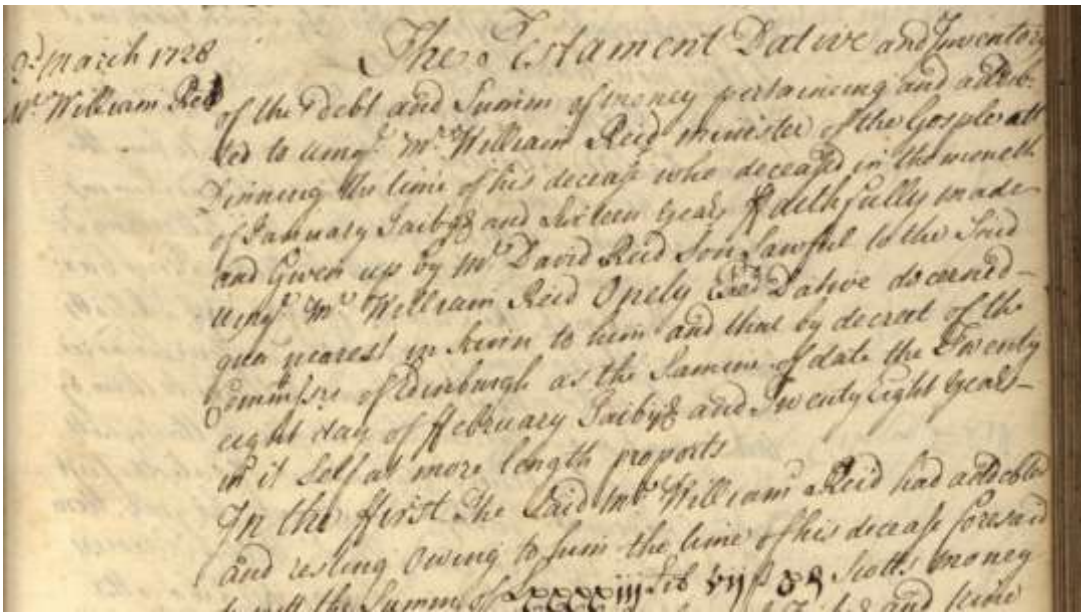
Abbotshall Palaeography

Guide to Scottish Wills and Testaments



Start of the testament of William Reid, minister of Dunning, 1728
(Crown copyright, National Records of Scotland, CC8/8/91/489)

Wills and testaments recorded in Scottish courts are a major source of information on the social and economic history of Scotland, and on Scottish people, places and language from the sixteenth century onwards.

This guide is concerned mainly with reading and understanding the contents of Scottish wills and testaments, especially those written in the sixteenth and seventeenth centuries.

Contents

Background

Wills and testaments recorded in Scottish courts are a major source of information on Scotland and Scottish people and places from the sixteenth century onwards. For information about wills and testaments in general and methods of searching the ScotlandsPeople index please see the ScotlandsPeople and National Records of Scotland websites and the Scottish Handwriting website (see below under 'Bibliography and websites').

Since 2003, digital copies of testaments have been available online, latterly via the ScotlandsPeople website, where an electronic index can be searched by personal name, and (to some extent) by place-name and occupation.

This guide is concerned mainly with reading and understanding the contents of Scottish wills and testaments, especially those written in the sixteenth and seventeenth centuries, but some misconceptions should be addressed first, namely that wills and testaments were only made by the wealthiest people and that they are difficult to read and understand.

Misconception 1: only the wealthy left testaments

There is a commonly held notion that wills and testaments were only made by (or on behalf of) the wealthiest people. Wealthy people certainly make wills and have testaments registered in court, but a fairly quick look at the index to the register of testaments on the ScotlandsPeople site is enough to show that there are plenty of testaments for people of much smaller estate: especially employees like labourers, servants, clerks and tenant farmers.

It is possible to find testaments for paupers, prisoners and others of low estate. In such cases, the court often waived its right to charge a fee for processing the testament, the quot, which was normally one twentieth of the value of the estate.

In the nineteenth century, about half a million testaments or inventories recorded in Scottish courts (if you include a separate series of soldiers' wills). About 10% of these were for farmers, crofters and tenants. Not all of these had large landholdings; many were smallholders. Many testaments are recorded for people like miners, labourers, weavers, clerks, teachers, servants, and fishermen.

