

## St Andrews Society, Detroit

### Finding Inheritance, Property and Land

Saturday 18 March 2017

#### Dr. Bruce DURIE

BSc (Hons) PhD OMLJ FSAScot FColIT FIGRS FHEA  
Genealogist, Author, Broadcaster, Lecturer

e: [bruce@durie.scot](mailto:bruce@durie.scot)

w: [www.bruce-durie.co.uk](http://www.bruce-durie.co.uk)

Shennachie to the Chief of Durie

Shennachie to COSCA

Honorary Fellow, University of Strathclyde

Member, *Académie Internationale de Généalogie*

Fulbright Senior Scottish Studies Scholar, 2015-16



#### Where to get Wills and Testaments

Download full documents at <https://www.scotlandspeople.gov.uk/advanced-search>

Click on **Legal records** then **Wills and Testaments**. Free to search, full document 10 credits (approx. US\$3.50)

#### Scots Law

The law in Scotland (the laws themselves, the courts, judges etc.) are different from England.

#### The Courts

1. Before the 1560s wills etc. were Church records
2. Bishops (Consistorial Courts) had civil jurisdiction over executry and matrimonial cases
3. After 1564 22 Commissary Courts were established – these bear more relation to the pre-Reformation mediaeval dioceses (St Andrews, Dunkeld etc) rather than county boundaries.
4. Up to 1823, testaments were recorded in the local Commissary Court which had jurisdiction over the deceased's parish.
5. The Edinburgh Commissary Court was superior and could confirm testaments where the deceased had moveable property in more than one commissariat, across commissariat boundaries and where a Scots died "abroad" (including England).
6. The Commissary Court of Edinburgh had exclusive jurisdiction in marriage, divorce and bastardry, and a general jurisdiction in the same areas as the old courts.

#### Wills in Scotland

Up until 1868 only moveable property could be included in a testament.

The term "Wills" in Scotland can be misleading:

1. There is no system of Probate – Scotland has Confirmation
2. There are Testaments Testamentar (contain a will clause)
3. There are Testaments Dative (no will clause)
4. Testaments concern ONLY the inheritance of moveables
5. Immoveables (Heritables, such as land and buildings) were passed on by a separate system called Retours of Services of Heirs

IMPLICATION: You won't find who got the farm/house/castle/titles in a Testament

#### Scottish rules of inheritance:

1. difference between *immoveable* or *heritable* property and *moveable* property (money, tools, furniture, animals etc).
2. eldest son inherited everything *heritable* (immoveable property, land and buildings), unless there had been a specific disposition or bequest
3. the law of primogeniture applied to *heritables* from 1868 until 1964
4. heritage (heritable property) could be bequeathed after 1868 but from the early 1800s it is increasingly common to find dispositions, settlements, trust dispositions and settlements, etc. including instructions about heritable property
5. all children had an equal share of moveables regardless of primogeniture

### Moveable property

- Anything that could be picked up (clothes, household and personal goods money, jewellery, investments, bank accounts, tools and machinery, animals, crops, books, papers and so on).
- It is referred to in Testaments as goods, gear, sums of money and debts.

Testaments are often a disappointment... as they don't always contain names of heirs. This is a consequence of the Scots Law principle that the deceased's moveables are divided into a three parts at most:

(in the simplest case)

- **the widow's part - the *jus relictæ***
- **the bairns part - the *legitim* (children having an equal share)**
- **the deid's part (the dead person could dispose of it according to his wish, or will).**

The widow's and bairns' parts were automatically vested in the wife and children without any need for these parts to be given up by the executor to the commissary court for confirmation.

However, the deid's part required the court's confirmation if not stipulated in a will.

In the absence of any disposition this share was taken up by the deceased's next of kin by confirmation.

In the absence of surviving wife or children, the next nearest of kin were deemed to be his surviving brothers and sisters by law and the estate would be distributed equally between them (*heirship* to next-younger brother, *conqueish*, which means anything not inherited, to elder brother).

