estate of the decedent. If the person is named in a will, then the administrator is called an executor. The feminine forms of these two terms are *administratrix* and *executrix*.

Administratrix See *Administrator*

Affinity The relationship, by degrees, between a person and their spouse’s blood relatives.

Agnation Relationship by the father’s side, normally through a male lineage

Ancillary A secondary intestate or testate case taken out in a jurisdiction outside (i.e. another state or country) of where the decedent lived, and where the estate has assets or debts that need to be settled.

Beneficiary A person who benefits from the act of another by various legal instruments such as a will or trust.

Bequest, bequeath A gift of person property in a will (now normally called a devise).

Chattel Personal and movable property not connected with any real estate.

Child One’s progeny or offspring

Illegitimate child A child born out of lawful wedlock.

Legitimate child A child born in lawful wedlock.

Natural child A child by birth as opposed to adoption or an illegitimate child who has been acknowledged by the father.

Posthumous child A child born after the death of the child’s natural father.

Quasi-posthumous child A civil law term for a child born during the life of his grandfather or other male ascendant that was not his heir at the time he made his will, but by the subsequent death of the child's father is now an heir.

Codicil(lus) An instrument that modifies a will. Codicils must follow the requirements of a will.

Common law The body of statutory and case law of England and the colonies before the American Revolution as opposed to laws created by legislative enactment. All states used a common law system except for Louisiana, which used Napoleonic law, a derivative of Roman law.

Court of Probate The court having jurisdiction over the probating of wills, granting of administrations, and supervising of the management and distribution of estates in most states. Some states include the jurisdiction of guardianship over minor and adults. New York calls these Surrogate Courts. Maryland and Pennsylvania call them Orphans' Courts.

Decedent A deceased person, usually a recent event.

Deed In the United States, it usually means a written instrument that transfers land.

Dower It is the one-third interest of a widow in her husband's estate. A husband's interest in his wife's estate is called a curtesy. This is a life interest, which is only having the use of the interest during the person's life. If there is no surviving issue of the couple, the interest may go to one-half in most states. The dower principle is based in common law and now not used.

Dwelling house The domicile of a person as opposed to other houses that may be on a single piece of land.

Easement The right of one landowner to use the land of another for a specific reason, normally for access to the land from a highway or water.

Estate The property of a decedent.

Et al The abbreviated Latin term *et alii* meaning "and others." It is commonly seen in reference to buyers and sellers in land deeds. The Anglicized plural form is *et als*.

Executor A person or persons designated in a decedent's will to execute his or her wishes as written. The feminine form is *Executrix*. See Administrator.

Executrix See *Executor*

Goods Movable personal property, usually referring to manufactured items.

Goods and chattels This phrase as used in a will refers to all things except real estate.

Guardian A person appointed to take care of another person who is a minor or for several reasons unable to administer their own affairs. A guardian also manages any property, rights, and money of the person in their care. The court appoints a guardian for minors up to fourteen years of age. Above that, the minor can select his or her own. The age of majority (the age when one is no longer considered a minor) was generally eighteen for females and twenty-one for males. This applies to guardianships during and prior to the nineteenth century. A testamentary guardian is one appointed by a decedent in their will for their child or children.

Guardian *ad litem* A person appointed by the court for the purpose of prosecuting or defending the interests of a minor or other incapable person.

Heir at law A common law right to the entire estate of an ancestor if he/she died intestate.

Heirs of the body A child born of the decedent or one of the child's direct descendants. This specifically excludes a spouse, adopted children, and collateral relations of the decedent.

Issue A term to include all offspring and lineal descendants of a common person. When used in a will, it was equivalent to "heirs of the body." More specifically, the intent was to exclude illegitimate children from a father's

estate. Since the mid-twentieth century, the term has included adopted children, though its usage has declined.

Late This refers to a decedent, recently living but now dead. When referenced to a residence (i.e., “late of...”), the term means “formerly.”

Legatee A person receiving a legacy as stated in a will. A *residuary legatee* is one who receives all that remains in an estate, real or personal, by will after all debts and other legacies are paid.

Letters A probate court’s formal appointment of an administrator (*of administration*), executor (*testamentary*), or guardian (*of guardianship*).

Minor A child that has not reached the “age of majority,” of twenty-one years old for males and eighteen years old for females (before the twentieth century).

Natural Heirs This term is equivalent to “heirs of the body” or by consanguinity (common ancestor), thereby excluding heirs by adoption or collateral relationship.

Next-of-Kin This expression means those persons entitled to take an estate by statutory law, or more commonly, the nearest blood relations as determined by consanguinity. Historically this term described persons who took personal property and “heirs” who inherited the real property.

Per capita This Latin term literally means “by the heads” or polls. This rule of distribution of intestacy is based at common law whereby the total number of heirs is determined and share equally, regardless of their relationship to the decedent.

