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Wills and Testaments

Strictly speaking, Scotland has no system of *Probate*. There is *Confirmation*, and the documents concerned are called *Testaments* – which may or may not contain a *Will*. Testaments are all about the inheritance of moveables – immovable or ‘real’ property (in the sense of ‘real estate’) was dealt with up until the 1860s, by **Retours of Services of Heirs** (see later).

Testaments are often a disappointment to the genealogist, as they may not contain any names, and will almost certainly not say who got the land, house, title etc.

Scottish rules of inheritance:

There was a difference between immovable or heritable property and moveable property (money, tools, furniture, animals etc.). Essentially, the eldest son (or, if no sons, all daughters equally) inherited everything heritable (immovable property, land and buildings, titles), unless there had been a specific disposition or bequest. This ‘law of primogeniture’ applied to heritable property from 1868 until 1964. Heritables could be bequeathed after 1868 but from the early 1800s it is increasingly common to find deeds (see below), trusts, dispositions, settlements, etc. including instructions about heritable property.

However, all children had an equal share of moveables regardless of primogeniture. Moveables are referred to in Testaments as goods, gear, sums of money and debts, divided into three equal parts at most:

- the widow’s part (part) – the *jus relictæ*
- the bairns’ part – the *legitim* (all children having an equal share)
- the deid’s part - in other words, the dead person could dispose of it according to his wish, (the ‘legacie’, ‘latterwill’, or just ‘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, or for any of them to be named. 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 (or ‘conquest’, anything acquired by purchase, gift, etc. but not by inheritance) to the next- elder brother).

Executry

1. On death, an executor was appointed to dispose of moveable property.
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 and the record of this process would either be:
 - if the deceased left a will - a **Testament Testamentar (TT)**
 - if the deceased left no will - a **Testament Dative (TD)**

Usually these will also contain an **Inventar** (inventory) of moveable possessions – hence **TTI** and **TDI**.

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) may be included. If not,, there will be a reference to where it was recorded (most likely in the Registers of Deeds – see www.gro-scotland.gov.uk/research/guides/deeds);

All of these wills, testaments, inventories, eiks (additions, before 1823) and other documents – some 610,000 entries from 1513 to 1925 – can be searched free at www.scotlandspeople.gov.uk and they typically cost 10 credits (£2.50, \$3.00) regardless of length.

Soldiers' and airmen's wills

From 1857 to 1965, these are separately available at www.scotlandspeople.gov.uk

Retours of Services of Heirs

Scotland had a feudal system until the Abolition of Feudal Tenure (Scotland) Act 2000, which came into force in 2004.

In theory, all land belonged to the Crown, which passed ownership to immediate vassals ('subject superiors' or 'Crown tenants'), who in turn could pass on ownership to their tenants and vassals. 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.

Inheritance was by Service of Heirs rather than any form of will, until 1868 (Retours of Services of Heirs) - similar to Inquisitiones post mortem in England.

If approved, the Chancery would serve the individual as heir and the process could start to give full title to the property.

The Retours were indexed and calendared by the wholly wonderful Thomas Thomson in 1811 to 1816, in two series

1. 1544 to 1699 (mostly in Latin except for 1652 – 1659, and some in Scots), but all with English indexes)
2. 1700 to 1859 (in English).

The first series consisted of two volumes of printed summaries, *Inquisitionum ad Capellam Regis Retornatarum Abbreviatio* and a third volume index, arranged by county, of names (*Index nominum*) and places (*Index locorum*).

The original retours are in the Chancery records at NRS (NAS ref. C22) but usually the printed Thomson abridgement is all the information needed.

Retours can be used to trace land inheritance down families, but also to trace the history of the land inheritance itself

Retours example

<p>(5460) Sep. 9. 1671. MAGISTER ARCHIBALDUS WILKIE aliquando portionarius de Lintoune, nunc incolā in Vico Canonico prope burgum de Edinburge, hæves portionarius Andreæ Comitis de Teviot, Domini Rutherford, avunculi: et JOANNES DURIE de Grange filius Willielmi Durie de Grange, hæves portionarius lineæ dicti Andreæ Comitis de Teviot, Domini Rutherford, fratris aviæ ex parte patris. xxx. 225.</p>	<p>Master Archibald Wilkie, portioner of Linton, and indweller in Canongate burgh of Edinburgh, heir portioner to Andrew, Earl of Teviot, Lord Rutherford, his maternal uncle; And John Durie of Grange, son of William Durie of Grange, heir portioner of line of the said Andrew, Earl of Teviot, Lord Rutherford, brother of his paternal grandfather.</p>
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Where to get Retours

These are NOT YET (!) available in online database format

NRS has bound extracts in Historical Search Room, as do some other large, specialised libraries.

Now reprinted as three volumes, available at www.bruce durie.co.uk/books

Coats of Arms

Arms are the legal, personal, heritable property of one person at a time

There NO SUCH THING (in Scotland) as a "Family Coat of Arms"

Consult the Public Register of all Arms and Bearings at www.scotlandspeople.gov.uk >Legal Records> Coats of Arms

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