

## Lecture

### Henry VIII's Will and the Politics of Succession

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This Lecture was co-sponsored by the Selden Society and The Francis Forbes Society for Australian Legal History and was read in the Banco Court, Law Courts Building Queens Square Sydney on 6 November 2019.

1. Henry VIII's Will of 30 December 1546, a valid Will under the law of his time, is important to History because he attempted to bar or postpone any entitlement of his Scottish relatives the House of Stuart to the Crown of England. He failed in this as History shows: the theme of this lecture is that he also failed in Law and his Will did not change anybody's entitlement to the Crown. The Will is also important to History because it appointed the Councillors who conducted government in Edward VI's minority. It also disposed of a great deal of property.
2. In exercise of authority Henry was inconstant in affections and in friendships, deceiving in charm and in business, untrusting, untrustworthy, acquisitive, dishonest, confused, fearful, treacherous, murderous, intensely and erratically religious, fierce in hatreds, beset by irrational suspicions, and also beset by rational suspicions flowing from his many cruel injustices and from bitter grievances held by people close and far. It was his disposition to see conduct and events in terms of hostility and personal danger. He was bodily gross, chronically ill, recurringly acutely ill, and distracted by pain, These are context of Henry's last year of kingship and life. The writer will not mention them much more, but they were there in everything. His shortcomings are important for understanding the shortcomings of his Will.
3. "Honour, love, obedience, troops of friends, I must not look to have, but in their stead, curses, not loud but deep, mouth-honour, breath,

which the poor heart would fain deny, and dare not.” This passage is from Macbeth, but Shakespeare’s words could as well have spoken of Henry VIII.

4. Henry’s Will was made in a time of crises for Henry: a crisis in his health and intense and continuing concerns in his administration. He died about four weeks later at 2 o’clock on the morning of 28 January 1547.
5. (*Display the Will.*) On Folio 1 notice the signature at the head of the page, at line 6 “Defender of the Faith” and “in Earth immediately under God the Supreme Head of the Church of England and Ireland.” On Folio 12 line 276 the words “lawfully begotten” have been ruled through: Henry adhered firmly to his view that his marriages to Catherine of Aragon and Anne Boleyn were null and void and his daughters were illegitimate. There are several other points in the Will where words are ruled through, and places where text is interlineated, without being noticed by initials or in any other way. On Folio 27 there are a number of failures to ascertain and enter the full names of beneficiaries: these include line 624 Symbarde, line 625 Cooke (and how many cooks were there?) line 628 Cecil and Sternhold, line 636 Alsopp, line 637 Patrick, line 638 Ferris and Henry and line 639 Hollande. There are others. On Folio 28 at line 635 the attestation clause includes “... we have signed it with our Hand...” Notice also the signatures of witnesses including Patrick, about half of whom were also beneficiaries, the place where the Signet was formerly affixed, and notice too that the two signatures of the king are remarkably uniform.
6. One of the clerks present made this note of the events: “Your majesties last will and testament bearing date at Westminster the thirtie daie of December last past, written in a booke of paper signed aboue in the beginning and beneth in thend and sealed with the signet in the presence of thErle of Hertford, Mr. Secretarie Pagett, Mr.Denny and Mr.Harbert and also in the presence of certain other persons whos names ar subscribed with their owne hands as witnesses to the same;

which testament your majestie delyuered in our sights with your own hande to the said Erle of Hertford as your owne ded, last wille and testament revoking and adnulling all other your hieghnes former willes and testaments.”

7. This note describes delivery of the document, appropriate for delivery of a deed: but the document was not a deed. The note shows that the Will was executed in the presence of Henry himself, and of Edward Seymour Earl of Hertford, elder brother of Queen Jane Seymour and an uncle of Prince Edward. Also present were Sir Anthony Denny and Sir William Herbert: each held the office of Chief Gentleman of the King’s Privy Chamber and was personally close to Henry, in his company almost every day. Sir William Paget the Secretary of State was also present and affixed the Signet. There were also eleven attesting witnesses and there probably were guards and servants, so the scene was crowded. The accuracy of this note has been questioned, but it seems unlikely that a false record would have been made attributing participation to so many people.
8. The Will contains many provisions which a Tudor King could be expected to have made. The dispositions of property were of great importance in the months after Henry died, and its provisions for conducting government under his son Edward VI continued to be important throughout Edward’s reign, although his Councillors did not always conform with them. The Will’s greatest importance to History was in the lengthy passages which attempted to control Succession to the English Crown after the lifetimes of Henry's son and daughters and to impede his Scottish relatives. These had a place in controversies about rights of Mary Queen of Scots and her son James VI and I to the English Crown. They were poorly considered and poorly expressed, and they did not have any legal effect as will be shown.
9. The Will opened with orthodox professions of religious faith, trust in God, confidence in the Church Militant and the Sacrament, and invocation of the prayers of the Blessed Virgin and the Company of

Saints for Henry the sooner to attain everlasting life. These gave no hint of religious Reform. There were directions for Henry's funeral and for his burial in a tomb then almost finished in the choir of his College at Windsor, where he wished the remains of his late Queen Jane Seymour to be buried with his. (His executors did not finish building this tomb.) Henry provided for daily Masses until the end of the World, for distribution of alms to the Poor and for the embellishment of the tombs and altars of Henry VI and Edward IV: "...our great Uncle and Grauntfather..." (This was a curious association, as each dethroned the other). He made large gifts to St George's College in Windsor Castle with provisions for Masses and Obits and for maintenance of thirteen Poor Knights.

