

# Testamentary Procedure with special reference to the Executrix

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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.<sup>1</sup>

Thus does Christine de Pisan describe with simplicity and directness the first task falling to a widowed princess, capturing perhaps more the spirit than the letter of the law surrounding testamentary procedure. Whether or not the women of medieval England took up the challenge of sole and indefinite administration of estates which passed to them at widowhood, few could or would distance themselves from the most immediate business arising from their husbands' demise, even if they had not actually been appointed as executrix. If surviving wills provide some of the most intimate views of the preoccupations of medieval people then their execution also may lay some claim to revealing much of the seriousness and earnestness of those entrusted with their fulfillment. Not for the first time the question arises of how far the law in theory regulating the relationship between men and women, in this case even beyond the grave, was able in practice to cover the eventualities arising from the singular desires of individuals at death. It is a question that may be tackled, if not fully answered, by examining both sides of the argument.

An immediate gap between theory and practice arises with regard to evidence, for where the law, though intricate, is well recorded, that same law envisaged a procedure which generated documentation that in certain areas has not survived in quantity. There is, of course, an abundance of wills, many of which are now in print, but since for every will there ought to have been letters of probate and administration, an inventory, a final account and letters of dismissal, with a possibility of special commissions, certificates of action,

separate appointments of administrators and depositions concerning contentious wills, knowledge of the actual logistics of overseeing settlements is often lamentably sparse. One reason for this loss in effect of almost entire classes of documents must surely be attributed to the rather transient and strictly temporary state of affairs which death presented, at least to those who survived the testator. Although the law required such documentation it is not certain that legal procedure was always followed to the letter, especially with simpler and more straightforward wills. Even where procedure was rigorously followed there was, arguably, not much point in keeping an inventory of goods that had been drawn up with the chief purpose of distributing the very items recorded. Such historical silence does not mean that at the time the tasks falling to executors were undertaken lightly and indeed it might rather be taken as a sign of the regular, meticulous fulfillment of a serious matter that was, by and large, efficiently and quietly done by generations of conscientious trustees, often indeed by women.

The confidence of medieval husbands in their wives is at once apparent in the regular choice of their partners to act as executrices of their wills. Who better after long years of shared responsibility for estates to entrust with the safety of the soul, the integrity of the inheritance and the guardianship of children, than the surviving spouse?<sup>2</sup> Such confidence regularly found unrestrained expression in the testator's will. William de la Pole, duke of Suffolk, giving sole responsibility to his wife Alice declared simply, 'for above al the erthe my singuler trust is moost in her'.<sup>3</sup> Sir Thomas Arundel referred frankly to his wife Katherine 'for the feith and trust that I have in hir more thenne I have in alle the world' and as proof of his belief he ordered his feoffees to 'fulfille and performe all that she will require you to do in my behalf, for my will is that my said wife shall adde and mynisshe this my will at alle tymes as it can by hir best be thought'.<sup>4</sup> Oliver Leder of Much Staughton in Bedfordshire by his will of 1554 created his wife Frances as his sole executrix leaving her all his property to do as she pleased adding that he was, 'very sorye that for her wyse and womanlye governaunce and most loveinge and honest behavior towards me at all tymes sens or mariage, I have nott tenne tymes so much to geve unto her'. He ordered his feoffees to make her sure of a good estate because he declared, 'Thomas Leder my brother's son is a very unthrifty lad and I knowe be a suer experyence that he is of a lewde lyffe'.<sup>5</sup>

Whatever restrictions the law might in theory ordain for the married woman, in practice husbands had little hesitation in burdening their wives with the huge responsibilities which attended the administration of their will.<sup>6</sup> Indeed, some wills suggest that the choice of women as executrices or even supervisors was not merely a matter of the more obvious reliance on a spouse. Daughters were often appointed, as were mothers and sisters and in some instances testators looked to women of influence to ensure fulfillment, further indication that here, as in other issues, status overrode mere questions of sex. Joan, countess of Westmorland was chosen by William Hoton of Brandon to act as supervisor of his will in 1421 and Joan herself appointed her daughter, Katherine Neville, as one of her own executors in 1440.<sup>7</sup> Hugh, Lord Burnell, in spite of fairly prestigious male relatives who might have served his last wishes chose Joan, Lady Abergavenny as his chief beneficiary and executrix and Sir John Lumley in 1418 appointed his cousin Elizabeth, Lady Neville as his supervisor.<sup>8</sup> Some women indeed must have become very expert in the business as a result of acting for parents and successive husbands. Katherine Neville had already acted as principal executrix to her first husband, John, duke of Norfolk (d.1432) before her appointment to act for her mother. It is not known whether she was chosen by her second husband, Sir Thomas Strangeways and though certainly not acting for her third, John, Viscount Beaumont she was executrix to her last husband, Sir John Woodville.<sup>9</sup> In certain cases while not actually appointing the wife, orders to executors were such as to give practical control to the surviving spouse.<sup>10</sup>

In terms of complexity the canon and common law of medieval England as it related to last wills or testaments can scarcely be surpassed. Owing to the almost limitless possibilities that could arise in matters relating to this area of life and the fact that over certain issues the jurisdictions of ecclesiastical and royal courts overlapped, the theory that lay behind the application of testamentary law was highly intricate. Henry Swinburne, writing in the sixteenth century, could remark:

All the limmes and bones of this my testamentarie picture, were not only heretofore out of joint; but scattered and dispersed farre asunder, some amongst the laws civill, some amongst our provincially constitutions, and some amongst the lawes, statutes, and customes of this Realme.<sup>11</sup>

Despite this complexity, the law of wills and testaments had an obvious and inescapable relevance to the practical lives of individuals of every rank in medieval English society. Of equal significance was its importance in the medieval English church, given the development of that church's widespread and unique jurisdiction over the last will and testament.<sup>12</sup> Indeed most of the implications of the testamentary jurisdiction of the courts christian were evident in England by the end of the thirteenth century. By that time the canonical will was accepted and the basic procedure for examination and enforcement had been established. Further, the common law had admitted the representation of the testator by the executor and though many problems remained to be solved, the theoretical and practical foundations of the last will and testament in English common law had been established by the time of the second statute of Westminster (1285).<sup>13</sup>

The general law of the church with respect to wills was both applied and developed in England to an extent unknown elsewhere. Jurisdiction over probate of wills of personalty, in general movable goods and chattels, belonged to the ecclesiastical courts, so that matters concerning their making, revocation and interpretation fell also within their jurisdiction, and many of these rules were both recognised and accepted by the common law. In some ways the most profound influence of the canonists on the common law was through their contribution to the law of wills.<sup>14</sup>

The actual terms used for the document or act describing the last wishes of the testator varied. In general *testamentum* referred to the bequeathing of movable goods and chattels, *ultima voluntas* to the disposing of real estate, but a clear distinction was not always made in practice.<sup>15</sup> The will itself could be either written or nuncupative, and a codicil that may be deemed a last will could be added.<sup>16</sup>

The church's interest in testamentary matters developed from an incidental concern with certain aspects of the burial of the dead and the disposition of their property, to the possession of its own law and jurisprudence.<sup>17</sup> From an initial desire to protect the bequest in alms the church's jurisdiction in England expanded until it controlled the formalities of the will, obtained jurisdiction in disputes and established regular procedures for the control of executors and delivery of bequests. By the fifteenth century the English canonist, William Lyndwood, states that this overall procedure was a particular responsibility of ordinaries.<sup>18</sup>

With respect to the testament, there were two basic tasks: to ascertain the dead man's wishes as to the disposal of his goods and then to enforce them. To this end a careful and generally efficient legal apparatus had developed. Basically, to make a dead man's testament legally effective an ecclesiastical judge, appointed by the ordinary, had to approve it, and entrust its execution to the testator's nominees who remained answerable to the judge until they had discharged their duties. If the validity of the testament was challenged or the executors failed to carry out their responsibilities, the resultant dispute would ordinarily come before the ecclesiastical judge for settlement. There were restrictions on the latter, the most important being his powerlessness to determine titles to land. Indeed the ecclesiastical courts did not merely have no jurisdiction over title to land, they were not, in the view of the common lawyers, permitted to meddle with freehold, so that if land were devisable, as it might be by custom, a suit in the ecclesiastical court to enforce the devise would be prohibited.<sup>19</sup> By the beginning of the sixteenth century the ecclesiastical judge had also practically lost the right to enforce payment of debts due to the dead man.<sup>20</sup> If someone died without making a will, *i.e.* died intestate, the judge appointed administrators to dispose of the estate. Thus administrators differed from executors only on the basis of appointment: the former being appointed by the ecclesiastical judge, the latter by the testator.

