

Transcription
Source: Scotland's People
Assisted by: Claude AI

Lilias Fleming, relict of John Napier

Testament Dative and Inventar, confirmed 1722 – transcription and summary

Glasgow Commissary Court, CC9/7/51, images 681–683 (folios 349–351)

Reliability. This is a clear 18th-century hand, so the narrative is read with good confidence. The Roman-numeral sums in the inventory are harder; they are given as read with [?] and should be checked against the image. Spelling, abbreviations and capitals are as written; line breaks are approximate (about one line of transcription per manuscript line). Uncertain readings are in [square brackets]; [illegible] where unreadable.

Item	Detail
Deceased	Lilias Fleming, relict of John Napier, merchant in Glasgow, within the parish of Killellan; died January 1715.
Also covered	Patrick Fleming, elder of Barrochan, parish of Killellan, who died in February 1715; his estate is given up in the same inventory (he is her brother, and the father of the executor).
Executor	William Fleming, now of Barrochan, decerned executor dative to both by decreet of the Commissar of Glasgow, 4 January 1722.
Confirmed	19 January 1722, by John Wilson, Commissary Depute, and John [Stevenson?], Commissary Clerk, at Glasgow.
Caution	Bond of caution by James Fleming, [son lawful?] of Patrick Fleming of Barrochan, signed at Barrochan 13 January 1722.
Not transcribed	The top of 681 (the end of the testament of Marion Reid, with a bond of caution by John Bryce) and the middle and foot of 683 (a ratification for Margaret Stirling, executrix of Robert Wotherspoon, maltman in Glasgow, and a bond of caution by James Wotherspoon) belong to other estates.

1. Is she the Earl of Wigtown's daughter Lilias Fleming?

The testament gives no support for that identification, and several points count against it. I would treat her as a different Lilias unless other evidence connects them.

- **Her family is given as the Flemings of Barrochan.** Her brother is Patrick Fleming of Barrochan (the assignation of 1705 calls him "her brother german"), and her nephew William Fleming succeeded to Barrochan. Barrochan is in Killellan (Kilellan) parish, Renfrewshire. Nothing in the text mentions Cumbernauld, the Earl of Wigtown, Lord Fleming, or any Fleming title.
- **Her husband.** She is "relict of John Napier, merchant in Glasgow". You say the Earl's daughter married Richard Story, a customs officer. This testament says nothing of a Story marriage; it would require a remarriage to Story and a later, third description as Napier's relict, which is unlikely, and in that case she would normally be styled by her last husband.
- **Her relatives named.** Sir John Houstoun of that Ilk (Houston), an assignee in 1705 and a trustee for her and Patrick; her aunt, another Lilias Fleming, "sister german to Patrick Fleming of Barrochan", who held bonds from Robert Kerr of Kersland in 1659–1666 (so an earlier Patrick Fleming of Barrochan, probably the deceased's grandfather or uncle, is meant); and her sister Margaret Fleming, whose testament was confirmed in 1697 and which carried the aunt's bonds.
- **Age.** The aunt was already contracting in 1659, so the deceased was probably born in the 1640s–1660s. The Earl's daughter (the 3rd Earl was born in 1647, so his daughter would be a generation later) would be younger than the deceased's aunt's generation; a Lilias who is niece of a woman active in 1659 sits more naturally in the Barrochan family.

Suggested checks: the Barrochan Fleming pedigree (Renfrewshire Flemings); Glasgow burgess and merchant records for John Napier; Kilellan parish registers; and the Register of Sasines for the 1705 assignation.

2. Summary

- **Form.** A testament dative and inventar of the debts and sums of money owing to the two deceased, given up by William Fleming of Barrochan, who had been appointed executor dative by the Commissar of Glasgow on 4 January 1722, seven years after both deaths.
- **Basis of the claim.** An assignation dated 17 [?] November 1705 by Lilias Fleming of all debts owing to her, in favour of Sir John Houstoun of that Ilk and Patrick Fleming of Barrochan her brother german; Sir John's declaration of trust of the same date that the assignation was for the use of Patrick and Lilias; and a translation (transfer) by Lilias to Patrick, dated 8 March 1712, and a further translation by Patrick to his son William Fleming, dated 31 January 1715.
- **Estate.** No goods, plenishing or money are listed: the inventory is solely of debts due, namely five bonds granted by Robert Kerr of Kersland to the aunt Lilias Fleming (1659, 1659, 1663, 1666, 1666). The sums of those bonds were previously included in the testament dative of Margaret Fleming, sister and executrix of the aunt, confirmed by the Lilias who is now the deceased, and decree and confirmation conform on 9 January 1697. The bonds are now brought in again.
- **Totals.** The summa of the inventar is read as j^m [ie?] … li, but I could not read it with confidence. No debts owed by the deceased are entered.
- **Legatees.** None; it is a dative testament.
- **Confirmation.** Granted 19 January 1722 by John Wilson, Commissary Depute, and John [Stevenson?], clerk, at Glasgow, on the bond of caution given by James Fleming, [son lawful?] of Patrick Fleming of Barrochan, presented by Robert Sprent [?], writer in Glasgow, as procurator; witnesses Alexander Morison [?] and Andrew Smith, servitors to William Fleming of Barrochan; the bond was subscribed by James Fleming and Wm Fleming.

