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The Usual Sources:

Historical Surprises in Letters and Wills

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The title of this paper refers to 'the usual sources'. At one level this is accurate since letters and wills are standard sources for historical research. At another level it is meant ironically in that the fact that a source is 'usual' does not necessarily mean that historians cannot be wrong in what they conclude from them, or be surprised by them in some way. This paper was written for a forum about sources where the audience was historians and legal historians. This is not necessarily a formal separation, but where one's training is legal rather than historical, as mine is, one might make mistakes in the usual historical dealing with documents; and where one's training is historical rather than legal, one might make mistakes in dealing with legal documents. In this paper I treat myself as the experimental subject so that the first part of the paper is about wills, a legal document about which I have considerable expertise;[1] the second part of the paper puts me into a context where I do not have expertise, in dealing with letters to and from a government department.

In this paper I consider these documents as sources of information and where pitfalls might lie for the uninitiated. The sources I refer to in this paper are ones I have used for several different investigations: the first is a series of wills from a mediaeval village in Norfolk, England from 1400–1700, the second is two sets of wills from New South Wales, from 1910

[1] I have taught the law of succession and published in the area for over twenty years. Recent publications include (with R. Croucher) *Succession: families, property and death, 4th edition* (Sydney: LexisNexis Butterworths, 2013) and *Aboriginal Wills handbook: a practical guide to making culturally appropriate wills for Aboriginal people* (Sydney: NSW Trustee & Guardian, 2013).

and from 1995. The third is a series of letters between a New South Wales postmistress and the NSW Post Master General's Department in the 1880s and 1890s.

Wills

Wills as sources

Wills are a commonly used source and in the history of the English people they have been in existence since the Anglo-Saxon *cwide.*[2] The question of whether the English will derives from the Roman will is one which we need not enter into here.[3] But English wills are available in various forms including the original from mediaeval times on. By this I mean that many of the wills we now have are the copy of the will made and held by the court after probate was granted. This may have been transcribed by a clerk of the ecclesiastical court, or it may be that the original will itself was attached to the court's documents. After the Norman Conquest English wills are in Latin and therefore need to be translated as well as transcribed; but from around 1600 they are more commonly in English.

Wills are wonderful resources for the consideration of daily life and personal property[4] until modern times, later land as well. Once probate has been granted to a will (that is, a court has decided it is valid), it becomes a public record that we can see long after its making. This continues to be the case.[5] This often surprises people, but it is a boon to historians and genealogists.

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[2] Dorothy Whitelock, *Anglo-Saxon Wills* (Cambridge: Cambridge University Press, 1930). The first paperback edition was 2011. The Anglo-Saxon written will was a transcription of the oral will made for the purpose of evidence.

[3] This is a perennial argument amongst succession lawyers. The link to Roman law through the canon law to the modern law of succession can be traced, but the existence of wills in the Germanic tradition quite independently of the Roman law means that it cannot be assumed that the will comes to us entirely from the Roman tradition, particularly because some features of the will have no counterpart in the Roman law.

[4] Here 'personal property' is used in the legal sense of property apart from land.

[5] Rosalind Croucher and Prue Vines, *Succession: families, property and death, 4th edition* (Sydney: LexisNexis Butterworths, 2013).

Wills are particularly valuable because they come with an inventory of the chattels of the person either in the will or attached to them, and we frequently get lists of household goods, giving us an excellent source for knowledge of ordinary life. For example in the will of Anne Chamberlyn of Roudham in Norfolk in 1620 is the following section:

> Item I give & bequeath unto my daughter Alice Rose my best walnuttree cheste Item I give & bequeath unto my daughter Margrett Canham one waynscott chest a grate joined Cubboard (both of them standinge in the kitchen Chamber at my house in Larlinge) and a mourning Gowne Item I give & bequeath unto Amy Canham my grandchild & goddaughter my best Fether bedd a boulster twoe pillows a paer of Blanketts a Cov[er]let twoe paer of sheets the lesser bayld Kettle and a walnuttree linery Cubbord And I give to Mary Margrett and Suzan Canham my grandchildren to ev[er]y of them a payre of Sheets & a halfe a dozen of napkins a peece Item I give & bequeathe unto my daughter Eliberthe Weld my needle work Chayer w[I]th a backe the hakes barrs eyes & Craned of Iron in my Kitchinge at Larlinge the Andirons fier pann & tonges in my Chamber there and a mourninge gowne Item I give & bequeath to my grandchild & goddaughter Anne Welde a maudlin silver Cupp w[I]th a Cover now remayninge in myne owne hands And I give and bequeath unto my grandchild & goddaughter Amye Weld A bedd & bed coveringe and a silver porringer that Cam out of the east Countrye w[I]th porringer I have heretofore delive[er]ed to her use into the hands of her Fatther Mathew Weld
>
> Item I give and bequeath to my daughter Temperance Chamberaine a mourninge gowne And to [*next word crossed out*] Gascoyne Chamberlayne my grandchild godson my greate brass pott that belongs to the Lymbock And to Temperance Chamberlaine my grandchild and godsone Reginalde Chamberlaine my biggest walnuttree Chest And to Temperance Chamberlaine my grandchild I give a Foult table w[I]th a Cover under it &a sillett w[I]th a Cover …

From this we can infer relationships and some of the belongings of this testatrix, painting a picture of a life with some significant comforts in it.

However in relation to mediaeval and early modern English wills there are some conundrums that need to be considered. These include the question of whose voice are we hearing? Where the document has been written by someone, is that person the testator? If it is not the testator, to what extent does the will reflect the ideas, preferences and religion of the testator or testatrix? How representative of a population are the wills we find among them? And there

are also some issues which can only be solved with some knowledge of law. For example, early wills very rarely mention land. To draw the conclusion that any one of those testators did not own any land would be quite incorrect, since until 1540 when the Statute of Wills was passed, land could not be passed on by will. Even then, only some land could be passed on by will. It took until 1660 and the Statute of Tenures[6] for it to be possible to say that (almost) all land could be passed on by will.

Whose voice?

'A will is a written document which represents a unique form of communication between the dead and the living'.[7] This communication between the dead and the living may be more indirect than is sometimes supposed. Consider the modern will-making process. The client goes to a solicitor with instructions. The solicitor, before drafting the will may advise that the client's ideas may lead to problems. Already what is in the will may have changed from the client's authentic voice. Then the solicitor drafts the document using legal language which is another departure from the client's voice, although it may be a true representation of their wishes. In pre-modern England the question of the testator's authentic voice takes an interesting turn when one considers the preambles to wills. While many people could not read, it was also quite common for people who could read not to be able to write, so the vast majority of wills were written by the local priest. Often they used their own pet abbreviations which the modern transcriber has to determine the meaning of. One minor point about transcription is that there may be pitfalls in this process. For example in the Norfolk wills, although the wills are in Latin until 1600, all the numerals used are Roman, and this continues in some after the wills are in English. How are they to be transcribed? It seems reasonable to transcribe them into the Arabic numerals we habitually use today, until we

[6] The Tenures Abolition Act 1660 (12 Car 2 c 24). Of course, a particular testator might be constrained by entails or other arrangements.
[7] Finch, Mason, Masson, Wallis and Hayes, *Wills Inheritance and Families* (Oxford: Clarendon Press, 1996).

realise that there was a reason for using Roman rather than Arabic numerals. That was, that Roman numerals were regarded as 'canonical' and the Arabic ones as suspect, possibly of the devil. So transcribing into the Arabic numerals is not consistent with the tenor of the document.

Returning to the question of the voice of the testator, preambles to wills raise an interesting issue about the religious faith of the testator. Consider the following Norfolk wills.