A generally non-contentious though potentially onerous procedure developed for the execution of the will, establishing its validity, its precise contents, the taking of an inventory of the assets of the deceased, the commission of administration, the examination of accounts and finally the acquittal of the executors or administrators.<sup>21</sup> Probate, the legal procedure by which the testament of the deceased was proved and registered in the court and a right to administer the testator's effects granted to the executors, preceded administration and was granted by the ordinary. This normally meant the bishop but could also refer to *inferioribus ordinariis*.<sup>22</sup> The ordinary could do this himself but quite often he provided for it by commissions.<sup>23</sup> The actual procedure was relatively simple and direct. Executors presented the will to the relevant ecclesiastical authority, witnesses and documents were examined to establish the will's authenticity, and if the will was nuncupative its terms were announced by those who had been present. If the statement of the testator's intentions was shown to be satisfactory and the conditions in which the will was made

corresponded to the formal requirements for validity, the will was approved.<sup>24</sup> Letters of administration were duly issued and the executor gave an undertaking on oath to prepare a faithful inventory of the deceased's goods for exhibition and to surrender a final account of the actual administration.<sup>25</sup>

In practice this apparent directness could vary in a number of respects and the simplicity may on occasion have seemed a little elusive. The question of who actually took the will to court is often not recorded. The widow as sole executrix must frequently have done so herself though some did appoint proctors.<sup>26</sup> It was common practice in the case of multiple executors for such letters to be granted to one or two only of those named. Thomas Fitzalan, earl of Arundel, making his will before sailing to France in August 1415, appointed eight executors, including his wife. A testament and codicil confirming these followed as he succumbed in October to dysentery contracted at Harfleur. On 14 December probate was granted to Countess Beatrice and two of the less prestigious executors with power reserved to appoint others if the need arose.<sup>27</sup> That the restriction to one or two of the executors named might be achieved by mutual agreement is apparent from the account of proceedings relating to the probate of John Paston's will. Though he died in 1466 probate was not granted until 1473. Upon proving the will his son wrote explaining to his mother that administration could not commence until she and the other named executors should refuse the burden and leave the field to him. He had clearly discussed the matter in advance for he said:

iff ye list not to take admynstracion, as I woot well ye woll nott off olde, ye most than make a proctor that must, on yowr behalve, byffor my Lorde of Canterbury, with a sufficiaunt warant and autoryte, undre a notarys syngne ther in the corte, reffuse to take admynestracion.<sup>28</sup>

A rare glimpse of variation in the procedure survives in the case of Richard de Vere, earl of Oxford who, making his will on 6 August 1415, appointed his wife Alice as sole executrix. He died on 15 February 1416 and the archbishop of Canterbury issued a commission the following February to William Alnwick and John Cok, rector of Lavenham in Suffolk to grant probate. The latter recorded in detail how Alice had dispatched her proctor with the earl's will and a sealed

letter, together with three witnesses, all former esquires of the deceased, to attend a hearing in Cambridge. One of the three, being versed in French, translated the earl's sealed letter for the commissioners who, having examined all three witnesses, duly granted probate to Alice.<sup>29</sup> Another victim of dysentery at Harfleur was Michael de la Pole, earl of Suffolk who had made his will in July 1415 and perished in France in late September. A commission to prove the will and commit administration was issued on 25 October to Matthew Assheton who granted probate to the earl's widow on 5 November, actually visiting her at Wingfield castle that day and then certificated his action to the archbishop one week later. Although the earl had appointed a total of twelve executors full responsibility seems in practice to have passed to Alice.<sup>30</sup>

The use of a proctor and the personal visit of the archbishop's commissioner may have made the business of proof easier for the two countesses but these accounts also record a further procedural requirement in probate, that of depositing the seal of the deceased. Here both law and evidence seem unclear respecting the origins and purpose of the archbishop's rights and the extent to which the prerogative was pursued.<sup>31</sup> Happily Matthew Assheton actually records his instruction to receive the de la Pole seal, probably because he had to report that the seal could not be collected because it was still overseas, on account of the earl's death in France. Countess Katherine had given an assurance that she would recover it for him. The de Vere commissioners also reported delays in procuring the earl's seal.<sup>32</sup>

A particular complication that affected probate was the divisions within each diocese where local officials claimed this power in their area of jurisdiction. Of particular importance were the archdeacons whose power of probate seemed to be the one area of activity in which they clearly vindicated their claim to ordinary jurisdiction. Probate could in certain cases be granted by those in charge of the deaneries of the archbishop of Canterbury's immediate jurisdiction, by cathedral chapters and certain of the great religious houses who were exempt from episcopal authority.<sup>33</sup>

A further highly significant factor in probate procedure concerned wills that contained what was to become known as *bona notabilia*. The archbishop of Canterbury claimed to have the probate of all dying testate or intestate with goods over a specific value in different dioceses of the province.<sup>34</sup> The specific value is difficult to pin down.

Lyndwood explaining *notabilia* remarks, '*habens in bonis minus centum solidis sterlingorum non dicitur habere bona notabilia*'.<sup>35</sup> Swinburne cites figures varying from 40s. to £23, but inclines to £10 as the minimum.<sup>36</sup> Whatever the specific figure, the archbishops vigorously claimed their right to prove these wills and certainly by Chichele's time the largest proportion of wills found in his register were proved before the Prerogative Court of Canterbury by virtue of that claim. In practice it encompassed the wills of what can broadly be termed the magnate class.<sup>37</sup>

A fundamental requirement for a testament's validity was that the testator make a clear statement of the use of his property after death. Lyndwood argued that two witnesses were sufficient to prove the truth of a testament, and this following Antonio de Butrio, was based upon the argument that in conscience it was sufficient for the intentions of the deceased to be established by such proof as would be sufficient in the law of nature.<sup>38</sup> While it was one of the forms required for the civil law testament that the witnesses should not only be present, but should be specifically requested by the testator to attest his testament, de Butrio and Lyndwood held the requirement superfluous in the law of nature, since it was not necessary to qualify a witness to depose of any other matter of fact. As long as the testator clearly expressed his last intentions in the presence of witnesses legally competent, the act was valid.<sup>39</sup> Some testators were at particular pains to ensure the validity of their wills, openly declaring that as their own seals were not known they had secured the seal of another, often that of the town mayor, a local abbey or the ordinary himself.<sup>40</sup>

According to the canonists women were excluded from being witnesses and though Lyndwood makes no reference to their competence, it is questionable as to how seriously the canonical disqualification was ever taken, though practice suggests that it was rare for women to act as witnesses.<sup>41</sup> They could not attest a civil law testament because the formal testament of Justinian's law was a simplified version of the mancipatory will of the classical age. Women could not be witnesses to a mancipation and he retained this requirement.<sup>42</sup> On the other hand it has been pointed out that the canonical prohibition does not seem to have been applied in England and that women were perfectly competent witnesses in other cases was taken for granted in the thirteenth century.<sup>43</sup>

In some parts of Europe the presence of a priest was required when the will was made. In England the first rule calling for the priest's



presence appeared in the Salisbury statutes of Richard Poore and there were similar canons at Canterbury, Durham and Exeter.<sup>44</sup> On the other hand, Lyndwood remarked that the presence of a priest never became a general law, though it may have been required by particular custom.<sup>45</sup> Possibly Lyndwood's reason for insisting that the presence of a priest is not necessary to the validity of a testament, save where custom requires it, is that it was arguable that by the general canon law, the presence both of the *parochianus* and of two other competent witnesses was essential.<sup>46</sup>

To determine how far the use of priests as witnesses was influenced by episcopal canons, it would be necessary to make a study of those rather rare written wills where the testator professes to be sound both of mind and body, but nonetheless impressed by the mutability of this earthly life. If he followed the more usual practice of making his will when he was, or when he was thought to be *in extremis*, there would naturally be a priest present, and it would be equally natural to make use of him as a witness of good fame from outside the family. Indeed it has been pointed out that the impression left by written wills is that the church's efforts to ensure the presence of a priest were successful in the thirteenth century and for many years thereafter, though by the time that Lyndwood was writing it seems to have been accepted that no priest need be present. In fact the priest was often asked to be an executor.<sup>47</sup>

Intestacy caused particular problems and demanded a modified procedure. The church claimed the right for a man dying intestate of administering his estate for the good of his soul, so he would not suffer for his negligence or misfortune. The fact was that to die intestate, unless death was sudden, was generally to die unconfessed, and thus there was a real sense that to die intestate was a disgrace.<sup>48</sup> On the other hand intestacy meant more than simply failure to make a testament. It could also refer to a defective testament, or if the executors who had been appointed died or refused to undertake the administration.<sup>49</sup> An executor could not be compelled to act, although it was possible that a consequence of his refusal would be to forfeit any legacy which the testator had bequeathed to him. Testators themselves often expressed anxiety about executors shirking the task.<sup>50</sup> Some were at pains to acknowledge the burdensome nature of administration and in practical terms bequeathed specific sums to meet the costs,<sup>51</sup> but were at the same time given to issuing dire warnings to executors touching the consequences of failure to act.<sup>52</sup>

Among the upper ranks of the nobility intestacy resulting simply from the failure to make a will was rare. Wills were often made at an early stage and were virtually automatic before an individual undertook potentially dangerous errands, such as war or crusade.<sup>53</sup> Nevertheless there are a few notable exceptions in the persons of Thomas, Lord Morley who died of a haemorrhage at Calais in 1416; Hugh Courtenay, earl of Devon who died suddenly in 1422; and Edmund Beaufort, duke of Somerset, who was killed at the first battle of St Albans in 1455.<sup>54</sup> However judicious a testator might be in appointing trustees he could not guard absolutely against a refusal to act. The reasons for such refusal are often unknown but it can be deduced that some balked at what they viewed as excessively demanding wills and, or, an estate which was so burdened with debt as to be a daunting and perhaps hopeless undertaking. In 1455 Lady Eleanor, widow of Thomas Hoo, Lord Hastings, refused, as did her co-executor, the testator's brother, to act for her husband. No reason is recorded but it may have been related to Hoo's demands concerning his father-in-law whom he ordered the executors to sue, if necessary, concerning a settlement for Eleanor.<sup>55</sup>

