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### Why use Probate Records?

- Many published genealogies never went to the bother of searching probate and deeds
- Because old handwritten documents are often a challenge they are overlooked by genealogists

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### Challenges of Probate Records

- Not everyone left a probate record
  - i.e. women
- Deceased may have had multiple marriages
- Not all children are always listed
- No uniformity
- Difficult to read

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[eI]  
 Don't assume your ancestor didn't have a will.

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# English Probate Overview

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### English Probate

- Debate on the origins of early probate in England
- Oral wills in the presence of witnesses
- Church Courts of England had a monopoly on proving probates until the Probate Act of 1857 introduced in Parliament; there were over 300 Church Courts in England in 1857
- Not until 1882 could a wife who predeceased her husband make a will except with her husband's permission

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### Primogeniture

- A system of inheritance in which a person's property is inherited by their firstborn legitimate child after their death
- Primogeniture: (Latin) "primo" first, and "genitura" relating to a person's birth
- A daughter could inherit if and only if she had no living brothers or the descendants of deceased brothers
- Today, primogeniture has largely been abandoned; instead, a person's property is dispersed through a will or through the laws of intestate succession

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### Successions in English Probate

- In England when an individual dies intestate with no surviving spouse, but with living children or other descendants, the entire estate will pass to the children in equal shares
- In situations when a son or daughter has died, their specific share of the inheritance will be divided amongst their children

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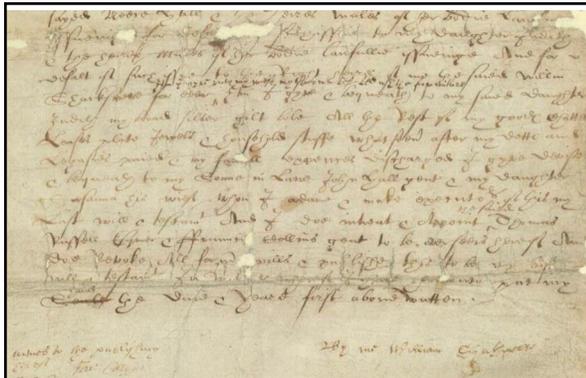
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William Shakespeare (1616)

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### Probate in America

- Early American probate system traces back to the English system with some exceptions depending on time period and location
- Probate laws and resulting records differ from state to state; time period to time period
- First probate court in U.S. established in Massachusetts in 1784
- U.S. probate courts:
  - Surrogate
  - Orphan courts
  - Courts of the ordinary, etc.

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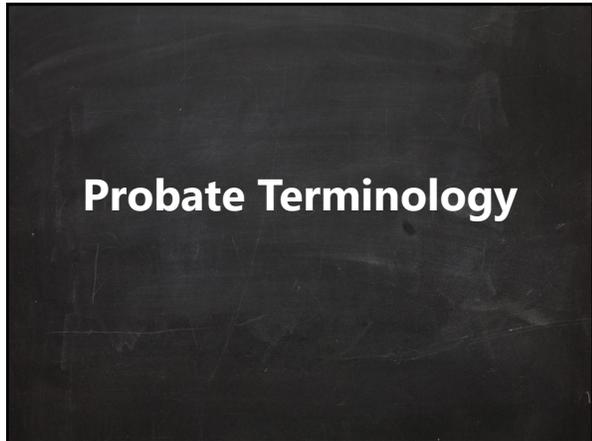
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### Generic Probate Terms

- **Personal and Real Estate:** the possessions belonging to the deceased outlined for distribution
- **Testate:** dies *with* a Last Will & Testament
- **Intestate / Administration:** dies *without* leaving an actual will of any kind



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### Generic Probate Terms - People

- **Testator / Testatrix:** an individual leaving a will
- **Executor / Executrix:** a person with the responsibility of having a will proved and acting on its conditions
- **Administrator / administratrix:** an individual appointed by the court to administer the estate

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**Generic Probate Terms**

 **File Papers:** the original documents associated with the probate file

 **Record Books / Copy Books:** copies of certain probate files copied into bound record volumes

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**Types of Probate Records**

