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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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**Tip**

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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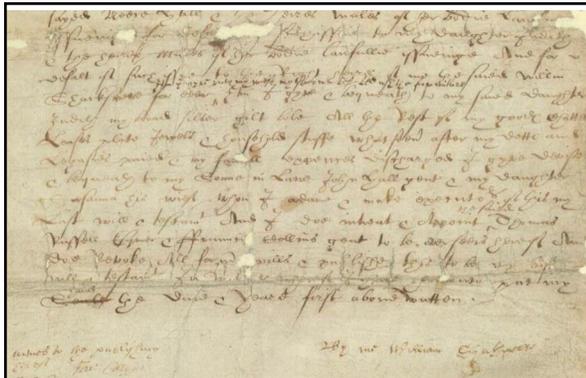
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William Shakespeare (1616)

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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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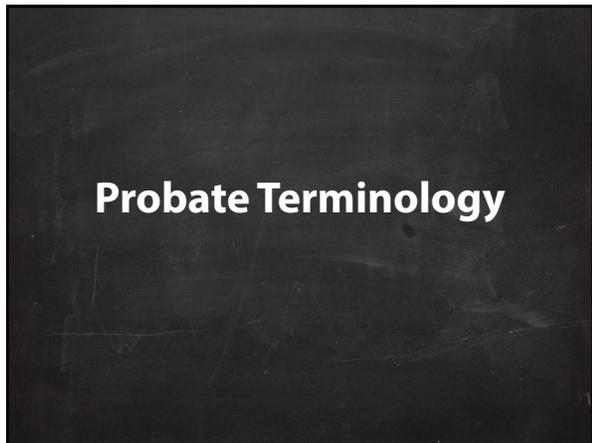
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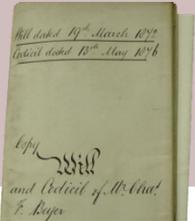
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### Generic Probate Terms

- **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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**QUESTIONS?**

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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**

<b>Testate</b>	<b>Intestate</b>
• Will	• Letters of Administration
• Codicil	• Inventory
• Letters of Testamentary	• Guardianships
• Inventory	• Distributions

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**Wills and Codicils**

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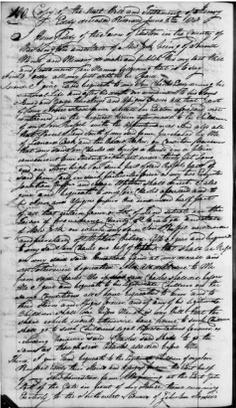
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## Wills

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



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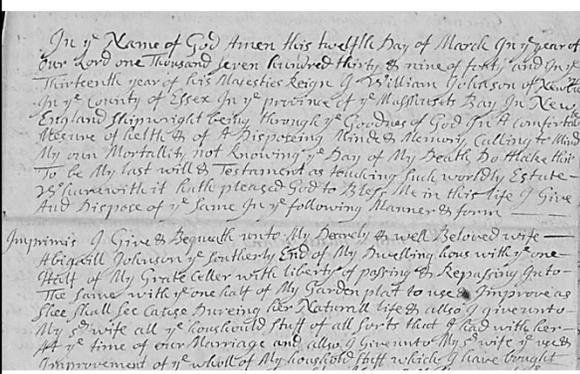
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Last Will & Testament

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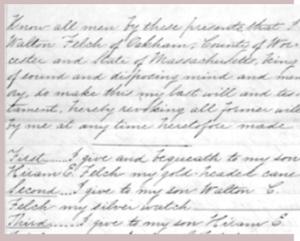
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## Types of Wills

- Written Will
- Holographic Will
- Nuncupative Will



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**Codicils**

- An addition or change to a will
- Add heirs
- Change distribution of estates
- Acknowledge deaths of heirs in will
- Change administrators

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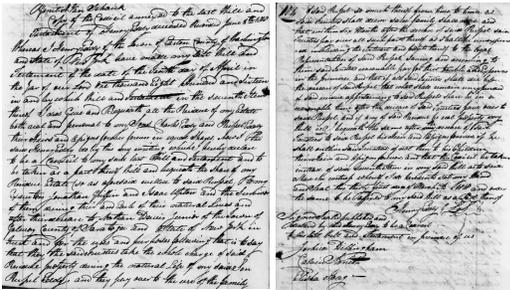
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**Codicil of Henry Eddy**