10. Henry appointed sixteen Executors: Cranmer the Archbishop of Canterbury, nobles who were High Officers of State, a bishop, Judges, gentlemen and clergy associated with his Household. The same sixteen were appointed and empowered as Councillors of the Privy Council of Edward VI; they were to act only with the written consent of a majority. Henry made provision for his Household Cofferer to pay his gifts and debts, and he directed that all grants which he had promised but had not perfected were to be performed. The Will also appointed twelve other persons to give counsel for the assistance of the Councillors. These included two noblemen, several officers of the Household and other Government officers.
11. The Will gave the Succession of his kingdoms and much property to Prince Edward his son, and charged Edward to be ruled by the Councillors until his Majority. Edward became king when he was nine years old and died aged fifteen without reaching his Eighteenth Birthday which was to be his Majority.
12. The Will gave Henry's daughters Mary and Elizabeth £10,000 each on marriage "to any outward potentate" and also incomes of £3000 each, and gave Henry's then Queen Catharine (so spelt) Parr £3000 and an income of £1000. The Will gave many gifts of money to High Officers and people who were or had been of his Household.

13. In 1546 Henry's main dwellings were the Palace of Westminster at Whitehall and the Palace of Greenwich, neither of which still exists. Sometimes he spent a few days in the London homes of prominent Councillors, and Council meetings were sometimes held in their homes. On 23 December he was at Whitehall and it seems that he stayed there until the end of his life. He was severely ill with fever for several days. Christmas celebrations were muted and the Queen and the Prince were not brought to Whitehall. About 26 December Henry told Councillors that he wished to prepare a new will. His earlier Will or perhaps two Wills were located; Henry and his courtiers and clerks looked at the earlier Wills and worked on drafts over four days. The Will was prepared amidst frantic and severe business at the end of a severe year. The language of the Will is solemn and ponderous. There are signs of insufficient attention and whoever drafted the Will seems to have failed to study the statutes which were the source of Henry's power to deal with the Succession. Many pages about Succession of Edward, Mary and Elizabeth were superfluous as their rights to Succession were conferred by the Succession Act 1544, and the only power given to Henry was to impose conditions on Succession by Mary and Elizabeth. He imposed such conditions and they were not tested as his daughters complied with them. A passage on Folio 14 about the Succession of the Lady Mary recurs incoherently to an earlier expression and trails off uncompleted: the draughtsman had lost his way. As far as the writer can see no sense can be made this passage, but Rymer an Eighteenth Century editor tried to make sense of it and erroneously added a negative which was not in the original. Uneconomical use of language is a sign of haste in drafting, and there are other signs: at several places phrases are struck out, others are interlineated, and there are uncompleted blank spaces in several names: poor drafting for a will. A real lawyer would have taken the time to prepare a document that did not have passages crossed out here and there, and would have established the correct names of all beneficiaries.

14. Perhaps some readers have encountered a very important client who makes pushy demands for work to be done in a hurry or immediately, and deprives himself of the advantages of his lawyer preparing a document with general care skill and consideration. That is what seems to have happened here. In this atmosphere the lawyers who prepared the Will missed an obvious point of extreme importance, an even worse failure to advert to the legislation when the Will was executed. This lecture will come to that.
15. The rules for inheritance of the Crown were (and still are) similar to but not exactly the same as the old rules of English law for inheritance of land, and these are fairly well-known. Land descended to the heir. The heir was the eldest son or the eldest surviving son, or the son's heir if the son had died: if there were no son all daughters inherited together. If there were no sons or daughters or more remote issue the heir was the heir of the person from whom the deceased had inherited: usually the heir of his father or his mother, sometimes of a close or remote grandparent, uncle or aunt. This could lead to a brother, an uncle, a cousin or a remote cousin. There were details and complexities, including barriers to tracing inheritance through relationships in the half-blood, and to (and possibly through) aliens, persons born outside the king's dominions. Legal writers said for centuries that if there were only daughters the heir to the Crown was the elder daughter. Descent of the Crown to Queen Elizabeth II from her father was the first occasion when this rule actually took effect. There may be other differences.
16. On the assumption that the ordinary rules about inheritance of land applied, the heir to the Crown after the deaths of all three of Henry VIII's children without descendants would have been found by tracing descent from Henry VII, from whom Henry VIII had himself inherited. There was no male line as Henry VII's elder son Arthur had died without descendants. Two daughters of Henry VII reached adulthood and left descendants. The elder was Margaret Tudor who married James IV of Scotland and became Queen of Scotland. She

lived until 1541 and was the mother of James V of Scotland and the grandmother of Mary Queen of Scots, who was born in 1542, became Queen of Scots when she was six days old and was the senior possible heir in the Stuart line. When she died in 1587 this place passed to her son James who was born in 1566 and became James VI of Scotland in 1567. There was also a junior Stuart line, as Margaret Tudor married the Earl of Angus after the death of James IV and was survived by daughters and their descendants, including Lord Darnley who married his cousin Mary Queen of Scots and was the father of James VI and I. A complexity was that Margaret Tudor's marriage to Angus had been annulled after her daughters were born. Inheritance by some of the Stuarts may have been defeated by Alienage, in which persons born outside the territories of the king were disqualified from inheriting English land. No-one has ever been disqualified by Alienage from inheriting the English Crown but the possibility that Alienage may be a disqualification was much discussed and debated. This large subject must be left to be studied elsewhere.

