

Women and Law in Early Modern Scotland: The Court of Session

Dr Rebecca Mason, University of Glasgow

The First Blast of the Trumpet (1558)

In 1558, the Scottish Reformer John Knox published his polemical work *The First Blast of the Trumpet Against the Monstrous Regiment of Women*. His work was a vitriolic, uncompromising attack against the rule of women. Knox attacked female monarchs, arguing that the very idea of women rulers went against the laws of God, and that women were – by their nature - an inferior, imperfect version of man.

Witches, Scolds and Sinners

In early modern Scotland, women navigated a patriarchal legal system and society more broadly. Scold's bridles were used to publicly shame and humiliate women who used their tongues and speech as weapons. Convicted witches were strangled at the stake before having their bodies burned, while scaffolds displayed the remains of infanticidal mothers and militant, non-conforming women. But what of the women who used the legal system to assert and defend their status and rights?

While the pages of Scottish court books are filled with countless tales of women branded as witches, scolds and sinners, thousands of ordinary women also left their mark. Today we are going to learn about the history of the foundation of the Court of Session, Scotland's highest civil court, and more specifically, how women in early modern Scotland negotiated their legal status and property rights before the law in daily life.

Women and law in theory

During the early modern period, women faced considerable legal constraints over their property as well as their bodies. It was within marriage that the law most rigorously entrenched the subordination of women to men. While single women and widows were entitled to independently own property and defend their legal interests before the courts, married women were theoretically subject to their husbands in all matters that concerned their property and person. Married women were therefore unable to sell property, initiate legal proceedings, or represent their own legal interests without their husbands' consent.

Gender also dictated women's status and rights within the family and wider kin group too. Daughters could only inherit their parents' landed property upon the absence of brothers and widows were only granted a lifelong interest to a proportion of their late husbands' lands, with ownership rights ultimately passing onto (preferably male) heirs. Yet, while Scottish law codes and legal statutes are revealing of attitudes to women and shifts in women's status and rights as they progressed through the life cycle, they say very little about the effect that law had on women's daily lives.

Women and law in practice

Despite their limited legal status, women appeared before the courts on numerous occasions throughout their lifetimes, including when they believed they had been wronged. Whether appearing through lawyers or acting on their own behalf, women pursued and contested property disputes, economic and commercial obligations and wrongdoing, among many other issues, often on a regular basis. In fact, much of women's legal actions arose from their everyday lives and relationships: their economic activities, their familial and personal relationships, and their property rights through inheritance, marriage and widowhood. Uncovering women's everyday experience of the civil law tells us much about women's lifelong strategies for self-preservation and advancement, such as their marriage choices and opportunities, their protection of their own and their families' material welfare, and their negotiation of patriarchal gender roles.

The College of Justice: Civil Law

The Court of Session was founded in 1532 by King James V, and at its foundation it primarily dealt with underdeveloped civil law. In basic terms, civil law is the system of law concerned with private relations between members of a community rather than criminal, military, or religious affairs.

The Court of Session originally sat in Parliament House, which was loud and noisy and set alongside coffee shops and jewellers and other shops that were also located inside the building. It was designed by the Scottish architect Sir James Murray and completed in 1641. The oldest part of Parliament House is Parliament Hall, which the Town Council of Edinburgh, at its expense, had built as a permanent home for the Parliament of Scotland, and as such is the oldest purpose-built parliamentary building in the British Isles.

As a court of appeal and of first instance, the Court of Session held jurisdiction over contract and commercial cases, matters of succession and land ownership, intellectual property and copyright disputes, and many more issues. During the early modern period, women from across Scotland appeared before the Court of Session when asserting or defending their legal status and property rights, such as demanding their share of inheritance, challenging their husbands' handling of their personal goods, or asserting their rights to their widows' estates.

The Love Letters of Robert Burns and Agnes Maclehose

The Court of Session has oversaw many notorious cases since its inception in 1532. At the end of the eighteenth century, Agnes Maclehose, a close friend of the poet Robbie Burns, became embroiled in a major intellectual property lawsuit over the contents of love letters exchanged over the course of their close relationship. Agnes met Burns at a party in Edinburgh in 1787 – they were immediately taken with each other, and she wrote to him to invite him to tea at her home. There began a long series of love letters and love poetry sent between the two. Despite the intensity of their correspondence, it is widely-thought that their affair was unconsummated. Agnes was married yet separated from her husband, who had emigrated to

Jamaica in 1780. In 1804, the Lords of Session ruled in Agnes' favour, with the letters she had sent to Burns returned to her.

Daring Daughters

While sons were ultimately favoured over daughters in relation to succession, daughters approached the Court of Session when attempting to secure their rightful share of inheritance, with many initiating litigation against their brothers, uncles and male cousins.

In November 1766, Margaret Mathieson pursued her half-brother, John Mathieson, for an inheritance share of 6000 merks, the equivalent of around £33,000 today. In her suit, Margaret alleged that she was due her rightful share of inheritance from her father's estate, and that her half-brother, born from her father's second marriage, had inherited her father's property and was refusing to honour the terms and conditions of her parents' marriage contract. The Lords ruled that Margaret was entitled to inherit the sum of money as the heir of the first marriage, with her half-brother ordered to transfer 6000 merks to his older half-sister. Blended families complicated the smooth distribution of family assets, as children from multiple marriages contested their rights to shares of their parents' estates.

Formidable Wives

Despite their limited legal status and property rights within marriage, married women also approached the Court of Session when they believed they had been wronged by their husbands. In June 1582, Mistress Barbara Ruthven pursued her husband Lord Patrick Gray before the Session, demanding him to return 'certain chains, rings of gold and certain other things, which appertained to the ornament of her body'. While husbands held near absolute control over their wives' property within marriage, they did not own their wives' *paraphernalia*, which consisted of her clothing and jewellery. It had transpired that Barbara's husband had sold these items in a bid to resolve personal debt, under the pretence that he owned all her moveable goods during their marriage. Barbara countered her husband's claim, with her lawyer asserting that the items 'were proper to be called *paraphernalia*. . . and so they might no more be taken away from her', any more than her shared landed property, without seeking her prior consent. In the end, the Lords ruled that Patrick should restore the items to his wife as they rightfully belonged to her.

Wilful Widows

The Court of Session was not the only civil court in Scotland during the early modern period, either. Other courts existed alongside the highest civil court in the country, such as the burgh courts, the sheriff courts, and the commissary courts, among many others. These lower-level civil courts were situated in towns across Scotland, with many women approaching a range of courts before travelling to Edinburgh to seek justice at the highest level. In April 1615, Jonet Falconer, the widow of Master Henry Kerr of Greenlaw, pursued her deceased husband's tenants before Glasgow's commissary court for unpaid rent. In the suit, Jonet alleged that she

had already received a judgement from the 'Lords of Council and Session at Eden[urg]h'. The commissar judge in Glasgow then ordered town officers to auction her tenant's livestock and other property on the land to settle the outstanding debt due to Jonet.

A New Trumpet?

Despite John Knox's anxieties surrounding female authority and rule, women in early modern Scotland petitioned the Court of Session in a bid to secure what was rightfully theirs. While the Court of Session was populated by male judges, lawyers and notaries during this time, women appeared as pursuers, defenders and witnesses in all forms and manners of civil legal matters and disputes. Civil litigation was a common, almost universal experience during this time, with many women accessing justice at the highest level. Though women did not appear in the same numbers as men, their legal actions were not exceptional, nor were they prevented. Whether appearing through a lawyer, voicing their complaints independently, or challenging male authority, many women clearly knew their way around the patriarchal legal system; not all fell victim to it.