

Will of Robert Fotherby 1749

PCC Prob 11/776

The Will of Robert Fotherby, who owned property in the Parish of St Catherine, Jamaica, is unusual in that he requested that his body should be 'opened' after his death so that the cause of his death might be established for the benefit of mankind. A reference to a certificate of a post mortem, in National Archives records relating to a probate law suit, suggests that his will in this respect was carried out.

His first wife was the widowed Frances Charnock, a daughter of John Rose Jamaica Merchant, whose first husband Dr John Charnock and two daughters had all died in Jamaica. His second wife was Dorcas Wykes. He had no children from either marriage and his residuary legatees, after generous provision was made both for his second wife and for the woman who had cared for his first wife, were his sister Mary and her daughters Mary and Elizabeth Faikney (or Fackney).

In the Name of God Amen

I **Robert Fotherby of Saint Johns Clerkenwell** being of sound Mind and in Perfect Health (thanks be to God for it) do make this my last Will and Testament in manner and Form following first I most humbly beg Leave to hope for mercy for my Soul from God that gave it through the Merrits of my dear Redeemer Jesus Christ my Body I direct and order to be opened (if I die in London) by **Mr Hawkins the Surgeon** that now lives near Smithfield Barrs To whom for his Trouble I give and bequeath Three Guineas but if Mr Hawkins should not be alive or not in the Way at the Time of my Death to intitle himself to the above mentioned Three Guineas by performing the aforesaid Operation Then my Will is that my Body shall be opened by one of the Surgeons of Saint Bartholomews Hospital to be paid for his Trouble at the Discretion of my Executor hereinafter named but if it please God I should die in the Country then my Body to be opened by any Surgeon in the Neighbourhood where I die as my Executors shall think proper it being my earnest desire and

determined Resolution that my Body should be opened before it is put into the Coffin that the Cause of my Death as much as is possible may be discovered for the Benefit of Mankind and for other Reasons therefore in case my Executor hereinafter named shall neglect or refuse to Comply with my Request and Order aforesaid she shall forfeit and pay to the Poor of the Parish where my Body shall be buried without having been first opened the Sum of One Hundred Pounds to be paid to the Church Wardens of the said Parish at the Time of my Death within one Month after my Burial but for proof of my Body having been opened before put into the Coffin the Oath of the Surgeon that performed the Operation or any Credible Witness that see the Operation performed shall be sufficient and such Oath I do direct and order to be made before some Magistrate before my Body shall be Interred and such Affidavit or Copy of such Affidavit to be delivered to the Church Warden or Church Wardens (or left at the Dwelling House of one of them) of the Parish where I shall be buried to satisfy them that they can have no Demand on my Executor on account of my Body having been buried without having been first opened according to my Directions as aforesaid As to my Burial I recommend **Mr Jonath Kendall in Pater Noster Row** if alive at the Time of my Death to be the Undertaker I order (if I die in London) that my Body shall be carried from the House where it shall please God I shall die very late at Night without any Lights to the Undertakers Room the Night before my Executor shall order my Body to be buried And I do order that the Room where my Body shall be laid shall not be hung with Black no Eschutcheons Great Lights or any Show but later at Night to be carried in a Hearse with Six Horses without Eschutcheons to such Place as my Executors shall think proper to bury me at One Handsome Coach with Six Horses for four of my Servants to go in to follow the Hearse no other Show no Pall Bearers but Gold Rings of one Guinea value each (to be made by **Mrs Chasson** if alive in Foster Lane) Vizt to **Robert Tothill Joseph Gape William Lightfoot Simon Whithell** and **Richard Holland** Esquires to each One Gold Ring as aforesaid As to my Worldly Goods with which it has pleased God to bless me after my Debts and funeral Expenses are paid (which I desire and direct may be done forthwith) I give and bequeath in manner following Vizt to my **Brother In Law Mr Joseph Faikney** Sixty Pounds for to put himself and Family in Mourning To my