Will of Thomas Ruddock 1558

> In the name of God Amen the 8th day of September and in the year of our Lord God 1558 I Thomas Ruddock the elder of Bridgham dwelling in the county of Norfolk being whole of mind and good of remembrance to God be praised do make this my last will and testament in this form following First I commend my soul in to the hands of my lord God to our lady Saint Mary and all the holy company of heaven and my body to be buried in the churchyard of our lady in Bridgham aforesaid

Will of John Sparke 1586

> In the name of God Amen, and in the twentith yeare of the raigne of o[ur] Soveraign Ladie Elizabeth by the grace of god Queene of England, Fraunce and Ireland etc/I John Sparke the elder of Rowdehame in the Countty of Norff husbandma[n] and in the dioces of Norwich being of whole mynd and of good and perfecte remembrance thanckes be to Almightie god trustinge assuredlie that of his infinite goodness and mercie through the merrittes and passion of his deare sonne my Lorde and Saviour Jesus Christ hee will after the course of thys mortall life fulfilled receave my Soule unto the blessed reste of his eternall and everlastinge kingdome of heaven: And my bodie to be buried in the Churchyarde of Rowedeham aforesaide.

In 1558 Thomas Ruddock's will refers to 'our lady saint Mary and all the holy company of heaven.' In 1586, twenty-eight years later, during the reign of Elizabeth I, a protestant Queen, John Spark's will refers to 'thanckes be to Almightie god trusting assuredlie that of his infinite goodness and mercie through the merrittes and passion of his deare sonne my Lorde and Saviour Jesus Christ …' These are examples of a pattern seen in this set of wills. The references to Mary the Mother of Jesus and the saints refers to the practice of prayers for the

dead which became forbidden in England during the reign of Henry VIII[8]. The reformation in England saw a change from intercession with the saints to a more direct relationship between the person and Jesus Christ. The wills reflect this. But it is more likely that they reflect the 'political correctness' of the time and the view of the local priest, (whether personally held or held as a matter of convenience), than the religious conviction of the testator.

It is interesting to note that wills continued to begin 'In the name of God Amen' up until the 1910s. Again, this appears to be a matter of form rather than of the testator's conviction. The Will of Michael Brennan, 1849,[9] begins: 'In the name of God, Amen. I, Michael Brennan Senior, of Appin in the colony of New South Wales, being weak and sick of body but of perfect mind and memory, and knowing that it is appointed for all Men once to die, do make and ordaine this my last Will and Testament …'

By the time William Morris Hughes (Prime Minister of Australia, 1915–1923) made his will in 1938 the introductory reference to God was gone: 'THIS IS THE LAST WILL AND TESTAMENT of me WILLIAM MORRIS HUGHES of Lindfield in the State of New South Wales Barrister-at-Law and Member of the Commonwealth parliament of Australia–I HEREBY REVOKE all former Wills and Testamentary dispositions made by me and declare this to be my last Will and Testament …'

Representativeness of will makers

When drawing conclusions from wills the question of the representativeness of the will-makers needs to be considered. There are issues about the age of people making wills. For

[8] Henry VIII forbade the payment for masses to be said for the dead in 1529.
[9] From NSW Probate Registry.

example minors have not been able to make wills since Anglo-Saxon times, and still cannot, unless they are married. So wills are unlikely to represent the position of young people.

To exacerbate this issue, it is clear that old people are more likely to die leaving a will today. Has that always been the case? Perhaps not, since if someone young died of an illness in early modern England, as was far more likely than it is today, a priest was likely to be called to give the last rites, and this usually included the making of a will at the same time. Thus mediaeval and early modern wills might be slightly more representative of the population as a whole than wills made today where the evidence is that people under the age of thirty-five rarely make them and once the age of seventy is reached nearly every person has a will.[10] In modern times, the poor are less likely to make a will.[11] Again, this may be less true for mediaeval and early modern people than today for the same reason.

If one knows about the history of married women's lack of capacity to make wills one might not expect to find many married women's wills. In fact there are many. There are two reasons for this. Many married women made wills with their husband's permission. And secondly, the church insisted that married women did have capacity to make wills, although the common law insisted that they had no capacity to make wills in respect of land.[12]

Handwriting, typewriting and transcription and the difference knowledge makes

[10] In 2012, 79% of Queenslanders over the age of thirty-five and 98% of those over seventy had a current will. The rates of grants of letters of administration on intestacy were 6% in New South Wales in 2003 and 13% in Tasmania in 2005: NSWLRC Report 116 (n 16) 1.13-1.14.

