

Research Note:

Sources of Bias in Nineteenth-Century Ontario Wills

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Wills are a major source of information for historians of the family because of the information they provide about such matters as family inheritance strategies, provision for widows and orphans, and dowry arrangements. They have also been much used by economic historians, though this has not been the case in Ontario to the extent that it has been in England and the United States.¹ The Ontario historian who wishes to use wills must know where to locate them, for not all wills left by residents of a particular area are to be found in one set of records. The investigator must also realize that testators were in many ways not representative of the general population.

Les testaments constituent une source essentielle pour les historiens de la famille; ils procurent des informations abondantes sur diverses questions telles le mode de transmission des biens familiaux, le sort réservé aux veuves et aux orphelins, et les dispositions ayant trait aux biens dotaux. Les tenants de l'histoire économique y ont eu largement recours, quoique beaucoup moins en ce qui concerne l'Ontario qu'en ce qui concerne l'Angleterre et les États-Unis.¹ L'historien de l'Ontario qui désire utiliser ces sources doit savoir où les trouver puisque les testaments laissés par les résidents d'une région particulière ne sont pas nécessairement regroupés dans les mêmes dépôts d'archives. Le chercheur doit aussi être conscient du fait qu'à bien des égards, les testateurs n'étaient pas représentatifs de l'ensemble de la population.

I — LOCATING ONTARIO WILLS

The Ontario Courts which deal with probate matters were established in 1793. A Surrogate Court was set up for each district, and later for each county, which was concerned with the estates of the residents of the particular region.² A provincial Court of Probate also sat in Toronto from 1793 until its abolition in 1859. This court, which was similar to the Prerogative Court of Canterbury in England, was established to deal with the estates of individuals dying possessed of £5 or more in two or more districts or in a district where the deceased was not a resident. In practice, heirs often preferred to avoid a trip to Toronto and had copies of the wills proved or registered in the various Surrogate Courts in the dis-

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1. See Brian S. OSBORNE, "Wills and Inventories: Records of Life and Death in a Developing Society", *Families*, 19, No. 4 (1980): 235-247 for examples of the utility of testamentary records in Ontario economic history.

2. On the use of Ontario Surrogate Court records see Catherine SHEPARD, *Surrogate Court Records at the Archives of Ontario: A Genealogical Research Guide* (Toronto: Ontario Genealogical Society, 1984).

tricts where the properties were situated. The records of the Carleton County Surrogate Court even include a few wills from Quebec and the British Isles, there because the testators owned real or personal property in Carleton County. The Court of Probate became “a sort of elite vehicle for the landed gentry”,³ though the will of the odd itinerant labourer does turn up there.

Most studies of Ontario inheritance have relied upon the records of the County Surrogate Courts, yet there is good reason to believe that the majority of wills in nineteenth-century Ontario may never have been probated, probably to save legal expenses. Many unprobated wills turn up in the county Land Registry Offices because all wills bequeathing land were filed there to record the transfer of the property.⁴ Until the 1840s these Registry Office copies were “memorials of wills”, abstracts of the portions of the documents that related to land in the county. Later, complete transcripts of the wills were registered, but not inventories or other papers.

One finds a specific will in the Land Registry by consulting the page in the Abstract Index to Deeds (AID) for the lot concerned.⁵ The only way to locate all wills so registered is to watch for the words “Will” and “Probate” in the column of the AID identifying the type of instrument. From 1866 onward wills mentioning unspecified property were entered in a General Register, usually indexed by name. Some researchers incorrectly assume that the General Registers contain all wills filed in the Land Registry Office.

The importance of the Land Registry Office as a source of testamentary records is demonstrated by the results of a search for all wills left by nineteenth-century residents of March Township. The records of the Carleton County Surrogate Court included only thirty-six of the eighty-five wills of which some form of official record survives. Forty-four, on the other hand, were found only in the Land Registry Office. Table 1 indicates in greater detail the locations of the wills of March residents. In other municipalities the proportions filed in the various offices may differ, but the importance of searching Land Registry wills is clear. Of course, we can never know how many wills bequeathing only personalty went unprobated and disappeared into family papers until discarded, for such wills never made the trip to the Land Registry Office.⁶

3. Gordon DODDS, “Court Records as a Genealogical Source in Ontario”, in *Readings in Ontario Genealogical Sources*, ed. Don Wilson (Toronto, 1978), p. 97.

