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# 8

## PROPERTY OVER PATRIARCHY? REMARRIED WIDOWS AS LITIGANTS IN THE RECORDS OF GLASGOW'S COMMISSARY COURT, 1615–1694

*Rebecca Mason*<sup>1</sup>

In the spring of 1670, Jonet Love, the twenty-year-old daughter and heiress of her late father William Love, a maltman in Paisley, embarked on a bitter legal battle before Glasgow's commissary court. Jonet was litigating against her father's widow, Agnes Montgomerie.<sup>2</sup> (It is unclear if Agnes was Jonet's mother or stepmother, as Agnes was referred to as William's 'relict' [widow] throughout the case.) Agnes had remarried since William's death, with the clerk noting that her new husband John Fork, a lawyer's clerk in Paisley, appeared 'for his interest'. Jonet – with the support of her uncles in their capacity as legal guardians – accused Agnes of refusing to deliver her inheritance, consisting of various household items, books, weaponry, riding gear, and pieces of gold and silver jewellery. John – a man seemingly well-versed in the intricacies of the law, presumably due to his occupation – is noted to have replied on behalf of his wife Agnes, alleging before the commissar judge that the goods had passed to Agnes as her widow's share of goods, and that she was not expected to answer as a response would 'prejudg [prejudice] him' as her husband. John also argued that his wife Agnes had transferred ownership of the goods in question to him at 'the tyme of her marriage'. According to marital property law, the goods now rightfully belonged to him. Despite this, and after much deliberation, the commissar judge ordered Agnes and her husband John to return the property to Jonet as the rightful heir of the estate.<sup>3</sup>

Property quarrels between Jonet, Agnes and John were to last many years. In the summer of 1673, three years after the initial litigation, Jonet appealed to the commissar judge yet again; however, on this occasion she appeared as a married woman, with her husband William Fyff named 'for his interest'. In the records, Jonet further escalated her grievances, accusing Agnes of 'maliciouslie' hiding and embezzling her late father's deeds. She also accused John of borrowing a large sum of money from her late father shortly before his death, and asserted that

Agnes and John had contracted a marriage ‘within ane verie short space eftir the defuncts [William’s] deceas’, insinuating, perhaps, that their hasty marriage was forged in an attempt to divert property away from her as the rightful heir of the estate. She further accused Agnes and John of misappropriating goods beyond the specific allegations she had made in 1670, and asserted that Agnes and John had repeatedly refused to appear before the commissary court when summoned, on numerous occasions, to answer to these allegations.<sup>4</sup>

This ongoing disagreement between a married daughter and a remarried widow exemplifies the ambiguities within the operation of marital property law and married women’s legal status that have been highlighted by recent research into the realities of women’s access to justice in Scotland and Europe.<sup>5</sup> Even though women’s legal status and property rights were significantly regulated in Scottish legal handbooks on marriage, women regularly appeared as pursuers and defenders in a range of disputes related to their rights to property, although to varying degrees.<sup>6</sup> Married daughters (like Jonet) demanded their share of inheritance and remarried widows (like Agnes) claimed a customary share of their late husbands’ property. Husbands (like William) supported their wives’ litigation as they held a vested interest in their wives’ inherited goods, while other husbands (like John) attempted to exploit the strictures of marital property law by emphasising their patriarchal control over their wives’ property and person. In early modern Scotland, a husband was considered the legal, economic, political and moral head of his household; dependents – notably his wife, children and other subordinates (male and female) – were deemed to have inferior, restricted legal rights while living under his authority.<sup>7</sup> Yet, as the above dispute demonstrates, married women were intrinsically involved in their property dealings, and could be named as pursuers or defenders in disputes surrounding their inheritance, marriage and widowhood rights. Moreover, litigation concerning a remarried widow and her property not only threatened to disrupt relationships within and between families but also overtly challenged her new husband’s patriarchal authority as superior manager of their marital property.

In broader contexts, however, the legal battle between Jonet and Agnes touches on some of the complex legal circumstances experienced by remarried widows as litigants in early modern Scotland. The distribution of a household’s patrimony on the death of a husband, as well as the organisation of a new household following a widow’s remarriage, involved complex negotiations between unequal actors with multiple and often competing interests. Widows were required to transfer or secure inheritance portions to their children (or to their children’s legal guardians if they were minor) on remarriage, primarily to prevent the stepfather from seizing control of assets.<sup>8</sup> Yet, as can be seen from the opening dispute between Jonet and Agnes, remarriage sometimes brought into conflict opposing claims to the same property, with disputes often lasting many years. Heirs (either children or kin relations) brought remarried widows (who were often their mothers or stepmothers) to court to assert their claim to property that they considered had been misappropriated. The husbands of remarried

widows, with their own interests in the property that marriage provided, asserted ownership of their wives' customary share of the marital estate, citing – and thereby attempting to reinforce – their patriarchal control over their wives and their households.<sup>9</sup>

This chapter will demonstrate, quantitatively and qualitatively, that remarried widows were visible litigants in a wide range of issues concerning their blended marital status and diverse property rights, and that court clerks carefully mapped their varied identities within the records of Glasgow's commissary court. Remarried widows are often reclassified as married women within historiography on women's access to law, mainly due to their married status.<sup>10</sup> Yet, as this chapter will show, concealing remarried widows within the broad category of 'married women' is a methodological oversight that overlooks their complex marital identities, as well as their legal obligations to children and kin relatives from previous marriages. Moreover, looking closely at remarried widows' litigation in court records sheds further light on the roles and interests of their new husbands, including the specific challenges they faced when entangled in litigation concerning their wives' blended marital status. In doing so, this chapter argues that remarried widows should be considered as a distinctive category of married female litigant in order to explore the diversity of married women's backgrounds and life-choices that influenced their access to justice in early modern Scotland. Female litigants are here defined as women who pursued actions (pursuers) or defended actions (defenders). Detailed analysis of nearly two-thousand lawsuits recorded in Glasgow's commissary court between 1615 and 1694 reveals the myriad ways in which remarried widows and their new husbands contested and negotiated their varied rights to property in daily life. By locating and categorising remarried widows as a distinctive group of married female litigant, this chapter provides a more nuanced picture of the operation of marital property law and negotiation of patriarchy in relation to women's rights on remarriage in early modern Scotland.