[11] A. Humphrey et al., *Inheritance and the Family* (London: National Centre for Social Research, 2010); A. DiRusso, 'Testacy and Intestacy: the dynamics of wills and demographic status', *Quinnipiac Probate Law Journal 23* (1, 2009): 36.

[12] Prue Vines, 'Land and Royal Revenue: the Statute for the Explanation of the Statute of Wills 1542–43', *Australian Journal of Legal History 3* (1, 1997): 113–30; Jane Cox, *Hatred Pursued beyond the Grave* (London: HMSO, 1996).

All wills were handwritten until the 1920s and many continued to be handwritten into the 1930s. Transcribing handwritten wills can be very difficult. Some of the reasons have already been discussed.

Here is an example of a will which has been transcribed from handwriting to type. This is the will of John Payn of Roudham, made in 1535:

> ANF 89 Gillior MF 177[13]
>
> In The Name of god Amen In the yer of oLord god 1535 the 24th Day of October I John Payn of Rowdh[a]m holl of mynd and of good of Remebrance mak this my Last will and testament First I bequeth my soule to god Almighty ou[r] Lady saynt mary and to all ye holy company of hevyn and my body to be beried in ye chancel of saynt Andrew in Rowdh[a]m Item I Bequeth to ye mayntaynyng of ye churche of Rowdh[a]m 3s 4d Item I Bequeth for my Lyeng in the chanell 6s 8d Item I bequeth to John Thurwood my s[er]vants on[e] combe Barly and on[e] combe Rye yf they stay ther yer w[I]t[h] my wiff ther Item I Bequeath to Alyce my wiff all my Landers Farmys and goodes that I have payeing my Detes and Recyveng my Detes The Resdew of my goodes unbequeathed I put yt to ye Disposon of Alyce my wyf whome I mak my executrix Wytnes hirof Willi[l]am Pory Willi[a]m Whytlaw and John Sparke
>
> Proved at Mundfor 15 day November 1535

This is a good example of the difficulties for modern transcribers. Not only is the will in early modern language with its entirely variable spelling, but the writer has used his own abbreviations and the transcriber has had to interpolate missing letters. Often this is quite easy, but not always.

The will of W. M. Hughes in 1938 was typewritten, but even a typewritten will may raise issues of interpretation. For example Hughes' will has a handwritten codicil for which it is unclear which signatures are those of the witnesses.

[13] Reference from Norwich Public Records Office. This will is interesting to me because it appears to give land ('all my Landers Farmys') at a time when this is not supposed to be possible, and, as is common in this social stratum, makes his wife his executor.