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**Documents found in Probate Records**

- Will
  - Written
  - Holographic
  - Nuncupative
- Codicil
- Letters of Administration & Letters of Testamentary
- Inventory
- Accounts
- Division, distribution
- Guardianship Records
- Miscellaneous Probate Papers
  - Dower Records
  - Bill of Sales
  - Receipts

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## Testate vs. Intestate

| Testate   | Intestate  |
|---|--|
| <ul style="list-style-type: none"> <li>• Will</li> <li>• Codicil</li> <li>• Letters of Testamentary</li> <li>• Inventory</li> </ul> | <ul style="list-style-type: none"> <li>• Letters of Administration</li> <li>• Inventory</li> <li>• Guardianships</li> <li>• Distributions</li> </ul> |

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# Wills and Codicils

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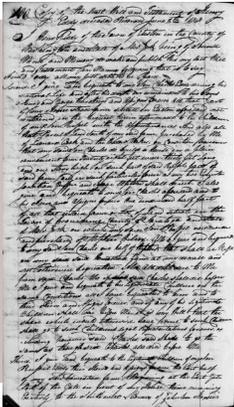
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## Wills

- Written by the deceased
- Indicates how the deceased wants his or her estate distributed



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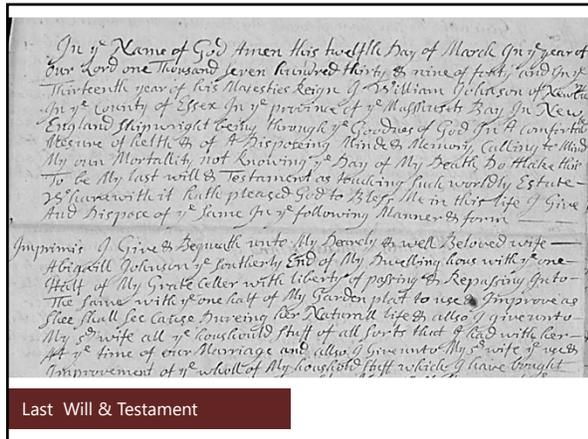
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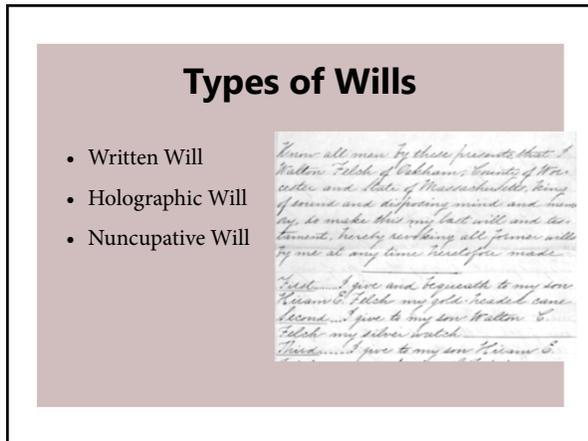
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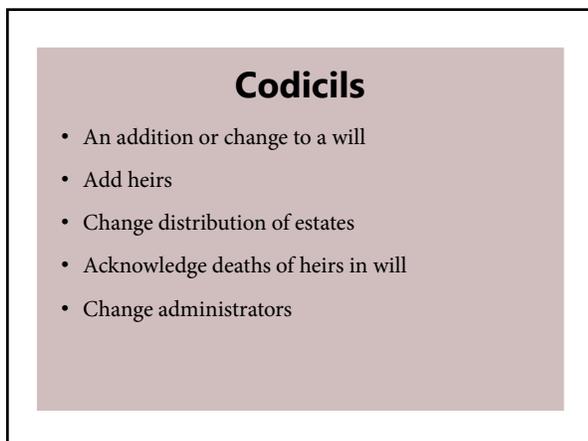
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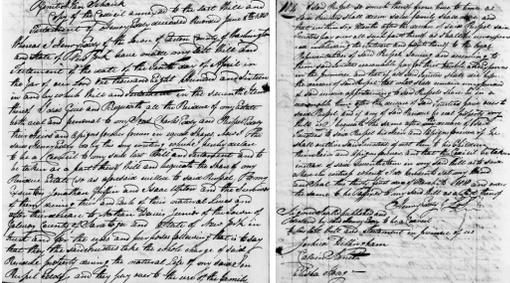
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## Codicil of Henry Eddy



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## Letters of Testamentary and Administration

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## Letters of Testamentary

- Issued by the court
- Exists if a person left a will
- Allows the executor to take control of the deceased's estate and distribute it according to the will

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### What is an Inventory?