17. The younger of Henry VII's daughters who reached adulthood was Mary Tudor who was briefly Queen of France in 1514. When she was aged 18 she married Louis XII, who was 52; their marriage was childless and ended after 12 weeks as he died on 1 January 1515. There were unkind inferences about the cause of his death. Henry VIII wished to arrange his sister's further marriage to some foreign Prince for political advantage, and sent his good friend Charles Brandon Duke of Suffolk to France to escort her home. However she married Suffolk secretly in France on 3 March 1515 without Henry's knowledge or permission, and they incurred his extreme displeasure, which later passed. Mary Duchess of Suffolk was usually referred to in England as the French Queen. Their two sons, successively Dukes of Suffolk, died in youth and their two daughters Lady Frances and Lady Eleanor and their descendants were the Suffolk line and had distant places in inheritance of the Crown traced from Henry VII.

18. Mary the French Queen died in 1533. Her elder daughter Lady Frances became Duchess of Suffolk, lived until 1559 and was survived by her younger daughters Lady Catherine Grey and Lady Mary Grey. Lady Frances' eldest daughter is known to History as Lady Jane Grey, and was executed in 1554 without issue after irresponsible relatives involved her in a groundless claim to the throne on the death of Edward VI. Lady Frances' elder surviving daughter Catherine died in 1568 and left descendants who would have inherited her place in the Suffolk line if they had been legitimate. Lady Eleanor died in September 1547 and left descendants in a line which long continued: perhaps still does.
19. It may seem strange that Henry made dispositions about who was to be king or queen of England not only upon his death but also in later generations. Descent of the Crown was governed by law and was not something which a king could give away, in his lifetime or by his will, unless Parliament had empowered him to do so. Henry was able to obtain from Parliament almost any legislation he called for, and Parliament gave Henry power to make dispositions of the Crown by several Succession Acts, lastly the Succession Act 1544, 35 H 8 c.1 which continued in effect.
20. This Succession Act provided for the Crown to pass to Edward, and if he were to die without heirs of his body to Henry's daughter Mary and the heirs of her body and in default to his daughter Elizabeth and the heirs of her body. Without this enactment Mary and Elizabeth would not have been able to succeed to the Crown because annulments of the marriages of their mothers and declarations which Henry had obtained from Parliament established that they were not legitimate. The Succession Act eventually made them both Queens of England but did not make them legitimate. The Will referred to them as Lady Mary and Lady Elizabeth and spoke of their brother as Prince Edward. During the reign of Mary I legislation restored her legitimacy, but not that of Elizabeth. Consideration was given to



excluding Elizabeth from the Succession, but no such law was enacted.

21. According to Henry's Will the Succession was to go to Prince Edward and the heirs of his body. In default, to Henry's children by his then wife Queen Catharine or by any future wife. In default, to his daughter Mary and the heirs of her body, upon condition that she should not marry without the written consent under seal of a majority of the surviving Councillors appointed for Edward. In default, to his daughter Elizabeth upon the like condition. If either Mary or Elizabeth did not conform to this condition she was to forfeit all rights to the Crown. In default, to the heirs of the body of Lady Frances, elder daughter of Mary the French Queen. In default, to the heirs of the body of Lady Eleanor the younger daughter. And in default to Henry's right heirs.
22. These dispositions have some curious aspects. It is curious that the dispositions excluded each of Lady Frances and Lady Eleanor from inheriting the Crown by giving a place in the Succession to the heirs of her body and not to her. The Succession Act gave Henry power to dispose of the Succession to such persons as he pleased if there were no heirs of the body of Edward, Mary and Elizabeth. It was not in Henry's power to appoint Edward, Mary and Elizabeth and their heirs to inherit the Crown; their rights in the Succession had already been conferred by the Succession Act. That Act did give Henry power to impose conditions on inheritance by Mary and Elizabeth, as he did: as they both conformed the effect of the conditions was not tested. The superfluous provisions suggest that those who drew up the Will did not take time to refresh their minds in detail on what the Succession Act already said. If they had done so they may have reminded themselves of a requirement which the Act made about the manner of execution of the Will.
23. The Stuart line ranked higher than the Suffolk line, and the Will purported to exclude the Stuart line by not mentioning them. Their exclusion can only have been deliberate. In 1546 Henry was still

engaged in the intermittent wars with Scotland later called the Rough Wooing, and his war aims included compelling a marriage between Prince Edward and Mary Queen of Scots; this probably explains the exclusion.

24. The provisions of the will relating to Succession concluded with the provision in remainder: by which in default of all the classes of persons mentioned the Succession was to go to Henry's right heirs: to whomever it would then have gone if Henry had made no provision at all. Section 6 of the Succession Act authorised this by giving Henry power to give the Crown in remainder "to such person or persons in remainder or reversion as shall please His Highness..." The Succession Act itself made no disposition to operate if Henry did not dispose of the remainder. Henry's disposition in remainder could conceivably have brought the Crown to the Stuart line if all possible inheritors under the Will were extinct: this unlikely outcome did not happen.
25. Three Successions, to Edward VI, to Mary I and to Elizabeth I took place under the rights conferred by the Succession Act, and not under rights conferred by Henry's Will. At the death of Elizabeth leaving no heirs of her body a disposition of the Succession in Henry's Will could for the first time have had effect. The next heir according to the ordinary rules of descent was then James VI of Scotland: according to the Will he was not entitled to succeed. The Will was not his only possible obstacle: he had not been born in England and he may have been excluded by Alienage.
26. Debate and discussion about whether James VI and I was truly entitled to the Crown of England have proceeded for more than four centuries. Remarkably many names and lines of descent have been considered and debated. Many claims and much debate depend on whether or not Henry's exclusion of the Stuart line was effective, and on whether Henry signed the Will.
27. Questions whether the Will was valid or was effective receive different answers when asked about different provisions in the Will.