Per Stirpes A Latin term literally meaning “by roots.” This rule of distribution of intestacy is based at common law whereby each branch of descent takes an equal share. Individuals in the same level and branch share equally, but not necessarily the same as in another branch or in a different level within the same branch.

Posthumous child A child born after the death of his or her father.

Probate The court procedure to prove a will is valid or invalid, though now generally including administrations and guardianships, too. This validation is when the witnesses to the signing of the will appear in court swearing that the court possesses the will that they signed.

Progeny The offspring of a father, mother, or both. Generally it is considered to be all the children of a couple collectively, though *Black’s Law Dictionary* does not define this term.

Relict The surviving person of a married couple.

Tenant A person who possesses lands.

Testator A person who legally executes a will. The feminine form is *testatrix*.

Testatrix See *Testator*

Uxor A Latin term usually written as *et uxor* and meaning “and his wife.” The abbreviated form is *et ux*.

Guardianship cases can be started by the estate process, whether testate or intestate. A guardian is needed to handle the estate — real or personal — that a minor child inherits. Historically, a living mother still needed a guardian for her children, which the court would appoint on behalf of the minor. This person is normally a closely related male relative. Children can request a specific person once they reach the age of fourteen. Historically, guardianships ended for females at age eighteen and boys at age twenty-one. Now they both end at age eighteen. The guardian must submit yearly accountings of the estate held in trust for any minors. Occasionally the guardian might have to sell land for the support of the child. This can only be done with the approval of the probate judge.

Adoptions have been handled by the probate court starting in 1853 and exclusively by 1863. These records were closed by state statute in 1946. In 1997 the state opened all adoption records over ninety-nine years old to any researcher. For a more detailed discussion of adoption in Vermont, see my previous article, “Adoption by Law.”

The older probate record ledger or docket books have been microfilmed and are available at the General Services and Records Center. These are arranged chronologically by district. Each county is one complete district or it forms two districts. These records were microfilmed up to 1850 and some cases to 1900. They usually have an index in each volume. One resource that you cannot find anywhere else except at the probate court itself is the card index to the estate and guardianship records. These indexes vary all over, but most actually go to the 1960s. Some of the indexes are closed as they contain cards for the adoption cases. The chart below will detail this important microfilm holding at the General Services and Records Center and in the Dean and Roberta Smith Microtext Center at the New England Historic Genealogical Society Library (those found at the library are indicated by the call numbers in square brackets). The only published index is the *Windsor County, Vermont, Probate Index, 1778-1899* compiled by Scott Andrew Bartley and Marjorie J. Bartley (St. Albans, Vt., 2000) [F57/W7/B37], which is available at both microfilm centers.

Addison County [*two courts combined in 1962*]

Addison District, 1801 – 1851 (salvaged from 1852 fire; filmed chronologically) [F57/A2/A33, 8 reels]

Addison District, index, 1852 – 1959 [F57/A2/A33, 2 reels]

New Haven District, 1824 – 1857 (v. 1-7, v. 1-2 are not indexed) [F57/A2/N49, 4 reels]

New Haven District, 1824 – 1959 (*restricted*)

Bennington County

Bennington District, 1778 – 1851 (v. 1-23, v. 1 is not indexed) [F57/B4/B45, 7 reels]

Bennington District, index, 1778 – 1961

Manchester District, 1779 – 1850 (v. 1-17, v. 4 & 6 are not indexed) [F57/B4/M36, 5 reels]

Manchester District, index, 1790 – 1960 [*sic*, excluding adoptions and name changes]

Caledonia County

Caledonia District, 1796 – 1877 (v. 1-37) [F57/C2/C35, 17 reels]

Caledonia District, 1797 – 1973 (first of four films include adoption card index, 1945 – 1973, all are *restricted*)

Caledonia District, guardian records, 1839 – 1881 (v. 1-4) [F57/C2/C35, 2 reels]

Caledonia District, probate records filed by Waterford town clerk in Waterford land records volume 18, 1878 – 1914

Chittenden County

Chittenden District, 1795 – 1857 (v. 1-31, v. 1 index in v. 2) [F57/C5/C49, 13 reels]

Chittenden District, guardian records, 1838 – 1856 (v. 1-3) [F57/C5/C49, 1 reel]

Chittenden District, index, 1796 – 1959

Chittenden District, guardianship index, 1811 – 1959

Chittenden District, trust index, 1860 – 1959

Essex County

Essex District, 1791 – 1855 (v. 1-6, v. 1 is not indexed) [F57/E7/E88, 2 reels]

Franklin County

Franklin District, 1796 – 1851 (v. A-Z, 1-6) [F57/F8/F73, 14 reels]

Franklin District, index volume, 1796 – 1850 [included in the above reels]

Franklin District, index, 1780 – 1970

Grand Isle County

Grand Isle District, 1796 – 1859 (v. 1-9, v. 1 is not indexed) [F57/G7/G73, 4 reels]

Grand Isle District, Town of Grand Isle, 1897 – 1922 (v. 9)

