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MARRIAGE IN SCOTLAND

To understand marriage records – and sometimes why they don't exist – it's important to understand the nature of marriage in Scotland and its different forms.

ABBREVIATED TIMELINE

- In 1567 "The Kirk" became the Established Church of Scotland
- The Kirk controlled Old Parish records (OPRs)
- 1641 and 1649 – Marriage Acts reflect Presbyterian control
- 1660 – Charles II restoration of the Monarchy and bishops
- 1661 and 1672 – marriage laws reflecting Episcopalian supremacy
- 1690 – Presbyterianism restored 1698 – Presbyterian Marriage acts penalising those who refused to name witnesses
- 1712 – The Toleration Act - Episcopalian clergy can solemnise marriages on certain conditions
- 1733 – The Secession Churches break away.
- 1753 – Hardwicke Act (England) leads to popularity of Borders marriages.
- 1784 – Marriages in other churches and by other ministers allowed (under certain conditions)
- 1834 – Marriage by dissenting clergy
- 1843 – The Disruption > 400 Free Church Ministers, 60% of congregation in Scotland (PROBLEM! – No OPRs, Statutory BMD records start in 1855)
- 1856 – Brougham's three week residency requirement
- 1939 – The Marriage (Scotland) Act.
 - Registrars conduct marriages
 - Irregular marriages are tidied up.

MARRIAGE BEFORE 1834

REGULAR MARRIAGE

From the Reformation until 1834 (and for Episcopalian from 1712) there were three essential conditions:

- proclamation of the intended marriage in the parish church or churches of the parties
- celebration of the ceremony by a minister of the established Church of Scotland
- celebration in church and on a Sabbath (Sunday) – but this one rather went away

If either of the first two requirements missing, the marriage was *clandestine* and illegal.

However the marriage could still be *valid*.

e.g. Roman Catholic or dissenting ceremony was marriage by consent in the presence of witnesses

Marriages in private houses legal and regular up to 1784 but higher fee payable to the poor

IRREGULAR MARRIAGE

Anything other than the form of marriage above was “irregular” and even illegal, but could still be valid

- Marriages according to the forms of the Church of Scotland but without banns.
- Betrothal followed by intercourse.
- Marriages by consent in the presence of witnesses.
- Marriages by consent without witnesses
(*by co-habitation and repute – but that’s only EVIDENCE of a marriage*)

Clandestine Marriages – the Borders (e.g. Gretna Green)

The churches were more concerned about all the other churches than the marriages themselves - Border marriages grew in number and popularity.

Most of the trade was from England, especially between

- 1754 (the Hardwicke Act in England), and
- 1856 (Brougham's Marriage (Scotland) Act), with a three week residency requirement).

Other ‘clandestine’ marriages

- Canongate and South Leith marriages in Scotland
- South Leith registers separately note the celebrant and the witnesses, but there is no legal distinction between these in what is, in fact, a marriage by consent
- Fleet marriages in London

Many of these are now available at www.scotlandsplaces.gov.uk and choose *Advanced People Search* then *Church Records*. Then select Church:

- Church of Scotland (old parish registers)
- Roman Catholic Church
- Other churches

Irregular marriages pre-1939

- Even as late as 1930 Edinburgh records 1,023 irregular marriages after which the parties had applied at the Sheriff Court to be registered
- Glasgow had a similar number in just six months of 1932.
- By 1939, it was all over – Marriages (Scotland) Act
- A valid marriage could only be contracted in the office of an authorised Registrar, and on production of a certificate of the publication of banns or a notice of intended marriage.
- No irregular marriage by declaration *de presenti* or by promise *subsequente copula* contracted after the commencement of the Act shall be valid.
- Led to problems with pensions and allowances after 1939, especially for Travellers and “Flatties”

NOTE: OPRs mostly record Proclamations of Banns and therefore may only have the names of the couple, and possibly the father of the intended bride. If it is a record of marriage, witnesses will be given.

SUMMARY

The important point is... Just because you can’t find a record of a REGULAR marriage, doesn’t mean there wasn’t a valid marriage.