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**Letters of  
Testamentary and  
Administration**

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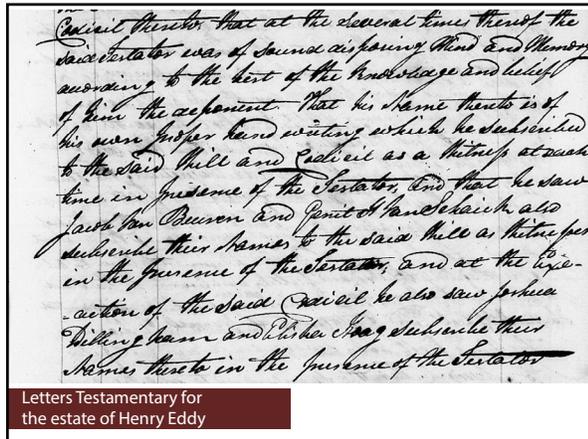
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Letters Testamentary for the estate of Henry Eddy

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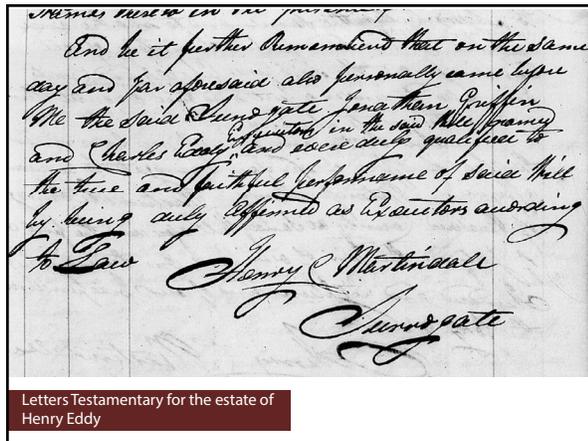
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Letters Testamentary for the estate of Henry Eddy

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**Letters of Administration**

- Issued if an individual died intestate
- The court appoints an administrator/trix
  - Distribute the estate of the deceased

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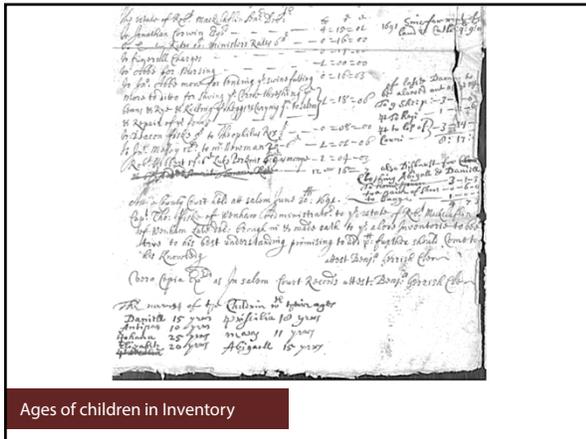




### What can an Inventory tell us?

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





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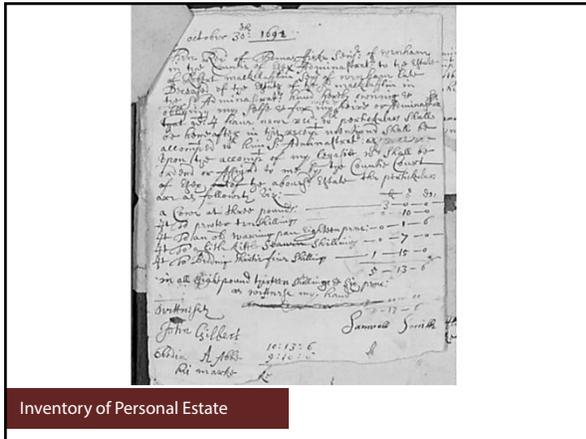
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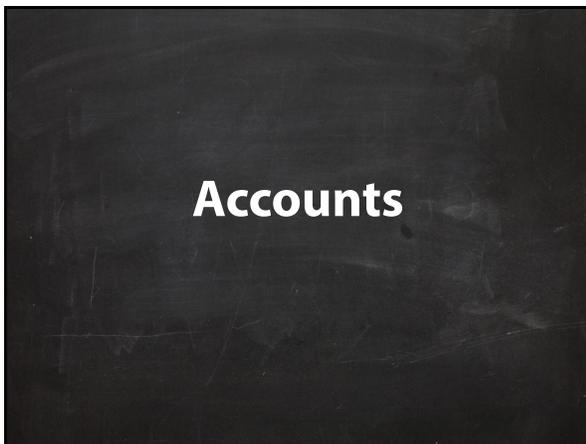
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**Guardianships**