"A" 1/2, 398613, 1-2/13

THIS IS THE LAST WILL AND TESTAMENT of me WILLIAM MORRIS HUGHES of Lindfield in the State of New South Wales Barrister-at-Law and Member of the Commonwealth Parliament of Australia I HEREBY REVOKE all former Wills and Testamentary dispositions made by me and declare this to be my last Will and Testament I APPOINT PERPETUAL TRUSTEE COMPANY (LIMITED) to be the Executor and Trustee of this my Will I GIVE AND BEQUEATH to my dear wife MARY HUGHES the "Freedoms" of the Cities of Westminster and Gravesend presented to me AND I DIRECT that the "Freedoms" of any other English Scottish and Welsh Cities presented to me be exhibited for a reasonable period in any Parliament House in Australia and at the discretion of my Executor elsewhere and then such "Freedoms" shall be handed over to the Commonwealth of Australia to be dealt with as the Governor General of the Commonwealth may deem fit but excluding from such "Freedoms" the plate and cutlery and cups received by me at the time of presentation and including only the actual "Freedoms" together with the gold and silver caskets accompanying them I GIVE AND BEQUEATH all plate of any description belonging to me to my wife absolutely AND in the event of my said wife predeceasing me then I DIRECT that all such plate shall be divided equally between my sons ERNEST MORRIS HUGHES and CHARLES LEONARD HUGHES and my niece EDITH HAYNES I GIVE DEVISE AND BEQUEATH all my real and personal property of whatsoever kind or nature and wheresoever situate not hereby otherwise disposed of unto my said Executor and Trustee UPON TRUST to sell call in and convert into money the same or such part thereof as shall not consist of money and with and out of the moneys produced by such sale calling in and conversion and with and out of such part of my personal estate as shall consist of money to pay my funeral and testamentary expenses and debts and all Probate and Estate ~~duties payable with respect to my dutiable estate~~ AND to stand possessed of the residue of such moneys UPON TRUST to divide the same into three equal parts and as to two of such three equal parts to pay the same to my wife MARY HUGHES for her own use and benefit absolutely AND as to the remaining one of such three equal parts to divide the same equally amongst my daughters ETHEL LILY and DOLLY for their own use and benefit absolutely PROVIDED HOWEVER that in the event of the said remaining one of such three equal parts exceeding in value the sum of five thousand pounds (£5000) then I DIRECT my said Executor and Trustee to divide the amount by which the said remaining one of such three equal parts exceeds the sum of five thousand pounds (£5000) equally amongst my sons ERNEST MORRIS and CHARLES LEONARD and my adopted son ARTHUR and my Niece EDITH HAYNES for their own use and benefit absolutely PROVIDED HOWEVER that in the event of my said wife predeceasing me then I DIRECT that the share which my said wife would have taken under this my Will had she survived me shall be divided by my said Executor and Trustee equally amongst my said sons my said adopted son and my said Niece for their own use and benefit absolutely I DIRECT that if any child or adopted child of mine or my said Niece shall die in my lifetime leaving a child or children who shall survive me and being a son or sons shall attain the age of twenty one years or being a daughter or daughters

NESSES

Signatures only.

C. A. Brett

M. E. Brett

Omit Signatures from Probate

16/5/-

W. M. Hughes

W. M. Hughes

-1-

-2-

shall attain that age or marry then and in every such case the last mentioned child or children shall take (and if more than one equally between them) the share which his her or their parent would have taken under this my Will if such parent had survived me and lived to attain a vested interest hereunder I ALSO DIRECT that notwithstanding the provisions hereinbefore contained my Trustee if it thinks fit with regard to the share of my wife or any child or adopted child of mine or of my said Niece hereunder may settle the same as to my wife's share for her benefit and as to the share of any of my said children or adopted child or of my said Niece for the benefit of such child or adopted child or of my said Niece or his or her issue and/or wife or husband and issue in such form and subject to such limitations and provisions as my Trustee may in its discretion think fit I FURTHER DIRECT that notwithstanding anything hereinbefore contained my said wife may if she shall so elect reside in my home at Nelson Road Lindfield aforesaid or Sassafras in the State of Victoria or such others as I may be possessed of at my death and may have the use and enjoyment of all furniture and household goods owned by me at my death free of rent and without responsibility to account for any loss or damage thereto other than wilful damage or destruction but subject to payment by her of all rates and outgoings in respect of such properties AND I FURTHER DIRECT that on failure of all the trusts hereinbefore declared of the residue of my estate and on the death without issue of all my children and my adopted child and of my said Niece such residue shall be paid to the Burnside Presbyterian Orphan Homes Parramatta to be used for the erection and maintenance of a Home to be known as " THE WILLIAM MORRIS HUGHES HOME" AND I DECLARE that the receipt of the Treasurer of the Board of Directors for the time being of the said Homes shall be a sufficient discharge to my Trustee I DECLARE that my Trustee may postpone the sale and conversion of my real and personal estate or any part thereof for so long as it shall think fit and that the rents profits and income to accrue from and after my decease of and from such part of my estate as shall for the time being remain unsold and unconverted shall after payment thereout of all incidental expenses and outgoings be paid and applied to the person or persons and in the manner to whom and in which the income of the moneys produced by such sale and conversion would for the time being be payable or applicable under this my Will if such sale and conversion had been actually made AND I DECLARE that all moneys liable to be invested under this my Will may be invested in any stocks funds or securities authorised by law as investments for trust funds AND I DIRECT that Mr. John Joseph Mulligan of 92 Pitt Street Sydney who is my Solicitor shall continue to act as such in all matters relating to my estate and affairs IN WITNESS whereof I have hereunto andto the preceding page of this my Will set my hand this sixteenth day of September one thousand nine hundred and thirty seven.