3. Contents and values

Sums are Scots money, given as read. Roman numerals: j^m = 1000, C = 100. Because the numerals could not be read with confidence, the values are provisional.

Bond	Date	Principal [as read]	Penalty [as read]
1st	12 May 1659	[j^m] CCCiij [?] li vj s viij d [?]	CCvj li C iij s iiij d [?]
2nd	12 May 1659 (replacing a struck-through date of 22 Aug 1663)	C L viij [?] li	C li [?]
3rd	22 August 1663	[j^m?] CCC li	CC li
4th	27 February 1666	[j^m?] CC vj li C iij s … d [?]	CC iij li vij s viij d [?]
5th	27 February 1666	viij [m?] vj li … [?]	[illegible]
Summa of the Inventar		Jaj iv CCCj li vi s ij d 4,301/6/2	—

Debtor in all: Robert Kerr of Kersland. Creditor: the aunt Lilias Fleming. Debts owing by the deceased: none.

Can you comment on why the Testament is recorded in 1722 if she died in 1715?

The 1722 date is when the record was made, not when she died. The record itself shows the main reason, and the rest is general background that I can't confirm from the text.

What the record says

- The heading calls this a testament dative, which means no executor had been named before her death. An executor had to be appointed by the Commissary Court.
- William Fleming of Barrochan was appointed executor dative "to the respective defuncts" by a decreet dated 4 January 1722, and the testament was confirmed on 19 January 1722.
- Her brother Patrick died in the next month, February 1715. The same inventory covers both estates, and William is Patrick's son, so this one grant settled both.
- The estate is only old debts, five bonds from Robert Kerr of Kersland to her aunt, dated 1659–1666. They had been left out of her sister Margaret's 1697 testament, and Lilias herself confirmed that earlier testament. They are brought in again as omitted estate, which is why the heading speaks of "corroboration and farder falsification" of the assignation and translations.
- The chain of papers (the 1705 assignation, the 1712 translation and the 1715 translation) was apparently put in order for this confirmation.

Why it was done seven years late

- Debts of this age are the usual reason. Nobody in the family would have needed a confirmed testament until someone tried to recover them. Confirmation gave the executor the legal title to sue the debtors and to give them a valid discharge.
- A court record of her death and of the executor's right to the debts helps establish a claim against the debtors' estate. The text doesn't say whether this was the purpose, so that is a guess.
- 1715 was also the year of the Jacobite rising. Disruption may have played a part, but the testament doesn't mention it.

If you can find Robert Kerr of Kersland's own papers, or the Court of Session or Register of Deeds entries for these bonds, they should show why the Flemings moved in 1722. A Kerr heir's death or a pending sale of Kersland are possible triggers.

4. Images and transcription

Image 681 – The heading and start of the inventory (lower half)