### Executry

1. On death, an executor was appointed to dispose of moveable property and a document was drawn up (by the court) for this purpose.
2. The executor may have been named in a will, or if not, appointed by a court.
3. If there was no will, the deceased was intestate.
4. Either way, the executor had to report to the court about the disposition of assets. The record of this process would either be:
  - if the deceased left a will - a Testament Testamentar -
  - if the deceased left no will - a Testament Dative

### Testament testamentar (equivalent of English *probate*)

This was where the deceased died testate (left a testament). It typically had four sections:

1. introductory clause – who died, when, where
2. inventory or inventar of moveable estate - a list of all the moveable property belonging to the deceased (money, household goods, furniture, animals, crops, tools and other personal possessions) at the time of death, as well as money owed (to creditors) and due (from debtors); sometimes it only gives a short, total valuation, but in some testaments it can be detailed, with every item listed and valued; where items were sold at a roup (auction) the inventory will have a 'roup roll' itemising each lot, the amounts paid and in some cases with the buyers' names.
3. a copy of the deceased's latterwill (or 'legacie'), with his or her wishes as to disposal of the estate and naming an executor (usually close family). If a copy of the will is not included, there will be a reference to where it was recorded (most likely in the court's Registers of Deeds)
4. confirmation clause - The executor might be a family member, but if there was considerable debt, the court might appoint a creditor as executor. If so, the testament would include a list of the debts and would allow their discharge to be authorised

### Testament dative (equivalent of English *letters of administration*)

If the deceased had died intestate (no will) a testament dative was drawn up by the court where the deceased was intestate (had not left a will), and served to appoint and confirm an executor on the court's behalf. It had three parts, the same as those above:

1. introductory clause
2. inventory or inventar of possessions
3. confirmation clause



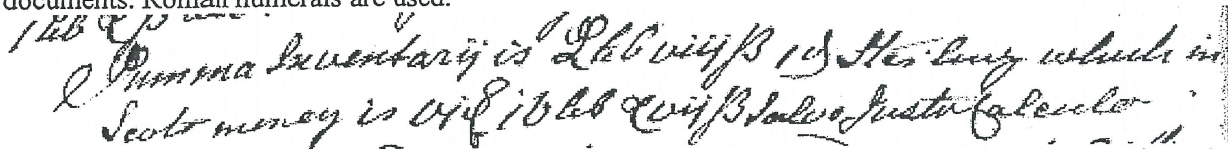
**Reading a testament**

Fortunately, the same words and phrases crop up in hard-to-read documents from the 1500s to easier-to read documents from the 1700s and 1800s. Compare these Introductory Clauses from Testaments of 1759 and 1601.

	<p>The Testament Dative and Inventory of the goods, gear and debts of Umq[ui]le (= late) George Lord Rutherford within the parish of Burntisland and Sheriffdom of Fyffe (Fife) the time of his decease which was upon the eighteenth day of June last by past (i.e., the immediately previous 18 June) Faithfully made and given up by Margaret Lady Rutherford Relict of the said Defunct and Executrix Dative qua relict Decerned to him /after due citation by publick edict and/ by Decreet (= judgement) of the Commissary of St Andrews dated the 29th day of August 1759 years.</p>
	<p>The testament Dative and Inventar of the Guid gere, sowmis of money &amp; Dettis p[er]teneing to umquhile David Durie of that ilk the tyme of his deceis quha Deceissit in his place of Scottiscraig wit[hi]n the parochyn [parish] of Leucharis in fyf [Fife] In the monethe of Januar The yeir of god Mv four scor seventeen yeire (1597). Faythfullie maid and given up be Patrick Durie servitor to Robert Durie of that ilk ex[ecuto]r Dative &amp; surrogat to the Defunct In place of the procu[ra]tor fischall Be Decrei of the Commis[ariot] of Edinburgh the said Decreit of the Dait of the xxi Day of f(ebruar)y 1601 yeiris At lenthe proportis...</p>

**Dates, money and numbers**

**Money** - the "Summa Invertarij" (total of the Inventory) may look like this, even in more modern Scottish documents. Roman numerals are used.



L lib viijss 1d Sterling L = 50, lib = libri = Pounds; viij = 8, β = ss = shillings; d = denarii = pennies = £ 50 8s 1d

In Scots money (Pund Scots)

viCiv lib xvij ss vi = 6, C = 100, iv = 4, lib = Pounds; xvij = 17, ss = shillings = 604 Punds 17s

Salvo Justo Calculo = saving fair calculation = "If I've got that right"!

**Conversions rates**

Dates	£ Sterling	Pund Scots
To 1500s	1	1
To 1603	1	4 or 5
After 1603	1	12
After 1707	No separate Scots currency. but still used in documents, at 12:1	

**Numbers** are often Roman. Apart from i and j (1, see above), look for v (5), x (10), L (50), C (100), D (500) and M (1,000).

