

12 Married women, property and paraphernalia in early modern Scotland

Rebecca Mason

This chapter is concerned with material things – namely, a woman's personal items of worth – and her subsequent right to own these items within a marital union in early modern Scotland. Items considered personal to a woman typically included her wearing apparel and her jewellery, which were collectively deemed as forming her 'paraphernalia' before the law (Erskine 1773: 90–91). Research exploring a married woman's ability to own and access her personal items of worth separately from her joint marital estate during the early modern period is surprisingly sparse, with scholarship transiently focusing on her limited right to administer her clothing and jewellery during her marriage; especially when living under the shackles of coverture (Staves 1990: 147–149; Erickson 2005: 26, 90, 122, 145, 184). By contrast, our knowledge of the nature and extent of a wife's paraphernalia in early modern Scotland remains significantly under-developed (Coutts 2003: 140; Peters 2003: 42–43; Barclay 2011: 46). This chapter will begin to reveal how wives in Scotland legally retained the right to pawn, sell and bequeath their paraphernalia separately from their marital estate in Scotland, with husbands possessing little to no right to own, sell or even administer such moveable assets during and after their marriage.

Moveable goods were in a constant state of negotiation, with spouses privately and publicly demarcating their rights to own and administer their personal items of worth within distinct and (at times) blurred parameters. When ownership and management of this property was disputed beyond the confines of the household, the disenfranchised party could therefore turn to the law to seek formal redress. To avoid such litigious challenges, Scottish men of law began to map out married women's property rights across the early modern period. Regarding paraphernalia, they addressed the kind of personal items a wife could independently own and administer during her marital union, mainly to simplify the complex gendered structures regarding administration, possession and property of material objects within marriage. Even though the men of law generally agreed that a wife owned her paraphernalia separately from the marital estate, they continually disagreed on which items formed her paraphernalia, and most importantly, if she held the legal right to dispose of these goods during marriage without seeking her husband's consent.

It is surprising that so far there has been no sustained effort to reconstruct the nature and scope of a married woman's paraphernalia during the early modern

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period across similar and conflicting legal jurisdictions. Instead, it is forlorn within historical narratives, unconsciously dismissed by historians as consisting of superfluous items of little material worth. To begin to redress this historical imbalance, this chapter will make some preliminary suggestions regarding the significance of paraphernalia in granting married women legal access to independently claim significant amounts of moveable property, and the implications this had on how the marital economy was understood and administered by husbands and wives. Whilst this chapter is largely focused on the arguments constructed by those lawyers and judges who defined, defended and challenged a wife's right to separately own paraphernalia within the law in Scotland, it is equally important to understand how ownership of paraphernalia was understood on the Continent under a variety of legal regimes.

What is paraphernalia?

Although the legal term 'paraphernalia' was chiefly used to signify a woman's right to maintain wearing apparel and jewellery upon marriage, the term generated a variety of definitions, with much ambiguity surrounding which objects could be specifically regarded as exclusive to a wife's body. The Scots legal understanding of paraphernalia as an official term derived from the Roman legal word 'parapherna', which was historically used to denote 'those articles of property held by a wife over and above the dowry she brought to her husband, and which remained under her own control' (Paton 1958: 102–103). In Scots law, the husband's right of *jus mariti* meant that much of the moveable property previously belonging to his wife was transferred to him upon their marriage, excepting her paraphernalia. Upon his death, she was legally entitled to claim ownership of one-third of their moveable assets if there were children born of the union, which increased to one-half if there were none (McNeill 1962: 217). Conversely, she was entitled to retain full ownership of her paraphernalia for the duration of the marriage and upon her husband's death. As such, paraphernalia became restricted to such purely personal belongings of a wife, chiefly consisting of her dresses, earrings, bracelets and necklaces (Paton 1958: 102–103). Writing in the late sixteenth century, the Scottish legal commentator Sir James Balfour in his *Practicks* wrote that:

Na woman cled with ane husband may or fould, without his licence, be borgh or caution, nor zit give, fell or difpone ony of hir husbandis geir, nor zit perfew or defend ony action, querrell or caufe in judgement, except almons, gevin mefourable, and all hir clathis, and abulzeaments of hir bodie, togidder with all giftis, gudis, geir of jewellis gevin unto hir, (*dona parapherna*) the quhilk could be gevin with avife and licence of hir husband.

(McNeill 1962: 93)

In this short extract, Balfour was simply declaring that whilst a woman had no right to dispose of her moveable assets (such as household furniture, merchandise and livestock) without her husband's permission, here referred to as 'hir

husband's geir', she could dispose of her paraphernalia, here referred to as her 'clathris and abulzeamentis... [and] geir of jewellis', albeit with his expressed consent. Despite attempts to unequivocally define paraphernalia in the late sixteenth century, there was continuous disagreement regarding the content and scope of a wife's separate assets until the mid-eighteenth century, especially concerning whether she could own goods affiliated with paraphernalia, such as the cabinets and coffers used to store her dresses and jewellery. The extent to which family heirlooms could be considered paraphernalia was also debated, suggesting that there was no clear-cut definition regarding which objects would have been lawfully perceived as personal to a wife's body, and thus her own separate property (Paton 1958: 103). There was also debate on whether a remarrying widow could retain the paraphernalia acquired from her previous marital union, or whether these goods should be reconstituted as forming part of the conjugal assets (Morison 1811: 5822–5823). Likewise, whether the wife or daughter of a merchant could claim objects that could be inextricably linked to her husband's or father's trade was discussed, reiterating the legal anxieties of authorising an all-encompassing definition when characterising the scope of paraphernalia within a legal framework (Morison 1811: 5822–5823).

