Devising, Dying and Dispute

Probate Litigation in Early Modern England

Lloyd Bonfield

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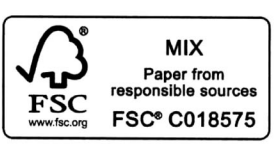

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DEVISING, DYING AND DISPUTE

For the women in my life:

My mother Libby,

my wife Adriana

and my daughter Lisa

Preface

This book has been 'a long time coming.' Its genesis was in an observation by my M.A. supervisor, later colleague and friend, Professor Henry Horwitz who, to paraphrase, remarked – you teach modern wills, why not look at will contests in the past? The records of the Prerogative Court of Canterbury are extensive; they would provide evidence for an interesting study in social, economic and legal history. Indeed. A decade and a half later I am able to offer this volume. The delay can be explained by the usual academic laments: too many courses to teach, too many exams to grade, too many committee meetings to attend, too many administrative chores to shoulder. To that I can add the unique challenge of living in New Orleans: too many hurricanes. Progress was impeded by numerous storms: Georges and Ivan and Lily and Ike and, of course, Katrina. Multiple back-ups were generated that later required reconciliation; lost notes needed to be reclaimed. Academic and climactic challenges aside, both the shear mass of documentation and the intellectual challenge of presenting effectively law to historians and history to lawyers was for me a daunting task. On one level, the endeavour should be straightforward: lawyers have respect for the past, and historians realize how important it is to understand the law. In practice, however, the disciplinary divide is not so easily broached. This volume is my modest offering.

Many conferences and colleagues have borne the burden of boredom and respectfully listened to presentations and read all or parts of this volume. Chapters of this volume were presented at the annual meetings of the American Society for Legal History and the Social Science History Association. Another helpful venue for developing a presentation strategy was Professor William Nelson's Golieb seminar at New York University Law School where the multitude struggled with pre- and post- Katrina versions of the work. I'd like particularly to thank Bill's own unflagging efforts to make sense of the morass, and those of my New York Law School colleagues who regularly participate, Professors Bill LaPiana and Richard Bernstein. Professor Tom Green read the manuscript twice, and while the evidence never said quite enough for him, his perceptions on what could be teased out of the documents were invaluable. My former Tulane colleague, Professor Felice Batlan, read many chapters, and I thank her for making me understand more, though perhaps not enough, about gender and power-relations past and present.

Continuity and Change has been an endeavour that has governed much of my academic life for over a quarter-century. It has also provided me with enduring friendships. My Founding Co-editor of *Continuity and Change*, Richard Wall, sadly gone, patiently honed his legal history skills on various versions of chapters, as did our Founding Associate Editor, Professor (now Dean) Larry Poos, and his successor, Professor Phillipp Schofield. Whatever Richard perused Beatrice Moring also read; I am certain her insightful remarks were incorporated into his now-cherished scribbles. Maureen Street, *Continuity and Change*'s long-suffering copy editor, read the entire storm-ridden text, pencil in hand and, as she has always done, insisted that thoughts flow logically and grammatically. Thanks to one and all.

As my current dean Rick Matasar reminds my colleagues frequently, we conduct our research largely at the expense of our students. My two academic homes, Tulane Law School and New York Law School, have both generously supported this mission with sabbaticals, summer grants and travel stipends. I was also fortunate enough to be honored with a John Simon Guggenheim Fellowship which allowed me a year in the then Public Records Office, now the National Archive.

To teach and write about death and the property transmission that it occasions is not always an agreeable task. If not present at the onset, which in my case it was, a certain degree of moroseness invades the recesses of the psyche. The support of my family, my wife Adriana and my daughter Lisa, in bearing with a difficult individual obsessed with the deaths and estates of others he never knew was invaluable. My mother passed away during the course of the project. From the very beginning of my career as a lawyer-historian, her confidence in my ability and memories of her own determination has sustained me. One supportive woman in a life is more than one can expect; I have been blessed with three to whom I gratefully dedicate this work.

Finally, those engaged in archival research lead a decidedly solitary life. One is never more alone than when seated in the reading room of any archive, let alone, the mighty National Archive. Sadly, it is no more salubrious to while away countless hours in Kew than it was in the neo-gothic tomb at Chancery Lane. To deal with the inherent loneliness, I purchased for a pound in Shaftesbury in Dorset a small hand-carved wooden English sparrow, improbably called Carlo. He has been my constant companion and 'best buddy' ever since, joining me on my transatlantic expeditions. He is witty, urbane, intelligent, even-tempered, shares my passion for micro-brews, and what's best, we hardly ever disagree. I thank him for his company. A 'polite and industrious' fellow, he is already at work on another project.

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Introduction

This is a book about devising, about dying, and finally, about dispute. Probate courts, then as now, generally focused on an individual's final legal acts. But through the evidence generated by the contested probates observed in my research, litigation over the particular validity of wills, this book is able to proceed further: it also chronicles the last words, and the last moments, of a group of now-deceased property owners. Narratives of living, will-making and dying are constructed by employing the Prerogative Court's record, and they shed light upon how its judges made the often difficult (though for the parties involved crucial) choice between will validity and will nullification. Because these documents depict deaths, the disposition of estates and, above all, the disputes that wills engendered, much can be learned from them about property law, and about the interplay between law and society in past time.

A book that focuses upon death presents some obvious drawbacks: this is not a happy narrative. It is written at a time when the sudden demise of individuals is commonplace and seems even mundane. Recent events, from terrorism to tsunami, have reminded us that death can strike suddenly and unexpectedly, leaving individuals with insufficient time to settle their worldly affairs soberly and with deliberation.[1] So it was for many of the players whose passing came to the attention of the Prerogative Court of Canterbury in the late seventeenth century. Unhappily, the mortality portrayed in the court record did not amount to what contemporaries described as the 'good death,' a proposition that is perhaps questionable to the twentieth-first-century Western mind.[2] The will-makers whose last words and acts are considered here did not die in the dignified manner of James I, or at least not in the stylized version that has come down to us thanks to

[1] In fact will-making seems to be on the rise as a result of the attack on the World Trade Center. 'Jolted by September 11, Many Rush to Make Wills,' *New York Times*, December 13, 2001. New York Region.

[2] For a discussion of the 'good death,' see Ralph Houlbrooke, *Death, Religion and the Family in England, 1480–1750* (Oxford, 1998), ch. 7.