

Wives and the Defence of Property in Early Modern Scotland

MARRIED WOMEN AND THE LAW

The complex intersections between law, property and gender are beginning to receive due attention by historians. Even so, much is to be said regarding the involvement of wives in land management and the administration of property within a legal framework. When discussed in relation to property, married women are often homogenized and subsumed within narratives, uncomfortably placed under the guise of their husband. Under civil law in Scotland, wives were not subject to the same limits of coverture as their English counterparts, and were granted the capability to retain a proportion of their landed and moveable property upon marriage. Through the retention of their own surname, the rights of their kin group were often equally important, and they could lawfully limit the extent to which their husband could administer and dispose of their joint marital property without seeking prior permission. By focusing on deeds, contracts, and testaments deposited in courts in Glasgow during the 17th and 18th centuries, this project will provide the first in-depth analysis of the issues facing ‘ordinary’ Scottish wives in relation to their ability to manage their real estate and moveable goods, and will explain how wider societal and political developments often affected their ability to retain control of these assets over time.

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Wenceslaus Hollar, “Mulier Scotica”, *Costumes, Theatrum Mulierum And Aula Veneris*, Plate Number P1899. 9 x 6 cm. From the Wenceslaus Hollar Collection, University of Toronto.

CIRCUMVENTING THE LAW

A wife had relative rights to her property within marriage. Although she lost her moveable goods through her husband’s right of *jus mariti* (excepting her paraphernalia), she retained ownership of heritable estate. While wives were limited in terms of managing their property, there is ample evidence of them petitioning the law to exert their right of ownership (or lack thereof) to their separate and joint marital assets. They sued for property that was alienated without their consent, sought control of property they shared with a wastrel husband, faced their husband’s creditors when he was absent from the country, and settled their children’s marriage and dowry negotiations. Glasgow commissary court regularly dealt with disputes regarding the division of goods upon the dissolution of marriage in Scotland. Here we see remarried widows attempting to circumvent the law and retain assets following the death of their previous spouse and their subsequent remarriage. On 13 January 1670, Jonet Love, daughter and sole heir of the deceased William Love, charged Agnes Montgomerie his relict and John Fork her new husband for refusing to deliver her share of her father’s assets following his death, which included household furnishings, kitchen utensils, pieces of gold, and a pair of spectacles. Agnes attempted to counter Jonet’s petition by asserting that her new husband John now had control of her entire moveable estate through his right of *jus mariti*. As she no longer owned the goods, she no longer had the authority to deliver them. [NRS, Glasgow commissary court Register of Decrees, 1669-1670, CC9/3/23]