However intestacy arose the ordinary appointed an administrator who would distribute and if necessary convert the goods of the deceased for pious uses for the benefit of the testator's soul: '*in pias causas, & personis decedentium consanguineis, servitoribus & propinquis, seu aliis, pro Defunctorum animarum salute* ...'<sup>56</sup> In some cases a wife who had not been chosen as executrix might, when intestacy occurred, find herself shouldering the burden after all. Although arrangements were made to take the custody of Edmund Beaufort's goods within six weeks of his death in 1455, the custodians apparently failed, at least to present an inventory, so that in 1457 a fresh commission was issued to his widow Lady Eleanor to act as administrator.<sup>57</sup> Certainly intestacy made the position of widows particularly precarious at the moment of their husband's demise. Lyndwood argued that if a layman died intestate, those entitled to his estate were, in the first place his children, in the second his ascendants, with certain collaterals, and in the third place his collaterals generally. Descendants and ascendants in any degree are entitled to take, but collaterals, whether agnates or cognates, are excluded beyond the tenth degree. In default of collaterals, the widow of the deceased is entitled. If he leaves no widow, the fisc succeeds, unless the deceased be a member of certain privileged *collegia*, when

his *collegium* takes to the exclusion of the fisc.<sup>58</sup> It is clear enough from Lyndwood's references that he is giving the Roman rules, but whether it be better English law that the fisc succeeds in default of kindred or wife is difficult to say. In any event, in England all those enumerated can only claim subject to the discretion of the ordinary to distribute the estate to pious causes, though this might in practice include the widow.

Given that the testament was valid, the executor on receiving grant of administration, proceeded to the fulfillment of his duties. In actual practice, of course, some of these, most obviously funeral arrangements, must in many cases already have been carried out, as must those not infrequent requests for disbursements or services within a few days of decease. Margaret Paston displayed a certain nervousness at how she and her co-executors had acted before grant of administration, saying in 1466,

I am enformed ... that we ben all a cursed that we have thus mynstred the dedis godes with ought licence or auctorite, and I wene we spede all the wers there fore. At the reverence of God, gete you a licens of my Lord of Caunterbery in dyscharyng of my conscyens and youris.<sup>59</sup>

Two factors are immediately apparent from even the most cursory reading of wills, namely the limitless variety of the actual tasks which testators imposed upon trustees and furthermore the open ended nature of bequests which implied a prolonged, virtually indefinite timescale for their fulfillment. Evidence of action taken is often not recorded or is at best patchy and scattered, arising more as a result of failure or irregularity of action than of completion of duties.<sup>60</sup>

An immediate and continuing consideration must have been whether resources were sufficient to undertake all the charges made. Such was the difficulty facing Lucy Kendal in 1390 when she was cited before the king's court over £60 awarded in damages against her husband Richard to John Elmede. The record of the case revealed that Lucy as executrix had been forced both to sell some of her husband's animals and to borrow in order to pay for his exequies. In the proving of the will later, Lucy had appeared before the ordinary and admitting that she had meddled with the estate prior to probate, refused to have anything further to do with the administration. The bishop duly discharged her and Lucy's defence rested upon that discharge. In the

king's court, however, judgment was eventually given against the unfortunate Lucy on the grounds that she had actually been appointed and had at one time acted as executrix. What such a judgment meant for Lucy in practice can now only be guessed.<sup>61</sup>

Lucy's plight was probably a common one. Funeral arrangements, masses, the month's mind, the anniversary services and the erection of tombs or memorials could fill several paragraphs of a will and must have presented an organisational problem that was at times monumental, if not downright impossible. Few testators made concessions to such logistical problems and it is remarkable that requests for thousands of masses, distributions of gallons of ale and bread to the poor, the procession of persons in great numbers robed in a particular livery, provision of tapers and candles by the score, were carried out in full.<sup>62</sup> Stephen Lane in 1495 is, however, quite exceptional, in adding to his request to his executrix for one hundred masses to be said all in one day, 'if it can be done'.<sup>63</sup> It cannot have been easy for Agnes Forster to arrange, as her husband requested, for every secular priest in the city of London within seven days of his demise to celebrate mass, pray for his soul and receive 1*d.* and for anyone delivering a public sermon at St Paul's Cross to receive 2*d.*<sup>64</sup>

Even harder to trace is evidence of the keeping of anniversaries in accordance with a testator's wishes over a specified and often long number of years. In 1453-4 Alice, duchess of Suffolk, made payments for a perpetual memorial for William de la Pole (d.1450); and whether or not she was his executrix Isabel, Lady Morley, paid out £4.10*s.* in fees to two priests in 1463-4 for masses celebrated for her husband Thomas who had died in 1435, as well as payments to the rector of Hingham for his exequies.<sup>65</sup> The provision of a suitable monument for John Paston greatly concerned his widow. It was over five years after his death before Sir John, his son, turned to the matter, requesting measurements of the grave in the autumn of 1471. Margaret complained to the younger John, 'yt is a schame and a thyng that is myche spokyn of in thys contre that zour fader's graveston is not mad'. It is to be wondered what she might have thought of Sir John asking for the loan of the cloth of tissue from his father's grave in order to supply a want upon the duke of Norfolk's sudden death in 1476, even if he did promise his brother, 'I undretake it shall be saffyd ageyn ffor yowe on hurt, at my perell'. It was a further two years before a proper memorial seemed likely to materialize.<sup>66</sup> It is clear too that widows undertook religious duties for their dead husbands in

addition to or instead of, those outlined in his will and regardless of whether or not they had been officially appointed as executrix, especially where the testator's wishes amounted to little more than a general request for the distribution of his goods for the benefit of his soul.<sup>67</sup>

Just how exacting ecclesiastical courts were regarding the compilation of an inventory of the deceased's goods is uncertain. This potentially valuable source is not as widely available as the standard request for such a list might lead one to expect.<sup>68</sup> Far more inventories survive as a result of forfeitures by condemned traitors.<sup>69</sup> Testators were not unaware of the obligation to which they sometimes referred, occasionally appending an inventory to their wills themselves.<sup>70</sup> A very fine inventory survives for John Holland, duke of Exeter, drawn up by his executors on 8 September 1447, though even this is only a record of his chattels in London.<sup>71</sup>

That the actual administration which followed could be and often was, enormously protracted can hardly be refuted. It was frequently encumbered with various obstructions, sometimes the responsibility of the church courts to remove. Goods bequeathed might on occasion be in someone else's possession and indeed many of the testamentary causes brought into the consistory court of Canterbury in the fifteenth century had been concerned with the recovery of debts due by or to testators. Margaret Wythe as widow and executrix of her husband John was in just such a predicament in the reign of Henry VI when she compiled a list of goods and debts totalling nearly £500 owing to the deceased's estate by William Mullesworth, including a sum of £200 which she claimed, 'my husband tolde me in his dying bedde'.<sup>72</sup> It was perhaps with such problems in mind that Walter Burton set out a memorandum in his will of 1417 explaining the whereabouts of £30 bequeathed for various causes. Some was in the hands of a London citizen and some remained in the form of pledged silver for war wages for his journey with the king to Harfleur and was being held by yet another individual. It was at least a lead for his widow as his principal executrix though it may only be surmised how long it took to sort out in practice. In 1389 Joan de Tarbok successfully extracted outstanding wages as her husband's executrix for the service which he had rendered to John of Gaunt on his 1386 expedition to Spain.<sup>73</sup>

Testator's requests for particular provision for their children either in terms of schooling or of marriage, must in certain cases have been

long in the realisation and sometimes financially trying. Sir Arthur Ormesby recalled in 1467 a poor child called Miter from North Turkey whom he had brought to England in 1465 and had baptised Hugh Arthur. He instructed his widow Edith to put him through Oxford until he became a priest and a doctor of divinity and to make him a white damask vestment to wear at the celebration of his first mass in which he was to remember, then and in every mass for the rest of his life, the souls of George, duke of Clarence and George Neville, Archbishop of York. John Comber of Piddinghoe in Sussex directed in 1554 that his wife should send their son to school at Eton for two years after his death and then keep him at one of the inns of court or the inn of chancery.<sup>74</sup> Even more complex to arrange must have been those specific instructions on the bones of ancestors of the sort confronted by Katherine Neville whose husband ordered the return from Venice of those of his father, Thomas, duke of Norfolk.<sup>75</sup> In general testators displayed an infinite, almost ingenious capacity for every conceivable bequest or charitable deed from the simple disbursement of cash to the initiating of some major repair or building project which must at times have occupied their trustees for many years, in some instances with little hope of completion. By his will in 1513 William Cope ordered his executors to, 'fynnishe and make my house in Hanwell in like manner and proporcions as it is begun and according to a platte thereof made'. The great brick and stone building lay incomplete for some years but sometime after 1518 the executors sued the heir, Anthony Cope, for refusing to complete the work.<sup>76</sup>

Additional tasks sometimes faced those who represented testators who had died while holding offices of the crown. For Agnes Ramsey the production of particulars of the accounts of her father William, late chief mason to Edward III, for a period of thirteen years was an essential part of her administration of his will, given that money was still owing for his services.<sup>77</sup> Eleanor, countess of Ormond, submitted accounts for Thomas de Dagworth's custodianship of Brittany for 1346-7 after his death and Joan de Copland similarly accounted for her husband's tenure as constable of Roxburgh castle and keeper of Berwick from 1361-63.<sup>78</sup> All three accounts have the indentures of contract between the testators and the crown attached while those of Margaret Waite, executrix of her first husband, John Bluet, custodian of the Isle of Wight, included a roll of the names of the garrison in 1370.<sup>79</sup>

On occasion the business of administration imposed demands that simply could not be met. The consequences could be dire. Alice Coterell, executrix of her husband John, was imprisoned at Newgate because of a suit against her for failing to make payments to her daughter Joan, contrary to the customs of London regarding orphans.<sup>80</sup> In 1382 Cecily Spicer became involved in proceedings as executrix to her husband as a result of his shortcomings in 1375. It was alleged that Richard had taken custody of a French prisoner who had acted as pledge for twenty-eight captives and had subsequently allowed him to escape. The original captors demanded the payment of the ransom out of Spicer's estate.<sup>81</sup> On the whole, however, executors seem to have displayed persistence and competence, even in the face of poor odds.