SIGNED by the said Testator WILLIAM MORRIS HUGHES as and for his last Will and Testament in the presence of us both present at the same time who at his request in his sight and presence and in the presence of each other have hereunto subscribed our names as witnesses:

W. M. Hughes

"B"

It should also be noted that a transcription of necessity fails to transfer the feel of what the will is written on—whether it is vellum, good quality paper, poor quality paper etc; and the various wax seals used by both signatories and public offices also are lost in this process. For some historical purposes (such as the question of whether the correct seal was used) this matters, for others it does not.

Letters

Letters as documents

Letters are one of the staple forms of document for historical research. They are used for many kinds of historical research and the usual way to analyse them is to consider them in relation to what they show of the writer compared with the common forms of the time, such as formalities of address and signature and forms of writing used within family letters as opposed to formal letters and so on. There is a large literature on the historiography of letters with which historians will be familiar, but for legal historians there may be issues which will not arise for historians. For me, wishing to investigate the progress and impact of the married women's property laws in New South Wales by considering a particular case study, letters were an obvious source, but a source whose use as historical documents was unfamiliar to me.

My sources were sets of letters to and from NSW postal authorities in the 1880s and 1890s.[14] Because these are letters between a government department and a particular person they give us a glimpse not only of the woman's struggle, but also of the process of decision-making and communication in a government department at the time.

Briefly, the story concerned Miss Annie Ludford, who applied for and was given the position of postmistress at Summer Hill, but found herself not paid for a considerable time, and then paid considerably less than the male postmasters in the post offices nearby. She then married her telegraph operator, was forced to swap jobs with him so that he was the postmaster, and then when he absconded with the funds, deserting her and their child, the post office refused to reappoint her to the position, despite a petition by the locals. All this was going on at the

[14] These letters are contained in the NSW Post Office Archives, Summer Hill, National Archives of Australia.

time the Married Women's Property Acts in their various forms were being passed in New South Wales.[15]

This part of the paper is not about the details of this story, which will be published elsewhere, but about the use of the letters by a mere legal historian. The wording of the letters is significant and can be analysed for content; but the handwriting on the letters, its placement and so on are also significant and give some insights into the feelings of Miss Ludford in particular, and also the exasperation of the postal authorities at her unwillingness to accept her unequal pay. Miss Ludford wrote letters requesting an increase in her salary in 1889, 1890 and 1891. The reply to the 1891 letter (which is in the form of writing on her letter to them, the same piece of paper going back and forth) gives a handwritten table showing that of six nearby post offices in Sydney Miss Ludford is getting the lowest wages and has some of the highest figures in revenue and flowthrough of work, but the answer to her request, this answer being written on the letter is: 'It is not possible to increase the Pms salary at present but it might be desirable (if PM wishes) to transfer her to a less important office and place a better paid officer at Summer Hill.' That is, the obvious thing to do is to move the woman and replace her with a 'better paid officer' (that is, a male officer). The 'if PM wishes' is an afterthought—it is written in superscript above the original writing. At this, Miss Ludford seems to lose patience. Her reply on a new piece of paper on 30 December 1891 is: '… This paper has taken me somewhat by surprise and I would respectfully state that since I have been in charge … it has grown very rapidly and at present a large amount of business is done