## Property and status

The Scottish context provides a particularly compelling case study to explore remarried widows as litigants because Scottish women retained their family surname on marriage.<sup>11</sup> In fact, throughout the early modern period, England was the only country in Europe in which married women routinely took their husbands' surname.<sup>12</sup> Unlike their counterparts in England, whose status, wealth and property became subsumed by their husbands on marriage under coverture, Scottish women retained greater control over their property, thus assisting them in remaining economically and legally active. John Finlay and Elizabeth Ewan uncovered married women acting as procurators (lawyers) in Scottish courts for their husbands and children during the late medieval period.<sup>13</sup> Cathryn Spence found that married women formed the largest proportion of female litigants in the debt records of the burgh (town) courts of Edinburgh, Haddington and

Linlithgow between 1560 and 1640, locating wives – including remarried widows – as producers and consumers of a wide range of goods and foodstuffs.<sup>14</sup> Yet, while it is now accepted that married women were considerably active in legal actions and property networks in early modern Scottish towns, less attention has been paid to the ways in which Scottish women came into contact with property through inheritance, marriage and widowhood, or how remarriage affected women's property rights and legal status as litigants in the courts.<sup>15</sup>

Much of what we know about widows and remarriage during the early modern period relies on scholarship that is focussed on England. Historians of early modern England have primarily investigated the range of choices available to those women who sought another partner, crediting their socioeconomic status, their stage of lifecycle, the presence (or absence) of children and their place of residence in dictating their marriage choices.<sup>16</sup> To date, only a handful of studies have considered the unique status and experiences of remarried widows in early modern Scotland. Winifred Cou tts' study of the considerable use of litigation made by elite remarried widows in the Court of Session – Scotland's central civil court – in Edinburgh has brought to light the extent and nature of their litigating activities. Cou tts estimated that around 17% of female litigants who appeared before the court in 1600 were remarried widows, with many embroiled in property disputes connected to their previous marital estates.<sup>17</sup> Unfortunately it is quite difficult to ascertain the rate of remarriage among the lower orders in Scotland as civil registration was not mandatory until the nineteenth century.<sup>18</sup> It has been estimated, however, that in early modern England, at least a quarter of all marriages involved at least one party remarrying.<sup>19</sup>

Much work has been done in recent years to dispel the persistent narrative that women were legally and economically incapacitated within marriage, particularly for the English context.<sup>20</sup> Yet, despite significant developments in understanding the reasons as to why a widow would (or could) remarry, more research is clearly needed to fully understand the impact of remarriage on women's legal status and property rights during the early modern period. Further, much less is known about remarriage in the context of early modern Scotland, especially for the middling to lower orders. In addition to further strengthening existing conclusions regarding women's access to justice during the early modern period, this chapter investigates the status of women in relation to their diverse family relationships, socio-economic status and blended marital careers, further highlighting that women – especially married women – were not a homogenous group with a shared way of dealing with the court. This chapter therefore contributes to a burgeoning literature that investigates the reintegration of the role of women into legal histories.

As previously mentioned, Scottish women retained their family surname on marriage. As such, Scottish women are easily traceable in court records, documented by clerks in relation to their marital status and their kin networks. Scribal conventions in Scottish court records assist in determining the cause and nature of women's legal actions. Rather than simply recording women in relation to

their marital status – as single, married or widowed – clerks and notaries recorded women in relation to a wide range of descriptors, including details surrounding their blended marital careers and diverse family relationships.<sup>21</sup> The reality of married women's access to courts in early modern Scotland was much more complex than previously imagined, depending on whether she was an unmarried heiress seeking restitution of her inheritance, a wife participating in credit arrangements on behalf of her absent husband, or a remarried widow safeguarding her widow's estate within a subsequent marriage. When claims to property were tenuous or left unrecorded outside the realms of the law, remarriage introduced significant financial complications that could be escalated before the courts.

The reasons why it is important to disentangle remarried widows' litigation from the legal actions of married women are twofold. First, married women theoretically required their husband's consent before engaging in legal action, while widows were considered as independent legal persons.<sup>22</sup> Second, alongside the loss of their independent legal status, married women surrendered much of their property (including the rents of their inherited and liferent land) to their husbands under the doctrine of *jus mariti*, while widows assumed full ownership of one-third of their husbands' goods (which increased to one-half if no children were born of the marriage).<sup>23</sup> Widows were also entitled to claim the custom of *terce* (lifelong rights to one-third of the husband's landed estate) or the lifelong use of their jointly-owned land (known as land held in 'conjunct fee').<sup>24</sup> The Scottish legal writer Sir James Balfour in his 1579 legal treatise *Practicks* even asserted that a widow's entitlement to a share of her husband's property – in this context, *terce* land – was so she 'may the mair easilie be maryit with ane uther man.'<sup>25</sup> Yet a woman's transition from widowhood back to wifhood, and her resubjugation within the marital household, clearly raises pertinent issues surrounding her property and status. How did remarried widows and their new husbands navigate the prevailing rights of the late husbands' children and/or heirs, who maintained a vested interest in property? How did the theoretical requirement for consent function in practice when remarried widows were called to court as defenders? And how did the husbands of remarried widows assert their patriarchal authority when faced with overlapping claims to their wives' – and, by extension, their own – property? While this chapter does not claim to provide all the answers to these complex questions, it does attempt to address many of these pertinent issues in the context of remarried widows' litigation in Glasgow's commissary court.

## Women and litigation in Glasgow's commissary court

The legal business of Scotland's commissary courts has received scant attention in historical scholarship, especially in relation to women's litigation.<sup>26</sup> After the Scottish Reformation of 1559–1560 – when the country transformed from a Catholic nation to a Protestant state – the commissary courts were in disarray, and attempts to restructure them in the years that followed led to episodes of

jurisdictional chaos and confusion.<sup>27</sup> By the start of the seventeenth century, the principal commissary court in Edinburgh exercised exclusive jurisdiction over matrimonial law; only the four commissar judges in Edinburgh could theoretically decide if a marriage could be dissolved on the grounds of adultery and desertion. The inferior commissary courts – twenty-three of which were scattered across the country – inherited much of the jurisdiction of the courts of the bishops' officials, and their main business remained the confirmation of testaments.<sup>28</sup> They also dealt with other executry and civil matters relating to property, such as the confirmation of tutorial and curatorial inventories (given up by the legal guardian of a fatherless child), actions for aliment (maintenance of an abandoned wife, fatherless child or close relative) and suits for debt up to a limit of £40 Scots. Disputes raised in the inferior commissary courts involving women included the administration of testaments, claims for the mishandling of heirship goods, the recovery of debts, claims for care provision (of both legitimate and illegitimate children), and the implementation of the provisions of marriage contracts, to list a few. As the inferior commissary courts were mainly concerned with determining the legal responsibility of individuals for debts and the rightful transmission of property following a person's death, they heard a wide range of disputes involving women and their property.