Cases of unfulfilled wills, not surprisingly, do occur, though often this was the result of the deaths of the executors themselves before completion of their duties. In such circumstances, as stated above, intestacy could result but in practice administration could be simply and swiftly awarded to another party.<sup>82</sup> Dereliction of duty for whatever reason was partially mitigated by some executors passing on such unfinished work to their own trustees. Thus Joan Cooke of Rustington in Sussex declared in her own will of April 1528:

I am sole executrix to the said Thomas Cooke, late my husbonde as it apperith by the last wille and testament of the said Thomas Cooke, which will as yet, is in grete parte unperformed ...  
I will that all suche thinges as is comprised in the will of John Cooke now dede father to the said Thomas late my husbonde to whom the said Thomas was executor unto that myn executours doo fulfill and perfourme the will of the said John as moch as is unperfourmed and undoon thereof.<sup>83</sup>

With their work completed the executors were expected to render an account as the final stage in the execution of the will. Here, as elsewhere, the evidence of the practice does not survive in quantity. Some of the inventories mentioned above, seem to contain in part items that might otherwise be expected to appear in final accounts. That of Elizabeth, Lady Clifford, lists the disbursements made for her funeral, probate fees, debts paid and the costs of writing the inventory.<sup>84</sup> An excellent but rare account is that drawn up by Lady Elizabeth Lucy, relict of Thomas Lucy of Charlecote Park in Warwickshire, detailing the value of the estate and all the payments



made from the date of the commission to administer on 24 July 1527 to 16 October 1530, on which day the account was registered at Lambeth. Lady Lucy's expenses included the items for his funeral comprising black cloth, tapers, the making of a litter for the body, priests and alms; a list of debts paid; and all the notarial and secretarial fees including a tantalizingly vague payment to the exchequer for various causes arising from the will.<sup>85</sup>

Once the account had been accepted the executors received their acquittal. The comparative scarcity of absolutions cannot be used to measure the success rate of executors and indeed even where evidence of acquittal is available it is, of course, only relevant to the disposal of movables and not to matters arising from land. It is worth remembering that if in practice acquittal followed submission of accounts it would almost certainly be granted well before the lapse of long term *post-obit* arrangements. No evidence has been found of prosecution of executors, known to have received their acquittal, for their later failure to act.<sup>86</sup>

The question of fees to be paid for probate and registration was complex and obviously open to abuse.<sup>87</sup> Chichele issued a constitution in 1416 which attempted to prevent, 'high and excessive perception of fees for the registration of such wills, and the hearing of the account and final discharge of executors deputed therein'.<sup>88</sup> The constitution allowed the ordinary 5s. for probate and established that no higher sum than this might be exacted for registration which included the subsequent audit of accounts and the final discharge of executors. Archbishop Stratford, whose constitution on the matter of fees was issued in 1342, and subsequently included in the *Provinciale*, seems to have been the guiding rule if Lyndwood's gloss is to be followed. Thus the scribe who entered the will in the register was entitled to receive 6d. but if the will were lengthy or if there were depositions of witnesses, he was to be suitably recompensed.<sup>89</sup> If the value of the estate was less than 30s. the ordinary was to take nothing.<sup>90</sup> For an estate worth between 30s. and 100s., the fee was 12d.; 100-201s. a fee of 3s.; 201-601s. a fee of 5s.; 601-1001s. a fee of 10s.; 1001-1501s. a fee of 20s.; and thereafter an increase of 10s. for every additional 501s.<sup>91</sup> No more was to be taken and if anyone took more than the permitted amount he was, within one month, to restore the excess amount to the person who had been defrauded and give an equal sum to the fabric of the cathedral of the diocese in which the fraud was committed. In addition, archbishops and bishops



who did not make the restoration within the one month were automatically forbidden to enter a church, while inferiors were suspended from office and benefice until restitution had been made.<sup>92</sup>

This picture of the work of the testamentary executor would be unbalanced if a word was not said about those who by deliberate action failed to do their duty, for there were, of course, numerous possibilities for abuse on their part and cases could arise from real, though sometimes from supposed, misdeeds or negligence. Non-payment of debts or refusal to complete bequests were the commonest faults and did give rise to some complaints that were brought to the attention of the chancellor. Humphrey Gentile, seeking payment from Katherine Neville, duchess of Norfolk, executrix of her last husband, Sir John Woodville, complained that he could get nowhere 'against the great might of the said lady', although he claimed that there was money enough to settle his account.<sup>93</sup>

The administration of the will of Sir Ralph Verney evidently led to substantial disagreement between the executors. Former mayor of London, Verney made his will as he lay dying on 11 June 1478. Death and probate followed on the 16 and 25 June respectively, the latter granting administration of Verney's widow, Lady Emma, and their two sons, Ralph and John, without mention of the fourth executor, Henry Danvers, a son-in-law of the testator.<sup>94</sup> That the executors had quarrelled became apparent in 1500 when John Verney, as executor, sued Danvers over an action of debt upon a bond made in 1482, declaring that far from owing Danvers money, the latter himself owed great sums.<sup>95</sup> In spite of this dispute the two Verney brothers co-operated with Danvers in another suit against Sir John Brown, alderman of London and overseer of Sir Ralph's will touching a debt of £100 which, though not written into Ralph's will, the latter had acknowledged verbally on his death bed.<sup>96</sup> Henry Danvers also brought an action against both Verney brothers because of their refusal to convey Verney property.<sup>97</sup> At about the same time the chancellor demanded that Danvers render a full account of his activities touching the administration of Verney's will to answer Lady Emma and her sons. The surviving booklet of accounts which is fairly defensive in tone, details all the payments which Danvers made in medical expenses in Verney's last illness, funeral costs, including the marbling of the tomb, the writing of the epitaph and the keeping of the obit and payments for Lady Emma and her household, which totalled £3,696. In spite of sums collected in debts, Danvers claimed

£1,329, which the Verney brothers reduced through 'disallowances' to £1,290. The account ends with a remarkable list of 'desperate' debts owed to Sir Ralph by merchants all over England amounting to £1,930 which it was agreed Danvers should have.<sup>98</sup> Just how much longer it took to resolve the trouble between these executors is unknown but these chance survivals reveal graphically the prolongations and complications that executorship could carry and the ever present risk of disagreement between a testator's trustees.

The power of bequest was expressed by the simple statement that all were free to make wills who were not prohibited by law.<sup>99</sup> As demonstrated the implications of this were somewhat more complex than the bold statement might suggest. In addition it does not do justice to the powerful movement to extend the right of bequest to persons who were forbidden to exercise it by custom or common law. Thus Lyndwood argued at some length for the right of the married woman to bequeath her chattels.<sup>100</sup>

Further, though 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. The almost complete separation between land and movable wealth was accomplished by the thirteenth century.<sup>101</sup> Thus bequest of land was the concern of the common law.<sup>102</sup> But many could only bequeath a portion of their goods and almost all found they were required to make certain payments to the church or their lord. Of some significance was the division of movable property into thirds, a practice that seems to have been established in England by the reign of Henry I and which continued, at least as a matter of local custom when Lyndwood was writing his gloss in the fifteenth century.<sup>103</sup> There were other limitations, such as the reservation of certain chattels to the heir, known as *principalia*, and the significant limitation imposed by the mortuary fee which became a customary due in England.<sup>104</sup>

In all of this the essential element to the flexibility and effectiveness of the canonical will in England was the development of the role of the executor. There was no English equivalent to the institution of an heir as required by the Roman civil law and the executor became the genuine representative of the deceased with delivery of bequests being entrusted to him. As control of the will came more completely under the jurisdiction of the ecclesiastical courts, the executor's area of activity enlarged, so that when he failed

to do his duty the ecclesiastical courts would intervene. In this area too, men and women alike enjoyed equal standing as well as equal responsibility in the requirements to ensure that a testator's last wishes were fulfilled, however complicated or long drawn out these might be. It has been shown too, that while the law provided a basic framework of rules, here, as in other respects, human frailty and individuality could provide its own shape to the practice. The common law for its part moved more slowly, maintaining several limitations to the executor's rights and obligations, but under pressure from bishops and their courts it came by 1285 to admit the essentials of the executor's position as the representative of the deceased. Here, women, as the natural choice of married men, had an important role to perform and the growth of the executor's powers was to be given a final importance in the royal courts, so that Lyndwood in the fifteenth century could justifiably compare him to the heir of Roman law.<sup>105</sup>

## NOTES

<sup>1</sup> *Christine de Pisan, The Treasure of the City of Ladies or The Book of the Three Virtues*, ed. S. Lawson, Harmondsworth 1985, p.81.