Despite the fact legal commentators continuously contradicted one other, there is no doubt that women, regardless of their current or previous marital status, were granted the capacity to viably draw upon these personal items of worth, in times of crisis, or even in times of economic opportunity (Barclay 2011: 46). This level of confusion concerning how a wife could administer her separate property during a marriage clearly often worked to her advantage, as it opened up the possibilities of claiming goods with ambivalent definitions. The wife of a tailor could claim a dress from her husband's merchandise; in a similar manner, the wife of a merchant could assert ownership of a necklace originally designed for sale as her own property. Curtains could be reinvented and redesigned as clothing; cabinets containing communal assets could be refigured to specifically hold paraphernalia. By recreating and reinterpreting the composition and meaning of goods, it was theoretically (and legally) possible for a wife to claim a plethora of items as constituting her paraphernalia.

Current state of research

Ownership of paraphernalia is a facet of marital property law that has been considerably overlooked in historiography, and is often only granted a brief mention in studies focusing on the possession and administration of marital property during the early modern period. Amy Louise Erickson (2005: 12) has even commented on the fact that there are no studies investigating the law's formulation of paraphernalia in England or elsewhere on the Continent. At face value, it seems that married women in Scotland had access to relatively advantageous legal rights when administering and claiming their personal items of worth. Within a legal framework, a husband had little power over his wife's paraphernalia: these items could not be alienated by him, nor could they be recovered to settle his debts

(Coutts 2003: 140). He was also unable to dispose of his wife's paraphernalia during their marriage without seeking her expressed consent, and he could not bequeath them in his testament. In defiance of their prescribed inferiority within the law concerning the bulk of their moveable assets, married women in Scotland actively litigated to protect these goods and reasserted their rights to own and administer their clothing and jewellery, which often amounted to a considerable amount of moveable wealth. To place the legal framework of Scotland in its proper context, it is firstly necessary to focus on similar and conflicting legal regimes across the Continent. Only then will it be possible to properly assess the extent to which Scottish women's claim to paraphernalia was unique, or if it was indeed an accepted reality for women living under Roman (civil) legal systems elsewhere across Europe.

A 'bewildering variety of customs' regarding the ownership and disposal of paraphernalia existed throughout Europe across the early modern period (Jones and Stallybrass 2000: 234). Historical research commenting on the nature and extent of such material goods has tended to focus on early modern England, with a wife's paraphernalia defined as consisting of '[her] clothes, jewels, bed linens and plate' (Erickson 1995: 26; Staves 1990: 148–150). Janet Loengard (2008: 162–176) has written on the extent and use of a wife's paraphernalia in late medieval England, finding that a wife could only claim proprietorship of these goods upon widowhood, and did not possess the right to administer or intrude with such assets during marriage. English common law clearly attempted to limit the amount of property that a wife could legally own and independently dispose of during her lifetime. Within legal circles, it was accepted that her husband may 'sell or give these away in his lifetime, and even after his death they may be taken for his debts' (Pollock 2010: 425). The anonymous female author of *The Hardships of the English Laws in Relation to Wives*, published in 1735, noted that while a married woman under a civil legal system was able to wear, own and bequeath her paraphernalia both during and after her marriage, an Englishwoman experiencing common law simply wore her clothes 'not as hers, and for her own Sake, but as her Husband's, or as it is express'd, suitable to his Quality, and to do him Honour' (Anon. 1735: 21). At face value, Englishwomen were significantly disadvantaged in contrast to those women living under Scots law; however, the situation was clearly more complex than legal commentators had often recognised. Despite the strident nature of common law on controlling and limiting a wife's share of the moveable marital property, early modern Englishwomen appealed for property rights to the ecclesiastical courts, equity courts, to customary law, as well as to common law; even though the latter court traditionally followed the doctrine of coverture (Jones and Stallybrass 2000: 235; Stretton 1998: 129–154; 2008: 1–24). As Alexandra Shepard (2013: 196; 2015: 120–121, 217) has also shown, married women in early modern England often estimated their worth before a church court in terms of the clothing and jewellery in their possession, suggesting that they certainly considered these assets as their own and therefore separate to their marital estate.

It is often difficult to define a wife's paraphernalia on the Continent, as under certain legal regimes her moveable assets were closely tied up with her dowry.

Sandra Cavallo's investigation into married women's moveable property in early modern Italy (specifically focusing on those women living in the towns of the Duchy of Savoy) found that their moveable goods, namely the *fardello* (or the bride's trousseau) formed part of the dowry, with items ranging from wearing apparel to household furnishings (Cavallo 2000: 45). It must be noted that various Italian regions were divided between the mixed influences of Roman, canon and Germanic law, suggesting that practices differed according to regional variations (Fontaine 2014: 132). For those married women living in the Duchy of Savoy, a state in the northern part of the Italian peninsula, many of their personal items of worth were intrinsically tied up with the dowry, and consequently married women may have found it more difficult when attempting to pawn and bequeath these items separately from their husband in comparison to those women living in other regions of Italy. Because the dowry often consisted of a monetary sum and a part consisting of goods, wives living in this part of Italy were comparably restricted when attempting to assert their rights to these personal items of worth in a court of law. In Italy, as in Scotland, a husband had the right to administer and invest his wife's dowry, although he could not alienate the property, and was required to return it to his wife (or the equivalent of the moveable assets) upon his death (Barclay 2011: 148–177; Fontaine 2014: 133). Likewise, Maria Ågren's research into early modern Scandinavian marital property rights focuses on a wife's right to landed property, with minimal discussion of what material assets she could potentially hold separately from her marital estate. Instead, Ågren (2009: 29, 175) notes that women were granted sole ownership of a 'morning gift' upon marriage, which consisted of a transfer of landed or moveable property from the husband's estate to the wife.