In Glasgow, the commissary court was situated in the south-west tower of Glasgow's Cathedral, and was headed by a commissar judge and his deputy.<sup>29</sup> The commissary court was one of many courts in Glasgow, and administered civil law alongside the regality, sheriff and burgh (town) courts. While the records of Glasgow's commissary court are fairly formulaic, they are also rich in detail. The Register of Decreets and Decreets Dative mainly recorded cases that reached the final stages of litigation; cases that were settled outside of court are therefore largely missing from the register. The majority of recorded cases in the register were successful actions (where the commissar judge pronounced his 'decreet' in favour of the pursuer); however, on a number of occasions the defender was absolved. Unfortunately, depositions (witness statements from litigants and witnesses) in support of these suits have not survived. Clerks did include, however, the pleas and responses of pursuers, defenders and their legal counsel, making it possible to ascertain the context and nature of a dispute.

The challenges of using early modern court records are well-known.<sup>30</sup> Specific details within the records, such as particular behaviours and motives, cannot be taken as accurate accounts of events. Rather than attempting to locate true statements from narratives created and mediated through judicial processes, Cordelia Beattie has suggested that historians who rely on legal records should 'move beyond the alleged truths of the dispute itself on to broader cultural attitudes', such as the depiction and interpretation of attitudes to gender.<sup>31</sup> Tim Stretton has urged similar caution, advising historians to 'pay closer attention to language – our own as well as that of our subjects' to allow for alternative readings and possibilities.<sup>32</sup> Stretton has also suggested that using measured phrases, such as 'according to the plaintiff's bill', or 'the alleged assault', avoids making bold

statements about what happened or who was at fault.<sup>33</sup> Rather than fixating on the authenticity of constructed narratives in the commissary court records, this chapter acknowledges the influence of legal counsel and officials in constructing and dictating women's legal claims to property. While remaining mindful of the limitations of records that were filtered through the male-dominated legal profession, attention is instead focussed on legal 'facts', such as the percentage of remarried widows as litigants, and the subjects and outcomes of their disputes and trials.

Remarried widows appeared personally, with (or through) their husbands or by way of an appointed procurator (lawyer) in the commissary court, not only to pursue or defend actions but to register deeds or take part publicly in legal actions as interested parties.<sup>34</sup> As a pursuer, a remarried widow could begin judicial proceedings by obtaining a formal written order from the court, such as a 'libel precept'. A libel precept was a formal statement of the grounds on which a civil prosecution was made, and it contained the name of the judge, the name of the pursuer(s) and defender(s), and specific details surrounding the case. The libel precept would then be delivered to the defender's dwelling place in the presence of 'diverse witnesses', summoning him or her to 'compeir [appear] in judgment' and answer at the instance of the other party.<sup>35</sup> If the defender failed to appear before the court on a specified day, further details of the summons were then read out at the Market Cross on a market day or at the kirk on the Sabbath as a form of public proclamation.

Due to Glasgow's distinctively mercantile and urban culture, many Glaswegian widows conducted subsequent marriages with men. Prospect of social advancement and economic improvement in Glasgow attracted opportunist men from all corners of Scotland, with the city's population more than doubling from 6,000 inhabitants in 1600 to 15,000 in 1700.<sup>36</sup> A widow's remarriage, in particular, supported the city's economy by encouraging the flow of goods within and between marriages and families. As a consequence of war, famine, plague, and merchant seafaring, Scottish women were frequently widowed, with many choosing to conduct a subsequent marriage when possible. Margaret Sanderson, in her study of individuals, families and communities in sixteenth-century Scotland, found that widows who lived in lively, populated Scottish towns – like Glasgow – tended to conduct subsequent marriages with men from the same mercantile or craft background as their former partners.<sup>37</sup> Despite a lack of information on the rate of remarriage in Scotland, it is possible to piece together details captured in commissary court records with information recorded in local parish registers to trace the marital careers of individual Glaswegian widows who remarried. Lilius Young, aged around twenty, wed John Wallace, a maltman of Glasgow, in February 1653, was widowed in 1656, then married the merchant Alexander Watson less than a year later.<sup>38</sup> Dorothy Dunlop wed the merchant James Stewart in 1614, was widowed after thirty years of marriage in 1644, then married the merchant Cuthbert Campbell three years later in 1647.<sup>39</sup> Margaret Hamilton married Patrick Bell, son of the provost of Glasgow, in 1634, was

widowed twenty-two years later in 1656, then married Robert Hamilton less than a year later.<sup>40</sup> While these three women had varying experiences of widowhood and remarriage—Lilias was widowed for a short period of time in her early twenties, while Dorothy and Margaret were married to their first husbands for decades before returning to married life once again as older widows—each sought another husband for reasons that remain elusive in the records.

Table 8.1 details the range of cases heard before Glasgow's commissary court throughout the seventeenth century. As expected, most of the business of the court related to testamentary and other civil disputes. Nearly one-third of all lawsuits were testamentary disputes, mainly relating to an outstanding debt when a person had died. A dispute was identified as testamentary when the pursuer or defender produced a testament-dative (intestate) or testament-testamentar (will and legacy) as part of their evidence. The court also dealt with a wide range of credit and debt-related disputes that involved both living and deceased persons. Aside from hearing testamentary and debt-related disputes, which routinely pulled in women from all social backgrounds, the commissary court also heard cases directly relating to women and the transmission of property through inheritance, marriage and widowhood. Matters raised in Glasgow's commissary court involving remarried widows included claims for inheritance, provisions

**TABLE 8.1** Types of court cases dealt with by Glasgow's commissary court, 1615–1645 and 1658–1694

<i>Type of court case</i>	<i>Number of cases</i>
Testamentary	552 (29%)
Credit and debt	451 (23.7%)
Food and drink	253 (13.3%)
Merchandise	201 (10.6%)
Landlord-tenant relations, including removal of tenants	97 (5.1%)
Family/inheritance business	81 (4.3%)
Widows' interests of <i>terce</i> /conjunct-fee land and <i>jus relictæ</i>	63 (3.3%)
Service and apprenticeship, including breach of contract	59 (3.1%)
Land-related issues, including boundary disputes and damage to crops	35 (1.8%)
Handling of goods, including recovery of heirship goods and goods pledged for credit	31 (1.6%)
Exhibition of legal documentation	24 (1.3%)
Actions for aliment	24 (1.3%)
Unpaid marriage portions	19 (1.0%)
Defamation	7 (0.4%)
Miscellaneous legal matters	4 (0.2%)
Matrimonial business, including action of adherence	1 (0.1%)
<b>Total number of cases</b>	<b>1902 (100%)</b>

Source: National Records of Scotland, Glasgow Commissary Court, Register of Decrees and Decrees Dative, CC9/3/vols. 7, 17, 23, 33.

for widows' estates, actions for aliment, the recovery of heirship goods and the exhibition of legal documentation, which formed roughly 13% of the business of the court.