- Appointed for minor children
  - Males: under 21
  - Females: under 18
- Guardians protected the inheritance of minor heirs to an estate
  - Can provide financial support
- After minor becomes of age, the guardian is released
  - Guardian would then make an account of compensation
- Guardians also appointed for adults judged incompetent

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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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Guardianship – Andrew Burnham, 1737

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Guardianship – Andrew Burnham, 1737

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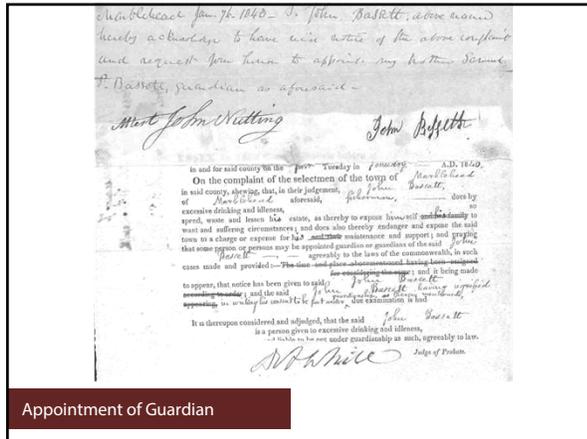
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Appointment of Guardian

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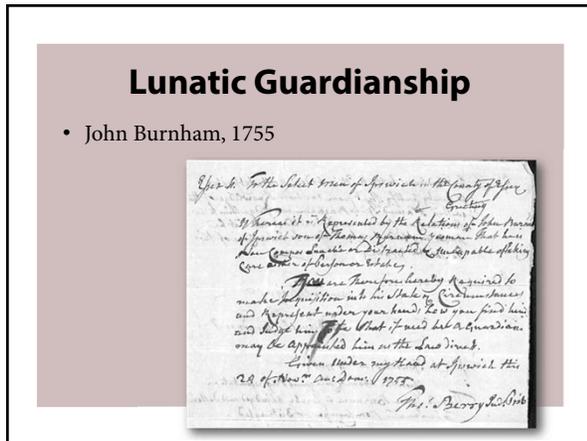
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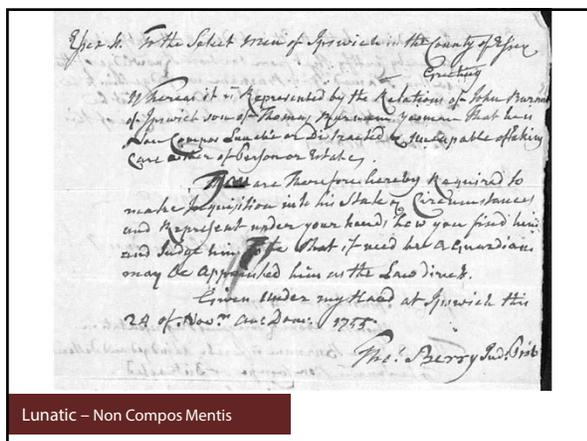
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Lunatic - Non Compos Mentis

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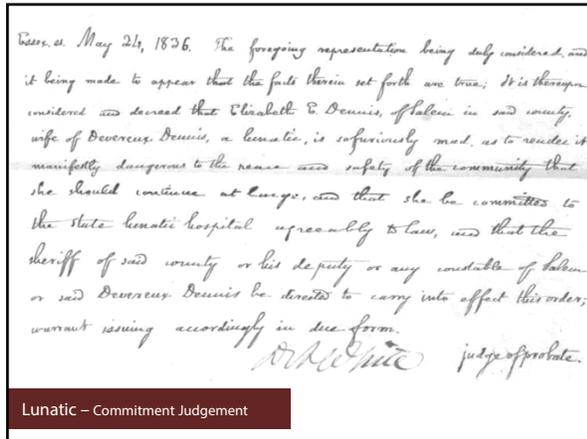
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Lunatic - Commitment Judgement