Sister Mary Faikney I give and bequeath Twenty of my Shares in the English Copper Company in Bush Lane Stiled in their Charter the Governour and Company of Copper Mines in England To my **Sisters Eldest Daughter Mary Faikney** Forty of my Shares in the English Copper Company as aforesaid To my **Sisters Youngest daughter Elizabeth Faikney** Thirty of my Shares in the English Copper Company as aforesaid and I do give and bequeath to my said Sister and her Two Daughters each of them the Dividends on the said English Copper Companys Shares which shall be due on them at the Time of my Death And I do order my Executor hereinafter named to Transfer to my said Sister **Mary Faikney** and to her Two Daughters the Shares above bequeathed to them in the English Copper Company Styled the Governour and Company of Copper Miners in England within three Months after my Decease Item I give and bequeath to **Elizabeth Lamb** that was Companion to my first Wife for and on Account of her great Care and Tenderness to my late dear Wife Forty Pounds pr. Ann. during her Life to be paid her by quarterly payments payable on the Four most usual Quarter Days that is to say the 25 Decemr. the 25 March the 24 June and the 29 September the first payment of Ten Pounds to be made and paid her the first Quarter Day (as above) that shall happen next after my Death and her Receipt though she should be married shall be a sufficient Discharge to my Executor hereinafter named And for the better Security of the Payment of the said Annuity of Forty Pounds a Year to the said **Elizabeth Lambe** my Will is and I do hereby direct my Executor to purchase within Three Months after my Decease Twenty Pounds a Year in Old South Sea Annuitys and my Will is that the aforesaid South Sea Annuitys shall be Transferred to my Executor and to the said **Elizabeth Lambe** And that my Executor do on the acceptance of such Annuitys execute a proper Letter of Attorney to the said Elizabeth Lambe to enable her to receive or to appoint any Person or Persons to receive for her from Time to Time the Dividend and Dividends (as they shall become due and payable) on the said South [obliterated] Annuitys and in case the Parliament shall reduce the Interest on the said old and new South Sea Annuitys both or either or if the Parliament shall order the paying of all or any part of either of the said Annuity my Will is and I do hereby direct and order that when ever it shall so happen that the said Old and new South Sea Annuitys directed to be

purchased as aforesaid shall not bring in each Twenty Pounds Year whatever deficiency there shall or may be from both or either of the Sum of Forty Pounds a Year my Will is and I do hereby direct that such Deficiency be made Good to the said **Elizabeth Lambe** within Ten Days after the Quarter Day when such deficiency shall so happen out of any Part of my real or personal Estate whatsoever or wheresoever it being my Intent and meaning that the aforesaid Annuity of Forty Pounds a Year shall be paid as aforesaid at all [illegible] to the said **Elizabeth Lambe** and without Trouble or Suit therefore in case she shall ever be obliged to sue my Executor hereinafter named her Executor or Executors Administrator or Administrators or any other Person or Persons whatsoever or whomsoever for or on account of the said Annuity not being punctually paid or for not securing the same as aforesaid And she the said **Elizabeth Lambe** shall have a Verdict or Decree in her Favour so often as she shall be obliged to sue and it shall happen as aforesaid my Will is and I do hereby direct that she shall have and receive one Hundred Pounds out of my real or personal Estate over and above the Costs and Charges that shall be given or allowed by the Court or Jury to be paid her as aforesaid within three Months after such determination And my Will is and I do hereby direct and order that the said **Elizabeth Lamb** shall not sell assign Transfer or set over all or any part of the said Annuity of Forty Pounds Year above mentioned to any Person or Persons whatsoever or whomsoever and that if she shall so do the Payment of the said Annuity shall cease until such Time such Sale Assignment Transferr or other conveyance shall be made null and void And further I will that no Husband shall have any power over the said Annuity it being my Intent and meaning that the said Annuity shall be for the support and maintenance of her the said **Elizabeth Lamb** And if it should so happen that by my want of Skilled in wording the above Bequest or by my Prolixity in endeavouring to explain my Intentions as aforesaid my Executor or any other Person or Persons shall attempt to find a Flaw in the manner of my Bequest and thereby endeavour to avoid the paying of the said Annuity of Forty pounds Year as aforesaid that then and in such Case whensoever it shall so happen my Will is and I do hereby give and bequeath to the said **Elizabeth Lambe** Six Hundred and Fifty Pounds to be paid her out of my Estate Real or Personal in lieu of the said Annuity of Forty