When considered as a whole, women maintained a strong presence as both pursuers and defenders in Glasgow's commissary court. Tables 8.2 and 8.3 show a detailed breakdown of the sex of pursuers and defenders in the court. Across the period, women appeared as pursuers in approximately 20% of property disputes between 1615 and 1694. During the first half of the seventeenth century, female pursuers appeared in as many as one-quarter of all cases heard before the court. What the data reveals, however, is that women were more likely to be called to defend actions as defenders than pursue cases as pursuers. Women were recorded as defenders in nearly 30% of disputes across the period, increasing from 25% during the first half of the seventeenth century to as many as one-third of defenders in the latter half of the seventeenth century. This high-level of female litigation is rather surprising, mainly because the commissary court overwhelmingly dealt with issues relating to property. The regulation and discipline of women's bodies, actions and speech was instead left to lower-level secular and church courts (such as the burgh court, the kirk sessions and the presbyteries).<sup>41</sup> As a result, women's participation as litigants in the commissary court largely mirrored the activities, pursuits and concerns of men, though to a lesser extent.

Table 8.4 details the marital status of female litigants in the court records. Married women formed the majority of women pursuing cases across the period, accounting for nearly 43% of female pursuers. Wives were also highly visible as defenders, accounting for over 37% of female defenders. The legal actions of wives can be further divided into three categories: wives as sole litigants; wives

**TABLE 8.2** Sex of pursuers in litigation in Glasgow's commissary court, 1615–1645 and 1658–1694

<i>Pursuers</i>	<i>Male</i>	<i>Female</i>	<i>Total cases examined</i>
1615–1645	635 (75.5%)	206 (24.5%)	841
1658–1694	893 (84.2%)	168 (15.8%)	1061
<b>Total</b>	<b>1528 (80.3%)</b>	<b>374 (19.7%)</b>	<b>1902</b>

**TABLE 8.3** Sex of defenders in litigation in Glasgow's commissary court, 1615–1645 and 1658–1694

<i>Defenders</i>	<i>Male</i>	<i>Female</i>	<i>Total cases examined</i>
1615–1645	624 (74.2%)	217 (25.8%)	841
1658–1694	715 (67.4%)	346 (32.6%)	1061
<b>Total</b>	<b>1339 (70.4%)</b>	<b>563 (29.6%)</b>	<b>1902</b>

Source: National Records of Scotland, Glasgow commissary court, Register of Decreets and Decrees Dative, 1615–1694, CC9/3/vols. 7, 17, 23, 33.

**TABLE 8.4** Marital and relational status of female litigants in Glasgow's commissary court, 1615–1645 and 1658–1694

<i>Marital status</i>	<i>Pursuers</i>	<i>Defenders</i>
Widowed	122 (32.6%)	239 (42.5%)
Married	159 (42.5%)	209 (37.1%)
named as primary litigant (husband 'for his interest')	62 (16.6%)	83 (14.7%)
named as co-party with husband	64 (17.1%)	85 (15.1%)
named as remarried widow (husband 'for his interest')	33 (8.8%)	41 (7.3%)
Daughter	52 (13.9%)	44 (7.8%)
Female kin (mother, aunt, sister)	10 (2.7%)	8 (1.4%)
No marital or relational classification	31 (8.3%)	63 (11.2%)
<b>Total</b>	<b>374</b>	<b>563</b>

*Source:* National Records of Scotland, Glasgow commissary court, Register of Decreets and Decrees Dative, 1615–1694, CC9/3/ vols. 7, 17, 23, 33.

as co-parties with their husbands; and remarried widows. Sheenan Hutton, in her study of women's economic activities in fourteenth-century Ghent, similarly classified women as 'active women, passive women, and consenting wives' in court records, differentiating between wives who were named after their husbands from those who appeared as principal litigants in disputes.<sup>42</sup>

Aside from married women, widows were highly visible as female litigants, accounting for nearly one-third of pursuers and over 43% of female defenders across the period. When recorded in litigation, widows primarily appeared as executrices to their former husbands' estates, which entitled them to sue debtors and uplift rents owed to their former husbands, and made them liable for settling outstanding credit arrangements.<sup>43</sup> Table 8.4 also reveals the extent to which court clerks recorded relational descriptors when women appeared as litigants. Aside from marital status, nearly 17% of pursuers and over 9% of defenders were identified as daughters, mothers, aunts, sisters and nieces in the court records. A significant number of women were not assigned a marital or relational descriptor, accounting for over 8% of pursuers and 11% of defenders. It is possible that women without a marital or relational descriptor were single women, wives, widows or remarried widows, but this cannot be ascertained.

When a wife appeared as a primary pursuer or defender in the commissary court, her husband was always named 'for his interest'. For instance, when Jonet Wood, the wife of Alexander Mayne, appeared as a pursuer in 1625 concerning unpaid rent on a brewhouse she had inherited and subsequently leased, her husband was named 'for his interest'.<sup>44</sup> A wife was categorised as a co-party in a suit when her name was included after her husband's name in the record. Catherine Cauldwell, for instance, was named after her husband Patrick Wilson in a suit initiated by Patrick before the commissary court in 1625.<sup>45</sup> Patrick, as the primary

pursuer, alleged that he had purchased a horse from John Cauldwell and his wife (who remained nameless) at the Glasgow Fair and that he was still waiting for the animal to be delivered to his dwelling place. If Patrick died before receiving the horse, his wife Catherine would have been entitled to pursue John through the courts as a co-party to the transaction. When a remarried widow was identified in the court record, her blended marital status was recorded, with her current husband named 'for his interest'. When Merry King, the widow of Patrick Aikenhead, a bookbinder in Newcastle and resident of Glasgow, appointed her father Nicolas King as her son's legal guardian in 1694, her new husband David Longdale was named 'for his interest'.<sup>46</sup> Remarried widows were recorded as nearly 9% of female pursuers and over 7% of female defenders across the period. When focussing solely on those female litigants who were married, remarried widows formed 21% of married female pursuers and 20% of married female defenders. While these figures are not drastically high, they warrant specific attention as remarried widows' litigation primarily concerned the negotiation of relationships within blended families and the transmission of property within and between marriages.