While parallels can be drawn between those legal regimes where Roman ideas remained strong, practices clearly differed from region to region, with local customs influencing and informally reshaping the written word of the law across the early modern period. In a discussion amongst the Scottish Lords of Court and Session on 4 December 1696, it was noted that '[t]he Spanish and Italian doctors are very narrow to wives... and allow them only the use of [paraphernalia] but not the property of them' (Morison 1811: 5822). There was clearly a level of knowledge among the men of law in Scotland regarding practices in other countries, with legal decisions in other regimes being taken into consideration in discussions surrounding married women's right to own their paraphernalia in Scotland. From this statement alone, one can see the striking difference regarding *ownership* of property in contrast to the *use* of property. A married woman's right to own her wardrobe is significant as it suggests that, as well as being able to sell and administer these goods, her social and economic estimation in the eyes of the community could be derived from the value of her moveable property, rather than through her marriage to a lawyer, a butcher or a travelling merchant. As such, the action of taking possession of paraphernalia was more than just a way of achieving material security, but should also be regarded as solipsistic venture, providing the female proprietor with a means to gain social status as well as accumulating credit. Ownership of paraphernalia thus unlocked a variety of

economic opportunities for married women in Scotland to utilise and exploit across the entire early modern period, allowing them to engage within male-dominated credit and debt networks on a level that has been hitherto overlooked.¹

Sources and methodology

This chapter hopes to make an initial contribution towards addressing these key issues, and it will do so by focusing on petitions brought before the Court of Session, the highest civil court in Scotland, and the Privy Council, the monarch's advisory council, with married women (with and without their husbands), their children and their nearest of kin actively litigating before both judicial bodies to affirm their right to solely own and administer their paraphernalia from the marital estate. In 1532, the Session as a branch of the Council's activity was 'finally recast and reconstituted separately' within the framework of a new College of Justice, which was now recognised as a separate and autonomous court of law (Godfrey 2014: 82). Many of the newly appointed Lords of Council and Session had previously been part of the Privy Council, and to confuse matters further, many of these Lords of Council and Session undoubtedly remained on the Privy Council. The Court of Session resided in Edinburgh, and was initially comprised of a body of fifteen judges, including seven secular judges, seven churchmen, and a president. Reflecting its importance as a judicial body, John Finlay (2012: 92) has argued that it was 'largely the Lords of Council and Session... who developed Scots law into the distinctive legal system that it remains today'. In contrast to the Lords of Council and Session, members of the Privy Council were appointed by the Crown, primarily advised on matters of state, and were dismissible at the monarch's pleasure. The Privy Council was seen as a secretive council and has been described as 'virtually self-elected', consisting of nobles, barons and prelates entrusted with administering the authority of the Crown (Dickson 1958: 82–94; Davies 1980: 151–154). In his *Institutions of the Laws of Scotland*, George Mackenzie (1694: 15) claimed that as well as advising the Crown on matters of state, the Privy Council had the power to 'sequester Pupils, give Aliments to them, and to Wives who were severely used by their Husbands'. It is within these records that we find married women requesting alimony alongside the return of their paraphernalia when their marriage was in an irrevocable state of crisis.

Whilst this chapter will focus on cases brought before both judicial bodies, most married women asserted their right to retain their paraphernalia before the Court of Session, due to its superior status as Scotland's highest supreme civil court. Unfortunately, there are no surviving testimonies from those female litigants who claimed ownership of their paraphernalia during this period, as the decisions recorded in the private papers belonging to those advocates who were involved in each petition are mediated through the language of the court.² In the early 1800s, William Maxwell Morison, himself an advocate, began to collate the decisions of the Court of Session from its institution until 1808, bemoaning that some of the manuscripts archived in the Faculty of Advocates were 'almost obliterated' (Morison 1811: v). Despite Morison's lamentations, a significant amount of

private papers have luckily survived, which are currently housed in the Faculty of Advocates and the Signet Library in Edinburgh. It is within these private papers and Morison's collection that we find evidence of married women (with and without their husbands), their kin and their children on at least twenty separate occasions asserting and even challenging the legality of their right to claim their dress and jewels from their joint marital estate. Most importantly, these judicial suits show how the law's formulation of paraphernalia was fluid and therefore subject to negotiation, with the Lords of Council and Session and the Privy Council regularly disagreeing and clashing concerning which material objects should be ruminated as forming a wife's paraphernalia. From petitioning the Lords to assert their right to pawn their paraphernalia, to warning off their husband's creditors from seizing these moveable assets, there is evidence to suggest that many married women in Scotland were aware of their right to legally dispose of these goods separately from their joint marital estate, and that their claim to such goods could be explored within multiple jurisdictional frameworks.