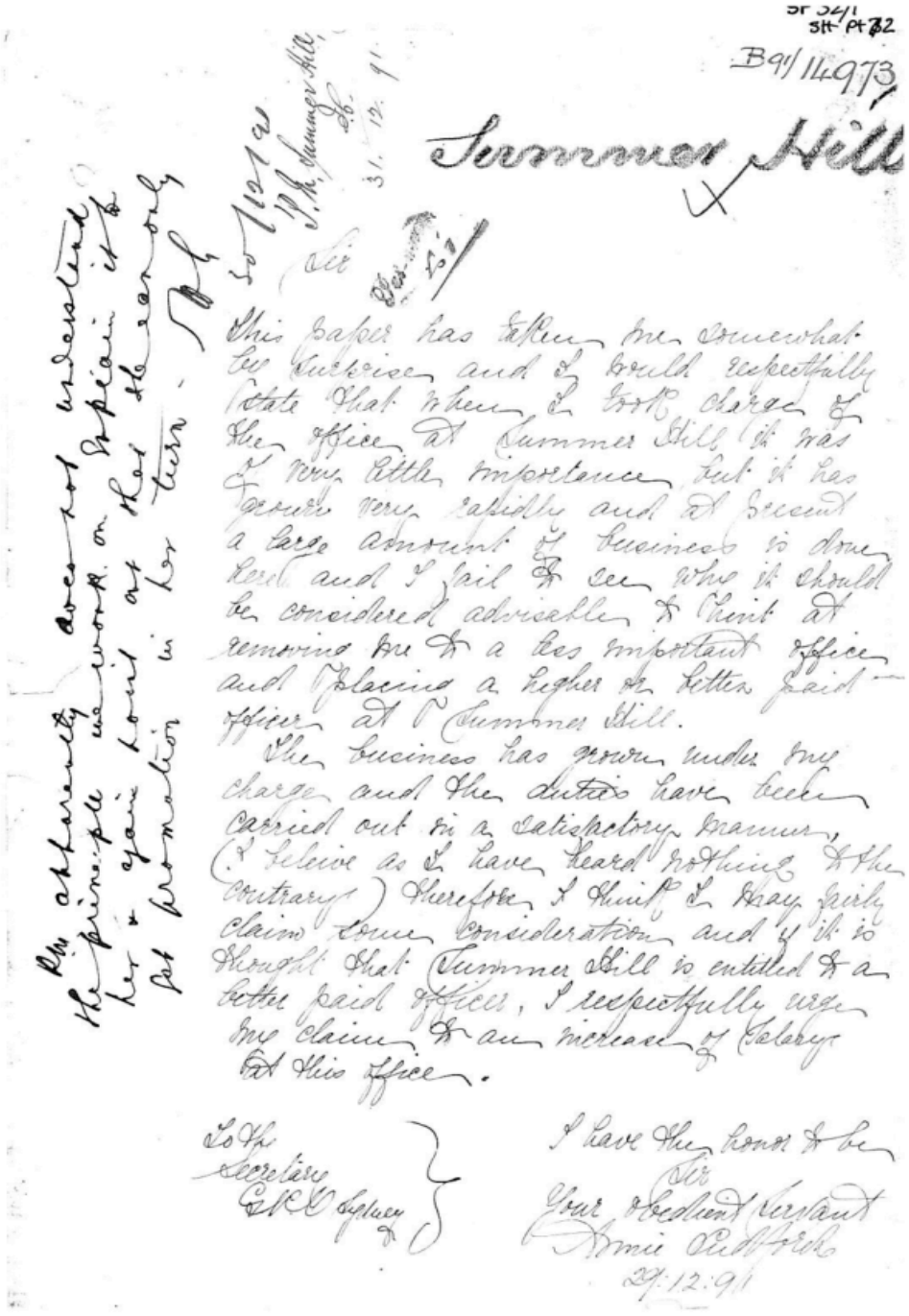
[15] Married Women's Property Act 1879 (NSW). This only gave limited protection to married women's property rights, confining itself to allowing the married woman access to her own income and some other limited rights relating to personal property (that is, not land). It was only when the Married Women's Property Act 1893 (NSW) came into force that substantial changes were made. From 1893 a married woman became capable of owning both land and personal property, suing and being sued, capable of entering into a contract and making her will. Annie Ludford married in 1894 and therefore should have been treated as independent from her husband.

here and I fail to see why it should be considered advisable to hint at removing me to a less important office and placing a better paid officer at Summer Hill.'