There were arrangements for Henry's funeral, his charitable gifts and distribution of alms and his gifts to St George's Chapel, to his family and to others: their validity should be tested by the law which governed testamentary dispositions of property on death, and there is no doubt of their validity. These dispositions were given effect during Edward VI's reign. A second area is the arrangements for governance during Edward's Minority: Henry was given power by the Succession Act 1536 to appoint Councillors and nobles to govern an heir during minority, and this and Henry's own prestige were the bases for his attempts to control the conduct of Edward VI's government. He did not appoint a Lord Protector and the Act of 1536 did not empower him to do so. A third area is the Succession to the Crown.

28. In modern times everyone has a general idea that formalities must be observed if a will is to be valid. Most people know that a will must be in writing and the testator must sign it at the foot or end in the presence of at least two witnesses who also must sign as witnesses, then and there; and that beneficiaries cannot be witnesses. These rules only go back to 1837: there had been centuries of changes and in Tudor times the rules were different. A Will appointing an executor and making gifts of movable goods and money did not have to be signed: it did not have to be in writing at all, and effect was given to wills whispered to priests from deathbeds. For several centuries until 1540 a Will could not dispose of land: the same effect could be produced by elaborate arrangements involving Uses, later called Trusts. Uses could avoid feudal services which were part of the king's revenue: so Henry in effect abolished these arrangements by the Statute of Uses 1536. Then he obtained legislation, the Wills Act 1540, which authorised disposition of land by Will, a more direct way than creating a Use had been. The only formality for a Will disposing of land was that it had to be in writing: just in writing, not signed. The testator could tell someone else what his Will was and the person who heard him could write it down: if these facts were proved that was enough. No lawyer and no sensible person would make a Will which

was not written out, signed and witnessed, and in Tudor times almost everybody who could write did sign his will, but signature was not essential for the validity of a will disposing of land. The legal requirement for wills to be signed was first made by the Statute of Frauds 1677.

29. The Succession Act 1544 worked in a different way to the Wills Act 1540 and made formal requirements which a document disposing of the Crown had to comply with. When the Succession Act said that Henry could impose conditions on Mary's Succession, its words were "with such conditions as by His Highness shall be limited by his letters patent under his great seal, or by his Majesty's last Will in writing signed with his gracious hand." Then every time the Act conferred another power on Henry, which it did seven more times, it used the same or a closely similar formula such as "by his last Will in writing signed with his Majesty's hand" and "by his last Will in form as aforesaid." There had been similar provisions in the Succession Act 1536. The requirement for signing the Will with his hand had special force because otherwise the law did not require a Will to be signed. It was essential to exercise the power in one of the formal ways specified: otherwise it would not have been exercised at all. Parliament did not empower Henry to change the Succession by telling his courtiers or anyone else what he wanted or by telling someone else to write out his Will, even if he authorised someone to sign it on his behalf; his power was to change the Succession in one of the two formal ways stated in the Succession Act: Letters Patent under the Great Seal or his Last Will signed with his hand. Nothing short of that and nothing else could change the law about rights to Succession: could take the right to be King away from one person or class of persons and confer it on someone else, and in so doing impose duties of allegiance on all the English which they otherwise would not have had.

30. Henry had made at least one earlier will, perhaps several. The validity of dispositions of property in the Will of 30 December 1546 means that no earlier will could be his last Will.
31. The year 1546 was eventful. Henry was in poor general health, fifty-five years old, prematurely aged and grossly over-weight, and he had suffered for many years from incurable leg ulcers which caused great pain. It was difficult for him to walk and he was usually moved up and down stairs on a wheeled chair or trolley. Several times that year he was extremely ill with fevers and could well have died, lastly in the few days at Whitehall from 23 December, and he repeatedly recovered his long-standing poor general health. England was at war with France and Scotland, and when the English army suffered a severe defeat in France in January 1546 its commander Henry Earl of Surrey was replaced by the Earl of Hertford: Surrey did not take this well. In June 1546 the French made peace with the English after Scots rebels had murdered Cardinal Beaton, the chief upholder of French interests in Scotland. England's war with Scotland continued. Surrey and Hertford returned to Court and participated energetically in affairs.
32. Officers in Henry's Government were active in prosecution and persecution of Protestants, notably the arrest, interrogation, trial for heresy and execution of Anne Askew, a learned and vivid Protestant preacher with a large following. Her most noted heresy was rejection of Transubstantiation, so she is a Protestant martyr. She was interrogated on the rack with great cruelty, so cruelly that the Constable of the Tower refused to continue and the two Government lawyers who were interrogating her took over the machine. Under severe torture she maintained her refusal to implicate others. She was burnt at the stake in July 1546, so disabled by the rack that she could not walk but was carried to the stake on a chair. While a cleric delivered a last sermon she interrupted to correct his biblical references. The objects of her interrogators included searching for some ground to attack Queen Catherine Parr whose opinions and

associations tended toward Protestantism, and they probably had some support from Henry as they obtained a Warrant for the Queen's arrest. If in truth Henry did support action against her, he did not pursue it when she made a complete submission to his opinions. She assured Henry that she would gladly follow his counsel and that she had spoken of religion in order to learn from him. This would have been universally regarded as the only prudent response to give to the king on any religious question.