4. On using Ontario Land Registry records, and for a list of places of deposit of the copy books, see A. David McFALL and Jean McFALL, *Land Records in Ontario Registry Offices*, (Toronto: Ontario Genealogical Society, 1983).

5. On the Abstract Index to Deeds, see John CLARKE, “Land and Law in Essex County: Malden Township and the Abstract Index to Deeds”, *Histoire sociale/Social History*, 11 (1978): 475-93.

6. Similar points about unprobated wills have been made and debated recently in England. See the correspondence columns in *The Local Historian*, 15 (February 1983): 299; 15 (May 1983): 363; 15 (August 1983): 433; 15 (November 1983): 497 and 16 (February 1984): 52-3.

Table 1 Sources of Wills of March Township Residents, 1838-1900

	Wills	Admons.
Probate Court only	1	2
Surrogate Court only	15	16
Land Registry only	35	
General Register only	9	
Surrogate & Land Registry	13	
Surrogate & G. R.	5	7
Land Registry & G. R.	2	
Surrogate, Land, & G. R.	2	
Prob., Surrogate, & Land	1	
Probate Court & Land Registry	<u>1</u>	<u>—</u>
	84	25

Sources: Ontario Archives: Probate Court, RG22 6-1-A, 1793-1859; Lanark County Surrogate Court estate files, 1829-1893; Carleton County Surrogate CI registers, 1838-1900; Carleton County Land Registry: Abstract Indexes to Deeds and filed memorials, 1824-1900; Carleton County Land Registry, Index to County General Registers, 1866-1900, and filed memorials. The Surrogate Court will registers have been microfilmed by the Latter-day Saints, and the copy books from the County Land Registry, including the General Registers, have been deposited at Ottawa City Archives.

II — SOURCES OF BIAS

The historian who uses wills in local or social history studies must ask how representative testators were of the total population if conclusions about the community at large are to be drawn. One must know what proportion of the population left wills at all and discover how these individuals may have differed from their neighbours. A person's sex, wealth, occupation, and age or, more accurately, stage of life may have influenced how that person went about disposing of an estate. The March Township example provides the basis for some tentative answers to these questions.

1. Potential and Actual Testators

What proportion of people who could have left wills in fact did so? Eighty-four March Township residents left wills between 1838 and 1900. The starting date of 1838 was selected because the Carleton County Surrogate Court records, a major source of wills, began around that date and the Anglican burial records, an important source of information about deaths, became comprehensive around the same time.⁷ March was first settled in 1819. The next step was to discover how many adult males could have left wills in the period; in other words, how many adult males actually died in the township between 1838 and 1900.⁸ In identifying potential testators I considered only male heads of family because women in

7. Anglican Diocese of Ottawa, registers of the parish of March, 1834-36, 1839-1900.

8. The method consists of comparing heads of families in the decennial census and the 1891 assessment roll with names inscribed in the township's graveyards and noted in the burial registers of the Anglican Church, already cited, and in the parish registers of St. Isadore's Roman Catholic Church, March, 1861-1910, Genealogical Society of the Church of Jesus Christ of Latter-day Saints (Mormons) microfilm, reel 1304511. Burials were not regularly entered in the Roman Catholic registers until 1880; see note at that date in the register.

the nineteenth century could will property only if they were spinsters or widows. Many such women were dependents or had no property to bequeath and consequently women made up only a small proportion of testators. Only a tenth of the eighty-four wills were left by women, five by widows and three by spinsters. Another testator was a married woman who had been given the privilege of bequeathing property by her husband. All but three of the seventy-five male testators were householders.

The result of this search was a list of 166 heads of family who actually died while resident in the township or temporarily absent from it between 1838 and 1900. There are several reasons why this number is comparatively small. Most obvious to those who know the township is the fact that March was a small triangular municipality on the Ottawa River with a population of only 1125 in 1851 and 1318 in 1881. In addition, as in many other townships in eastern Ontario where the land was mediocre and settlement early, more people migrated from the township than arrived in it once the initial wave of settlement was past. Many residents therefore did not die there.