Paraphernalia and debt litigation

In early modern Scotland, even though the husband was legally responsible for his wife's debts, including those that were pre-nuptial, the wife was theoretically exempt from settling her husband's debt, unless she was a named executor in his will (Paton 1958: 101; Coutts 2003: 140). As such, it was unclear regarding whether a wife's paraphernalia could be used to settle household debt during their marital union. There are cases detailing instances of married women directly challenging their husband's right to sell their paraphernalia in a bid to settle personal debt, insisting that they had no power to use and dispose of their personal belongings without seeking their explicit consent. On 31 June 1582, Mistress Barbara Ruthven pursued her husband Lord Patrick Gray before the Session, and demanded him to return 'certain chenzies, rings of gold and certain ul[ther] things, [whilk] appertained to ye ornament of her body'.² It had transpired that her husband had sold these items in a bid to resolve personal debt, under the pretence that he owned all her moveable goods during their marriage. Barbara countered her husband's claim, with her lawyer asserting that the items 'were proper to be called paraphernalia... and so they might no more be taken away from her', any more than her shared landed property, without seeking her prior consent. In the end, the Lords ruled that Patrick should restore the items to his wife as 'they appertained to the ornaments of her body' (Morison 1811: 5802). Although this case seems quite straightforward, as Barbara asserted her legal right to her clothing and jewellery and subsequently won, it reveals the intricacies surrounding the possession and ownership of moveable goods upon entering a marriage, and which items could be considered exclusive to the wife's wardrobe. It also raises questions regarding the negotiation of personal property within marriage, and the disastrous effects of marital disharmony on the household economy. Even though the husband was viewed before the law as the head of the household, this did not necessarily mean that he presided over the marital property in an authoritarian manner, and the

law clearly recognised a married woman's right to influence the distribution and use of their personal property; in this case, consisting of her items of jewellery (Barclay 2011: 148–177).

A comparable case was brought before the Lords on 23 June 1610, when a wife similarly pursued her husband before the Court of Session to assert sole ownership of her jewellery. In this case, her husband had also sold her jewellery to settle personal debt, arguing that he had a right to do so as they formed part of their conjugal assets. Initially, the Lords were 'inclined to susteine the arrestment', arguing that the wife should only be able to claim her clothing as forming her paraphernalia, not her 'superfluous Jewells'. In rebuke, the wife claimed that 'they were her own proper ornaments, and pertained not to her husband, nor would come under his testament'. Four days later, 'the most part of the [Lords] ruled that 'the wyffes Jewells and ornaments could not be arreasted and poynded for her husbands debt but wer properlie her own and pertained nowayes to the husband' (Morison 1811: 5802). These particular cases brought before the Court of Session certainly reveal that married women were aware of their right to separately own their paraphernalia from their marital estate, as well as revealing the level of uncertainty amongst the Lords regarding which items could form a wife's separate property. Most importantly, the Lords were clearly in disagreement when deciding the extent to which paraphernalia could be used to settle existing debt incurred by the husband, reflecting the dynamic nature of legal debate concerning property with ambivalent demarcations within the Court of Session during the early modern period.

Because a wife's paraphernalia was theoretically exempt from being uplifted to cover both a husband and a wife's debt, in certain circumstances the husband was clearly placed in quite a disadvantaged position, as it would therefore be left to him to settle his wife's financial affairs upon her death. On 8 January 1685, the Lords ruled that a husband was liable for paying his wife's funeral expenses, which 'ought to come off the head of the inventory', and that 'her clothes and paraphernalia were liable to no part thereof' (Morison 1811: 5926). In another case presented on 31 July 1716, Mary Crawford, executrix and sister of the deceased Bethia Crawford, had pursued her sister's widower John Stirling before the Court of Session concerning her right to claim Bethia's paraphernalia (Morison 1811: 6111–6113). In this instance, the Lords agreed that a wife's 'abulziement and ornaments' could not be uplifted to settle her husband's debt, and that he had no interest in her paraphernalia as they fell outwith his right of *jus mariti* (Paton 1958: 101–102). Ownership of paraphernalia clearly advantaged a wife during her lifetime as well as her executors following her death; if she was to die in debt, her executors could claim her paraphernalia, and separately claim the use of her joint marital property to settle her financial affairs.

In certain instances, it often worked to the benefit of the husband by asserting that his wife's possessions were to be legally understood as paraphernalia; especially when creditors were seeking their due payment. On 31 July 1716, Jean Pitcairn along with her husband jointly petitioned the Court of Session regarding her right to own a chest of drawers that had been appropriated for storing

her paraphernalia. The defendant, John Peutherer, had argued that 'if wives be allowed to make moveables their own by laying clothes within drawers, cabinets and chests, a good part of the moveables of the husband will in progress of time be made paraphernalia' (Morrison 1811: 6116-6117). In this case, the Lords ruled in Jean and her husband's favour, despite a previous judgement in 1697 that ruled that 'cabinets, coffers and other alleged accessories for holding the paraphernalia, are not paraphernal, but fall under the communion of goods' (Morrison 1811: 5823). John's proclamations also raise further issues concerning married women's legal right to property in general, with the underlying trepidation that their claim to paraphernalia could lead to the destruction of the marital economy. By suggesting that a wife could claim a large proportion of the conjugal assets, John had clearly highlighted what many of the Lords had feared. However, since she was litigating alongside her husband, it suggests that they were both actively protecting the property from being uplifted by John, who was perhaps attempting to recover debt. Rather than asserting her own rights to the chest of drawers, it is quite possible that Jean and her husband were jointly protecting their marital property by asserting that the chest of drawers formed part of her paraphernalia, and thus unable to be retrieved to settle her husband's outstanding debt. As this case has shown, it is quite possible that a wife, alongside her husband, could have claimed objects as forming part of her paraphernalia as part of a joint marital strategy, in a bid to protect their household goods from creditors. Therefore, the legal ownership of paraphernalia could both advantage and disadvantage a husband in certain circumstances, and a level of negotiation between a husband and a wife was clearly imperative when reconfiguring moveable property within a marital union.