1722 Fleming, Lillias (Wills and testaments Reference CC9/7/51, Glasgow Commissary Court) Image 681 Last image 683
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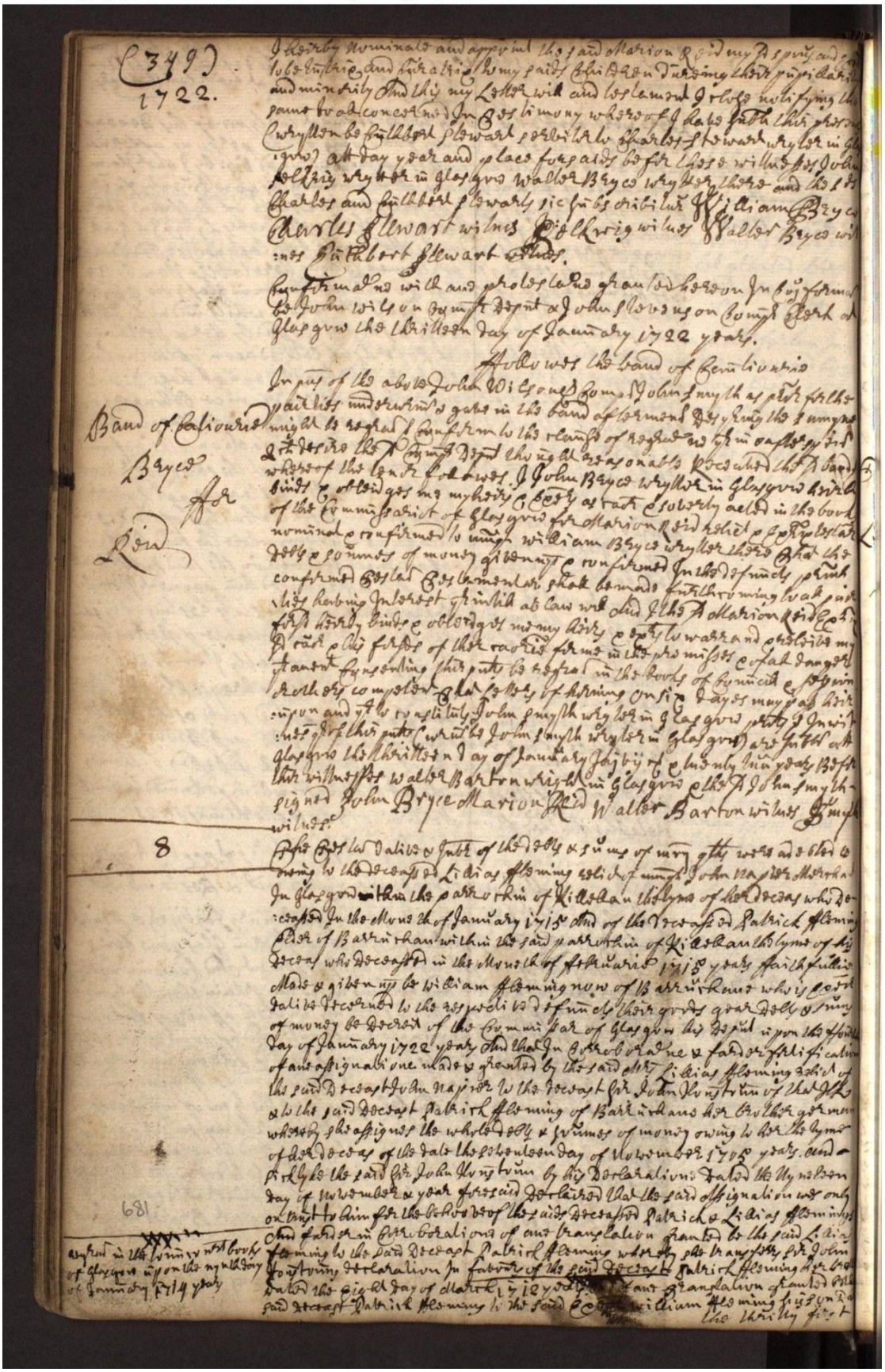


Image: ScotlandsPeople / National Records of Scotland (CC8/8/1) – reproduced for private research.

Transcription

[Top and upper half of the page: the end of the testament of Marion Reid, and a bond of caution by John Bryce – not transcribed]
[Margin:] 8

The Testament dative & Inventar of the debts & sums of money qlk were addebted & owing to the deceast Lilias Fleming relict of umqll John Napier Merchand in Glasgow within the parochin of Killellan the tyme of her deceas who de-ceasted in the Moneth of January 1715 and of the deceast Patrick Fleming elder of Barruchan within the said parochin of Killellan the tyme of his deceas who deceasted in the Moneth of Februarie 1715 years faithfullie Made & given up be William Fleming now of Barruchane who is Exr dative decerned to the respective defuncts their goods geir debts & sums of money be Decreet of the Commissar of Glasgow bearing date upon the fourth day of January 1722 years And that in Corroboratione & farder falsification of ane assignatione made & granted by the said Mrs Lilias Fleming relict of the said deceast John Napier to the deceast Sir John Houstoun of that Ilk & to the said deceast Patrick Fleming of Barruchane her brother german whereby she assignes the whole debts & sums of money owing to her the tyme of her deceas of the date the [seventeenth?] day of November 1705 years. And a-lsolyke the said Sir John Houstoun by his Declaration dated the [Nynteen?] day of November & year foresaid declared that the said Assignation was only on trust to him for the behove of the said deceast Patrick & Lilias Flemings And farder in Corroboratione of ane Translation granted by the said Lilias Fleming to the said deceast Patrick Fleming whereby she transfers Sir John Houstoun's Declaration in favours of the said deceast Patrick Fleming her bro-ther dated the eight day of March 1712 years [and] ane Translation granted by the said deceast Patrick Fleming to the said [Wm] William Fleming his sone dated the thirty first
[Margin, lower left:] [Registrat?] in the Town's [wast?] books of Glasgow upon the [..]th day of January 1714 years