- Appraisal of deceased's real estate and personal property
- Provides a value for the estate
- Can provide clues about the lives of your ancestors

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### What can an Inventory tell us?

- How much land/property an ancestor owned
- Job/trade
- Education level
- Level of wealth/status



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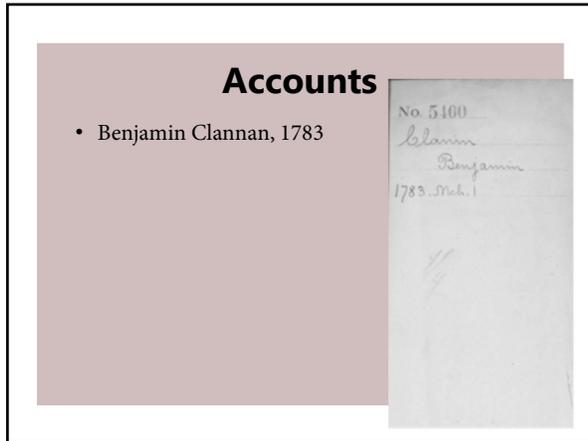
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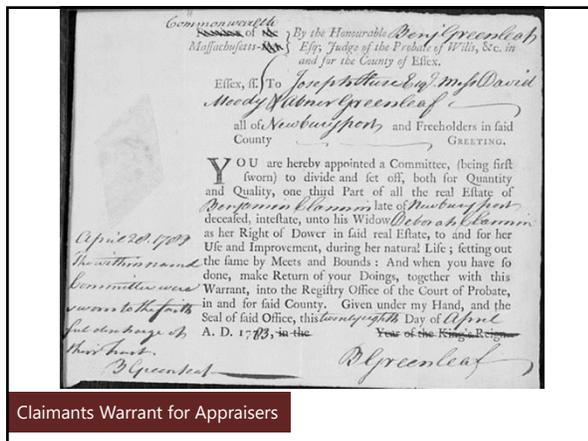
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# Divisions/Distributions

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## Distributions

- Dividing an estate among heirs
- Occurs after bills are paid, debts collected
- Heirs (children, widow, etc.) mentioned in distribution
- Genealogical importance:
  - List of children if vital records aren't available
  - Married names of daughters
  - Children of deceased heirs