To take an earlier example, the testament dative (CC20/4/3/198), part of which is shown on page six below, was for Isobel Broun, a servant girl who had died, intestate (without making a will) on 15 January 1596 (1597 in modern reckoning). Isobel had no movable goods except 'hir small abulzement' (clothing and possessions on her person when she died). She literally owned little more than the clothes she stood up in. Nevertheless, her sister, Mirabill, went to St Andrews commissary court two weeks later and had herself declared executor. Mirabill might simply have wanted another set of clothes or old clothing to be sold for other purposes, such as rags for padding for things like jackets.

Another thing to bear in mind, is that, having been declared an executor, if some other bit of movable estate was discovered later, the executor could go back to court and have herself given the power to liquidate that. This supplementary bit of court business was called an 'eik' (see below under 'Eiks'). A fairly obvious bit of movable estate for any servant or employee who died in service would be the wages owed for the number of weeks or months worked. This isn't mentioned in

Isobell's testament, but she might have been owed money for part of her last quarter's service and one of Mirabill's motives might have been to ensure she could claim this, as next of kin. If she discovered later that wages were due to her late sister, she would go back to court and register an eik.

Misconception 2: testaments are difficult to read and understand

Testaments from the mid-nineteenth century onwards, are not difficult to read and understand. They are often written either in modern handwriting or a mixture of typescript and modern handwriting.

There are two slight issues. One is understanding the way that wills and settlements interact with other legal documents. For example, a will or trust disposition might mention a marriage contract or a bond or some other document in another set of legal registers, such as registers of deeds or sasines.

The second issue is that in nineteenth century testaments, although the handwriting is modern, it can sometimes be a bit monotonously loopy. |What is written is often very wordy. Lawyers and legal clerks in this era tended to take several sentences to say what a clerk in earlier centuries would say in a few words.

Testaments written between the early-1700s and the early-1800s are often slightly harder in terms of handwriting but not any more difficult to read than contemporary handwriting in other sources, such as Old Parish Registers or correspondence. In terms of understanding the contents, it is fairly easy and quick to pick up the structure and typical legal phrasing of testaments.

Seventeenth century and sixteenth century testaments contain a much higher proportion of early-modern handwriting styles like secretary hand and cursive. They contain more Scots words and abbreviations. To read these, if you are not already experienced at reading early-modern handwriting, you would need to do a formal palaeography class (such as an evening class or an online training course), or study some of the online tutorials on the Scottish Handwriting and other palaeography websites (see below under Bibliography and websites).

At first sight they are difficult to understand but they are not nearly as tricky as some other documents, like sasines and deeds. Because they follow a predictable pattern, in terms of structure and wording, they can be less daunting than some early-modern correspondence. You will need dictionaries, wordlists and formularies and time to consult these, but a lot of what you need is online and if you are going to be working on other early-modern sources, you will need to have put in some training in palaeography and the Scots language.

Types of testaments

Prior to the mid-nineteenth century in Scotland there were essentially two types of testaments. One where the deceased left a will or instructions of some sort regarding the movable estate, and another where the deceased left no instructions. Where someone made a will, the resulting testament is called a **testament testamentar**. When someone died intestate (without making a will or leaving some other form of instructions), and a family member or creditor went to court to be made executor of the estate, the resulting testament is called a **testament dative**.

Until 1868, testaments in Scotland only dealt with movable estate (such as money, furniture, clothing, household and working tools, livestock and agricultural crops). The movable estate had to be split three ways:

- If there was a widow, the widow got a third (what was called the widow's part)
- If there were children, the children were entitled to a third (the bairns' part or 'legitim')
- The deceased was entitled to a third (what was called 'the deid's part'). That was the part he or she could bequeath in a will.

If there were no children or widow, the proportions were adjusted accordingly.

Most families or successors sorted out the inheritance without going to court. People only went to court if there was a complication in the inheritance. This was usually where the executor needed the confirmation of a court to manage the estate and deal with debts owing to the deceased and debts owed by the deceased.