Image 682 – The inventar: bonds by Robert Kerr of Kersland; summa; confirmation

1722 Fleming, Lillias (Wills and testaments Reference CC9/7/51, Glasgow Commissary Court) Image 682 Last image 683
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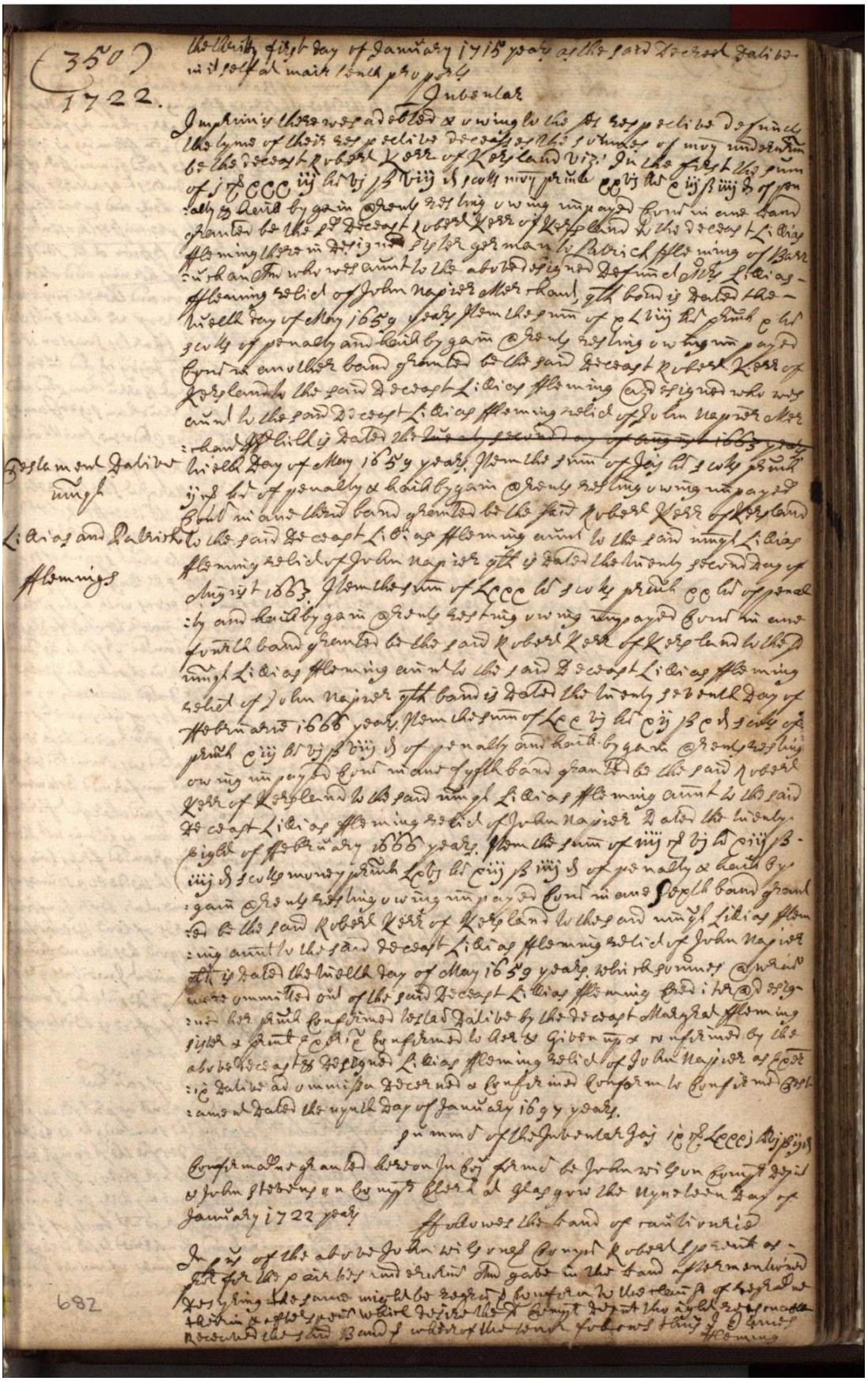