Inclusion of the stock phrase 'for his interest' in Scottish court records has garnered specific attention among historians in recent years. Gordon DesBrisay and Karen Sander Thomson, in their study of married women and debt litigation in seventeenth-century Aberdeen, argue that the phrase 'for his interest' signalled 'both the nominality of the husband's role in the transaction and his legal responsibility for it'.<sup>47</sup> Cathryn Spence, in her study of women's credit networks in early modern Edinburgh, similarly argues that while the phrase 'for his interest' rarely appeared in debt records in Edinburgh, clerks often named a woman 'for her interest', with the phrase denoting legal responsibility for a debt, but not solely between husbands and wives.<sup>48</sup> In the cases analysed for this chapter, however, clerks frequently employed the phrase 'for his interest' when signalling married women's obligations to pursue or answer for property received, due or taken through inheritance, marriage or widowhood. The circulation of property within and between marriages and families somewhat alleviated the general legal principle that married women were subjugated to their husbands, especially when their legal actions concerned inheritance from kin, care provision for children from previous marriages, or marital property tied to previous marital estates. In Glasgow's commissary court, the phrase 'for his interest' therefore alludes to married women's *de facto* legal capability and responsibility to pursue actions or defend cases relating to property, as we will see further below in the context of remarried widows' litigation. Remarriage, in particular, sparked a series of negotiations that, if left unchecked, could result in significant levels of interfamilial discord before the courts. Key issues – such as transferring or securing children's inheritance portions in deeds, safeguarding care provision for infants from kin relatives, and protecting the widow's estate and other forms of marital property – frequently drew in remarried widows and their new husbands as litigants. When disputes were escalated before the courts, the husbands of remarried widows, in

particular, could potentially gain or lose out on a significant proportion of the property their wives had accumulated from previous marriages.

### Access to resources

When appearing as pursuers in the records, remarried widows frequently accused their late husbands' heirs of refusing to honour the property arrangements agreed in their marriage contracts. In a case heard before Glasgow's commissary court between December 1693 and February 1694, Anna How, the widow of John How, alongside her new husband William Miller, pursued her late husband's nieces and heirs, Anna and Mary Marshall, for her liferent payments.<sup>49</sup> Anna had wed John in 1682, was widowed in 1688, then remarried in 1690.<sup>50</sup> As John's nieces were jointly served as heirs to his estate, it appears that John did not have any living children at the time of his death. Anna alleged that her first husband John had placed her in 'conjunct fee' (joint ownership) of lands in Renfrewshire worth £100 Scots in liferent per year in their marriage contract, and that she had attempted to retrieve payment from her late husband's nieces ever since his death in 1688. William, appearing 'in name and behalf of' his wife Anna, also informed the commissar judge that he had (allegedly) visited Anna and Mary Marshall at their dwelling place on numerous occasions and implored them to deliver the yearly liferent payments, to no avail. As well as the outstanding sum of £700 Scots in liferent, the clerk also noted that Anna 'and her said husband for his entres' had requested further payment of 500 merks as a late penalty fee.

In response, the defenders Anna and Mary Marshall, through their legal counsel, alleged that Anna's liferent was only worth £60 Scots per year. They also accused Anna's new husband William of uplifting rents from the land totalling £54 Scots per year since their marriage in 1690, a claim which he denied under oath. Anna also denied any knowledge of her late husband's credit arrangements, and insisted that her former husband John did not provide her with bonds or deeds worth her liferent payments before his death. The commissar judge, on this occasion, ruled in favour of Anna and her husband, ordering the defenders to deliver the outstanding liferent amount, and to continue to pay £100 Scots yearly to Anna during her lifetime. Favourable legal decisions did not mean that pursuers were guaranteed immediate payment, however. Four months later, William reappeared on Anna's behalf before the commissary court, alleging that his wife's nieces were still refusing to honour the property arrangements detailed in his wife's first marriage contract.<sup>51</sup> This time, however, William asked the court to send town officers to their dwelling place in order to seize assets worth the outstanding sum. The transmission of women's property between marriages was clearly not always smooth.

Remarried widows were expected to relinquish control of their children's inheritance to appointed legal guardians on their remarriage.<sup>52</sup> Sir John Erskine, in his 1773 *Institutes of the Law of Scotland*, cited 'both the impropriety of a woman's having one under her power who is herself subjected to the power of another'

and 'from the bad consequences that might be dreaded from leaving a [child's] estate to the management of one under the influence of his stepfather.'<sup>53</sup> Second marriages were financially complicated, and heirs frequently accused remarried widows of carrying away goods or concealing legal documents that they considered to rightfully belong to them before the commissary court.<sup>54</sup> In 1620, Andro and Christian Anderson, children and heirs of the late John Anderson, accused their father's widow Margaret Anderson and her new husband Matthew Wood 'for his interest' of refusing to deliver household goods left to them in their father's testament. Margaret and her new husband Matthew, through their legal counsel, replied that the property had passed to Margaret as her widow's share of goods, and that ownership of the property was automatically transferred to Matthew on their marriage. After considering the various arguments offered by legal counsel, the commissar judge ordered Margaret and her new husband to return the requested goods to her late husband's children.<sup>55</sup> Later that very same month, the five children and heirs of the deceased George Leggat accused their father's widow, Isobel Thompson, and her new husband, James Hamilton, 'for his interest' of withholding their inheritance portions and misappropriating goods that they considered belonged to them as heirs of their father's estate. With the assistance of their legal guardians and counsel, the children alleged that Isobel had failed to adequately divide George's moveable estate before her remarriage, and that she had taken more than she was due as her widow's share. Ruling in favour of the pursuers, the commissar judge ordered Isobel and her new husband James to return the property or else to pay the requested amount, totalling a hefty 1,280 merks.<sup>56</sup>

The husbands of remarried widows clearly supported their wives' litigation when claims to property due to them as widows were contested; however, they were also drawn into disputes that threatened their control of their wives' goods. Moreover, these cases represent a significant difference in the conceptualisation of married women's status in theory and practice, where a remarried widow's responsibility to negotiate the interests of her late husband's children and heirs threatened to undermine her newly formed household economy, as well as her new husband's patriarchal authority.

Many remarried widows brought young children from their previous marriages into subsequent marriages. Children under the age of seven typically resided with their mother after their father's death, while older children came under the care of members of their father's kingroup before entering apprenticeships and service in their early teens.<sup>57</sup> A mother's financial obligation towards her children after the death of a father was subject to much deliberation in legal handbooks. The legal writer Erskine noted that mothers should only be liable to provide care provision for the children after paternal ascendants had been obliged to contribute (grandfathers, uncles and so on).<sup>58</sup> Blended families clearly had the best chance of living in harmony when contracts secured the inheritance and provisions of all children. In 1664, John Connell drew up a contract concerning his forthcoming marriage to Jean Dunlop, a widow. Her three children – James,

Jean and Barbara Dunlop – born from her previous marriage to John Dunlop, a landowner from Ayrshire, were all named in the contract.<sup>59</sup> John swore to receive Jean and her children ‘all in familie with me’, promising that he would provide food and shelter for his new wife and stepchildren, and that each of the children were to be ‘put to the scholles for learning’, according to their rank and degree. In return, however, John noted that the children’s ‘friends’ (i.e. former husband’s kin relatives) were required to pay him twenty merks yearly per child until each child had reached the age of fourteen.