33. It was and is difficult to know with any definition what Henry's religious opinions were, but whatever they were, he adhered to them with great conviction and it was life-threatening to differ. He rejected Papal authority but as his Will shows he adhered to most opinions which can be classed, to a poor degree of definition, as close to the Old Religion and remote from the New Faith of the Protestant Reformers. The extreme rigour used against Anne Askew in the middle of the year seems to indicate how Henry's opinions were tending, but late in 1546 he turned against two of his high officers who were strongly associated with the Old Religion, Stephen Gardiner Bishop of Winchester and Thomas Howard Duke of Norfolk.

34. Gardiner had served Henry in great matters and high office for almost twenty years, and had handled much delicate and indelicate business for him. Late in 1546 Gardiner did not respond to Henry's request for a manor which belonged to the Diocese of Winchester, and was excluded from the king's presence and his attendance at Council was limited. Gardiner remained in high disfavour for the rest of Henry's life. He was not included among the Executors and future Privy Councillors, and a courtier's suggestion that he should be included was dismissed with anger. However the two lawyers who were most strongly associated with the prosecution of Anne Askew and handled the rack themselves did not incur corresponding displeasure.

35. Late in 1546 the most prominent nobles at Henry's Court and in his service appeared to be Thomas Howard Duke of Norfolk and Edward Seymour Earl of Hertford, a brother of the late Queen Jane and hence Prince Edward's elder uncle. The Duke of Norfolk was the father of Henry Howard Earl of Surrey, and both were of royal descent, Henry Howard more closely than his father as through his mother he was a great-grandson of the Yorkist Edward IV. There was rivalry between the Earl of Surrey and the Earl of Hertford. Surrey had been removed from command in France and replaced by Hertford, and Surrey had a history of troublesome behaviour, even so troublesome as roaming London streets in the small hours and breaking citizens' windows. Hertford had a prominent place in Henry's favour and perhaps the most prominent position among the king's Councillors. Hertford was generally regarded as an Evangelical and associated with religious Reform. Identifications of courtiers as Catholics or as Evangelicals made at later times are extremely uncertain and would have been disavowed at the time by the courtiers themselves.
36. In December 1546 the king turned suddenly and murderously against the Howards. Treason charges against the Duke of Norfolk and his son Henry Earl of Surrey destroyed them. The king's actions were thunder-striking in their severity. The Duke had spent almost fifty years in Royal service for Henry VII and Henry VIII, after the Duke's grandfather and father had fought for Richard III at the Battle of Bosworth Field in 1485 and his father had adroitly restored the family's fortunes. The Duke was strongly associated with the Old Religion. He had performed a great deal of hard military, naval and administrative service for Henry. His service had been hard and it had not all been successful. His misfortunes included that two of his nieces had in their times married Henry and later been executed for adultery. He had done a great deal of Henry's dirty work, a high point being that he presided at the trial of his niece Queen Anne Boleyn. It

was astonishingly extreme that at the end of 1546 Henry turned against the House of Howard and destroyed its leading members.

37. Proceedings against the Howards were carried forward at irresistible deliberate speed by Lord Chancellor Wriothesley. Wriothesley had earlier seemed religiously conservative and had had somewhat hostile dealings with the Earl of Hertford. The fall of the Howards may have been related to rivalry over control of the future government under Prince Edward but this was not its explicit ground. The Earl of Surrey was arrested by Wriothesley on 2 December and the Privy Council proceeded to examine Surrey and witnesses against him. Henry took an active part in these investigations, and the notes for the interrogation of Surrey bear his alterations and additions. Most of the information collected seems inconsequential, almost trivial in the context of an investigation of Treason. The main ground, at least nominally, was that Surrey had displayed a coat of arms which quartered the Howard arms with those of Edward the Confessor and this could be understood as asserting a claim to the Crown or to be heir to the Crown. The arms bore heraldic labels appropriate for the king's heir and displayed the initials H R: in the King's interpretation the initials meant Henricus Rex and were a treasonous assertion of a right to the Crown. It availed nothing to claim that they meant Hereditas Resurgens. (Edward the Confessor lived before heraldry gave meaning to coats of arms, and kings used arms conventionally attributed to the Confessor.) There were other grounds which were even less clearly proofs of Treason. The real ground of action may have been that Surrey had put about his view that his father the Duke was the appropriate person to be Lord Protector and to control government after Henry's death: and that Hertford was not. Open discussion of the king's impending death and of arrangements for government after it was dangerous. Perhaps the thought of a boy king and a Lord Protector with a place however distant in the Succession raised ghosts of Edward V and Richard III in Henry's mind. The



contention that the Duke should be Lord Protector was not one of the grounds relied on at the Earl's trial.

38. The process against Surrey and Norfolk was driven by the king and all concerned acted promptly to fulfil his wishes. The king's Solicitor General presented an Indictment charging Surrey with Treason. The Judges placed the Indictment before a Grand Jury and obtained a Presentment on 7 January without delay: they consulted with the king on suitable jurymen. Lord Chancellor Wriothesley who had led the investigation presided at the trial. The particulars of the Indictment against Surrey were that he caused a coat of arms to be displayed in the Duke's house with the Howard arms quartered with Edward the Confessor's arms, appropriately displayed only by the king, and three silver labels appropriate to the heir apparent. The Indictment did not refer to the use of the letters H R. If there were to be a conviction the jury must find on their oaths that displaying these arms might disturb or interrupt Henry in his kingship. They were able so to find. The Earl was tried and condemned for Treason on 13 January and was beheaded on 19 January 1547.
39. The offence charged in the Indictment was created and made Treason by section 12 of the Succession Act 1536: it was Treason willingly to give occasion by a deed or act whereby the king might be disturbed or interrupted of the Crown. There was much else in section 12, which went on at great length to punish acts which might cast doubt on the effectiveness of the king's annulments, the validity of his marriage to Queen Jane and the illegitimacy of his daughters.
40. The Duke was arrested on 12 December and imprisoned in the Tower: he was charged with Treason in not revealing his son's Treason, and he knew how hopeless it was to defend a charge of Treason as he had presided over such trials himself. He submitted in writing to his own condemnation and forfeiture of his property. Parliament was reassembled on 15 January, and Henry readily obtained a Bill of Attainder against the Duke which passed the House

of Commons on 24 January and was given Royal Assent on 27 January.