Again, the response of the Postmaster General to Miss Ludford's complaint is a note on the letter: 'Pm apparently does not understand the principles we work on. Explain it to her and again point out that she can only get promotion in her turn.' A further letter to her chides her for 'giving the Dept a lot of unnecessary trouble. Your office is already over-resourced and with a Postmaster the work could be much more efficiently and economically managed.'

When one reads this exchange one gets the impression that the Post Master General's staff were not in favour of Miss Ludford being in her position, but despite the remark above, this was not because of any lack of efficiency. There is no evidence of any complaints in the archives.

The handwriting in Miss Ludford's letter is different from that in her other letters. The emotion the postal authorities' response has engendered in her seems to be reflected in the handwriting. This is something that a typewritten document or a transcription misses, and one reason to treasure handwritten letters. The information they give is richer and goes beyond the words.



The other thing that these documents give us is an insight into the bureaucratic processes in government departments at the time. Presumably this is familiar to historians of government processes, but it was surprising and interesting to me. Any one piece of paper seems to be passed around various people and new notes added to it. Thus any one piece of paper is actually the repository of what today might be several letters or memos. Office procedures

before the existence of typewriters and computers clearly were document-focused, and the advantage of this procedure is that if one part of the transaction is known usually all of it is available on the same document. It also means that a letter would have been seen by a range of people which a modern letter might not. The story of Miss Ludford's interaction with the NSW Post Master General over some eleven years is thus contained on relatively few pieces of paper; a great economy of space is thereby achieved. The letters document the post office's reluctance to bring into play the new state of the law. They never mention the Married Women's Property Act, nor the changes to the requirements for divorce and the fact that by law Miss Ludford should have been treated as a feme sole, rather than, as they wished, a married woman, always subject to her husband. Even after being told of a judicial separation being granted, they said, '… Mrs Young's case was duly considered at the time, but it was thought it would be very unsafe to appoint the wife of a defaulting and absconded officer to the position her husband held, seeing that quarters are provided by the Department and that Mrs Young would be at all times under the control of her husband if he chose to visit the place.'

Thus this series of letters illuminated for me a picture of the workings of a government office which was putting into practice its view of how things should be done, against a background of legal change which it was clearly resisting. Did the fact that the Married Women's Property Act was never mentioned mean that the post office authorities were acting in ignorance of it? It seems unlikely but the letters cannot tell us. For me, as a legal historian, it was another salutary reminder not to assume that the changing of a law necessarily means the changing of practice, or certainly not immediately. How law impacts on society is a complex and sometimes slow process.

Letters and wills as historical documents for a legal historian

What we learn from particular documents always needs to be treated with some caution. Whether one is a legal historian or a non-legal historian the process of learning from any document seems to be a spiral process. One looks at the document, then checks the information against what is already known, then goes back to the document and evaluates the knowledge against the document. Because of this 'spiralling' process documents may be both the source of information and a check on information, whether that information is in the content of the document or its form. Careful unravelling and documentation of the unravelling process will give valid information that can be relied on. So, for example, a mediaeval will that does not mention land cannot be used as evidence that the testator had no land. This must be checked against other knowledge—in this case legal knowledge, and then one comes back to the document. Looking at letters to and from government departments in NSW, the historian will check against already known information about government department processes before coming back to the document again to assess its contents.

In this paper I have tried to show that the legal historian, who is in some ways a non-historian, may have advantages in their treatment of legal documents compared to non-legal historians, but that their confidence with legal sources should not necessarily translate into confidence with letters, with which historians generally are very familiar. At the same time, historians may need to be more careful with wills than they necessarily have been in the past, purely because the law of succession is one of the most intricate areas of law in existence, combining as it does ecclesiastical law, common law and equity law in a synthesis which in the area of wills creates a document with multiple levels of meaning and interpretation so that specialist knowledge has considerable importance. There is nothing new in recognising the

limitations of the use of any kind of documents if expertise concerning those particular documents is lacking. The ‘unknown unknowns’ are a trap for everybody against which vigilance is always required. Complacence because these documents are ‘usual sources’ is what has to be avoided.