The main players: the deceased, executor and cautioner

When it comes to testaments, the key players are the deceased, the executor and the cautioner. The supporting cast includes the beneficiaries, debtors, creditors, feudal superiors, servants, and employers, who might be mentioned in the inventory or the latter will.

Firstly, **the deceased**: he or she might or might not have left a will, but the deceased left behind a complication that required an examination and valuation of the movable estate.

The executor is really the most interesting individual in a testament. Executors had to come to court, prove that they had a valid claim to be appointed executors and had to bring along a cautioner (or cautioners) in each case. An executor might need the help of a lawyer or agent to draw up the testament and have it registered in court, or executors could appear in court themselves. Sometimes it wasn't a member of the family who was the executor. Courts could appoint someone *ad omissa*, meaning in the absence of a next of kin. Some of these cases featured people who were owed money or some sort of movable property, who went to court and had themselves declared executors in order to try to get back some or all of the debt from the estate. In a case like this, an executor would be called an *executor qua creditor*, rather than a *creditor qua next of kin*.

A cautioner (pronounced 'kay-shun-er') was someone, usually of substance, within the jurisdiction of the court, who would stand surety for the executry being properly carried out. The cautioner was often a relative or it might be a business associate or friend of the family.

Registration process

The executor requested the court to register a testament, either personally or via a lawyer, by means of a document brought to court called a **testament warrant**. The warrant would be accompanied by an **inventory** of the estate made by the executor.

The executor would normally also bring along a **bond of caution**, which can also survive among the commissary or sheriff court records. In the bond of caution, the cautioner agreed to indemnify the executor in case the executor cannot fulfil the executry and the bond would normally contain a mutual indemnity.

It was not necessary to have a will, but if a will was made, it can survive either as part of the warrant or as a separate document.

The contents of the warrant, inventory, will (if there was one) and the name of the cautioner were copied into the register of testaments and other details added, such as the date of registration, the name of the court official (such as the commissar in a commissary court) and legal formulas necessary to confirm the testament.

The executor could then get a document from the court confirming that he or she was the executor, which the executor might need to prove to a bank or an employer or whoever, that they were empowered to collect what was owed.

A testament normally consists of three or four parts, depending on whether there was a will or not. The four parts can be loosely termed the introductory clause, the inventory, the will and the confirmation clause. There might also be a later addition to the inventory, called an eik.

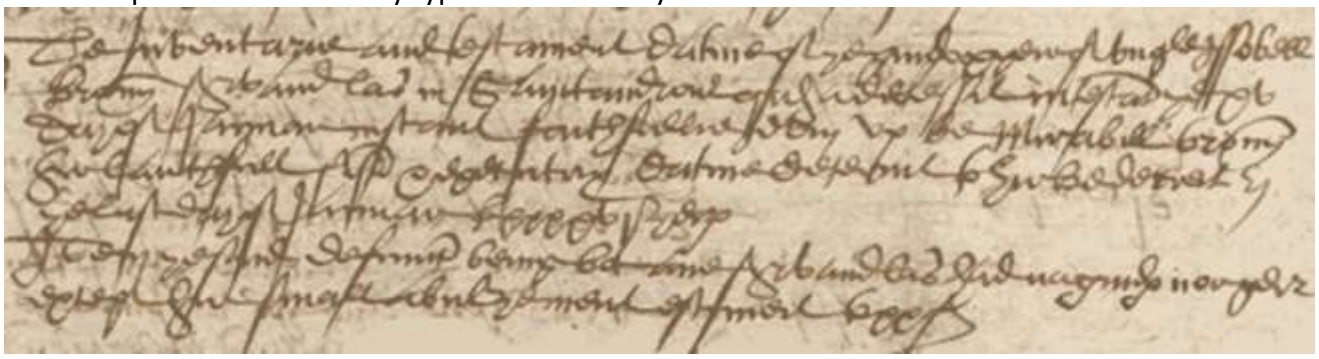
Introductory clause

Introductory clauses can look intimidating and formal but they are probably the quickest part of the testament to read and understand. The executor identifies himself or herself and give details of who the deceased was, the date and sometimes the place (or circumstances of death) of the deceased, how the executor was connected to the deceased and what kind of testament it is. So, you will come across phrases like:

- *Testament testamentar* – testament including a latter will or instructions by the deceased
- *Testament dative* – testament where the deceased died intestate
- *inventar* - inventory
- *latter will* – will written or dictated by the deceased
- *gevin up* – given to the court by the executor for registration
- *guidis & geir* – movable estate
- *umquhill* - deceased
- *decessit* - died
- *executor/executrix* - executor
- *decernit* – identified and confirmed by the court

Variations in spelling will be legion and some of these typically will be abbreviated.