Pounds a Year as aforementioned the said Sum of Six Hundred and Fifty Pounds to be paid to Her within Three Months after my Executor or any other Person or Persons shall refuse to pay the said **Elizabeth Lambe** the Annuity of Forty Pounds Year as abovementioned and not otherwise And I give and bequeath to the said **Elizabeth Lambe** Twenty Pounds for Mourning to be paid her within Ten Days after my decease I give and bequeath to **Mrs Mary Willigo** Widow that has Lodgings or that did lodge at **Mr Roes in Red Lyon Street** Clerkenwell Six Pounds Year to be paid her during her Life in the same manner and to continue at the same Time as the Annuity bequeathed as aforesaid to the said **Elizabeth Lamb** And I give and bequeath to the said **Mary Willigo** Six Guineas for Mourning to be paid her within Ten Days after my Decease I give and bequeath to each of my Servants at the Time of my Death One Years Wages I give and bequeath to **Jack Johnson** a Boy that was sent me from Beverly that I put into Christ's Hospital and have lately bound him apprentice to one of the Arts Masters at Bridewell Twenty Pounds to be paid him when he has served out his Apprenticeship faithfully and well so as the Governours of Bridewell Shall think he deserves and order him Locks (?) Gift and not otherwise of this Bequest I desire my Executor to inform him to encourage them to behave well I give to the Poor of the Parish of Saint Lawrence Jury (where I was born) Ten Pounds to the Poor of the Parish of Aldermanbury where my first dear Wife was buried Ten Pounds To the Poor of the Parish of Saint Johns Clerkenwell Ten Pounds and if it shall please God I shall not die in any of the Parishes abovementioned then I give and bequeath Ten Pounds to the Poor of the Parish where I shall die each Ten Pounds as aforesaid to be paid within Ten Days after my Decease to the Minister and Church Wardens of each of the said Parishes to be by them distributed to the most necessitous Objects in their respective Parishes. Whereas by my Marriage Settlement amongst other Things my House in St Johns Court Clerkenwell that I now live in with all the appurtenances thereof belonging are settled upon my **dear and loving Wife Dorcas** for her Life now for the further explanation and Confirmation of the said Settlement my Will is and I do hereby give my said Wife for Liberty to use and Enjoy all the Linnen Woollen Pewter Silver Plate China and all other Furniture of what Nature and kinds whatsoever that shall be in my said Dwelling House at the Time of my Death for and

during her Life and I do also give my said Wife the use of all my Diamonds Watches and Rings whatsoever for and during her Life and I do also give and bequeath the Rest and Residue of all the Rents of my Real and Personal Estate Dividend and Dividends on Government Securitys and for any Share or Shares in any Company or Companys Interest in due on Mortgage Bonds and Rates of what Kind and Nature of whatsoever and wheresoever unto my said Wife for and during her Life and my Will is and I do hereby direct and order that whenever any Principal Sum Part or the whole or any Sum in Part or in full of any Amounts due to me at the Time of my Death shall be paid to my Executor herein after named that my said Executor do with all convenient speed place out such Sum and Sums from Time to Time so received as aforesaid in purchasing some of the Government Securitys as she shall think most Proper the Interest or Dividends thereof to be my scnd Wifes for her Life and I do give my said Dear and loving Wife my Coach my Horses and Harnesses and the Rents Dividends and Interest that shall be due to me at the Time of my death except such Dividends as are hereinbefore devised Item I give to my said Wife One Hundred Pounds for Mourning After my Wife's decease I do give and bequeath the use of the House I now live in with the Furniture and every Thing else of what Nature or Kind whatsoever as above given to my said Wife for her Life to my loving Sister **Mary Faikney** for her Life and From and after her decease all my Real and personal Estate of what Nature and Kind whatsoever and wheresoever I give and bequeath to my **Sister Faikneys Two Daughters Mary and Elizabeth** directing them to pay to the Treasurer of Saint Bartholomews Hospital towards the carrying on of their new Buildings One Hundred Pounds And to the Treasurer of Christs Hospital towards the educating poor Children therein the sum of One Hundred Pounds to be paid as aforesaid within the Six Months after the Decease of my said Sister **Mary Faikney** And the Rest and Residue of all my Real and Personal Estate whatsoever and wheresoever I give to my said **Two Nieces Mary and Elizabeth** for ever to be by them divided Share and Share alike And I do hereby in consideration of the Trust and confidence I repose in my dear and loving **Wife Dorcas** nominate constitute and appoint her my sole Executor of this my last Will all which I have wrote with my own Hand at several Times and made several Interlineations (with my

own Hand) which I purposely mention least any Dispute should arise thereupon And I do hereby
revoke and make And all and void all other and Former Will and Wills by me heretofore made and do
declare this to be my last Will and Testament Witness my Hand this Fourteenth Day of August 1749
Robert Fotherby - NB This my will is wrote as above mentioned with my own Hand and on Two other
Sheets of Paper the same sort of this & at the bottom of each side as above the 14 Augst 1749
Robert Fotherby