41. With these events in train in December and January all business at Court must have proceeded in an atmosphere of extreme tension. Nobody then still alive had such high claims on Henry's goodwill as the Duke of Norfolk, and his destruction showed how frail was the destiny of everyone participating in government. The king's expressions of favour were sometimes deliberately deceptive. Repeatedly the king's highest officers had been overthrown and pursued to their deaths, and many lesser persons had been disgraced and executed. Disgrace and death on trivial grounds could readily overtake anyone at Court with no forewarning.
42. Complex business was in hand at Henry's Court in December. The Ambassadors of the French King, and of Charles V the ruler of the Holy Roman Empire and of Spain, repeatedly sought audience. There was much correspondence from foreign governments, from English diplomats overseas, and from spies and others, about the progress of the war between the Holy Roman Empire and the Protestant rulers of Northern Germany, and about implementation in detail of the recent Treaty of Peace with France. The war with Scotland continued, with requirements for money and supplies as English garrisons in Scotland resisted sieges at several places. Envoys from Scotland were at least nominally seeking to open negotiations to be included in the recent peace with France; or they may have been procrastinating possible intervention by the English in a long siege of St Andrews by Regent Arran. Scots Protestant nobles improbably called the Castilians had murdered Cardinal Beaton and seized his castle.
43. Correspondence from France reported the French King's intrigues to aid Regent Arran and to injure the Emperor, even to the extent of urging the Turkish ruler to attack Vienna. There was also correspondence about the progress of the Council of Trent, and about relations with the Republic of Venice, whose rulers agreed with

Henry's request that they should again send a permanent ambassador to England: notwithstanding the apparent involvement of an English agent in a political murder. There were concerns for English subjects who had been robbed by pirates and for others whose goods had been seized in war. English diplomats abroad reported giving foreign rulers highly coloured accounts of the misdeeds of the Howards. Although diplomatic business was pressing, investigations against the Howards took priority and sometimes engrossed the Council for days to the exclusion of all else.

44. Now this story becomes quite strange. In the last months of his life Henry signed few documents. It was physically difficult for him to do so: he was handicapped. He became less active and more deeply an invalid, but he continued to conduct the business of State himself, sometimes from his bed, in the presence of High Officers of State, his Chief Secretary, courtiers and trusted clerks. The press of business and decisions continued, even when he was ill and in bed, in pain and fevered. There were Ambassadors to receive: plans to make for the next year's campaign against Scotland: correspondence to and from Courts abroad: appointments to offices and dismissals: petitions and claims for grants of land: arrangements to exchange privately-owned land for land owned by the Crown: pardons: payments to be authorised: public works to be ordered and paid for. A strong tide of documents required signature when Henry was no longer readily able to make signatures.

45. Three trusted members of Henry's Household used a Dry Stamp which produced an outline of Henry's signature when stamped on paper, parchment or vellum. When they were commanded to do so they would trace the signature over the outline with a pen. They signed hundreds of documents in this way, and after a year or so the practice was formalised by the Dry Stamp Commission, Letters Patent dated 31 August 1546. The first was Sir Anthony Denny, Chief Gentleman of the King's Privy Chamber: an officer of the Household rather than of Government, and one of the sixteen Executors of the

Will and Privy Councillors to Edward VI. The Will gave him a gift of £300. The others were John Gates, Esquire (who was given £200) and William Clerk, Gentleman. Two of them were required to be present when the Dry Stamp was used. The Letters Patent spelt out in plain Latin what they were to do, which the writer translates: "...after making the said sign and impression with the Stamp [William Clerk or one of the other two] should fill in the signature so made and blacken it with ink..." The Letters Patent provided that each document signed in this way was to be noted in "a book or in certain schedules ordained and deputed by Us for the purpose and once in each month signed and subscribed with Our own hand..." At the end of each month the book or schedule was brought to Henry, who looked through it, or could look through it. Usually he did no more: occasionally he made a signature or a mark of approval. There was some peril for the clerks as forging the king's signature was Treason unless they actually had his authority in advance to do it but (it should be said) Henry was not altogether reliable and was capable of disavowing some document and punishing the clerk who had signed his name. He is not known to have done this, but there were grounds for caution.

46. As has been shown, an entry in the schedule for January 1547 states in detail the events in which the Will was signed on 30 December 1546. This entry was made by one of the three persons authorised to use the Dry Stamp, probably William Clerk, and speaks for all of them. The entry could have been even more explicit but means that the king himself was present when the Will was signed: the entry says that the king delivered the document to the Earl of Hertford and in context this means that he approved of it and handed it to Hertford then and there. Henry's signature appears twice in the Will, once at the beginning and once at the end. In a passing reference (at line 464) the Will refers to itself as "...these Presents signed with our Hand..." and an attestation clause in the second last paragraph of the Will says "...in witness whereof we have signed it with our hand

in our Palace of Westminster the 30 day of December...” It cannot be literally true that the two signatures were made with the king’s hand because if they had been there would have been no occasion to include the Will in the record of documents signed with the Dry Stamp, and it would have been most perilous to include it in the January schedule. In the ordinary course the schedule was to be shown to the king, and it would have been if he had not died before January ended.