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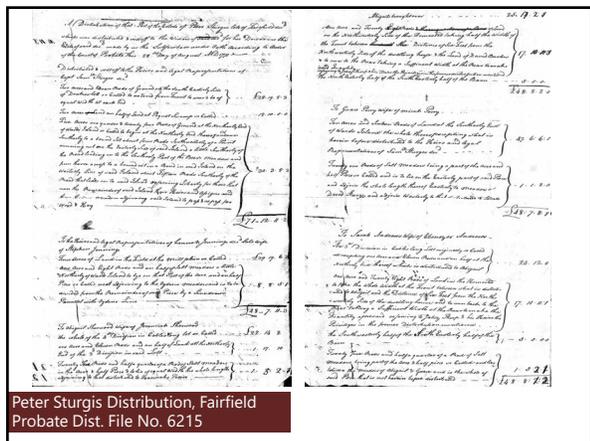
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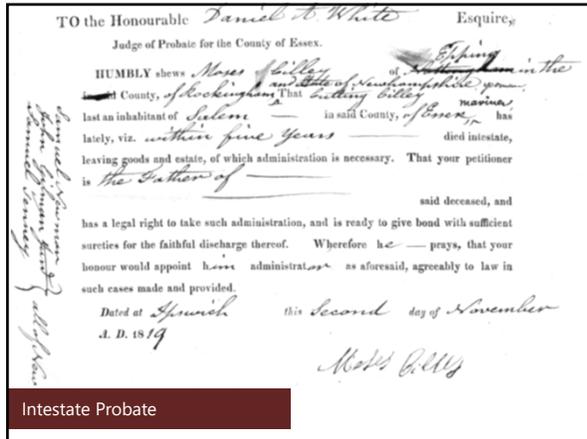
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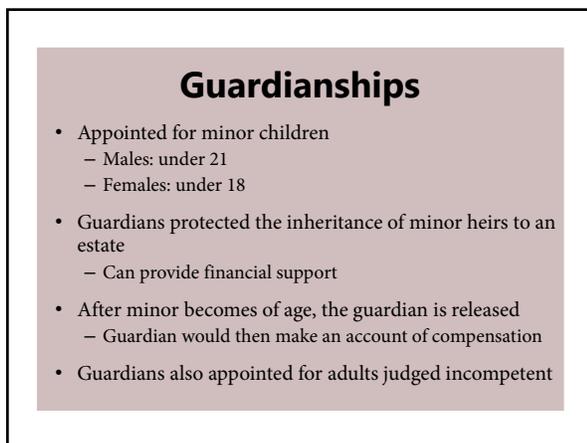
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### Who appoints the guardian?

- If a minor is under fourteen, the guardian is appointed by the court
- If a minor is over fourteen, they may choose their own guardian

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### Guardianship

- Andrew Burnham, 1737




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Know all Men by these presents,  
That We Samuel Burnham, widower of  
the late Thomas Burnham, deceased  
of the County of New England

Are holden and stand firmly Bound and Obligated unto  
his Successors or Assigns, in the  
full Sum of Two Thousand Pounds: To be paid  
unto the said Thomas Burnham his Successors or Assigns,  
in the Office of Judge of the Probate of Wills, and for Granting  
Letters of Administration on the Estates of Persons Deceased,  
in the said County of New To the true Payment  
whereof, We jointly and severally bind our Selves, and our se-  
veral and respective Heirs, Executors and Administrators, firmly  
by these Presents. Sealed with our Seals: Dated the  
22<sup>nd</sup> Day of March Anno Domini, 1737

Guardianship – Andrew Burnham, 1737

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**The Condition of this Obligation is such,** That if the above-bounden *Andrew Burnham* Nominated and Allowed to be Guardian unto *Andrew Burnham* a Minor of about *three* years of age *Son of James Burnham* late of *Marblehead* in the County of *Essex* and do well and truly Perform and Discharge the Trust and Office of Guardian unto the said Minor, and that in and by all things according to Law; And shall render a plain and true Account of *his* said Guardianship upon Oath, and all and singular such Estate as shall come to *his* hands and possession by virtue thereof, and of the Profits and Improvements of the same, so far as the Law will charge *him* there-with (when *the* shall be thereunto Lawfully required) and shall pay and Deliver what and so much of the said Estate as shall be found remaining upon *his* Account, (the same being first Examined and Allowed of by the Judge or Judges for the time being, of the Probate of Wills, &c. within the County of *Essex* aforesaid) unto the said Minor when *he* shall arrive at full Age; or otherwise as the said Judge or Judges by his or their Decree or Sentence pursuant to Law shall Limit and Appoint: Then this Obligation to be Void, otherwise to remain in full Force.