A Codicil to be added to and to be taken as part of my last Will and Testament hereunto annexed
As in the making of my last Will and Testament dated Fourteenth of Augt 1749 I have appointed my
dear and loving **Wife Dorcas** my sole Executor and given to her for her Life the Rest and Residue of
the Income of my real and personal Estate that I shall die possessed of after my Debts Funeral
Expenses and Legacys are paid and provided for as by my Will I have directed I have not by my said
Will given my said Executor therein named that power over the Principal that I think necessary
therefore I do hereby declare that it is my Will and I do give and bequeath to my said Executor my
Wife Dorcas full Power to ask for to receive and to sue for if need be all or any Sum Sums due to me
on Mortgage Bonds and other Debts of what Nature and Kind so ever and to sell all or any
Government Securitys Shares in any Company and Companies standing in my Name or in my Right at
the Time of my Death and Such Sum and Sums of Money that she my Executor shall receive on any
account as aforesaid to place the same out on good Mortgages or on Government Securitys as she
my said Executor shall think most proper And the Interest and Income of what kind soever (as in my
said Will) I give and bequeath to my said Wife Dorcas for her Life and likewise I give and bequeath to
my said Wife Dorcas the Interest Rents Profits and dividends that shall be due on my real and
Personal Estate at the Time of my Death and that shall grow due there on untill she my said Wife
shall think proper to alter the same as aforesaid And whereas I have a House and Penn in the Island
of Jamaica (of which Mr **Trayle the Apothecary** can give the most particular account) I do hereby
declare my Will is that neither the said House Pen or any Interest I shall die possessed of in Jamaica
shall be subject to the payment of any part of the Annuity given by me in my said Will to Elizabeth

Lambe but I do hereby give my said Executor all the Rents that shall be due at the Time of my Death and that shall grow due on the said House and Pen untill she my said Executor shall think proper to sell the said House and Pen both or either which I do hereby give my said Executor full Power to do and the Money she shall from Time to Time receive on account of the Sale of both or either of them to place out at Interest as she my said Executors shall best like and the said Interest I do give and bequeath to my said Wife for her life and my Will is that my said Executor do make true and perfect Inventory of all my real and personal Estate As Goods Plate Jewels and Household Furniture and everything else of what nature or kind soever have by my said Will given her the use and enjoyment of for her Life and that such Inventory shall be made out by herself and delivered to the Person who by my Will shall be In titled to my real and personal Estate after my said Wifes Death but in Case my Wife shall think Proper to marry then my Will is that she and the Person who shall be entitled by my Will to enjoy my Estate as therein mentioned after her decease do agree upon proper able and honest persons to be Trustees and I do hereby direct my said Wife my Executor to convey assign and transfer and make over to the said Trustees all and every Thing of my Personal and real Estate of what kind and nature whatsoever and wheresoever which I have given to my said Wife for her Life in Trust for the uses of my said Will And my Will is that Deed of Trust shall be drawn and agreed on by Counsell learned in the Law to settle my said Estate real and Personal as aforesaid in the said Trustees in such manner as not to be subject to any Debt or Debts contracted by any Husband before or after her marriage and that they may either receive the Rents Interest Profits and Dividends arising as they become due and pay the same over to her my said Wife or enable my said Wife to receive the same as she shall best like and her Receipt to be a sufficient Discharge for every Thing I have given her by my said Will notwithstanding her Coverture and my Will is that the said Trustees do likewise take care of my Plate Jewels and Household Furniture of all Kinds allowing my said Wife the use of them for her Life but not to be subject as aforesaid to the Power of any Husband or lyable to the Payment or Satisfaction of any Debt or Debts and may have contracted before or shall contract after Marriage every Thing herein before mentioned and by me given to my said Wife

being by me intended for the sole Use Benefit and Enjoyment of her my said Wife And I do hereby added this Codicil to my said Will to be taken as part thereof in Witness whereof I have hereunto set by Hand this Eighteenth of August 1749. Robert Fotherby.

Whereas I have made my last Will and Testament dated the Fourteenth of August 1749 and the Codicil dated the Eighteenth as aforesaid both of which are all wrote with my own Hand and have therein among the legacys bequeathed to my Brother in Law **Joseph Faikney** To his Wife **Mary Faikney** and to their Two Daughters **Mary and Elizabeth Faikney** Legacys and after my Wife's Decease the Reversion of my real and Personal Estate which I have given to my said Wife for her Life all which bequests are more particularly and at large set forth in my said Will And as I have not published and executed my above mentioned Will and Codicil as the Law directs relating to Freehold Estates therefore if it should please God to take me away before I shall have made such Alterations in my said Will as I have Thoughts of doing and before I trouble my Friends to Witness my Will and Codicil with relation to the little Freehold Estate I have or what may by Law require Witnesses to bar my Sister Mary Faikney as my Heir at Law from during the Life of my said Wife I do therefore hereby declare that I do revoke make Null and void every Part and Thing contained in my said Will above mentioned in favour of my said Brother in Law **Joseph Faikney** His Wife my Sister **Mary Faikney** their Daughters **Mary and Elizabeth Faikney** each of their Specifick Legacys and Reversion every Interest in my Personal Estate and give the said Legacies and reversionary Interest to my said Wife Dorcas for ever Unless the said Joseph Faikney and his Wife and also his Daughter and Daughters if needful do within Three Months after my Decease join in a proper Writing to my Executor to ratify and confirm my Will as aforesaid and my real Estate to the uses therein mentioned and in case such Writing as aforesaid shall be executed then the said Joseph Faikney his Wife Mary and their Daughters shall be entitled to their several Legacys and all other the Benefits as in my said Will Witness my Hand this Nineteenth Day of August 1749. Robert Fotherby./.