The example below has a fairly typical introductory clause.



Testament dative of Isobel Brown, 1597, Crown copyright, National Records of Scotland (CC20/4/3/198)

The Inventarie and testament datiue of [th]e guid[is] & geir of umq[uhi]ll Issobell
Broun Sh[e]rvand las in Saint androis quha decessit intestat [th]e xv
day of Januar instant faithfullie gevin vp be Mirabill broun
hir lautfull sist[er] & executrix dative decernit to hir be decreit
[th]e last day of Januar Lxxxxvj yeir[is]
Item [th]e said defunct being bot ane s[e]rvand las had na guid[is] nor geir
except hir small abulzement estimeit to xx sh[illingis]

Inventory

The inventory or *inventar* is the most complicated part of the testament. You'll find that the most common phrase is *goods and geir*, meaning the movable possessions. Of these, the most immediate would be the items on the person and in the house of the deceased. So, you expect to find things like:

- *the abulzements of his/her bodie* - the clothes and bodily possessions of the deceased at the time of death
- *utencillis & domicilis* – utensils and domestic movables
- *insichtt and plenesing* - furnishings and household movables

Then, typically, you get agricultural crops and livestock. For landowners, tenant farmers, crofters and others engaged in agriculture, this can be quite extensive, but until the late nineteenth century inhabitants of towns might have a horse or a small number of livestock, such as a milk cow or hens. Common agricultural items in inventories include:

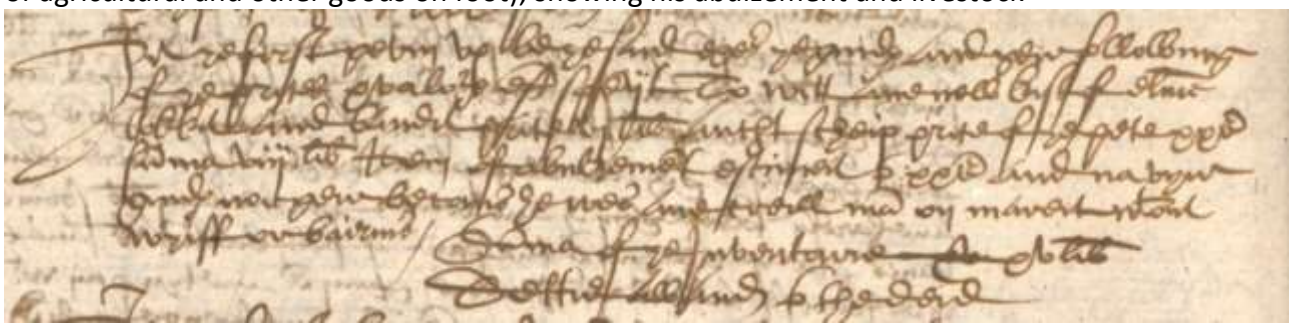
- *aittis* - oats
- *beir, bear* – barley
- *fodder* - stalks/hay left after sowing and valued for animal feed
- *ky* - cow
- *meir* - mare
- *peiss* - peas
- *quheit* - wheat
- *quoy, quey* - heifer
- *scheip* - sheep
- *staig* - young horse
- *stott* - bullock
- *turr, turris* - peat, peats

You also need to be aware of measurements and values in Scotland in the early-modern period.

- *lippies/pecks/firlots/bolls/chalders* – units of dry measure
- *third corne/ferd corne* – valuations of crops yet to be harvested
- *pryce of the peice/peis ourheid* – valuation of livestock or other items per head/item

Look out also for the *merk*, which was a Scottish monetary value equal to two thirds of the Scots pound.