Of these 166 possible testators, defined as male householders, 72 (44 percent) left wills, 15 (9 percent) left estates that were administered by the Courts, and 79 (47 percent) left no testamentary document or probate record behind them. In short, just over half the adult males who died in the township in the nineteenth century left some kind of probate record. This compares favourably with some studies of other areas in previous centuries. For example, in Banbury, Oxfordshire, England between 1560 and 1715, one quarter of potential male testators left wills and 10 percent left inventories only, a total of nearly 45 percent of the adult male population, and in eighteenth-century Hingham, Massachusetts 36 percent of males left wills and the estates of 42 percent were inventoried.⁹ In March a slightly higher percentage of people made wills, but still only about half of the relevant population. Were testators representative of that population?

2. *By Time Period*

There appears to have been no significant change over time in the tendency to leave wills with the notable exception of the first two decades of settlement. From 1819 to 1842, a period for which we lack comprehensive death or burial records and have minimal nominal census material, only a scattering of wills survives for the later Carleton County area as a whole. A major reason was that wills had to be proved in Perth until Carleton County was organized as the Dalhousie District in 1838.¹⁰ The distance of the early District capital was a constant irritant to Carleton settlers and probably discouraged them from filing for probate. Although records of deaths are sparse it seems, too, that comparatively few heads of family died in March Township in the pioneer period. This circumstance no doubt reflects the fact that most immigrant families were headed by young or middle-aged men who, barring accidents or illness, lived to die in a later period. Certainly most of the settlers found in the 1820-23 censuses of the township¹¹ whose names did not reappear in later records moved on in search of more or better land during this period and did not in fact die in March.

9. Richard T. VANN, "Wills and the Family in an English Town: Banbury, 1550-1800", *Journal of Family History*, 4 (Winter 1979): 350-353; Daniel Scott SMITH, "Underregistration and Bias in Probate Records: An Analysis of Data from Eighteenth-Century Hingham, Massachusetts", *William & Mary Quarterly*, 3rd ser., XXXII (January 1975): 104.

10. Although the Dalhousie District was created in 1838 a Surrogate Court judge was not appointed until 1842. Eric JONASSON, "The Districts and Counties of Southern Ontario, 1777-1979: Two Centuries of Evolution", *Families*, 20, 2 (1981): 92.

11. Ontario Archives, Municipal Records, MS. 262 (13), census and assessment rolls, March Township, 1821 & 1822; PAC, March Township Minute Book, MG9 D8-56, census of 1823.

In the 1840s and 1850s, however, people left some kind of testamentary record behind them more often than not, while in later decades roughly half the population left some form of testamentary document. There appears to have been a tendency for a smaller proportion of people to leave wills in later years than in the second quarter of the century. The reason for this is not clear, but the figures give us some confidence to think that wills from the 1840s and 1850s are not so rare in March as to be of little analytical value.¹²

Table 2 Testamentary Status of Deceased Male Householders, March Township, 1838-99

	Will	Admon.	Neither	Total Deaths
1838-49	6	4	6	16
1850-59	15	1	7	23
1860-69	10	2	12	24
1870-79	13	1	16	30
1880-89	15	3	10	28
1890-99	<u>11</u>	<u>3</u>	<u>18</u>	<u>32</u>
	70	14	69	153

Sources: as in Table 1.

We will now move on to consider three possible reasons why people left wills.

3. Occupation and Wealth

One would suspect that wills were left more often by wealthy people than by the poor. This is perhaps the most obvious source of bias of which the user of testamentary records must be wary.¹³ A breakdown of March Township's male decedents by occupation helps us to judge the extent to which this was the case.

Farmers accounted for 70 percent of both decedents and testators, with about two-fifths leaving wills and the estates of another tenth being administered by the courts. Tradesmen were a more mobile segment of the population than farmers, and they were thus more likely to depart than to stay in March and die there. Labourers also were mobile, and they usually moved on or became farmers. Few actually remained labourers in the township all their lives. Tradesmen and merchants accounted for 9 percent of both decedents and testators with just under half leaving wills, and labourers accounted for just 6 percent of decedents and for only 4 percent of testators, with fewer than a third leaving wills.

12. In thirteen cases I could not assign a death to one decade or the next with sufficient accuracy, but this still left 153 deaths to consider.