<sup>2</sup> A.J. Kettle, 'My wife shall have it': marriage and property in the wills and testaments of later medieval England' in *Marriage and Property*, ed. E.M. Craik, Aberdeen 1984, p.100 discusses the high percentages of husbands with living wives who appointed the latter as executrices.

<sup>3</sup> *North Country Wills*, ed. J.W. Clay, Surtees Society, 116, 1908, p.51.

<sup>4</sup> *Somerset Medieval Wills 1383-1500*, ed. F.W. Weaver, Somerset Record Society, 16, 1901, p.256-7. Arundel further provided that should his wife die, his mother should fulfill some of his last wishes and he appointed his wife and mother with two others as his executors.

<sup>5</sup> F.A. Page Turner, 'The Bedfordshire wills and administrations proved at Lambeth palace and in the archdeanery of Huntingdon', *Bedfordshire Historical Record Society*, 2, 1914, p.54.

<sup>6</sup> It was by no means automatic for women in making their wills to appoint their husbands as executors. See for example those of John and Joan de Dundrawe of Carlisle, made within a few days of each other and evidently in concert as the bequests of property were in agreement. John chose Joan but the latter had other preferences: *Testamenta Karleolensia*, ed. R.S. Ferguson, Kendal 1893, pp.135-140. Similarly

the Careys making their wills on the same day: A. Gibbons, *Early Lincoln Wills 1280-1547*, Lincoln 1888, pp.39-40.

<sup>7</sup> *Wills and Inventories*, ed. J. Raine, Surtees Society, 2, 1835, p.66; *Historiae Dunelmensis Scriptores Tres*, ed. J. Raine, Surtees Society, 9, 1839, p.cclx.

<sup>8</sup> *The Register of Henry Chichele, Archbishop of Canterbury, 1414-43*, ed. E.F. Jacob and H.C. Johnson, Canterbury and York Society, 42, Oxford 1938, II, p.217; G.E. Cokayne, *The Complete Peerage*, ed. Vicary Gibbs *et al.* 13 vols. London 1910-59, II, p.435; *Wills and Inventories*, p.62. For other examples of daughters, mothers, sisters and more distant kinswomen appointed see, *ibid.*, p.86; T.P. Wadley, *Notes on the Wills in the Great Orphan Book ... at Bristol*, Bristol 1886, pp.51,72,82; *Somerset Medieval Wills*, pp.9, 103,112,130; *Testamenta Eboracensia* III, ed. J. Raine, Surtees Society, 45, 1865, p.286; *North Country Wills*, pp.55,56,67; *Early Lincoln Wills*, pp.32-3,46,56,83-4,141,151,211.

<sup>9</sup> *Reg. Chichele*, II, p.476; British Library, Additional Charter, 74924 (Beaumont's will); Public Record Office (hereafter PRO), Early Chancery Proceedings C1/15/311. 15/311. Lady Jane Hastings was executrix to both her husbands, *Testamenta Eboracensia* III, p.285-6; *North Country Wills*, p.73-75. G.L. Harriss, *Cardinal Beaufort: A Study of Lancastrian Ascendancy and Decline*, Oxford 1988, pp.362-466 discusses the professionalism of Beaufort through long practice as an executor.

<sup>10</sup> *Reg. Chichele*, II, p.530, John Leventhorpe asked his executors to do nothing contrary to his widow's wishes. William Eddington offered his widow the help of their two sons as co-executors, an offer she declined when proving the will: PRO, Prerogative Court of Canterbury. Register of Wills, PROB 11/5/13.

<sup>11</sup> H. Swinburne, *A Brief Treatise of Testaments and Last Wills*, London 1590, p.ii.

<sup>12</sup> For testamentary bequests and their importance in the life of the church in late medieval Norwich, see N. Tanner, *The Church in Late Medieval Norwich 1370-1532*, Toronto 1984, pp.113-40.

<sup>13</sup> The basic study for the development of the canonical will in medieval England is M.M. Sheehan, *The Will in Medieval England from the Conversion of the Anglo-Saxons to the end of the Thirteenth Century*, Toronto 1963. See also T.F.T. Plucknett, *A Concise History of the Common Law*, 5th edn., London 1956, pp.725-46; W.S. Holdsworth, *A History of English Law*, 12 vols. London 1903-38, III, pp.534-95; and F. Pollock and F.W. Maitland, *The History of English Law*, 2 vols. 2nd edn., Cambridge 1968, II, pp.314-63.

<sup>14</sup> Holdsworth, III, p.536: 'In this way the law relating to wills, though evolved by a different set of courts and under the influence of a

different set of ideas, was becoming an integral part of English law - a process assisted by the fact that, as the church had not got this large testamentary jurisdiction abroad, the canon law had no very general rules upon these matters'. For a general survey of the relationship between the common and canon law, see R.H. Helmholz, *Canon Law and English Common Law*, Selden Society Lecture 5 July 1982, Selden Society, London 1983.

<sup>15</sup> For examples of this lack of precision see Tanner, pp.113ff.; *Reg. Chichele*, II, pp.xix-xx; Sheehan, pp.140,178. Throughout this paper the terms will be used interchangeably, except where the meaning demands a more precise use.

<sup>16</sup> For the codicil, see W. Lyndwood, *Provinciale*, Oxford 1679, p.173b, *a.v. Voluntatem ultimam: 'Codicillus quoque pro ultima Voluntate habetur, ut notat Petrus de Anchorano'*. A good collection of nuncupative wills can be found in *Testamenta Karleolensia, passim*.

<sup>17</sup> H. Auffroy, *Évolution du Testament en France des origines au III<sup>e</sup> siècle*, Paris 1899 and Sheehan, *passim*.

<sup>18</sup> *Provinciale*, p.169b, *a.v. Laesionem*. Lyndwood was the leading canonist of his age and provided an extensive commentary to certain selected provincial constitutions which dealt with testaments. *Ibid*, *Lib. III, tit. XIII*, pp.166a-183b. Lyndwood's commentary will be used throughout this paper to underline the basic aspects of testamentary procedure. For Lyndwood see C.R. Cheney, 'William Lyndwood's *Provinciale*', *The Jurist*, 21, 1961, pp.405-34 and B.E. Ferme, 'The *Provinciale* of William Lyndwood: the Sources, Contents and Influence', unpublished Oxford DPhil, 1987.

<sup>19</sup> R.H. Helmholz, 'Debt claims and probate jurisdiction in historical perspective', *American Journal of Legal History*, 23, 1979, pp.68-82. Technically the word devise is applicable only to real property, while bequeath is appropriate to personal property, though the two terms are sometimes used indifferently.

<sup>20</sup> R. Houlbrooke, *Church Courts and the People during the English Reformation*, Oxford 1979, p.89.

<sup>21</sup> Sheehan, pp.196-211; Holdsworth, III, ch.5.

<sup>22</sup> For probate, see *Provinciale*, p.170, *a.v. Insinuationem*, and for the ordinary's powers, *ibid*, p.174a, *a.v. Ad quos pertinet*. For efficiency in granting of probate in Chichele's administration, see *Reg. Chichele*, II, p.lx.

<sup>23</sup> *Provinciale*, p.174, *a.v. Approbatis*. Sheehan, p.198 points to several examples of probate by the bishop's official, though for the thirteenth century it is difficult to know whether this matter regularly fell to the official's court or whether he was acting on special commission. I.J. Churchill, *Canterbury Administration*, 2 vols. London

1933, I, p.59, shows that the commissary general of the archbishop was given the power to grant probate by his commission of appointment in 1382 and that the power was exercised earlier. The official gave probate at York in the fifteenth century according to A.H. Thompson, *The English Clergy and their Organisation in the Later Middle Ages*, Oxford 1947, pp.192-93. See also C. Morris, 'The commissary of the bishops in the diocese of Lincoln', *Journal of Ecclesiastical History*, 10, 1959, p.53 and generally R.L. Storey, *Diocesan Administration in the Fifteenth Century*, York 1959.

<sup>24</sup> Secular probate would seem to point in the same direction. It appears still to be held in the early fourteenth century to be clear that no will can be good without probate, that if the ecclesiastical court have no jurisdiction (as in wills of land devisable by custom), it follows, not that probate is unnecessary, but that the will must be proved in the secular court. Sheehan, pp.206-10, 266-81.

<sup>25</sup> Few original letters of administration survive, but see PRO, *Exchequer KR Ecclesiastical Documents E135/7/38*: letters granted to the widow of Andrew Dymmok. *Registrum Thome Bourghier, 1454-86*, ed. F.R.H. du Boulay, Canterbury and York Society, 54, Oxford 1957, pp.163-218 contains only the special commissions arising from abnormalities in the procedure. Details of normal grants are however known from bishop's registers. See *Reg. Chichele*, II, *passim* and pp.55, 88 for Sir Thomas de Clinton whose widow and sole executrix received probate for a will of 19 July 1415 on 11 November following and was acquitted on 29 May 1416.