Pawning and bequeathing paraphernalia

Whether a married woman had the right to pawn her paraphernalia without her husband's consent was also raised before the Lords of Council and Session. On 31 July 1711, the Lords heard that Lady Kirkhouse had pawned five rings to Thomas Irvine of Gribton in return for £16 sterling, without seeking the consent of her husband (Morrison 1811: 5970-5973). Her children, William and Jean Pringles, were now pursuing Thomas following their mother's death, ordering him to return the five rings under the premise that Lady Kirkhouse, in her capacity as a wife, was legally forbidden to contract a bond without seeking her husband's consent. In rebuke, Thomas claimed that a wife had the right to dispose of her paraphernalia as 'she hath the absolute property, possession and administration' of these personal belongings. By bolstering Lady Kirkhouse's right to pawn her paraphernalia during her marriage without her husband's consent, Thomas was simply safeguarding his own claim to retain the assets as a legitimate creditor. In this case, the Lords agreed that the rings were considered part of her paraphernalia, and could therefore be disposed of by Lady Kirkhouse in whatever manner she wished, even during marriage. This case clearly generated much heated debate amongst the Lords, as it states that they had agreed to

the final judgement 'by a scrip plurality', with some of them arguing that 'this was too great an interlocutor in favours of women'.

Wives also attempted to manipulate the law by reaffirming their relative inferiority in relation to their marital status. In a similar case brought before the Lords six years later, a married woman had claimed that she had wrongfully disposed of her paraphernalia to settle her husband's debt, and was attempting to recover those items which she had unlawfully pawned. On 31 January 1717, the Lords heard that Lady Sharp had pawned some of her jewels to cover her husband's outstanding debt and that she now wanted them restored to her, on the basis that 'a wife cannot oblige herself for her husband or otherwise, so neither can she pawn paraphernalia for his debt' (Morrison 1811: 5996). The Lords rebuked her argument, and claimed that a wife pawning her paraphernalia was as effectual as a security given out of their joint marital land. Lady Sharp had clearly attempted to reinstate her inferior status before the law by pleading her incapacity in pawning her paraphernalia during her marriage, albeit with little success. Once again, this reflects how married women (and their lawyers) were conscious of the complexities and contradictions within the law, and were wholly aware of ways in which this could often work to their advantage, as well as to their detriment.

The disposal of paraphernalia upon the death of a wife was also subject to considerable legal debate amongst the Lords of Council and Session, especially concerning whether she had the right to gift such goods freely upon her death, or if they should be automatically given to her daughters or her nearest of kin.⁴ However, because a wife solely owned her paraphernalia during the course of her marriage, it was suggested that she should be able to bequeath these items on her deathbed to whomever she wished. If she didn't explicitly bequeath these items in a testament prior to her death, and she had no children born of the marriage, it was then suggested that her executor should assume ownership of such goods. Aside from the gifting of paraphernalia, the Lords were also concerned with who held legal entitlement to a wife's paraphernalia upon her death when considering the inclusion of additional clauses in her marriage contract. In January 1684, Mary Craig acting as executrix to her sister Anna Craig, pursued her sister's widower George Monteith, a merchant in Edinburgh, before the Court of Session, demanding him to hand over Anna's paraphernalia (Morrison 1811: 5189-5820). George had claimed that Anna had accepted a jointure in her marriage contract, asserting that his wife had inadvertently revoked her right to own her paraphernalia separately from their joint marital estate. In this case, the Lords once again reaffirmed that the 'paraphernalia are the wife's property' and therefore cannot be subject to the husband's right of *jus mariti* in the first place. In the end, George was forced to hand over his wife's paraphernalia, which consisted of her clothing, several diamond rings, gold bracelets, and a watch totalling £1,000 sterling. This case sparked much debate amongst the Lords, with some asserting that the wife of a 'goldsmith, watchmaker or merchant' should not be able to claim ornaments and jewellery as part of her paraphernalia, as they could claim a large portion of their husband's stock as their own. This specific concern is quite ironic considering that 40 per cent of men received their trading rights through their wives in

eighteenth-century Edinburgh, suggesting that the daughters and wives of such merchants could certainly claim ownership of stock pertaining to their family trade as forming part of their paraphernalia (Sanderson 1996: 130).

In a similar case debated before the Court of Session on 16 January 1695, Jonet and Agnes Dick, sisters and executrices of the deceased Elizabeth Dick, pursued their sister's widower Andrew Massie for the reimbursement of 800 marks tocher (dowry) alongside the return of her paraphernalia (Morison 1811: 5821–5823). Elizabeth's will had been registered in Edinburgh's commissary court two years previously, with her sisters asserting that upon her death Elizabeth had legally owned her tocher along with 'the abulziements of hir bodie with the paraphernalia and uthers therto belonging estimat in numelo to be worth jai [1000] marks or thereby'.³ Most significant in this case is the fact that Elizabeth's paraphernalia was worth more than her tocher, therefore demonstrating that a woman's paraphernalia could be worth quite a substantial amount of money, and thus economically attractive for a husband to claim as his own. Andrew was compelled to return his wife's tocher along with her paraphernalia, costing him a total of 1800 Scottish marks; the equivalent of around £100 sterling at the time. The fact that both Jonet and Agnes knew how much Elizabeth's paraphernalia was worth suggests that they had debated the economic value of her goods prior to her death, reflecting how married women discussed, recorded and claimed property as their own, and were aware of their legal entitlement to such items within a legal framework.