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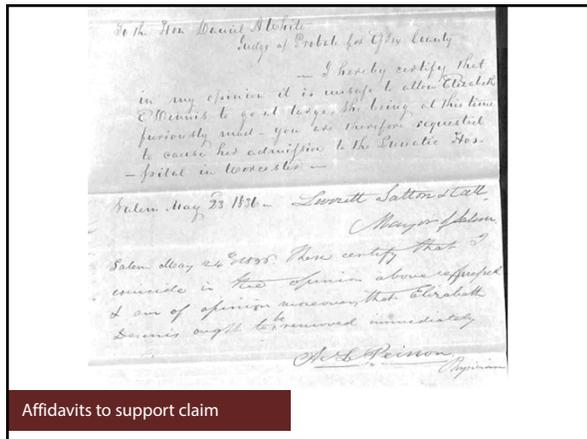
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Affidavits to support claim

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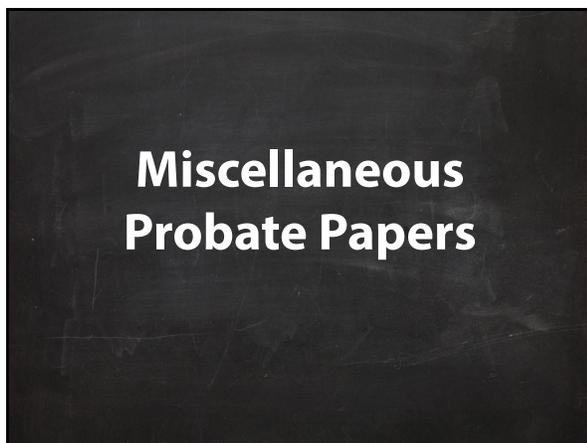
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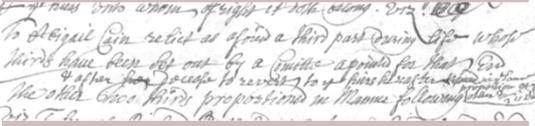
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**Dower Record**

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



*To the Right Hon. Justice of the Peace... To the Right Hon. Justice of the Peace... To the Right Hon. Justice of the Peace...*

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*In the Court of the Probate of the Will and Administration of the Estate of the Late Joseph Gushing... In the Court of the Probate of the Will and Administration of the Estate of the Late Joseph Gushing...*

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

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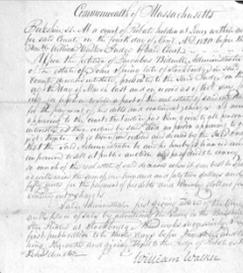
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**Bill of Sale**

- Property may have to be sold in order to pay debts
- Sold at public auction
- Approved by the probate court



*Commonwealth of Massachusetts... In the Court of the Probate of the Will and Administration of the Estate of the Late Joseph Gushing...*

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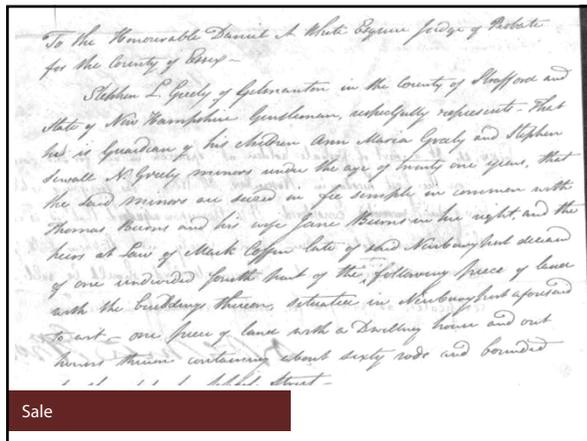
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Sale