13. In the United States probate inventories have been used extensively to construct wealth distribution profiles of colonial society. As a result considerable effort has gone into attempting to devise statistical methods for counteracting wealth and age bias. See, for example, SMITH, "Underregistration and Bias", 100-110; Gloria L. MAIN, "The Correction of Biases in Colonial American Probate Records", *Historical Methods Newsletter*, 8 (December 1974): 10-28; Bruce DANIELS, "Probate Court Inventories and Colonial American History: Historiography, Problems and Results", *Histoire sociale/Social History*, IX (November 1976): 387-405; and on English records: Carole SHAMMAS, "Constructing a Wealth Distribution from Probate Records", *Journal of Interdisciplinary History*, IX (Autumn 1978), 297-307 and Peter H. LINDERT, "An Algorithm for Probate Sampling", *Journal of Interdisciplinary History*, XI (Spring 1981): 649-668.

At the top of March's social pyramid were a number of half-pay military officers who settled along the Ottawa River front. This elite continued to occupy places of local authority to an extent far outweighing their numbers for most of the century. The gentry accounted for 10 percent of decedents but left 17 percent of the wills. In fact three-quarters of these members of the local gentry left wills, and we have letters of administration for three more who did not. Of the thirteen who did leave wills, seven were retired military officers, one was a member of an Irish landed gentry family, two were retired merchants, one was the son of a Legislative Councillor (who himself left a will but came to Canada as a retired merchant), and two were self-made men, F.W. Richardson and John Boucher, poor Irishmen who had made good through intelligent farming and lumbering in the one case, and tavern-keeping in the other.

Of the gentry known to have died in the township in the nineteenth century, only two left neither will nor administration. James Read, a brother of Lieutenant Thomas Read and a retired English customs officer, had already passed his property to his son and lived with him in his old age. He therefore had no need of a will. The second was Richard Mowbray, who died in 1858 at the age of 29. His was an early and probably sudden death, and a will was probably far from his mind. He was unmarried as well as young, and it was only in 1894 that his siblings and their children in Ireland, England, Scotland, and New Zealand disposed of his land in March.¹⁴

Though the March evidence does not permit analysis by wealth categories, it is apparent that the township's elite left wills in the majority of instances while fewer than half of the farmers, tradesmen, and labourers did so. The former, of course, had more property of which to dispose and more arrangements to make.

It is important to note that nineteenth-century March was a rural community. One would expect wills in an urban centre to be even more biased towards the wealthy because fewer people in cities owned land. March was also unusual in having a highly distinctive, readily identifiable elite group at the top of the social pyramid. Most rural areas had community leaders who are less visible to today's historian than March's group of river-front half-pay officers. These will have to be identified in any particular community through a detailed study of records of office-holding and land-ownership, but once this has been done a similar tendency for more of the wealthy to leave wills will probably be observable.

4. Health of the Testator

Of ninety-one nineteenth-century testators residing in March (or former long-time March residents, living nearby at the time of death), there is reason to believe that a high proportion made their wills in the face of impending death. A number of wills refer specifically to the ill health of the testator. Phrases such as "being weak and feeble in body", or "believing that I will soon depart this life" are not uncommon in March wills. One also finds a few references to medical bills, and doctors were witnesses to wills in a few cases. Fifteen of the ninety-one testators died within a month of making a will, another twenty-seven within six months, and six more within a year. These people probably made their wills in expectation of impending death. A quarter of the decedents actually stated that they were sick. Of the remaining forty-nine who made their wills over a year before they died, a quarter similarly referred to illness.

14. Carleton County Land Registry, Carleton County General Register (GR), #967-969.

This does not mean necessarily that most wills were a last-minute thought. Even if a will had been previously drawn up, sickness would have been a strong incentive to update earlier provisions. Nevertheless it is probably significant that only a few wills were updated with codicils. Most were either first wills or complete redrafts.

5. *Life Course Stage*

A major but much-neglected source of bias in probate records derives from the composition of the resident family at the time of death. The assumption behind consideration of this question is that the presence of young children at home influenced the provisions made in a will and perhaps whether a will was made at all. The age of the testator might at first appear to be a sufficient factor to consider. A successful retired farmer or merchant, for example, may well pass on most of his property long before he dies. His will may therefore not represent the extent of his wealth when he was in his prime and active in business. It would therefore be dangerous to use the valuation of his estate in comparing his wealth with that of someone else. However, age is not so useful a criterion as it first appears to be, for in the nineteenth century it was not uncommon for men to marry quite late to much younger women and therefore to be still fathering children in their old age. A good example is John Boucher, one of the self-made men previously mentioned, who married three times and whose last child was born when he was seventy.