The example below is from the inventar of a Perthshire creelman (someone who carried pack loads of agricultural and other goods on foot), showing his abulzement and livestock



First part of the inventory in the testament of Malcolme Archibald, Creelman, 1596, (Crown copyright, National Records of Scotland, CC20/4/3/92)

Jn [th]e first gevin vp be [th]e said executo[u]r [th]e guid[is] & geir following
of [th]e prices & values eft[ir]spe[cif]it To Witt ane new kist of elme
lokkit and bandit price vj lib~ aucht scheip price of [th]e pece xx s~
su(m)ma viij lib~ Jtem of abulzeme[n]t estimeit to xx s~ and na vthir
guid[is] not geir becaus he wes ane creill ma[n] vnmareit w[i]t[h]out
wyiff or bairns /

Su[m]ma of [th]e jnventarie xv lib~
Dettis awand to [th]e deid

After the movable goods come the debts owing to the deceased and owed by the deceased. The executor had to value these too. Debts could include overdue rent, other duties like teinds and bonds. Bonds usually concerned the principal sum loaned and the interest due on them. Interest is usually referred to as *annual rent*, and abbreviated to the @ symbol (*@rent*). Monetary penalties for late payment would be expressed as *liquidat penalties*.

Latter will

The latter will, if there is one, can be difficult to read, compared to the other clauses, because it is here that the deceased writes or dictates fairly freely. In the 16th and 17th centuries you can expect to find expression of piety and burial instructions. It then goes to to the bequests, and some of these can be expressed in similar ways to values, quantities and debt management found in inventories.

It is here that you can often find what was uppermost in the mind of the deceased, for example if there was a particular debt or issue that he or she wanted addressed.

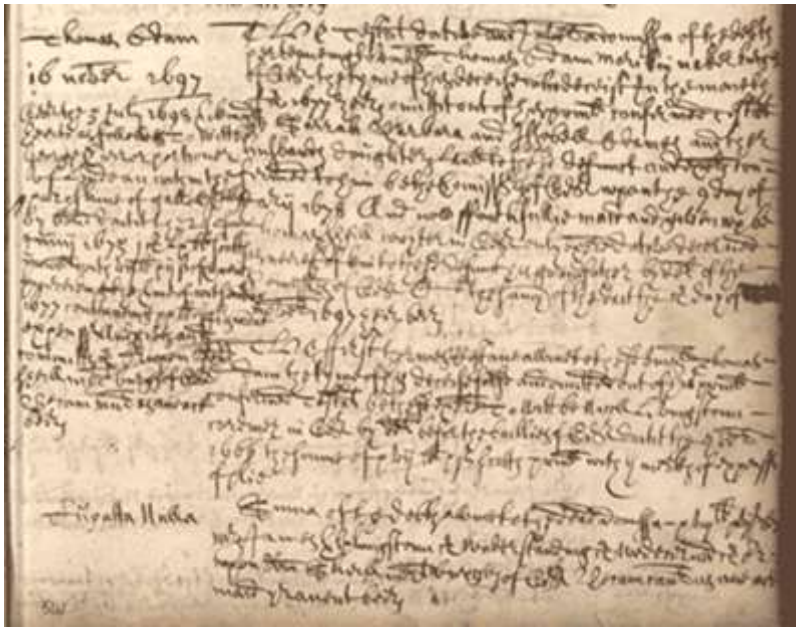
In a latter will you would expect witnesses to be named, and the name of the notary or writer who wrote the will. Something would normally be said about whether the latter will was signed by the testator in person or whether his or her hand was guided by the notary to sign. At this point in sixteenth and seventeenth century wills, it would be common to find some stock Latin phrases (see below under 'Glossary').

Confirmation and caution

The final clause is usually the confirmation clause. In this you'll find the name of the cautioner or cautioners and quite a bit of legal jargon confirming testament. This varies from court to court but some common legal terms will appear. For these it is best to consult formularies and published transcriptions of testaments. This clause probably has the least amount of genealogical information and the most amount of legal jargon, but the identity of cautioners can be quite interesting. They were often in-laws or associates of the executor and the key thing was that the cautioner had to reside within the jurisdiction of the court.

Eiks

An eik or ik was the name for an addition to a testament inventory. Usually this was where an executor discovered some movable estate which wasn't apparent when the inventory was drawn up. If the addition was small, it could be squeezed into the margin of the original testament (as in the example below).