<sup>26</sup> Letters of administration of 14 February 1433 concerning the will of John, duke of Norfolk, are addressed to his widow Katherine though she may well have sent one of her co-executors to prove the will: *Reg. Chichele*, II, p.476. For proctors named by executrices see *Somerset Medieval Wills*, pp.195, 260, 300, 337; PROB 11/5/21: the will of London draper Thomas Ashby was proved by a proctor sent by his widow and executrix.

<sup>27</sup> *Reg. Chichele*, II, pp.71-8. An inventory was to be before the court by the following Easter. *Ibid* pp.3-4 for a case of use of the power to involve others in a special commission granted to the widow of William White to assist the two co-executors who had earlier received the letters of administration.

<sup>28</sup> *The Paston Letters, 1422-1509*, ed. J. Gairdner, 6 vols. London 1904, V. pp.192, 199, 200. See also PRO, PROB 11/3/13: the will of William Langar, made on 8 July 1431 and proved two days later by his widow and principal executrix when it was stated in court that her co-executors had renounced.

<sup>29</sup> Whatever additional burdens the sealed letter may have contained, Alice performed the remarkably simple bequests to the satisfaction of

the court and was discharged in September 1417: *Reg. Chichele*, II, pp.116-118,126.

<sup>30</sup> *Ibid*, pp.49,57-60. In his accounts Henry Danvers recorded a payment to Doctor Winterborn dean of St Paul's for visiting Lady Emma Verney for probate of her husband's will in 1478, though the register of wills gives Lambeth as the official place of probate: PROC 1/230/53. f.2v. Miss Margaret Condon generously supplied the reference to this splendid booklet of accounts which she herself found in unsorted chancery miscellanea. PROB 11/6/1: Verney's will.

<sup>31</sup> Churchill, I, p.399 gives an example in 1367 of a claim to seals and of a reservation of the right in 1401 to the archbishop in spite of a commission to John Perche to register wills, *ibid*, II, p.179-80. In 1372 the commons complained and were supported by the crown, about the compulsion to hand over seals to the ordinary. (*Rotuli Parliamentorum*, ed. J. Strachey *et al*, 6 vols. London 1767-77, II, p.313.)

<sup>32</sup> *Reg. Bourgchier*, pp.xxvii, 166; *Reg. Chichele*, II, pp.58,118. It is not clear whether the seal was used simply to authenticate that on the will or, more significantly, to prevent further use and hence abuse of it before final administration took place. *Paston Letters*, IV, pp.181-85 refers to seals in the abstract of examinations concerning Sir John Fastolf's will. The question was raised as to whether the will had been sealed by Fastolf or after his death and therefore who had kept the seal and, 'how long did it remain whole'. It was stated that the seal was in a purse sealed with his signet and stored in a chest and later placed in a sealed box which was sent to John Stokys who inspected the contents, resealed the whole and deposited it with Roger Malmesbury. Clearly in this case the fate of the seal was of the first importance regarding authentication of the will. At the proving of the will of John Cornwall, Lord Fanhope at Ampthill, in January 1446 the deceased's silver seal and gold signet which had been used for sealing the will were examined by the bishop of Lincoln and the archbishop of Canterbury: *Early Lincoln Wills*, p.167.

<sup>33</sup> Sheehan, pp.206-10,266-81. *Wills and Inventories from the Register of the Commissary of Bury St Edmunds*, ed. S. Tymms, Camden Society, 1st series, 49, 1850 contains the wills of Bury burgesses who, because Bury was exempt from the jurisdiction of the local ordinary, the bishop or Norwich, had their wills proved before the sacrist of the monastery of St Edmund's. See also the award by the archbishop of Canterbury between the bishop and the archdeacon of Ely in which each was given power over wills in named parishes and deaneries in the diocese: *English Historical Documents IV, 1327-1485*, ed. A.R. Mayers, London 1969, p.703. See also P. Heath, 'Urban piety in the later middle ages: the evidence of Hull wills', in *The Church*,

*Politics and Patronage in the Fifteenth Century*, ed. R.B. Dobson, Gloucester 1984, pp.210-11.

<sup>34</sup> *Provinciale*, p.174, a.v. *Laicis: 'Hodie autem in Anglia Archiepiscopus Cantuariensis in sua Provincia, tam quoad Probationes & Insinuationes huiusmodi Testamentorum, quam etiam quoad commissionem Administrationis bonorum & auditionem Computi, omnia talia expedit, ubi decedentes habuerunt bona notabilia in diversis Diocesibus suae Provinciae'.*

<sup>35</sup> *Ibid.*

<sup>36</sup> Swinburne, p.414.

<sup>37</sup> C. Kitching, 'The prerogative court of Canterbury from Warham to Whitgift' in *Continuity and Change: Personnel and Administration of the Church in England 1500-1642*, eds. R. O'Day and F. Heal, Leicester 1976, pp.191-214; *Reg. Chichele*, II, pp.ix-xv.

<sup>38</sup> *Provinciale*, p.174a, a.v. *Probatis*. See also two letters of Alexander III (c. 1170), defending testaments made before two or three witnesses, in P. Jaffe, *Regesta pontificum romanorum ab condita Ecclesia ad annum post Christum natum MCXCVIII*, 2nd. ed., by S. Lowenfeld, et al. under the direction of W. Wattenbach, 2 vols. Leipzig 1885-88, p.11480 (1167-9), p.12129 (1171-72).

<sup>39</sup> Many surviving wills contain no reference to witnesses in spite of these legal requirements. Testators often used instead their own seals and the formula, '*in cuius rei testimonium sigillum meum apposui*'. *North Country Wills*, pp.8,9,15,34; *Reg. Chichele*, II, pp.59,116, where neither the earl of Suffolk nor of Oxford name witnesses and indeed a minority of wills in the register record witnesses. *Somerset Medieval Wills, passim*, where less than one third name any witnesses. *Testamenta Karleolensia, passim*, records a similar proportion.

<sup>40</sup> *Early Lincoln Wills*, p.45,49,74; Wadley, p.65, where a widow and her co-executors used the mayor of Bristol's seal to authenticate part of their administration of a will; pp.118,147; *Somerset Medieval Wills*, pp.219,248-9,275; *Testamenta Karleolensia*, pp.19,30,51,103. Sir Arthur Ormesby in his will of 2 August 1467 used both his own seal and that of the archbishop of York: PRO 11/5/25.

<sup>41</sup> Gratian had stated a general prohibition against the use of female witnesses, while the Decretists and authors of several procedural treatises applied this prohibition specifically to the testament. See *Decretum*, C.33, q.5, c.17 and Sheehan, p.179, no.50 for further references to Decretist prohibitions on the use of women as witnesses. In those wills naming witnesses in Chichele's Register, no women are mentioned: *Reg. Chichele*, II, p.837; and only one is named in lists in *Somerset Medieval Wills*, p.352. A female witness is mentioned in *North Country Wills*, p.35 but there were two men named as well. *Early*



*Lincoln Wills*, p.76 gives three women as witnesses and only two Carlisle wills name women: *Testamenta Karleolensia*, p.11, 140.

42 R.W. Lee, *The Elements of Roman Law*, 4th edn., London 1956, p.207.

43 Sheehan, p.179, n.51.

44 *Ibid*, p.180; Auffroy, pp.443-59, 598-99.

45 *Provinciale*, p.174a, a.v. *Probatis*.

46 *Decretals*, X.3.26.10.

47 Sheehan, p.181.

48 Holdsworth, III, p.535.

49 *Provinciale*, p.172a, a.v. *Intestatus* and p.170a, a.v. *Bonorum huiusmodi*. But see above p.6 the case of the Paston executors actually organising the refusal of two out of the three named in John Paston's will.

50 *Somerset Medieval Wills*, pp.154,297; Wadley, pp.9,18,43,46,48,64.

51 *Ibid*, *passim*. Usually executrices were not given specific sums to cover their costs even where co-executors were so rewarded. *Ibid*, pp.9,18,34,43,45.

52 Sir John Halsanger appointing Joan Asshcombe declared, 'I make her executrix of this my will that she may have God before her eyes in the administration as she will answer therefor at the day of judgment before God and his angels': *Somerset Medieval Wills*, p.130. John Norman took the not unknown precaution of forbidding any one of his three executors to act without the agreement of the others: PRO, PROB 11/5/25.

53 For example, Thomas Mowbray, duke of Norfolk made his will in 1389, ten years before he died: Berkeley Castle Muniments, Select Wills, 13. See also the wills made by individuals in 1415 before embarking or upon arrival in France for Henry V's first expedition there, *Reg. Chichele*, II, pp.44,51,58,62,70-1,83-6,97-8,115-6. Bristol merchant Robert Sturmy made his will because he was 'passinge over the see, vnder the mercy of God', Wadley, p.138. Sir Thomas Graa made his before going on the king's business to France in 1417, Sir Arthur Ormesby, as he prepared to go to Jerusalem in 1467; and William Symond as he set out for the court of Rome; PRO, PROB 11/26/39; 5/25; 3/29.

54 *Reg. Chichele*, II, p.112-13,249-50; *Reg. Bourghier*, p.170-71. There are eleven intestacies recorded on Chichele's Register, including two bishops. Suddenness of death may explain in part the intestacies of Somerset or of Gilbert Umfraville who was killed at Baugé in 1421 but the absence of a will for two such veterans of war is surprising: *Reg.*

*Chichele*, II, p.680. Other notables dying intestate include James Butler, earl of Ormond (d.1452), Edmund Tudor, earl of Richmond (d.1456) and William, Lord Bonville of Clinton (ex.1461): *Reg. Bourgchier*, pp.174,179,198.