For this reason we will consider stages in the life course rather than age. The investigation of life course has enjoyed some popularity in recent years among historians of the family, but Canadian historians have paid little attention to this factor as a source of bias in testamentary records. Life course stages may be defined in terms of dependency, that is, whether the testator was a bachelor, a married man with young children, a man with grown children on their own, or an elderly dependent. Let us now test this hypothesis by examining the dependency status of the children, inheriting and non-inheriting, of the March testators, as revealed by census records and a family reconstitution.

It is apparent that about 60 percent of the testators made wills in order to provide for children who were still at home or to dispose of what little remained after giving away the bulk of their possessions. It is notable that in thirty-one wills older children who had already married or left home were either omitted or left \$1. Omission from a will is clearly not an indication of disinheritance. The more likely explanation is that these children were either already provided for, or were firmly established. Assistance was therefore reserved for those children who still had to find a station in life. This finding also points up the dangers of using wills alone when studying inheritance patterns. Amassing land, money, or goods and passing portions to children as they came of age was a very common practice. An investigation of land deeds has revealed that in 224 instances in which the sons of families received farms from their parents in the mid-nineteenth century Ottawa Valley, 136 received them while their fathers were living and only 88 acquired them by inheritance. A similar tendency has been observed in northern New England.¹⁵

It is evident from this study, too, and suggested also by the figures above, that in almost all cases it was the younger son or sons who came to own the paternal homestead. It was perfectly natural for older children to strike off on their own, with or without parental

15. Bruce S. ELLIOTT, "The North Tipperary Protestants in the Canadas: A Study of Migration, 1815-1880" (Ph.D. dissertation, Carleton University, 1984), pp. 386-87; Hal S. BARRON, *Those Who Stayed Behind: Rural Society in Nineteenth-Century New England* (Cambridge: Cambridge University Press, 1984), pp. 94-5.

assistance, and logical that the youngest would remain to take over the farm when the father retired, for the youngest had the shortest wait. This pattern was noticed by genealogists some years ago.¹⁶

Table 3 Provisions Made in Wills of
Nineteenth-Century March Residents

	Wills
Children all under age	14
Provision only for younger children unmarried and at home	27
Transfer of farm to remaining (younger) son(s)	4
Disposal of residue of personal estate	8
No children; passing estate to relatives of friends	20
Other	<u>17</u>
	90

Sources: as in Table 1.

It is remarkable, too, that more than one-fifth of the March wills were left by those who had no children. In the absence of a will, such estates are disposed of to heirs determined by a set legal formula. These testators, therefore, ensured that their property went after their deaths to the people they preferred. John Jeremiah Goodman, a merchant at South March, for example, left the bulk of his estate to a valued employee and only a small sum of money to his nearest relations, the children of a sister in England.¹⁷

CONCLUSION

Wills were left more often by the rich than by the poor, by the sick than by the healthy, by those with young children or no children than by those with a grown family, more often by men than by women. More often than not the wills never reached the courts of probate. These biases do not mean that the use of wills is difficult or hopeless. It simply means that the historian using wills in an aggregative statistical manner, or even using them impressionistically to characterize groups of people, must be aware that the wills probably are not representative of the full range of experience in the subject community. In a township where land was in greater or lesser demand, or in a community with a different tenurial or occupational structure, or in a different economic region, certainly in a city or town, the proportions of the population leaving wills and the reasons for doing so will probably be different. It is this essential concern for context, an awareness that variables interact differently in different places, that distinguishes the sensitive local study. The nature of the community itself is the final, too often neglected, source of bias.

16. Marion KEFFER and Robert F. and Audrey L. KIRK, *Some Ontario References and Sources for the Family Historian* (Toronto: Ontario Genealogical Society, 1976), p. 14, and again, Marion C. KEFFER, "Migrations to and from Ontario/Michigan", *Families*, 17, 4 (1978): 187-8.

17. Ontario Archives, Probate Court, RG22 6-1-A, will of John J. Goodman, 1854.