Marital breakdown: his goods – or hers?

The ownership of paraphernalia upon the irrevocable breakdown of a marital union was discussed by members of the Privy Council. In January 1685, Dame Jean Keith, Lady Bamff, raised an action of adherence and aliment before the Lords of the Privy Council against her husband, George Ogilvy, Lord Bamff, on the basis that he had been physically and emotionally abusive and had subsequently denied her access to their marital home (Paton 1927: 147–148). The couple had been married for over sixteen years, and had four children together. As part of her aliment settlement, Jean was requesting 2,000 marks to be paid yearly on Whitsunday and Martinmas, alongside the return of her 'paraphernalia and the habiliments of her body'. Jean had asserted that following an unprovoked violent outburst in their marital home on 9 June 1684, he 'did violently take away the key of her closet or study where all her cloathes and paraphernalia wer and would not give her forth thereof what might for the present necessarily serve her'.

Further to this claim, she insisted that she had to subsequently rely on 'the charity of good friends', and that her husband's iniquity had reduced her to a 'miserable and disconsolat' state. Overall, the Lords upheld her request as reasonable, taking into consideration that her very well-being and her honour were at risk, and ruled for George to provide an aliment for his wife and for him to return her paraphernalia. The Lords also asserted that she was not expected to provide for their children, and that a separate action for aliment should be raised on their behalf

in the foreseeable future. In the end, George agreed to the separation, but upon further negotiation with the Lords, he agreed to give her sole ownership of a house jointly granted to them both in their marriage contract 'for the accommodation of herself and family', rather than providing a yearly aliment of 2,000 marks. With regards to the key of her closet and her personal belongings, the Lords ruled that 'by the laws of the kingdom she ought not to be deprived of her paraphernalia' which he had unlawfully seized, and that her personal belongings should be immediately returned to her (Paton 1927: 153–154). Therefore, rather than consisting of superfluous objects of little worth, a married woman's paraphernalia could very well constitute her entire assets, providing her with a form of financial stability following the breakdown of a marriage.

The fact that the Scottish men of law consistently disagreed over the extent, use and composition of paraphernalia over the course of the seventeenth century reflects how married women throughout this period could manipulate this equivocal marital provision to their advantage. Interestingly, by the mid-eighteenth century those men of law had become more inclined to diminish a wife's claim to her paraphernalia, with the husband's position as *dominus* often emphasised in their rebuttal (Paton 1958: 100). On 11 July 1735, the Lords of Council and Session ruled that a wife could only exercise 'acts of ordinary administration' with regards to her paraphernalia without the consent of her husband, but that she could not dilapidate or alienate the assets, nor could she pledge her paraphernalia as extra security on a loan (Morison 1811: 5997). On 15 February 1754, the Lords repeated their anxiety regarding the wife of a merchant accessing his stock. In this case, the Lords found that a wife of a journeyman tailor, who was also described as 'the daughter of a baillie in Linlithgow', had various 'rings and other trinkets' in her possession, which she may have acquired through her proximity to her husband's, or even her father's, personal stock (Brown 1826: 811). They ruled that she could not sign or dispose of them without the consent of her husband, 'for although the wife be the absolute proprietor of her paraphernalia, the husband is her curator, and she cannot act without his consent'. By refocusing on the issue of consent, the Lords had explicitly reaffirmed a wife's inferior status to that of her husband. More importantly, it was noted that 'the Court found unanimously, though they had formerly varied in their decisions upon this point'. Interestingly, these later rulings coincided closely with the English legal doctrine of coverture, whereby a married woman's entire moveable estate was legally considered under her husband's protection and authority during marriage. It seems that, by this point, the Scottish men of law were attempting to simplify the law with regards to ownership of moveables within marriage, perhaps in a bid to prevent debtors from deceiving creditors by distinguishing between separate and communal assets as commercialisation developed apace in the eighteenth century.

Conclusion

As this chapter has demonstrated, Scottish men of law habitually clashed and disagreed throughout the seventeenth and eighteenth centuries when defining which

items indisputably constituted a wife's paraphernalia, especially when considering the extent to which a married woman could dispose of her separate property without seeking her husband's consent. Even though their opinions differed during the late sixteenth and the seventeenth centuries, they still overwhelmingly ruled in favour of those married women who asserted ownership of paraphernalia as separate to their marital estate. It was only in the mid-eighteenth century that a wife's right to own and administer paraphernalia was subject to substantial pressure, with complex questions and queries concerning her social and economic status also being taken into consideration.

While the selected legal disputes are not necessarily exhaustive, or indeed indicative of a wider social and cultural practice concerning the interpretation and understanding of paraphernalia, they are revealing of the fact that men of law in early modern Scotland openly debated and questioned whether married women in early modern Scotland should be granted ownership of their paraphernalia; and most importantly, that there was no clear-cut definition regarding what the term encompassed. Rather than consisting of superfluous items of little worth, ownership and disposal of paraphernalia was discussed within the confines of the highest courtroom in the land on a plethora of occasions as an adaptable legal guarantee for wives, suggesting that there was much room for them to manoeuvre and circumvent the law on this matter within inferior legal settings.