<sup>55</sup> *Ibid*, p.173; W.D. Cooper, 'The families of Braose of Chesworth and Hoo', *Sussex Archaeological Collections*, 8, 1856, pp.119ff. Cooper discussed also the length of time taken to carry out the will. Executors refused to act for Thomas, Lord Stanley; and Richard, duke of York's will is known solely because of his executor's refusal to act, a decision that may have been taken because of York's debts: *Reg. Bourgchier*, pp. xxxvii,196,200; P.A. Johnson, *Duke Richard of York, 1411-1460*, Oxford 1988, p.221. For executrices refusing to act see *Somerset Medieval Wills*, pp.113,391; *Reg. Bourgchier*, p.209. See also the will of John Dodyng of 1379 in which the testator failed to name any executors though he left the residue to his wife. At the proving, administration was granted to the dean of Bristol: Wadley, p.13. No reason is given for the declaration that Lucy Sterk's will was void after it was exhibited: *Somerset Medieval Wills*, p.99. PRO, E135/7/34; 21/82 are original letters of administration of intestacies. *Paston Letters*, VI, pp.205-7, where Lady Margaret Beaufort, the archbishop of Canterbury and two other executors chosen by William Paston in 1496 refused to act for reasons unknown.

<sup>56</sup> *Provinciale*, p.180 for the constitution of John Stratford, *Ita quorundam* and the gloss, p.180a, *a.v. Pias causas*.

<sup>57</sup> *Reg. Bourgchier*, pp.170-1,183. See also the involvement of other widows resulting from intestacies of their husbands or delays by executors: *ibid*, pp.165,169,171,172,175,178,190,209.

<sup>58</sup> *Provinciale*, p.180, *a.v. Decedentium: 'In Laico autem decedente an Intestato, deficientibus Consanguineis & Uxore, succedet Fiscus. Unde breviter scias, quod in successione an Intestato prima Causa est Liberorum, secunda Ascendentium cum quibusdam Collateralibus si extent, tertia Transversalium. Primae duae in infinitum protenduntur, tertia usque ad decimum gradum protenditur, sive sint Agnati, sive Cognati. [Inst. 3.2.8] Istis autem deficientibus, si extat Uxor defuncti, ipsa succedet, post eam Fiscus. [C.6.18.1] Exciipiuntur tamen quidam casus, quibus alii praeferuntur Fisco. Puta, decedit Miles, Navicularius, Cohortalis, vel Fabricensis. [C.11.2(1)]'*.

<sup>59</sup> *Paston Letters*, IV, p.220. The list of funeral expenses, part of which may be in Margaret Paston's own hand, includes both short and longer term bequests from John Paston's will. *Ibid*, IV, pp.226-30. From her further worries about the technicalities of administration it is perhaps understandable that she was ready to leave much to her son, though she constantly reminded him of the need to act: *ibid*, IV, p.254; V, pp.10-11.

<sup>60</sup> Examples of executrices active in fulfillment of wills can be found scattered in *Calendars of Ancient Deeds*, 6 vols. London 1890-1915. See in particular deeds of sale of property in I, pp.182,184,186; releases of actions in *ibid*, pp.544,557; and receipts in *ibid*, pp.390,556. See also *English Historical Documents IV*, p.1140.

<sup>61</sup> *Select Cases in the Court of King's Bench*, VII, ed. G.O. Sayles, Selden Society, 88, 1971, pp.75-77.

<sup>62</sup> Help could clearly be expected from everyone at the moment of bereavement of the sort described by Sir John Paston in 1476 when the duke of Norfolk died so suddenly, 'wherfor it is for alle that lovyd hym to doo and helpe nowe that, that maye be to hys honoure, and weell to hys soweile'. *Paston Letters*, V, p.245. For an assessment of the pious requests by Bristol testators see: C. Burgess, 'By Quick and by Dead', wills and pious provision in late medieval Bristol', *English Historical Review*, 102, 1987, pp.840-1; and for Hull see Heath, pp.213ff.

<sup>63</sup> *Somerset Medieval Wills*, p.326; Heath, p.213 discusses the lack of realism among Hull testators.

<sup>64</sup> *Ibid*, pp.181-85. Occasionally funeral directions themselves were at variance with a testator's wishes, as in the case of Hugh Cokesey who had requested burial at Kidderminster but had died and been buried at Minster Lovell. In 1469 Lady Beauchamp had a licence for reburial Hugh at Kidderminster: *Early Lincoln Wills*, p.113. Sir John Lumley (d.1421) was finally moved to his chosen resting place in 1594! *Wills and Inventories*, p.60.

<sup>65</sup> BL, Egerton Roll, 8779; Add. Ms. 34122A; *Complete Peerage*, IX, p.214. The Morley accounts provide the circumstantial evidence but Lord Thomas's will does not survive. Eighteen accounts for the manor of Bosham in Sussex, covering the period 1342-1421 record an annual allowance of 6s. 8d. paid to the vicar for keeping the anniversary of Thomas of Brotherton, earl of Norfolk, who died in 1338: West Sussex County Record Office, Accession 939 II/A/1-17; Arundel Castle Archives, Ms. A360. See also payments to celebrate for the soul of Thomas, duke of Clarence in Westminster Abbey Muniments, 12163, fo.23. *English Historical Documents IV*, pp.1161-5 contains the superb contracts between the executors and workmen involved in organising the splendid tomb of Richard Beauchamp, earl of Warwick (d.1439) for the years 1447-54. For further evidence of Beauchamp's executors faithfully carrying out their duties see the inventory of goods of the collegiate chapel of Warwick of March 1468 recording receipt of the earl's plate and books by the Sexton, as well as the deeds relating to land purchased by the executors for the enlarging of the churchyard: PRO, Exchequer KR, Inventories of Goods and Chattels, E154/1/46. See also, M. Hicks, 'Chantries, Obits and Almshouses: The Hungerford Foundations 1325-1478', in *The Church in Pre-Reformation Society*:

*essays in honour of F.R.H. Du Boulay*, ed. C.M. Barron and C. Harper Bill, Woodbridge 1985, pp.123-42. K. Wood-Legh, *Perpetual Chantry in Britain*, Cambridge 1965, cop. pp.127-8.

<sup>66</sup> *Paston Letters*, V, pp.111-2,124,180,200,241,245,301,318,323-4. See also Agnes Paston's arrangements for a rent-charge from the manor of Swainsthorp to be settled to find a priest to sing for her husband who died in 1444 and for the vicar of Paston to keep his obit: F. Blomfield, *An Essay towards a Topographical History of the County of Norfolk*, 11 vols. London 1805-10, IV, p.40; *Paston Letters*, II, p.80; IV, pp.251-3; VI, pp.189-99. Advising Sir John Fastolf for his college at Caister, his nephew told how the executors of Lady Abergavenny had bound, 'maners of good valeu', to pay for the priests to sing for her in perpetuity: *ibid*, III, p.98. On the lack of evidence of keeping perpetual anniversaries see Burgess pp.854-5 but see also Hicks pp.127, 132, 135-6.

<sup>67</sup> *Ibid*. pp.842, 854 citing the examples of Alice Chestre and Maud Baker two Bristol widows who made provisions greatly in excess of the demands of their husband's wills.

<sup>68</sup> *Reg. Chichele*, II, *passim*, where grants of probate usually give a specific date by which the inventory is to be presented; *Reg. Bourghier*, pp.164-209, *passim*. Few of the items in *Wills and Inventories* or in *Bury Wills and Inventories* comprise inventories and most of those are for the clergy. A small collection of about sixty only survive for the whole period from 1464-1500 in PRO, Prerogative Court of Canterbury, Inventories 1417-1661, Prob 2. *Early Lincoln Wills*, pp.53,207,209 are the only wills in the registers of the bishops of Lincoln with inventories attached.

<sup>69</sup> K.B. McFarlane, *The Nobility of Later Medieval England*, Oxford 1972, p.237; *The Antient Kalendars and Inventories of His Majesty's Exchequer*, 3 vols. ed. F. Palgrave, London 1836, II, 303-7;366-67. PRO, E154/1;2;6 contain 85 inventories of which only 23 can be certainly associated with the execution of wills. Only one was the work of an executrix: 6/15.

<sup>70</sup> *Reg. Chichele*, II, pp.45-9, Edward Cheyne referred to 'ye goodis ... discribed in myn inventaire', which he had apparently given to one of his executors. R. Garraway Rice, 'The household goods of Sir John Gage of West Firle, Co. Sussex, K.G. 1556', *Sussex Arch.Coll.*, 45, 1902, pp.114-27. Gage drew up his inventory to avoid debate about his goods. E.M. Thompson, 'The will and inventory of Robert Morton 1486-8', *Journal of the British Archaeological Association*, 33, 1877, pp.308-29. See also PRO, PROB 11/4/5: the will of Ralph, Lord Cromwell who specifically ordered three inventories to be made with details of who was to keep them and provision of appropriate keys.