2d January 1749

Which Day appeared personally **Joseph Gape of the Middle Temple** London Esquire and **James Traill of the Parish of Saint Andrew Holborn in the County of Middlesex Apothecary** who being severally sworn upon the Holy Evangelists to depose the Truth did depose and say that they those Deponents have known and been well acquainted with Robert Fotherby late of the Parish of Saint James's Clerkenwell in the County of Middlesex but at Haslebeeche in the County of Northampton Esquire deceased for Seven Years before his Death and during such their acquaintance of him have seen him write and Subscribe his Name and thereby became well acquainted with his manner and Character of Hand Writing and Subscription and having now viewed and perused the Paper writing hereunto annexed purporting to be the last Will and Testament of the said Deceased beginning thus "In the Name of God Amen I Robert Fotherby of St Johns Clerkenwell being of sound Mind and in Perfect Health Thanks be to God for it do make this my last Will and Testament in manner and Form following" and ending thus "N.B. this my Will is wrote as above ment with my own Hand and on Two other Sheets of Paper the same sort of this and signed at the Bottom of each side as above the 14 Augst. 1749" and Subscribed thus "Robert Fotherby" And also having viewed and perused the Two several paper Writings hereunto annexed purporting to be Codicils to the last Will and Testament of the said Deceased the first whereof begins thus "A Codicil to be added to, and to be taken as part of my last Will and Testament hereunto annexed as in the making of my last Will and Testament dated the Fourteenth of August 1749" And ending thus "and I do hereby added this Codicil to my last Will to be taken as part thereof In Witness whereof I have hereunto set my Hand this Eighteenth of August 1749" and Subscribed thus "Robert Fotherby" The other Paper Writing or Codicil beginning thus "Whereas I have made my last Will and Testament dated the Fourteenth of August 1749 and the Codicil dated the Eighteenth as aforesaid both which are all wrote with my own Hand" and ending thus "Witness my Hand this Nineteenth Day of August 1749" and Subscribed thus "Robert Fotherby" do severally say that they verily believe the said Will and also the said Two several Paper Writings purporting to be Codicils to the said Last will and Testament of the said Deceased beginning and ending and Subscribed as aforesaid to be all of the Proper Hand writing and Subscription of him

the said Robert Fotherby deceased. Joseph Gape – Jas. Traill same Day the said Joseph Gape and James Traill were sworn to the Truth of this Attestation before me Robt. Jenner Surrogate – present Rich. Cheslyn Notary Publick./.

This Will was proved at London (with the Two Codicils annexed) before the Worshipful Robert Jenner Doctor of Laws and Surrogate of the Right Worshipful John Bettesworth also Doctor of Laws Master Keeper or Commissary of the Prerogative Court of Canterbury lawfully constituted on the Second Day of January in the Year of our Lord One Thousand seven Hundred and Forty Nine by the Oath of Dorcas Fotherby Widow the Relict of the Deceased and the sole Executrix named in the said Will To whom Administration was granted of all and singular the Goods Chattels and Credits of the said Deceased being first sworn duly to Administer./.

[Marginal Note]

On the fifth day of January 1757 Admon (with the Will annexed) of the Goods Chattels and Credits of Robert Fotherby late of the parish of St James Clerkenwell in the County of Middlesex but at Haslebeeche in the County of Northampton Esq decd left unadministered by Dorcas Fotherby Widow the Relict of the sd decd sole Extrix and residuary Legatee for life named in the said Will now also decd was granted to **Mary Faikney** Spinster one of the residuary Legatees substituted in the said Will (for that Mary Faikney wife of Joseph Faikney) the Sister and the other residuary Legatee substituted in the said Will survived the sd decd but dyed in the lifetime of the sd Dorcas Fotherby the Executrix aforesaid having been first sworn duly to administer.

Transcribed by Anne M Powers

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