In the context of situating the legal debates in Scotland surrounding married women's legal right to own paraphernalia, there is no doubt that wives in Scotland possessed advantageous rights to their wearing apparel and jewellery in comparison to their English counterparts; however, as this chapter has shown, this does not necessarily mean that married women litigating within a civil legal system elsewhere faced similar situations in their respective courts. Scottish men of law were clearly aware of how similar and conflicting legal regimes treated married women's right to own, pawn, sell and bequeath their paraphernalia, without providing much empirical evidence that their findings and judgements were based on the decisions of legal commentators elsewhere. Further research into how paraphernalia was understood on a broader level across Europe and the Continent will hopefully reveal the law's formulation of paraphernalia within contrasting jurisdictional frameworks.

Notes

- 1 For research on women, credit, and trade networks in early modern Scotland, see Sanderson (1997) and Spence (2016).
- 2 For research into legal voices and the language of the law in the courtroom, see Bailey (2001).
- 3 Signet Library, Parliament House, Edinburgh, MS 37, f. 68.
- 4 For research on bequeathing clothing in testaments, see Rushton (1984); Weatherill (1986); Howell (1996); Agren (2000).
- 5 National Records of Scotland, Edinburgh commissary court, Register of Testaments, CC8/80/ff. 7-8.

Bibliography

- Agren, Maria (2000), 'Contracts for the Old or Gifts for the Young? On the Use of Wills in Early Modern Sweden', *Scandinavian Journal of History*, 25(3), pp. 197-218.
- Agren, Maria (2009), *Domestic Secrets: Women and Property in Sweden, 1600-1857*, Chapel Hill: University of North Carolina Press.
- Anon. (1735), *The Hardships of the English Laws in Relation to Wives*, London: Printed by W. Bowyer, for J. Roberts, at the Oxford Arms in Warwick Lane.
- Bailey, Joanne (2001), 'Voices in Court: Lawyers' or Litigants?', *Historical Research*, 74 (186) (November), pp. 392-408.
- Barclay, Katie (2011), *Love, Intimacy and Power: Marriage and Patriarchy in Scotland, 1650-1850*, Manchester: Manchester University Press.
- Brown, M. P. (1826), *Supplement to the Dictionary of the Decisions of the Court of Session*, Vol. 4, Edinburgh: W. & C. Tait, 78 Prince's Street.
- Cavallio, Sandra (2000), 'What Did Women Transmit? Ownership and Control of Household Goods and Personal Effects in Early Modern Italy', in Moira Donald and Linda Hurcombe (eds), *Gender and Material Culture: Historical Perspective*, New York: Macmillan Press, pp. 38-53.
- Couts, Winifred (2003), '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*, Vol. 50, The Stair Society, Edinburgh: The Stair Society, pp. 135-205.
- Davies, Stephen J. (1980), 'The Courts and the Scottish Legal System, 1600-1747: The Case of Stirlingshire', in V. A. C. Gatrell, Bruce Lenman and Geoffrey Parker (eds), *Crime and the Law: The Social History of Crime in Western Europe since 1500*, London: Europa, pp. 120-154.
- Dickson, W. K. (1936), 'Privy Council Records, 1545-1707', in *An Introductory Survey of the Sources and Literature of Scots Law*, by various authors, with an introduction by the Rt Hon Lord Macmillan, Vol. 1, The Stair Society, Edinburgh: The Stair Society, pp. 82-94.
- Erickson, Amy Louise (1995), *Women and Property in Early Modern England*, 1st edn, London: Routledge.
- Erickson, Amy Louise (2005), 'The Marital Economy in Comparative Perspective', in Maria Agren and Amy Louise Erickson (eds), *The Marital Economy in Scandinavia and Britain 1400-1900*, Aldershot: Ashgate, pp. 3-20.
- Ersikine, Sir John (1773), *An Institute of the Law of Scotland in Four Books. In the Order of Sir George Mackenzie's Institutions of That Law*, 1st edn, Vol. 1, 2 vols, Edinburgh: Printed for John Bell at Addison's Head.
- Finlay, John (2012), *The Community of the College of Justice: Edinburgh and the Court of Session, 1687-1808*, Edinburgh: Edinburgh University Press.
- Fontaine, Laurence (2014), 'Women's Economic Spheres and Credit', in *Edam, The Moral Economy: Poverty, Credit, and Trust in Early Modern Europe*, New York: Cambridge University Press, pp. 128-156.
- Godfrey, A. Mark (2014), 'Royal Councils, Law Courts and Governance: The Role of Litigation in Early Modern Scotland', in Nils Jansen and Peter Oestmann (eds), *Rechtsgeschichte Heute. Religion Und Politik in Der Geschichte Des Rechts - Schlaglichter Einer Ringvorlesung*, Vol. 22, Grundlagen Der Rechtswissenschaft, Tübingen: Mohr-Siebeck, pp. 77-94.
- Howell, Martha C. (1996), 'Fixing Movables: Gifts by Testament in Late Medieval Douai', *Past and Present*, 150 (February), pp. 3-45.