The reliance on their former husband’s kin relatives meant that many remarried widows and their new husbands frequently appeared as pursuers when embroiled in litigation surrounding actions for unpaid care provision. In 1620, Agnes Halden, the widow of Gabriel Maxwell, and new wife of James Mowet ‘for his interest’, pursued William Maxwell – her daughter’s legal guardian – for unpaid child maintenance. James, appearing on behalf of his wife Agnes, alleged that his stepdaughter Grissell was in ‘his custodie and keeping’, and that ever since his marriage to Agnes in October 1617, he had kept her in ‘meit, drink, cleithing and bedding’ relative to her estate. William, as Grissell’s uncle and legal guardian, had control of her inheritance while she was a minor, and was liable to pay for her sustenance. James requested, and was granted, a yearly payment of £100 Scots per year, with expenses to continue for a further one year and ten months, when Grissell turned fourteen.<sup>60</sup>

Disputes surrounding the care of older children also sparked heated arguments between remarried widows and their late husbands’ kin relatives. In the spring of 1670, Margaret Mathie, the widow of James Brock, now married to John Crun, alleged before the court that since her former husband’s death in 1666, she and her new husband had maintained her former husband’s three children ‘in household and Familie’, providing them with ‘meit, drink, bedding and abulziementis [clothing]’. She alleged that her children’s uncle legal guardian – John Brock – had promised on multiple occasions to pay her eighty merks per child as compensation for childcare; a claim which he denied. In fact, John Brock, appearing on behalf of two of Margaret’s children, disputed Margaret’s claims, insisting that the children’s ‘labour and work’ was, in fact, ‘worth the[i]r intertainment’. John also informed the commissar judge that Margaret’s eldest daughter had left the household shortly after her father’s death, and that she was now ‘hyred as ane ordinarie servant’ in another household where she also ‘works for hir meit’. The commissar acquitted Margaret Brock from paying for her care, but ordered John to deliver eighty merks to Margaret and her new husband in satisfaction of the care they had provided to her two remaining children.<sup>61</sup> Three months later, however, Margaret’s new husband John Crun reappeared before the commissary court, alleging that he was still awaiting the payment.<sup>62</sup>

The provisioning of children was also mentioned in broader disputes that drew in remarried widows as litigants. In 1694, Jean Findlay, the widow of John Ritchie, now the new wife of James Reid, appeared as a pursuer before the commissary court, with her five children and their appointed legal guardians named

as defenders in the lawsuit.<sup>63</sup> Jean, appearing before the commissar judge by herself, alleged that she was owed various sums of money, including £400 Scots for her husband's funeral expenses and care during his protracted illness, £50 Scots for 'alimenting and intertaining' four of their children with a nurse and servant, and various other expenses for 'maintenance of the defuncts familie fra the tyme of his deceis'. Jean also alleged that she was owed 300 merks for baptising and burying a child born shortly after her husband's death. Finally, Jean alleged that her late husband's kingroup had sold much of her husband's property, and that she was owed £30 Scots for the sale of goods due to her as part of her widow's share. In response, her children's legal guardians – members of her late husband's kingroup – alleged that Jean's husband had gifted her with a gold purse with £30 Sterling in cash shortly before his death, and that she was not due any further payment from his moveable estate. Appearing under oath, Jean conceded that while her husband had gifted her the purse, she had used the money for 'what was needful during her said husbands seikness', purchasing brandy, wine, medicines and other 'necessaries'. The commissar judge accepted Jean's plea, but modified and reduced her claim after learning she had received cash shortly before her first husband's death. Moreover, Jean's new husband James is only briefly mentioned 'for his interest' at the start of the dispute, suggesting that he was either absent from Glasgow or that Jean – due to her blended marital status and pressing need for payment – was entitled to pursue her own actions without her husband's direct assistance.

## Conclusion

This chapter has sought to argue for locating and categorising remarried widows as a distinctive group of married female litigant in early modern Scotland. While commissary court records cannot fully reveal the intricacies of remarried widows' diverse interactions with the law, these legal documents do provide a valuable insight into the varying types and nature of litigation that remarried widows were embroiled in. Unlike with women married for the first time, remarried widows' experience of litigation – both as pursuers and defenders – was, in many cases, dictated by their particular marital status. Remarried widows pursued their late husbands' kin for care provision for children, fought with children or step-children of the previous marriage over heritable property rights, and sought to protect what they deemed as their widow's share of goods within subsequent marriages. Rather than simply grouping married women and remarried widows together in relation to their legal status as 'wives', this chapter has highlighted the importance of eschewing the homogeneity of collective 'women's experiences' at law during the early modern period, especially in relation to married women.<sup>64</sup> Furthermore, this chapter has also shone a light, albeit briefly, on the experiences of the husbands of remarried widows, a group previously overlooked or homogenised with married men more widely. When considering how property and patriarchy overlapped and interrelated, there needs to be a consideration of

how marriage and remarriage affected men's access to property and how their patriarchal authority over their households was perhaps challenged, threatened or even undermined by the complex marital status of their wives.