Grand Isle District, estate cases #800-850, 1936 – 1941

Grand Isle District, cases, #751-875, 1947 – 1950

Lamoille County

Lamoille District, wills, 1837 – 1878 (v. B, 1-2)

Lamoille District, wills, 1859 – 1892 (v. C-D, 3-4)

Lamoille District, wills, 1892 – 1902 (v. 5-7)

Lamoille District, records, 1837 – 1875 (v. A-F, J) [F57/L2/L36, 5 reels]

Lamoille District, records, 1863 – 1941 (v. H-Z, *restricted*)

Lamoille District, records, 1917 – 1938 (v. 1-22)

Lamoille District, guardian, series 1, 1878 – 1917 (v. 1-4)

Lamoille District, guardian, series 2, 1917 – 1938 (v. 1-4)

Lamoille District, appraisers and commissioners, 1878 – 1918 (v. 1-15) [F57/L2/L36, 1 reel (v. 4-7, 1885-1897 only)]

Lamoille District, licenses to sell real estate, 1878 – 1934 (v. 2-5)

Lamoille District, index, 1860 – 1960 (each letter subdivided into intestate, testate, guardian, insane, trustee, birth records, [adoptions not filmed])

Orange County [two courts combined in 1994]

Bradford District, 1781 – 1852 (v. A-B [not indexed], 1-8) [F57/O6/B73, 4 reels]

Bradford District, index, 1792 – 1967

Bradford District, Topsham records, 1925 – 1953 (v. 1)

Randolph District, 1792 – 1850 (v. 1-19) [F57/O6/R36, 9 reels]

Randolph District, index, 1792 – 1967

Orleans County

Orleans District, 1796 – 1855 (v. 1-7, index for v. 3 in v. 2) [F57/O7/O75, 3 reels]

Orleans District, index, 1780 – 1970 (*restricted*)

Rutland County

Fair Haven District, 1797 – 1823, 1842 – 1851 (v. 3-5, 6, 8, 10-11, 19-22, v. 3 is not indexed) [all other volumes destroyed by fire in 1862] [F57/R9/F35, 4 reels]

Fair Haven District, index, 1797 – 1959

Rutland District, 1784 – 1850 (v. 1-22, v. 4 is not indexed) [F57/R9/R88, 9 reels]

Rutland District, index, 1781 – 1960 (*restricted*)

Washington County

Washington District, 1811 – 1850 (v. A-O) [F57/W3/W37, 8 reels]

Washington District, guardian records, 1822 – 1857 (v. A-C)

Washington District, general index, 1811 – 1988

Washington District, estate index, 1811 – 1909

Washington District, estate index, 1909 – 1959

Washington District, guardian index, 1811 – 1959

Windham County

Marlboro District, 1781 – 1850 (v. 1-19) [F57/W6/M37, 10 reels]

Marlboro District, guardian records, 1821 – 1849 (v. 1-2) [F57/W6/M37, 1 reel]

Marlboro District, guardian records, n.d. (v. 1-21)

Marlboro District, estate index, 1781 – 1898 [F57/W6/M37, 1 reel]

Marlboro District, guardian index, 1781 – 1898 [F57/W6/M37, 1 reel]

Marlboro District, general book index, 1860 – 1944 (v. 1-2)

Westminster District, 1781 – 1851 (v. 1-2, C-T) [F57/W6/W47, 7 reels]

Westminster District, estate index, 1781 – 1962

Westminster District, guardian index, 1781 – 1962

Windsor County

Hartford District, 1783 – 1851 (v. 1-20) [F57/W7/H37, 10 reels]

Hartford District, index, 1783 – 1970

Windsor District, 1787 – 1900 (v. 1-50, v. 8 is not indexed) [F57/W7/W56, 24 reels]

Windsor District, guardian records, 1805 – 1855 (v. 2-13, v. 1 does not exist) [F57/W7/W56, 5 reels]

Windsor District, index, 1781 – 1962

Windsor District, name change, etc., index, 1941 – 1962

Windsor District, relinquishment adoptions, etc., index, 1800 – 1962 (*restricted*)

Windsor District, trust index, 1900 – 1962

[1] *State Papers of Vermont*. Volume 3. Journals and Proceeding (Vol. 1) of the General Assembly of the State of Vermont (Bellows Falls, Vt.: Secretary of State, 1924), 16.

[2] *State Papers of Vermont*. Volume 3 [see note 1], 8.

[3] Harris E. Thurber, “The Vermont Judiciary: A Study in Cultural Adaptation,” Dissertation Princeton University, 1955, 187, citing *Vermont Statutes*, Revision of 1947, Section 2793, and *Barber v. Chase*, 101 Vt. 343 (1928); Andrew E. Nuquist and Edith W. Nuquist, *Vermont State Government and Administration* (Burlington, Vt.: Government Research Center, 1966), 229, citing 4 VSA § 311.