	<p>This is a "Jaj" year. Jaj = M = 1000, vc = 500, thus 1500. This is often combined with words such as "Jajvc four scor and seventeen yeirs" = 1597.</p>
--	---

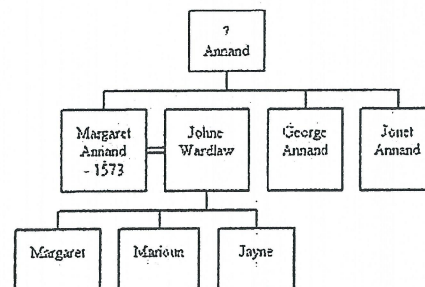


Dates are often given as a "Jaj" year followed by words, as in Fig. 8. The letter J or j is used when the numeral 1 is alone or terminal – for example, iij (4), xvij (17). "Jaj" is actually a stylised 1M (1,000). Remember that in Scotland, from 1600, New Year was January 1 rather than March 25 as in England. This changed in 1752. However, it does mean that a date such as January 1601 or February 1705, say, would "really" be in 1601 or 1705 in Scotland, but part of the previous year in England. The English calendar would go from, say, 24 March 1693 to the next day 25 March 1694. To avoid confusion, this is often written as 1693/4. This is independent of the other calendrical change in 1752 which removed 11 days from the Julian Calendar to turn it into the Gregorian calendar.

### Latterwill or Legacie (Will) in the Testament Testamentar of Margaret Annand, 1573

*Follows the deidis latterwill and legacie At Leith the xxiii day of Januar the yeir of god im vc lxxiii yeiris the qlk day in presence of me notar publict and witnesses underwritten ane honorabill woman Margaret annand spous to Johne Wardlaw in Leith haill in saule And mynd although vestit be the hand of god in hir body makis hir latterwill & testament in maner following. That is to say scho committis hir saule to the mercie of almichtie god and nominatis hir said spous hir onlie executor and intromettor with hir gudis to be estimat be him self And levis to hir bruther george annand twentie sex pu[ndis] xiii s iiii d and to hir sister Jonet annand fourtie pundis and the remanent of hir pairt of the gudis to be devidit equalie amangis hir thrie dochtiris and gif ony of thame happynis to deceis to be devidit to the remanent on lyf and levis hir abulyementis to be devidit amangis thame at hir said spoussis discretioun wt hir chenyne margaret hir belt to marioun and hir ringis to Jane...*

### Descendants of ? Annand



Here we get practically an entire family – husband, brother and sister and the names of three daughters. In money terms (see Fig. 9), Margaret left a total of 66lb 13s 4d Scots = £5.55 Sterling, or about US\$1,500 today (calculated by the Retail Price Index). Follow this through, and it allows the building of a Family Tree.

### Confirmation clause

	<p>The before written testament is confirmed upon the 29<sup>th</sup> of August 1759 years and David Lord Rutherford is become Cautioner for the Executrix</p>
--	--

The before written testament is confirmed upon the 29th of August 1759 and David Lord Rutherford is become Cautioner for the Executrix (Cautioner is pronounced "Kay-Shunner", the person giving a surety or guarantee)

### Retours of Services of Heirs - Records of land and property inheritance from 1544 to the 1860s.

Available in 3 Volumes at <http://www.bruceurie.co.uk/books.htm>

Scotland had a feudal system until the Abolition of Feudal Tenure (Scotland) Act 2000, which meant that all land belonged to the Crown, with a hierarchy of heritable possession below that. Originally this was a system of military duty in return for land granted, but later this was replaced by payment of produce or money called the feu. This also meant that when a vassal died, it was not automatic that property would be passed to the heir. It depended on the nature of the grant of land, and on proving inheritance.

### Sale, purchase and mortgage of land – Recorded in the Sasines Registers (not available online)

Places, land taxes etc - Go to [www.scotlandspplaces.gov.uk](http://www.scotlandspplaces.gov.uk). All free

Maps – from the 1500s to now, again at [www.scotlandspplaces.gov.uk](http://www.scotlandspplaces.gov.uk) or <http://maps.nls.uk/> All free

### Further reading

Bruce Durie, *Scottish Genealogy* – The History Press (3rd edition Dec 2011)

Bruce Durie, *Documents for Genealogy & Local History* – The History Press (2013)

For Scots words more generally, see the Scottish Language Dictionaries website at [www.scotsdictionaries.org.uk/](http://www.scotsdictionaries.org.uk/)