Guardianship — Andrew Burnham, 1737

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**Spendthrift Guardianship**

- Samuel Bassett, 1840

in and for said county on the *first* Tuesday in *January* A.D. 18*40*.  
 On the complaint of the selectmen of the town of *Marblehead* in said county, shewing, that, in their judgement, of *Marblehead* aforesaid, *John Bassett*, does by excessive drinking and idleness, so spend, waste and lessen *his* estate, as thereby to expose *himself* and *his* family to want and suffering circumstances; and does also thereby endanger and expose the said town to a charge or expense for *his* and *their* maintenance and support; and praying that some person or persons may be appointed guardian or guardians of the said *John Bassett*, agreeably to the laws of the commonwealth, in such cases made and provided:—The time and place aforesaid, having been assigned for considering the same; and it being made to appear, that notice has been given to said *John Bassett* according to order; and the said *John Bassett* having required appearing, in writing his consent to be put under due examination is had

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To the Honorable *Daniel A. White* Esquire, Judge of Probate for the County of Essex.  
 Humbly shews *Samuel P. Bassett* of *Marblehead* in said county *petitioner*, that there is occasion for a guardian to be appointed for *John Bassett* of *Marblehead* in said county, *petitioner*, a person given to excessive drinking and idleness; that your petitioner has a legal right to take such guardianship, and is ready to give bond with sufficient sureties for the faithful discharge thereof.  
 Wherefore he prays, that guardianship of said *John Bassett* may be granted to *him* agreeably to law in such cases made and provided.  
 Dated at *Salem* this *second* day of *January* A.D. 18*40*. *Samuel P. Bassett & M. Deben*  
 Essex, ss. At a Court of Probate holden at *Salem* in and for said county, on the *first* Tuesday in *January* A.D. 18*40*.  
 The foregoing petition being duly considered,—It is thereupon decreed by the court here, that guardianship, as therein prayed for, be granted to said *Samuel P. Bassett*, he giving bond according to law for his faithful discharge of that trust.  
*D. A. White* Judge of Probate.

Spendthrift

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### Lunatic Commitment

- Elizabeth Dennis, 1836

Warr. at May 21, 1836. The foregoing representation being duly considered, and it being made to appear that the facts therein set forth are true; It is therefore considered and decreed that Elizabeth E. Dennis, of Salem in said county, wife of Devereux Dennis, a lunatic, is so furiously mad, as to render it manifestly dangerous to the peace and safety of the community that she should continue at large, and that she be committed to the State Lunatic Hospital agreeably to law, and that the Sheriff of said county or his deputy or any constable of Salem or said Devereux Dennis be directed to carry into effect this order; warrant issuing accordingly in due form.

*Wm. H. H. Judge of Probate*

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Warr. at May 21, 1836. The foregoing representation being duly considered, and it being made to appear that the facts therein set forth are true; It is therefore considered and decreed that Elizabeth E. Dennis, of Salem in said county, wife of Devereux Dennis, a lunatic, is so furiously mad, as to render it manifestly dangerous to the peace and safety of the community that she should continue at large, and that she be committed to the State Lunatic Hospital agreeably to law, and that the Sheriff of said county or his deputy or any constable of Salem or said Devereux Dennis be directed to carry into effect this order; warrant issuing accordingly in due form.

*Wm. H. H. Judge of Probate*

Lunatic – Commitment Judgement

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To the Hon. Devereux Dennis  
Judge of Probate for Essex County

I hereby certify that in my opinion it is unsafe to allow Elizabeth E. Dennis to go at large, she being at this time furiously mad - you are therefore requested to cause her admission to the Lunatic Hospital in Worcester -

Salem May 23 1836 - Lovett Lathrop  
Mayor - Salem

Salem May 23 1836. I hereby certify that I coincide in the opinion above expressed & am of opinion moreover that Elizabeth Dennis ought to be removed immediately.

*Wm. H. H. Judge of Probate*

Affidavits to support claim

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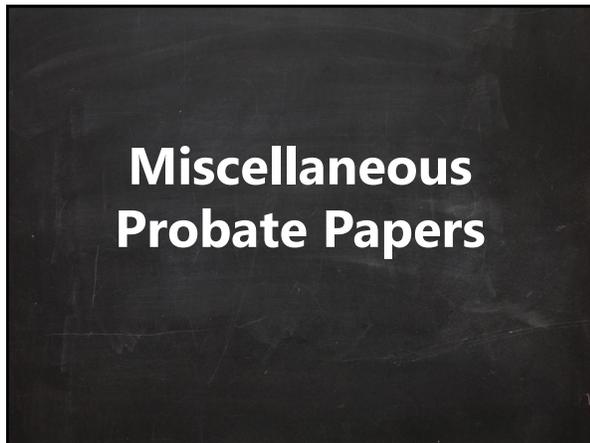
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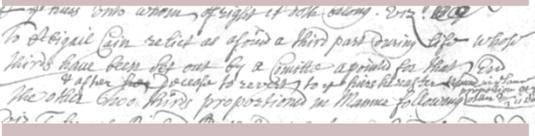
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### Dower Record