<sup>71</sup> M.M.N. Stansfield, 'The Hollands, dukes of Exeter, earls of Kent and

Huntingdon, 1352-1475', unpublished Oxford DPhil, 1987, pp.295-305. See also W.H. St John Hope, 'The last testament and inventory of John de Veer thirteenth earl of Oxford', *Archaeologia*, 66, 1914-15, pp.275-348. Oxford's wife was first named of the eleven executors but the inventory was actually made by an apparitor-general of the archbishop of Canterbury. Some of the ornaments described in the will are not in the inventory though many more items were listed in the latter. See also *English Historical Documents IV*, p.1152; *Calendar of Select Pleas and Memoranda of the City of London 1381-1412*, ed. A.H. Thomas, Cambridge 1932, pp.209-15; inventory of a London grocer of 1391 which was exhibited to and then sealed by the official of the archdeacon of London. PRO, Duchy of Lancaster Miscellanea DL41/12/2; 13/9 are two sixteenth century inventories, the first, including also eight bills and memoranda; Harriss, pp.364.

<sup>72</sup> B.L. Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury*, Oxford 1952, p.85. PRO, E154/1/38. The inventory of grocer Richard Toky referred to debts amounting to 40% of his assets, none of which could be realized: S. Thrupp, *The Merchant Class of Medieval London*, Michigan 1948, p.109. A.F.J. Sinclair, 'The Beauchamp earls of Warwick in the later middle ages', unpublished London Phd, 1986, p.134 discusses executors and widow dealing with outstanding debts.

<sup>73</sup> *Reg. Chichele*, II, pp.213-5; Lancashire County Record Office, Ms. DDX/293/34. William Langar's bequests to his widow and executrix included outstanding wages for the fortification work done at Guines castle where some of his movables also remained: PRO, PROB 11/3/13.

<sup>74</sup> PRO, PROB 11/6/25. No record survives to show whether Barbara Comber managed to carry out her burden. *Transcripts of Sussex Wills*, ed. W.H. Godfrey, 4 vols. Sussex Record Society, 43, 1938, p.317. For other schooling duties see *Reg. Chichele*, II, p.302, a bequest by John Stokes in 1424 for schooling at Oxford. Sometimes the burden for education was placed upon a testator's feoffees as in *Early Lincoln Wills*, p.190. For successful action see Wadley, pp.168-9, where appended to the will of Thomas Baker, proved by his executrix in April 1493, is a memorandum that the latter, in October following, assented before the mayor and alderman to the marriage of her daughter and handed over to the new son-in-law 100 marks and 50 ounces of silver bequeathed by her husband to his child.

<sup>75</sup> *Reg. Chichele*, II, p.473. Thomas Mowbray himself had organised the return of his father's remains from Rhodes, after nearly thirty years but it is not known whether Katherine carried out her husband's wishes. PRO Duchy of Lancaster, Various Accounts, DL28/1/6, fo.8; Exchequer Augmentations Office; Ancient Deeds B,E326/9376. See also *Wills and*

*Inventories*, pp.17,60 for other requests concerning bones.

<sup>76</sup> PRO, PROB 11/17/12; C1/399/39. No written record of the outcome of the suit survives but their success can be measured by the completed castle of which only part now remains.

<sup>77</sup> PRO, Exchequer KR Accounts Various, E101/501/28.

<sup>78</sup> *Ibid*, 25/19, 28/4.

<sup>79</sup> *Ibid*, 30/23: Margaret was making her account with her second husband John who would have automatically been named on the account as she would not have status since her new marriage as *femme sole*. See also the accounts of Alice Carey, executrix, for naval stores in her husband's charge from 1349-52 and of Joan Roger, relict and executrix of the keeper of the king's ships, for 1509-11: *Ibid*, 25/37; 55/27. The latter was especially careful in submitting her account stating under each heading of expenses that everything was recorded, 'in a booke of parcellez of the seid Johanne thereof made duly upon the makynge of this declaration seen proved perused and examened'.

<sup>80</sup> *Calendar of Inquisitions Miscellaneous 1377-88*, p.221; *Calendar of Patent Rolls 1385-89*, p.472; *Calendar of Wills Proved and Enrolled in the Court of Husting, London 1258-1688*, ed. R.R. Sharpe, 2 vols. London 1889-90, I, p.599.

<sup>81</sup> *Cal.Inq.Misc. 1377-88*, pp.106-7; *Cal.Pat.Rolls 1381-85*, p.255, showing that she was eventually pardoned. For another executrix in similar straits see *Cal.Inq.Misc. 1377-88*, pp.78,205; *Cal. Close Rolls 1385-89*, p.356.

<sup>82</sup> Wadley, p.162. William Rowley of Bristol appointed his father as his executor but the latter died before the will was proved and administration was granted first to Margaret Rowley, possibly the testator's mother and afterwards to his uncle. It is questionable how far Margaret Chocke may have proceeded with her husband's will of 3 July 1483 (date of probate unknown, though he was dead by 6 February 1483), and her own death by October 1484: *Somerset Medieval Wills*, pp.238,244. *Cal.Close Rolls 1476-85*, pp.317-8, shows Margaret to have been executrix of her first husband.

<sup>83</sup> *Sussex Wills*, 45, 1940, p.50. For similar though less convoluted declarations see *North Country Wills*, pp.69,77; *Early Lincoln Wills*, p.209, the will of Alice Osborn to which is annexed the inventory of goods she had as executrix of her late husband, John Muscote. See also, *Somerset Medieval Wills*, pp.193,306; *North Country Wills*, p.65; Burgess, p.852, discusses the passing on of testamentary burdens; Kettle, p.102.

<sup>84</sup> *Testamenta Eboracensia III*, p.85. Similarly those of Sir Gilbert Talbot (d.1517) in BL, Add.Ch.74187; of Richard Toky in *Cal. London Pleas*, pp.209-15; and in the inventories E154/1/32; 2/2; 6/15. See the

comments of Margaret Paston in 1469 before probate of her husband's will, expressing fear of having to render an account of his goods, *Paston Letters*, V, pp.10-12.

<sup>85</sup> PRO, E135/7/43. This is a view of account and refers to the inventory and the fuller account, neither of which survives. The estate was valued at £466.13s.8d. but allowances and *respecta* exceeded that sum by £433.12s.5d. PROB 11/23/28; Lucy's will. See also Chancery Ancient Deeds C146/6894, accounts of the executors of Eleanor, countess of Ormond with a residue of £864.17s.11.5d.

<sup>86</sup> For letters of acquittance or absolution see *Reg. Chichele*, II, pp.88,126; PRO, E135/7/31-2, 35, 37, 39, 42; 24/79; *Somerset Medieval Wills*, pp.63,78. The actual activities of executors in the business of disposal of real estate would constitute a study in its own right.

<sup>87</sup> In 1377 the commons complained about the fees, demanding that they should be fixed: *Rotuli Parliamentorum*, II, p.335.

<sup>88</sup> *Reg. Chichele*, II, p.xxxiv. For the constitution see D. Wilkins, *Concilia Magnae Britanniae et Hiberniae*, 4 vols. London 1737, III, p.377.

<sup>89</sup> *Provinciale*, p.181a, a.v. *Insinuationes huiusmodi*.

<sup>90</sup> *Ibid*, p.181b, a.v. *Excedere*.

<sup>91</sup> *Ibid*, p.182.

<sup>92</sup> *Ibid*, p.182b, a.v. *Cathedralis Ecclesiae*. Payments made in fees in *Somerset Medieval Wills*, p.78; PRO, E135/7/43; *Cal. London Pleas*, p.215; *Wills and Inventories*, p.85; BL, Add Ch. 74187, reflect a range from 6s.8d. to £63, the huge sum paid for Sir Gilbert Talbot in 1517.

<sup>93</sup> PRO C1/6/26; 6/71; 5/78; 15/311.

<sup>94</sup> Thrupp, p.371 gives a short biography. PRO, PROB 11/6/1: Verney's will in which he specifically instructed his executors to act at all times in concert.

<sup>95</sup> PRO, C1/230/16.

<sup>96</sup> *Ibid*, 230/17. Brown had accepted plate as security for the cash which the executors were unable to find and subsequently refused either to keep the plate or to take the cash and surrender the plate. Sir Ralph described Brown in his will as 'my true lover': PROB 11/6/1.

<sup>97</sup> PRO, C1/76/115. The lack of precise dating makes it impossible to know in what order or at what intervals these suits arose.

<sup>98</sup> *Ibid*, 230/53.

<sup>99</sup> *Provinciale*, p.176b, a.v. *Legari sunt: 'Et est regulare, quia omnia possunt legari, quae non sunt prohibita'*. See also p.166a, a.v. *Legitima Testamenta*; p.167b, a.v. *condere testamentum*.

<sup>100</sup> *Ibid*, p.173a/b, a.v. *Propriarum uxorum*.

<sup>101</sup> Sheehan, p.266.

<sup>102</sup> *Provinciale*, p.172a, a.v. *Mobilibus*, 'Bona enim immobilia talium, ubi non sunt specialiter disposita secundum Jura civilia, certo modo disponi debent; quem modum hic non prosequor, quia potius in his standum est Regni Legibus & Consuetudinibus, quas aliis in eisdem peritis remitto declarandas'; p.176a, a.v. *De consuetudine*.

<sup>103</sup> Sheehan, pp.289-95; *Provinciale*, p.172a, a.v. *Consuetudinem Patriae* and *Defunctus contingit*.

<sup>104</sup> A. Bernard, *La Sépulture en droit canonique de décret de Gratian au Concile de Trente*, Paris 1933.

<sup>105</sup> *Provinciale*, p.172a, a.v. *Intestatis*: 'Executores universales, qui loco Haeredis sunt'.