## Notes

- 1 This research was kindly funded by the Arts and Humanities Research Council [Ref: AH/L013568/1] and the Economic and Social Research Council [Ref: ES/V011847/1]. I am also grateful to the Economic History Society and the Institute for Historical Research for a postdoctoral research fellowship during which this chapter was completed. Special thanks are due to Karin Bowie, Hannah Telling, and the editors of this volume for their comments on earlier drafts of this chapter.
- 2 Only William is named as Jonet's parent in the birth register. See National Records of Scotland (hereafter NRS), Old Parish Register of Births, Hamilton, 647/10/21.
- 3 By 1600, £12 Scots was worth £1 sterling; £1 Scots was worth 1s 6d sterling; 1 Scottish merk was worth 1s 1d sterling. English monetary values have been included in parentheses throughout for ease of reference. See A. J. S. Gibson and T. C. Smout, *Prices, Food, and Wages in Scotland, 1550–1780* (Cambridge, 1995). NRS: CC9/3/23/fols. 467–469.
- 4 NRS: CC9/7/39/fols. 673–678.
- 5 For married women's legal status in Scotland see Gordon DesBrisay and Karen Sander Thomson, 'Crediting Wives: Married Women and Debt Litigation in the Seventeenth Century', in Elizabeth Ewan and Janay Nugent (eds.), *Finding the Family in Medieval and Early Modern Scotland* (Aldershot, 2008), pp. 85–98; Cathryn Spence, "'For His Interest?'" Women, Debt and Coverture in Early Modern Scotland', in Cordelia Beattie and Matthew Frank Stevens (eds.), *Married Women and the Law in Premodern Northwest Europe* (Woodbridge, 2013), pp. 173–190; Cathryn Spence, *Women, Credit and Debt in Early Modern Scotland* (Manchester, 2016); For married women's legal status under coverture in England see Tim Stretton, 'The Legal Identity of Married Women in England and Europe 1500–1700', in Andreas Bauer and Karl H. L. Welker (eds.), *Europa Und Seine Regionen: 2000 Jahre Rechtsgeschichte* (Cologne, 2007), pp. 309–322; Cordelia Beattie and Matthew Frank Stevens (eds.), *Married Women and the Law in Premodern Northwest Europe* (Woodbridge, 2013); Tim Stretton and Krista J. Kesselring (eds.), *Married Women and the Law: Coverture in England and the Common Law World* (Montreal, 2013); Bronach Kane and Fiona Williamson (eds.), *Women, Agency and the Law, 1300–1700* (London, 2013), see Introduction; Alexandra Shepard and Tim Stretton, 'Women Negotiating the Boundaries of Justice, 1300–1700: An Introduction', *Journal of British Studies*, 58:4 (2019), pp. 677–683.
- 6 *The Practicks of Sir James Balfour of Pittendrieck*, 2 vols., ed. P.G. B. McNeill (Edinburgh, 1962–1963), 93, 163; Sir Thomas Hope of Craighall, *Major Practicks*, ed. James Avon Clyde, 2 vols (Edinburgh, 1937–1938), II, 17, 1; Sir James Dalrymple, *Institutions of the Law of Scotland, Deduced from Its Originals, and Collated with the Civil, Canon, and Feudal Laws, and with the Customs of Neighbouring Nations*, in *Four Books* (Edinburgh, 1693), I, IV, IX, pp. 27–28.
- 7 Alexandra Shepard, 'From Anxious Patriarchs to Refined Gentlemen? Manhood in Britain, circa 1500–1700', *Journal of British Studies*, 44:2 (2005), pp. 281–295, at p. 283; Janay Nugent, 'Reformed Masculinity: Ministers, Fathers and Male Heads of Households, 1560–1660', in Lynn Abrams and Elizabeth Ewan (eds.), *Nine Centuries of Man: Manhood and Masculinities in Scottish History* (Edinburgh), pp. 39–57.
- 8 Balfour in his 1579 *Practicks* stated that a widow was expected to 'offer all hir gudis and geir, moveabill and unmoveabill, to renounce and discharge the office of tutorie, gif scho thairefter maryis ane husband.' He also noted that 'the woman may be tutrix testamentar [legal guardian] to hir bairns [children], sa lang as scho remains wedow.'

- See Balfour's *Practicks*, p. 116; Sir John Erskine, *Institute of the Law of Scotland in Four Books: In the Order of Sir George Mackenzie Institutions of that Law* (Edinburgh, 1773), I, VII, XXIX, p. 129.
- 9 Alexandra Shepard has also cited instances of married women who declared themselves worth little or nothing before English courts in a bid to reinforce the strictures of marital property law. Shepard has suggested that 'a woman's marital status may have aided evasion strategies by which witnesses avoided providing an estimate of their means.' See Alexandra Shepard, *Accounting for Oneself: Worth, Status and the Social Order in Early Modern England* (Oxford, 2015), pp. 58–59.
  - 10 These identifications reflected the effects of marriage on women's legal and social status. See Spence, *Women, Credit and Debt*, pp. 12–15; Amy M. Froide, *Never Married: Singlewomen in Early Modern England* (Oxford, 2005), pp. 17–24; Cissie Fairchild, *Women in Early Modern Europe, 1500–1700* (Harlow, 2007), pp. 35–122; Merry E. Wiesner-Hanks, *Women and Gender in Early Modern Europe*, 3rd ed. (Cambridge, 2008), pp. 55–110; Lyndan Warner, 'Before the Law', in Jane Couchman, Allyson M. Poska, and Katherine A. McIver (eds.), *The Ashgate Research Companion to Women and Gender in Early Modern Europe* (Farnham, 2013), pp. 234–254, at pp. 237–238.
  - 11 For a discussion of this practice, see Jenny Wormald, 'Bloodfeud, Kindred and Government in Early Modern Scotland', *Past & Present*, 87:1 (May 1980), pp. 54–97, at p. 67; Katie Barclay, *Love, Intimacy and Power*, p. 72.
  - 12 Amy L. Erickson, 'Mistresses and Marriage: or, a Short History of the Mrs', *History Workshop Journal*, 78 (Autumn 2014), pp. 39–57, at p. 48.
  - 13 Elizabeth Ewan, 'Scottish Portias: Women in the Courts in Mediaeval Scottish Towns', *Journal of the Canadian Historical Association* 3:1 (1992), pp. 27–43, at pp. 35–36; John Finlay, 'Women and Legal Representation in Early Sixteenth-Century Scotland', in Elizabeth Ewan and Maureen M. Meikle (eds.), *Women in Scotland: 1100–1750* (East Linton, 1999), pp. 165–175, at p. 172.
  - 14 Spence, *Women, Credit and Debt*, p. 47.
  - 15 Tim Stretton has argued that much of the litigation involving stepmothers (who were sometimes remarried widows) centred on the death of a husband and the destination of his property. See Stretton, 'Stepmothers at Law in Early Modern England', pp. 91–107.
  - 16 For scholarship on remarried widows in England, see Barbara J. Todd, 'The Remarrying Widow: A Stereotype Reconsidered', in Mary Prior (ed.), *Women in English Society 1500–1800* (London, New York, 1985), pp. 54–92; Barbara J. Todd, 'Demographic Determinism and Female Agency: The Remarrying Widow Reconsidered... Again', *Continuity and Change*, 9:3 (1994), pp. 421–450; Barbara Hanawalt, 'Remarriage as an Option for Urban and Rural Widows in Late Medieval England', in Susan Sheridan Walker (ed.), *Wife and Widow in Medieval England* (Michigan, 1993), pp. 141–164; Sandra Cavallo and Lyndan Warner (eds.), *Widowhood in Medieval and Early Modern Europe*, 2nd ed. (Abington, 1999), especially chapters 6, 7 and 12; Jane Whittle, 'Inheritance, Marriage, Widowhood and Remarriage: A Comparative Perspective on Women and Landholding in North-East Norfolk, 1440–1580', *Continuity and Change* 13:1 (1998), pp. 33–72; Shannon McSheffrey, 'A Remarrying Widow: Law and Legal Records in Late Medieval London', in Kim Kippen and Lori Woods (eds.), *Worth and Repute: Valuing Gender in Late Medieval and Early Modern Europe: Essays in Honour of Barbara Todd* (Toronto, 2011), pp. 231–252.
  - 17 Winifred Coultts, 'Women and the Law', in *The Business of the College of Justice in 1600: How It Reflects the Economic and Social Life of Scots Men and Women* (Edinburgh, 2003), pp. 135–205.
  - 18 For a discussion of remarriage among the Scottish elites, see Katie Barclay, *Love, Intimacy and Power: Marriage and Patriarchy in Scotland, 1650–1850* (Manchester, 2011), pp. 20–21.
  - 19 Amy Erickson, *Women and Property in Early Modern England* (London, 1993), p. 72.
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*Northwest Europe*; Stretton and Kesselring, *Married Women and the Law: Coverture in England and the Common Law World*.