- Portion of an estate given to a widow by law from her deceased husband's estate; usually 1/3



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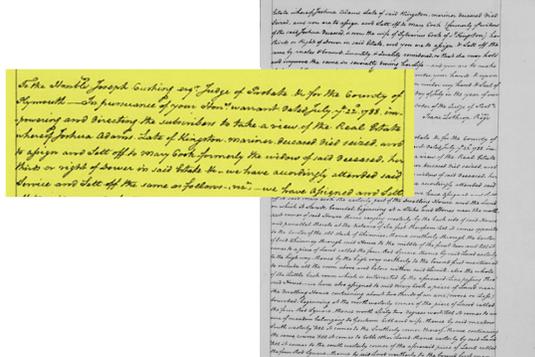
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Plymouth Co. Probate Records, Vol. 30, p. 401

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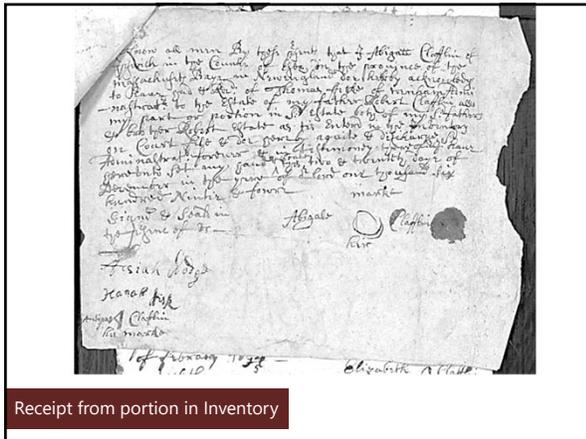
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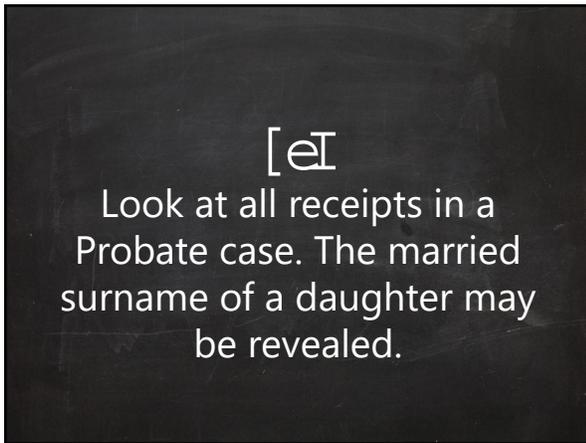
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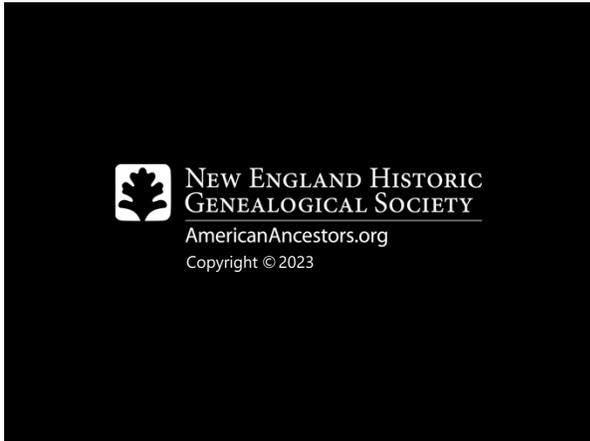
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