Eik recorded in Edinburgh Commissary Court, 1697, Crown copyright, National Records of Scotland (CC8/8/80, page 541).

If the eik was substantial, and could not be squeezed into the margin of the original testament, it would be entered separately in the register or perhaps even a different register from the original. Sometimes several eiks were recorded in relation to the same testament, usually where more debts owing to the deceased came to light.

Bibliography and websites

Guidance on the structure, contents and information value of wills and testaments

National Records of Scotland website:
https://www.nrscotland.gov.uk/research/guides/wills-and-testaments

ScotlandsPeople:
https://www.scotlandspeople.gov.uk/guides/wills-and-testaments

Palaeography and understanding testaments

Scottish Handwriting website:
https://www.scottishhandwriting.com/index.asp

Scottish Handwriting guide to eighteenth century testaments dative:
https://www.scottishhandwriting.com/18cTIntro.asp

Grant G Simpson, *Scottish Handwriting 1150-1650* (Edinburgh, 2009) is still the best introduction to palaeography of Scottish documents, with good facsimiles (including a sixteenth century testament).

Peter Goldsborough, *Formulary of Old Scots Documents* (Edinburgh, 1985)

Dictionaries, wordlists and gazetteers

ScotlandsPlaces website (help identifying place-names):
https://scotlandsplaces.gov.uk/

Dictionaries of the Scots Language (DSL):
https://dsl.ac.uk/

Scots, Older English and Latin Dictionaries
Although the DSL site is extremely good, it is worthwhile having a hard copy Scots dictionary, to be able to look up words quickly and browse variations, of which the best is the *Concise Scots Dictionary* - https://dsl.ac.uk/our-publications/concise-scots-dictionary/.

A good older English Dictionary is useful for items which appear in inventories and latter wills. I find the *Imperial Dictionary of the English Language*, New Edition (London, 1901) invaluable. A Latin dictionary can be helpful and also Eileen Gooder, *Latin for Local History* (London, 1961).

For legal terms (especially when a testament refers to another legal document or case, it is worth having any edition of W. Green & Son's *Glossary of Legal Terms* (1946, 1971, 1975, 1978, 1982, 1992, or 2004).

Select glossary of legal words and phrases found in testaments

Latin words and phrases are in italics

assiney	assignee
availl/auaill/awaill	worth, value
be thir pesentis	by virtue of this document
cautioun	security
cautioner	someone within the jurisdiction of the court who acted as security for the executry being carried out properly
confermis	confirms
conforme	conforming, as stated in another document
de mandato dicte	by mandate of the said (the form of words used by a notary where the testator could not write would be *de speculi mandato dicte X scriber Nescientis Manu sua*)
defunct	deceased
deid partis, deidis part	the portion of the movable goods, after the division of property between the widow and children, which could be bequeathed in a will
disponit	disponed (legally transferred or set in order)
entres	see 'interes'
fundin	finding, found
geuvis/gevis	gives
guidis and geir	movable goods
haifand	having
hes	has
in premissa rogatus pariter et requisitus	in the presence of and commanded (for example, a notary recording a latter will, dictated orally)
in rem suam	in his own interest

in sa far as/ in sua far as	in so far as
inde	thus, therefore
interes, entres	legal concern (someone with an interes/entres in a case or legal action, such as confirmation of a testament, was someone connected to the deceased or executor, such as a relative or creditor)
intromissionun	dealing with property or money
intromittoris	person who deals with someone else's property
ita est	it is so, that is to say
membrie	memory
quhairof	whereof
quhilk	which
quot	fee charged by the court for registering the testament, usually 1/20th of the value of the estate but waived if the estate was of low value
ratifeis	ratifies
resseruand	reserved
scribere nescientis	who does not know how to write
shrefdome	sheriffdom
sic subscribitur	as undersigned
siclyk	similarly, also
summa	total
umquhill/vmquhille	deceased
viz	abbreviation for *videlicet,* a contraction of the Latin term *videre licet*, literally meaning 'it is permitted to see', and used where a more detailed explanation is given of what has been stated or items listed (in an inventory), and so meaning 'namely' or 'as follows'