47. At least fifteen persons were named as present, so they were able to observe the event or say that it had not happened, and to say whether or not the king signed the Will with his own hand. Eleven persons signed as witnesses including two of the three persons authorised to use the Dry Stamp and three of the king’s doctors. The courtiers who were present according to the schedule did not sign as witnesses. It is impossible to suppose that a person whom the king entrusted with his Dry Stamp would have made an entry in the schedule which meant that the Will had been signed with the Dry Stamp if this was false, false to the observation of fifteen persons as well as of the king: and it would have been just as impossible to make such a false entry after the king died, as some have contended. The eleven witnesses could be identified immediately, and several of them were named in the Will and given gifts. One of them had very poor handwriting and signed “Patrec”: he may have been the apothecary but it seems more likely that he was the flautist. Patrick was given a gift of 100 marks.
48. The entry in the schedule says that the Will was delivered as a deed and was sealed with the Signet. The Signet was a small seal in the custody of the Secretary of State, Sir William Paget, and the language attributed to the king in delivering the document as his deed was appropriate for a deed under seal. The use of the Signet bears out Paget’s presence. In that Age a deed was given full effect by being delivered as well as being sealed (an event now reduced to the mere formula “signed sealed and delivered.”) The Will now at The National

Archives at Kew does not appear to bear the Signet, but the copy in Rymer's Foedera published in 1713 concludes with that editor's statement "Under his Royal Signet of Red Wax hanging by white and green Ribbons."

49. By handing his Will to Hertford Henry indicated how high the Earl then stood in his confidence. In doing this Henry departed from the ordinary routine in which the clerks had an opportunity after signing a document to note it then and there in the schedule of documents signed with the Dry Stamp. The facts that the king himself was present and saw the signatures being made, and that he then took the document himself and handed it to the Earl of Hertford, meant that there was no need to report the event to the king: he knew of it because he took part in it. Still the Dry Stamp Commission required a record to be made and it was, although not until January.
50. The plain fact, the plainest of facts is that Henry did not sign his Will with his hand. Someone else signed it, one of his clerks: and had his authority to do so.
51. The fact that Henry did not sign the Will did not deprive it of all effect. The words in it are the words he wanted to be in his Will, and he wanted the document to be his Will. Its dispositions of property were effective and it was the last will he made, so it truly was his last will and testament. For the appointment of executors and all the gifts of money there is no doubt that it was a valid Will. There was one gift of land in the Will, as Henry gave St. George's College lands to the yearly value of £600: the Will was in writing so there is no doubt that this gift was valid. But for anything in the Will which was an exercise of the powers in the Succession Act 1544 it is simply wrong and impossible to say that it was his "last Will in writing signed with his gracious hand." The words of the Act mean with the clarity mysteriously attributed to crystal that Henry could not exercise the power and produce the changes for which the Act provided by a signature made by someone whom he had authorised to sign for him. The Will was signed by one of Henry's clerks with his authority and

was not signed with Henry's hand: not arguably, not constructively, not possibly, not at all.

52. Gates and Clerk signed as witnesses to the Will: remarkably bold and unclerkly behaviour if they knew that it was not Henry's authorised Will. Statements that the Dry Stamp had been used were attributed to William Clerk, and to evidence given by Sir William Paget, possibly in the House of Lords during the reign of Mary I when Parliament repealed the Act of Attainder of the Duke of Norfolk. Signature of the Will would only have been incidental to that enquiry as the Lords were concerned with the Commission under which Assent had been given to the Act of Attainder. However doubts have been expressed about whether they gave that account of the event, and about whether what they then said was true. In this controversy assertions that witnesses were unreliable, or that sources about what they said were unreliable are made readily.

53. In the course of four Centuries historians have attacked Henry's Will in many ways and on many bases. Historians have scrutinised every word, every known copy, the careers of persons mentioned in the Will and of the witnesses, in searches for anomalies. Many have thought that a document signed with the Dry Stamp was signed by Henry with his hand within the meaning of the Succession Act 1544. Historians have rejected the view that signature of the Will with the Dry Stamp was not effective and have said that if that were correct hundreds of other documents signed with the Dry Stamp would not have been effective. However the requirement of the Succession Acts for signature with the King's own hand applied only to dispositions of the Succession by Will and did not apply to grants, pardons, bearbaiting licences or to any other documents. A lawyer could add that if all the other documents signed with the Dry Stamp were ineffective then so they were. It seems that it is possible to attain a Doctorate in History while reaching a conclusion which would cause one to fail the Bar Examinations.