WIVES IN LEGAL RECORDS

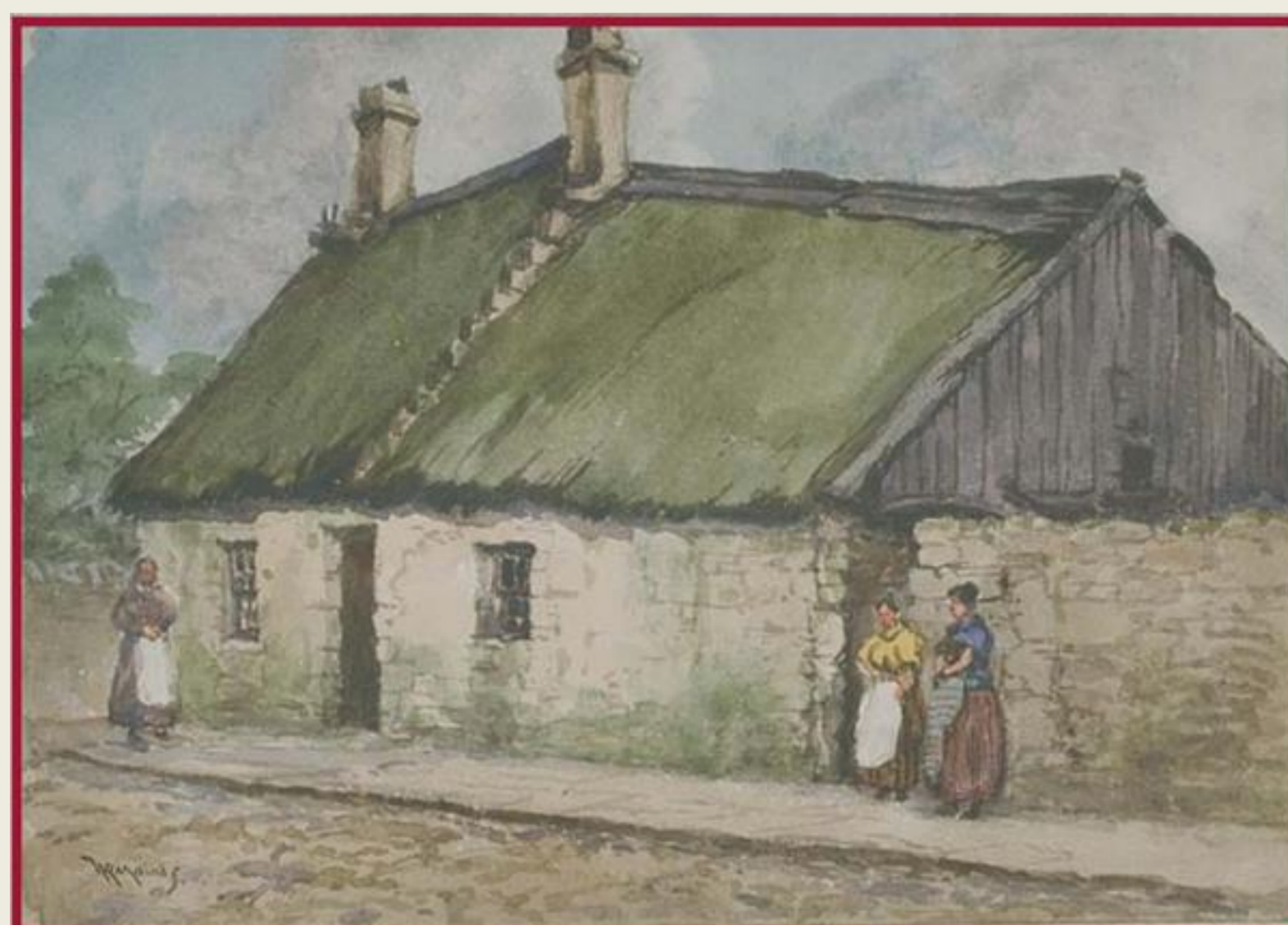
Citing the legal constraints attached to the status of ‘wife’, there has been a tendency to over-emphasize their prescribed lack of legal agency when asserting proprietorship of their assets within the confines of the law, especially when considered in relation to the liberated ‘widow’. For example, a wife required her husband’s consent before contracting a will, whereas a widow was free to make testaments without seeking anyone’s consent. However, from sampling wills registered in Glasgow commissary court, it appears that married women were more likely to register a will during the early 17th century (15.6%-33.7%), with only a small proportion of widowed women formally bequeathing their assets in comparison (4%-5%).

STATUS OF WOMEN WILL-MAKERS IN GLASGOW COMMISSARY COURT 1610-1720

Dates	Total no. of wills*	%Men	%Wives	%Widows	%Single-women	%Married couple
1610-1615	1,299	55.9%	33.7%	4.0%	5.9%	0.5%
1625-1630	1,247	56.0%	33.5%	4.7%	5.2%	0.6%
1645-1650	584	73.1%	15.6%	5.0%	5.3%	1.0%
1660-1665	1,117	56.7%	33.3%	5.7%	3.1%	1.2%
1670-1675	1,407	62.8%	25.1%	5.3%	5.1%	1.7%
1690-1695	276	82.6%	4.4%	5.1%	3.6%	4.3%
1705-1710	93	89.2%	0.0%	7.5%	2.2%	1.1%
1715-1720	265	87.9%	1.1%	6.5%	3.4%	1.1%

Source: NRS, Glasgow commissary court Register of Testaments, 1610-1615, CC9/7/6-11; 1625-1630, CC9/7/20-24; 1645-1650, CC9/7/29-31; 1660-1665, CC9/7/32-35; 1670-1675, CC9/7/37-42; 1695-1700, CC9/7/47-49; 1705-1710, CC9/7/50; 1715-1720, CC9/7/51.

For more information about the project, see: womenhistorylaw.org.uk.



“Oldest house in Partick, 1641”. Painting by William Reid Mainds, 19th century. University of Glasgow Special Collections, Bh12-x.2, Item: fol. 20/2.