- Jones, Ann Rosalind and Stallybrass, Peter (2000), *Renaissance Clothing and the Materials of Memory*, Cambridge: Cambridge University Press.
- Loengard, Janet S. (2008), "'Which May Be Said to Be Her Own': Widows and Goods in Late-Medieval England', in Maryanne Kowaleski and P. J. P. Goldberg (eds), *Medieval Domesticity: Home, Housing and Household in Medieval England*, Cambridge: Cambridge University Press, pp. 162–176.
- Mackenzie, George (1694), *Institutions of the Law of Scotland by Sir George Mackenzie of Rosehaugh, His Late Majesty's Advocate. With an Alphabetical Explanation of the Most Difficult Scots Words*, London: Printed for Andrew Bell and Jonas Lunley.
- McNeill, Peter G. B. (ed.) (1962), *The Practicks of Sir James Balfour of Pitendreich*, Vol. 1, 2 vols, The Stair Society, Edinburgh: The Stair Society.
- Morison, William Maxwell (ed.) (1811), *Decisions of the Court of Session, from Its Institution until the Separation of the Court into Two Divisions in the Year 1808, Digested under Proper Heads, in the Form of a Dictionary*, 42 vols, Edinburgh: Printed for Archibald Constable.
- Paton, G. and Campbell, H. (1958), 'Husband and Wife: Property Rights and Relationships', in *An Introduction to Scottish Legal History*, by various authors, with an introduction by Lord Normand, Vol. 19, The Stair Society, Edinburgh: The Stair Society, pp. 99–115.
- Paton, Henry (ed.) (1927), *The Register of the Privy Council of Scotland: 1684 to 1685*, Vol. 10, Third Series, Edinburgh: H. M. General Register House.
- Peters, C. (2003), *Women in Early Modern Britain, 1450–1640*, Basingstoke: Palgrave Macmillan.
- Pollock, Sir Frederick (2010), *The History of English Law before the Time of Edward I. Reprint of 2nd Edition, with a Select Bibliography and Notes by Professor S. F. Milsom*, Vol. 2, 2 vols, Indianapolis: Liberty Fund.
- Reid, Kenneth and Zimmermann, Reinhard (eds) (2000), *A History of Private Law in Scotland: Introduction and Property*, Vol. 1, Oxford: Oxford University Press.
- Rushton, Peter (1984), 'The Testament of Gifts: Marriage Tokens and Disputed Contracts in North-East England, 1560–1630', *Folk Life*, 24(1) (December 1984), pp. 25–31.
- Sanderson, Elizabeth C. (1997), 'Nearly New: The Second-Hand Clothing Trade in Eighteenth Century Edinburgh', *Costume*, 31, pp. 38–48.
- Shepard, Alexandra (2013), 'The Worth of Married Women in the English Church Courts, c. 1550–1730', in Cordella Beattie and Matthew Franck Stevens (eds), *Married Women and the Law in Premodern Northwest Europe*, Woodbridge: Boydell Press, pp. 191–210.
- Shepard, Alexandra (2015), *Accounting for Oneself: Worth, Status, and the Social Order in Early Modern England*, Oxford: Oxford University Press.
- Spence, Cathryn (2016), *Women, Credit and Debt in Early Modern Scotland*, Manchester: Manchester University Press.
- Staves, Susan (1990), *Married Women's Separate Property in England, 1660–1833*, Cambridge, MA: Harvard University Press.
- Stretton, Tim (1998), *Women Waging Law in Elizabethan England*, Cambridge: Cambridge University Press.
- Stretton, Tim (2008), *Marital Litigation in the Court of Requests 1542–1642*, Cambridge: Cambridge University Press for the Royal Historical Society.
- Weatherill, Lorna (1986), 'A Possession of One's Own: Women and Consumer Behavior in England, 1660–1740', *Journal of British Studies*, 25(2), pp. 131–156.

13 Women at work in a Southern European town

Women, guilds and commercial partnerships in Venice in the sixteenth century¹

Emilie Fiorucci

Introduction

Research carried out on professional associations has emphasised the exclusion of women from professional organisations in Europe at the start of the early modern age. The different reasons for this exclusion include demographic factors (competition from the male workforce), as well as economic (capitalist evolution of production) (Clark 1919; Wiesner 1986; Howell 1986) and social ones (exclusion of Jews and women from the 'social capital' represented by belonging to the guild) (Ogilvie 2003). Studies on France, and notably those by Daryl Hafer (2007) on Rouen and Clare Crowston (2001) on Paris, have evidenced a contradictory tendency, that is to say, a process by which new female guilds were created and guilds became more open to women during the early modern age. In support of this, studies on Italy, and notably the works by historian Angela Groppi, have shown that periods of exclusion of women from organised professions alternated with periods of inclusion, according to an 'accordion movement' (Groppi 1990, 1996). Several studies have also demonstrated that women voluntarily remained outside of the corporate system (Crowston 2001; Groppi 2002; Zucca Micheliello 2013; Zanoloni 2016).

Studies carried out on the different industrial sectors that made Venice a commercial and productive town acknowledge the influence of women in the urban economy, because of their activities of production (Mola 2000: 423–459; Trivellato 2000: 171–187) and their involvement in business partnerships (Clarke 2012: 67–84).²

Throughout its history, Venice had no fewer than two hundred guilds and, while a strictly female guild never existed (Manno 1995),³ numerous trade associations accepted women, as they represented a crucial, inexpensive and easily mobilised workforce depending on circumstances (Della Valentina 2012).⁴ This chapter concerns the strategies, the organisational capabilities and the roles of women in the incorporate world of shopkeeping in sixteenth-century Venice. We have not limited ourselves to a single trade in this project, but rather to activities that, variously, have crossed paths with haberdashery at some point in their history.⁵ Having set out the institutional context through an analysis of the rights granted to women by trade statutes, we will focus on the case of