54. There have been suggestions that the Will or parts of it were fabricated, that passages were put in or altered without Henry's knowledge, that the Will was actually signed several weeks after the date it bears; that the witnesses made their signatures under a blank space and that dispositions were later written in above the signatures. It has been suggested that conclusions like these are supported by conflict between factions at Court: that when compared with drafts and an earlier Will its provisions reflect conflict between Evangelical and Catholic courtiers. Henry reduced many bequests, and there have been research and speculation into the positions of beneficiaries in the politics of December 1546 and January 1547 and minute examination for Henry's motivations.
55. Speculation is particularly provoked by the fact that there was no entry for the Will in the schedule which would have been shown to Henry at the end of December 1546 for his approval. That schedule had entries for sixty-four documents, of many kinds from appointments to offices and grants of property to a bear-baiting licence, but there was no entry for the Will. To make matters worse, the Will was entered late in the record for January 1547, far out of chronological order, the second last entry, in prominent writing but so late that it could not receive Henry's ratifying mark before he died. Anyone who has done routine clerical work in a big office knows that mistakes in following routines happen all the time, that papers get out of date order, that the biggest piece of business in hand engrosses attention yet can be the very thing that escapes routine attention.
56. When clerical work is viewed from an Ivory Tower it seems to be easy to assume that if anything went wrong that fact demonstrates that there was villainy. It has been conjectured that the document was not really signed on 30 December at all, but was cobbled together at some time late in January when Henry was past knowledge or understanding: that it was not in the exact terms he had approved or was a complete forgery. It has been conjectured that the signatures were put on the Will with the Dry Stamp later than 30 December, in



the last days or on the last full day of Henry's life or even after his death. These conjectures can be made to fit in with the order of entries, but they cannot be made to fit in with reality in that many persons who had different or conflicting interests or antipathies were present at Court, close to the king and active in State business, and far too many people were involved, especially those who signed as witnesses, for a conspiracy of that kind to exist and operate, let alone stay secret in the conflicts which arose soon after Henry died.

57. To his last day Henry was ready with the axe: the last document in the January schedule, and probably the last document signed with the Dry Stamp, was a Commission which authorised several Peers to attend the House of Lords and give the king's assent to the Attainder of the Duke of Norfolk. The date of the Commission was 27<sup>th</sup> January and the Bill was assented to straight away, but the Duke was not beheaded the next morning because Henry died in the night.

58. If the Will was not made and signed with the Dry Stamp on the date it bears, all witnesses and all others involved in producing the Will risked their necks, their lives on the deception's being and remaining concealed. Avoiding Henry's wrath would have been the first concern of all present at all times and in all things. A conspiracy to fabricate Henry's Will, or to forge parts of it, which would probably have been known to about twenty people, was too dangerous, too rash to be possible.

59. To add to many earlier speculations, the writer raises the suggestion that so many people were involved in preparing the document that the point that Henry's own personal signature was essential can only have been disregarded if someone was proceeding with calculation and design to make sure that the provisions about Succession were not effective. This is not the writer's interpretation, but it deserves a place among the many adverse interpretations which have been made.

60. To the writer's reading and in his opinion Henry VIII's Will did not have, could not have had any effect to set aside the right of James

VI and I to be King of England when all descendants of Henry VIII had died.

61. A note on sources. The original material in this paper is the writer's opinion on the legal effect of passages in the Will on the assumption that the Will was signed with the Dry Stamp. Otherwise all sources are secondary. The Will of Henry VIII is at The National Archives E/23/4. A transcript of the Will appears in *Foedera, Conventiones, Literae...* by Thomas Rymer, published London 1713 Vol 15 pages 110 to 117. Rymer's transcription is not completely exact. The Dry Stamp Commission it is set out at Vol 15 at pages 100 to 101.
62. The writer consulted passages on the Law of Wills in Holdsworth's *History of English Law*, particularly 2ed 1937 Volume 7 pages 367-368.
63. The writer's confidence that the Will was signed with the Dry Stamp and not otherwise is based on material in the *Oxford History of the Laws of England Vol 6 1483-1558* Sir John Baker, 2003 Oxford University Press, particularly discussion and materials at page 61 and further references there. Page 61 note 40 refers to material in *Reports from the Last Notebooks of Sir James Dyer volume 1*, 109 Selden Society 1990 at Introduction 1 (meaning page fifty), particularly note 33 including reference to article *The Influence Of Plowden's Succession Treatise* Marie Axton *Huntington Library Quarterly* Vol 37 No 3 (May 1974) pp 209-226) University of Pennsylvania Press. Axton dealt with some rigour with the question whether the Dry Stamp had been used. It is evident that she had read Plowden's *Succession Treatise* in the version in the *Harleian Miscellany* number 849 folio 32 v. Plowden's *Treatise* does not appear ever to have been in print and the writer has not had access to it. There is also close examination in article *EW Ives Henry VIII's Will - A Forensic Conundrum – The Historical Journal* 35, 4 (1992) pp 779 – 804

Cambridge University Press. This material has convinced the writer that the Will was signed with the Dry Stamp.

64. An important recent publication is *The King is Dead The Last Will and Testament of Henry VIII* by Susanna Lipscomb published 2015 Head of Zeus, London. This work is rich with detail and insight but at p 93 rejects the significance of the use of the Dry Stamp. Lipscomb a more detailed transcript of the Will at pp 171-201.
65. Other published works consulted included these.

Article Baldwin Smith the Last Will and Testament of Henry VIII: A Question of Perspective – *Journal of British Studies* Vol 2 No 1 (November 1962) pp 14-27

Article Mortimer Levine - The Last Will and Testament of Henry VIII: A Reappraisal Appraised – *The Historian* Vol 27 (1964) pp 471 to 485.

Article R A Houlbrooke - Henry VIII's Wills; A Comment the *Historical Journal* 37, 4 (1994) pp 891-899

“Doubtful and Dangerous: The Question of Succession in late Elizabethan England” ed Susan Doran and Paulina Kewes Manchester University Press 2014

Letters and Papers, Foreign and Domestic, Henry VIII, Vol 21, ed. Gairdner and Brodie (London 1910) in *British History Online*: passages for December 1546 and January 1547

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