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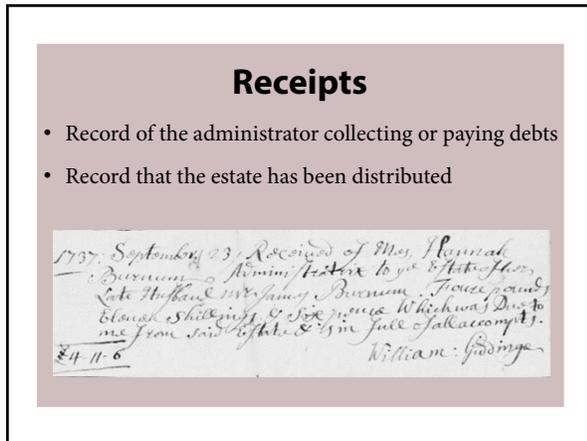
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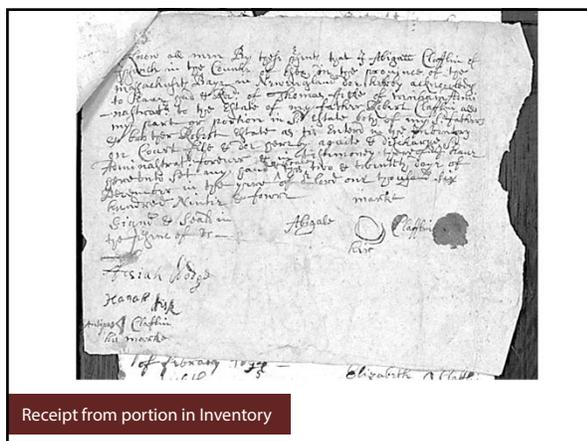
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Receipt from portion in Inventory

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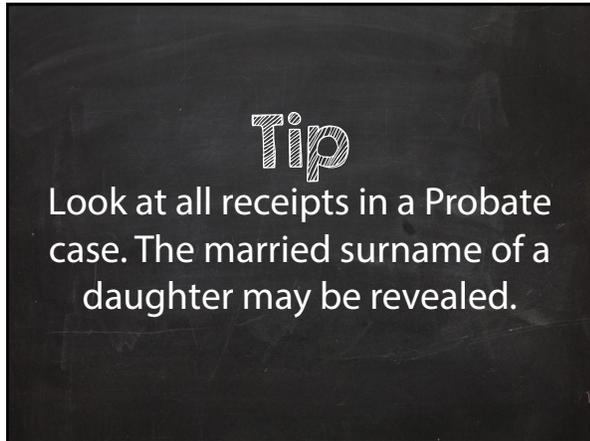
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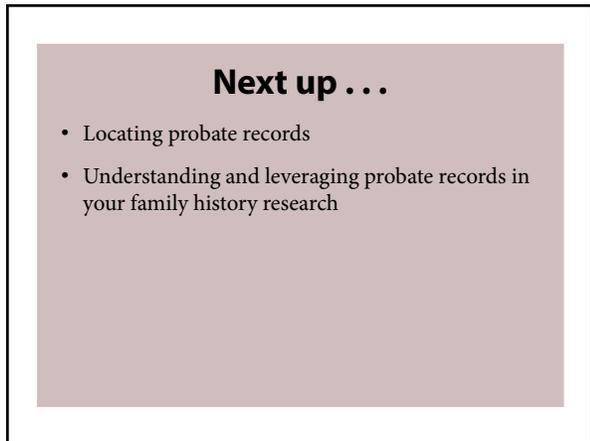
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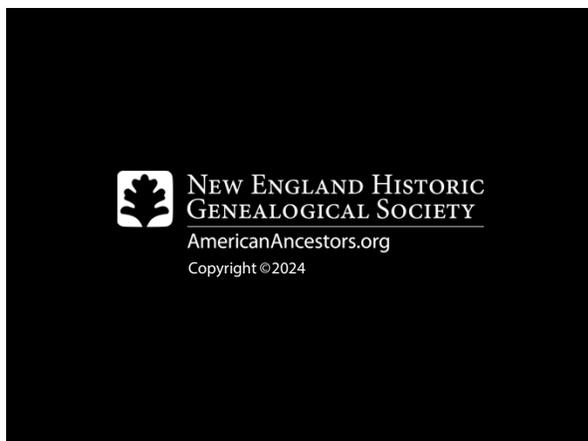
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