- 21 Rebecca Mason, 'Women, Marital Status and Law: The Marital Spectrum in Seventeenth-Century Glasgow', *Journal of British Studies*, 58:4 (2019), pp. 787–804, at p. 791.
- 22 Balfour, *Practicks*, p. 93.
- 23 Balfour, *Practicks*, pp. 93, 217–218, 294.
- 24 Dalrymple, *The Institutions of the Law of Scotland*, 2: ii, vi, x, pp. 275–277.
- 25 Balfour, *Practicks*, pp. 93, 105.
- 26 Leah Leneman and Thomas Green have both produced detailed studies on the business of Edinburgh's commissary court in relation to matrimonial law. See Leah Leneman, *Alienated Affections: The Scottish Experience of Divorce and Separation 1684–1830* (Edinburgh, 1998); Leah Leneman, *Promises, Promises: Marriage Litigation in Scotland 1698–1830* (Edinburgh, 2003); Thomas Green, *Consistorial Decisions of the Commissaries of Edinburgh 1564 to 1576/7* (Edinburgh, 2014).
- 27 Green, *Consistorial Decisions*.
- 28 Gordon Donaldson, 'The Church Courts', in *An Introduction to Scottish Legal History* (Edinburgh, 1958), pp. 363–373, at p. 369.
- 29 Thomas Green, 'Romano-Canonical Procedure in Reformation Scotland: The Example of the Court of the Commissaries of Edinburgh', *The Journal of Legal History*, 36:3 (2015), pp. 217–235.
- 30 Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford, 1987), pp. 1–6; Joanne Bailey, 'Voices in Court: Lawyers' or Litigants?', *Historical Research* 74:186 (November 2001): 392–408; Bronach Kane and Fiona Williamson (eds.), *Women, Agency and the Law, 1300–1700*, pp. 7–8; Tim Stretton, 'Women, Legal Records, and the Problem of the Lawyer's Hand', *Journal of British Studies* 58:4 (October 2019), pp. 684–700.
- 31 Cordelia Beattie, 'Single Women, Work, and Family: The Chancery Dispute of Jane Wynde and Margaret Clerk', in Michael Goodich (ed.), *Voices from the Bench: The Narratives of Lesser Folk in Medieval Trials* (New York, 2006), pp. 177–202.
- 32 Stretton, 'Women, Legal Records, and the Problem of the Lawyer's Hand', p. 695.
- 33 Stretton, 'Women, Legal Records, and the Problem of the Lawyer's Hand', pp. 695–696.
- 34 Sanderson, *A Kindly Place?*, pp. 102–103.
- 35 Balfour, *Practicks*, 303.
- 36 George Smith Pryde, 'The City and Burgh of Glasgow: 1100–1750', in Robert Miller and Joy Tivy (eds.), *The Glasgow Region: A General Survey* (Glasgow, 1958), p. 144.
- 37 Margaret Sanderson, *A Kindly Place? Living in Sixteenth-Century Scotland* (East Linton, 2002), p. 122.
- 38 Liliás's first marriage was registered in Glasgow in 1653 (NRS, Register of Banns and marriages, Glasgow, 644/1/230/216). Her first husband died in May 1656 (NRS: CC9/7/32/fols. 101–102). She appeared as a remarried widow before the commissary court in January 1658 (NRS: CC9/3/17/fols. 84–86).
- 39 Dorothy's first marriage was registered in Glasgow in 1614 (NRS, Register of Banns and marriages, Glasgow, 644/1/230/12). Her second marriage was registered in 1644 (NRS, Register of Banns and marriages, Glasgow, 644/1/230/185).
- 40 Margaret's multiple marriages were noted in a dispute concerning her widow's estate in 1658. See NRS: CC9/3/17/fols. 173–174.
- 41 Leah Leneman and Rosalind Mitchison, *Girls in Trouble: Sexuality and Social Control in Rural Scotland, 1660–1780* (Edinburgh, 1998); Leah Leneman and Rosalind Mitchison, *Sin in the City: Sexuality and Social Control in Urban Scotland 1660–1780* (Edinburgh, 1998); Elizabeth Ewan, 'Impatient Griseldas: Women and the Perpetration of Violence in Sixteenth-Century Glasgow', *Florilegium* 28 (2011), pp. 149–168; Alice Glaze, 'Women and Kirk Discipline: Prosecution, Negotiation, and the Limits of Control', *Journal of Scottish Historical Studies*, 36:2 (2016), pp. 125–142.

- 42 Shennan Hutton, "'On Herself and All Her Property": Women's Economic Activities in Late Medieval Ghent', *Continuity and Change*, 20:3 (December 2005), pp. 325–349.
- 43 Balfour, *Practicks*, pp. 219–221.
- 44 NRS: CC9/3/7/ fol. 342.
- 45 NRS: CC9/3/7/fol. 328.
- 46 NRS: CC9/3/33/fols. 523–524.
- 47 DesBrisay and Sander Thomson, 'Crediting Wives', p. 89.
- 48 Cathryn Spence, "'For His Interest?" Women, Debt and Coverture in Early Modern Scotland', p. 180.
- 49 NRS: CC9/3/33/fols. 419–421.
- 50 NRS, Register of banns and marriages, 568/20/fols. 30, 35.
- 51 NRS : CC9/3/33/fols. 525–527.
- 52 Balfour, *Practicks*, p. 227.
- 53 Erskine, *Institute* I, VII, XXIX, p. 129.
- 54 For scholarship exploring property disputes between remarried mothers and children, see Stretton, 'Stepmothers at Law in Early Modern England', pp. 91–107; Katie Barclay, 'Natural Affection, Children, and Family Inheritance Practices in the Long Eighteenth Century', in Janay Nugent and Elizabeth Ewan (eds.), *Children and Youth in Premodern Scotland* (Woodbridge, 2015), pp. 136–151.
- 55 NRS: CC9/3/4/fol. 234.
- 56 NRS: CC9/3/4/fol. 263–264.
- 57 Balfour, *Practicks*, pp. 336–337.
- 58 Erskine, *Institute*, I, VII, LVI, p. 112.
- 59 NRS: CC9/14/20/208.
- 60 NRS: CC9/3/4/fols. 212–213.
- 61 NRS: CC9/3/23/fols. 489–490. See also Mason, 'The Marital Spectrum', p. 800.
- 62 NRS: CC9/3/23/fols. 555–556.
- 63 NRS: CC9/3/33/fols. 503–506.
- 64 Kane and Williamson, *Women, Agency and the Law, 1300–1700*, p. 15.