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Transcription

[Margin:] Testament Dative / [illegible] / Lilias and Patrick / Flemings

the thirty first day of January 1715 years as the said deceast Lilias
in it self at mair length proports
Inventar
Imprimis there was addebted & owing to the [ ] respective defuncts
the tyme of their respective decease the sumes of money underwritten
be the deceast Robert Kerr of Kerslland viz In the first the sum
of j^m CCC [iij?] li vj sh viij d scots money principall CC vj li C iij sh iiij d of pe[n]-
alty & heall by gain [and] ordinarie [..] owing unpayed contenit in ane band
granted be the sd deceast Robert Kerr of Kerslland to the deceast Lilias
Fleming therein designed sister german to Patrick Fleming of Barr-
uchane who was aunt to the above designed Defunct Mrs Lilias
Fleming relict of John Napier Merchant, qlk band is dated the
twelth day of May 1659 years Item the sum of C L viij the [..] C li
scots of penalty and heall by gain [and] ordinarie [..] owing unpayed
contenit in another band granted be the said deceast Robert Kerr of
Kerslland to the said deceast Lilias Fleming [aforesaid] who was
aunt to the said deceast Lilias Fleming relict of John Napier Mer-
chant [qlk] is dated the [twenty second day of August 1663 years - struck through]
twelth Day of May 1659 years. Item the sum of [..] li scots [pri]nll
[..] li of penalty & heall by gain [and] ordinarie [..] owing unpayed
Contenit in the third band granted be the said Robert Kerr of Kerslland
to the said deceast Lilias Fleming aunt to the said umqll Lilias
Fleming relict of John Napier qlk is dated the twenty second day of
August 1663. Item the sum of [j^m?] CCC li scots prinll CC li of penal-
ty and heall by gain [and] ordinarie [..] owing unpayed Contenit in ane
fourth band granted be the said Robert Kerr of Kerslland to the said
umqll Lilias Fleming aunt to the said deceast Lilias Fleming
relict of John Napier qlk band is dated the twenty seventh Day of
Februarie 1666 years. Item the sum of [j^m?] CC [vj?] li C iij sh [..] d scots of
prinll C iij li vij sh viij d of penalty and heall by gain [and] ordinarie [..]
owing unpayed Contenit in ane fyfth band granted be the said Robert
Kerr of Kerslland to the said umqll Lilias Fleming aunt to the said
deceast Lilias Fleming relict of John Napier Dated the twenty
eight of Februarie 1666 years. Item the sum of [viij m?] [vj?] li [..] sh
[..] d scots money prinll [..] li [..] sh [..] d of penalty & heall by
gain [and] ordinarie [..] owing unpayed Contenit in ane sixth band grant-
ed be the said Robert Kerr of Kerslland to the said umqll Lilias Flem-
ing aunt to the said deceast Lilias Fleming relict of John Napier
qlk is dated the twelth day of May 1659 years. Which sumes [and]
were omitted out of the said deceast Lilias Fleming [her] [and] desig-
ned her [first] confirmed testament dative by the deceast Margaret Fleming
sister & [Execx] confermed to her & given up & renfirmed by the
above deceast [&] designed Lilias Fleming relict of John Napier as Exr
dative ad omissa Decerned & Confirmed Conform to Confirmed Test-
ament dated the nynth day of January 1697 years.
Summa of the Inventar is j^m [ie?] L CCCj [..] [sh?] [..] [d?]
Confirmation granted hereon In Common form be John Wilson Comnr Depute
& John Stevenson Comnr Clerk at Glasgow the Nynteen Day of
January 1722 years

Followes the band of cautionrie
In presence of the above John Wilson Comnr Robert Sprent as peticr for the pairtie
under named & gave in the band aftermentioned Desyring the same might be Regrat &
Confirm to the clause of Regrat[ion] in the said Comnr Court and the said Comnr Depute thought
reasonable Recorded the sd Band qrof the tenor follows thus I James
Fleming

Image 683 – Bond of caution by James Fleming, 13 January 1722

1722 Fleming, Lillias (Wills and testaments Reference CC9/7/51, Glasgow Commissary Court) Image 683 Last image 683
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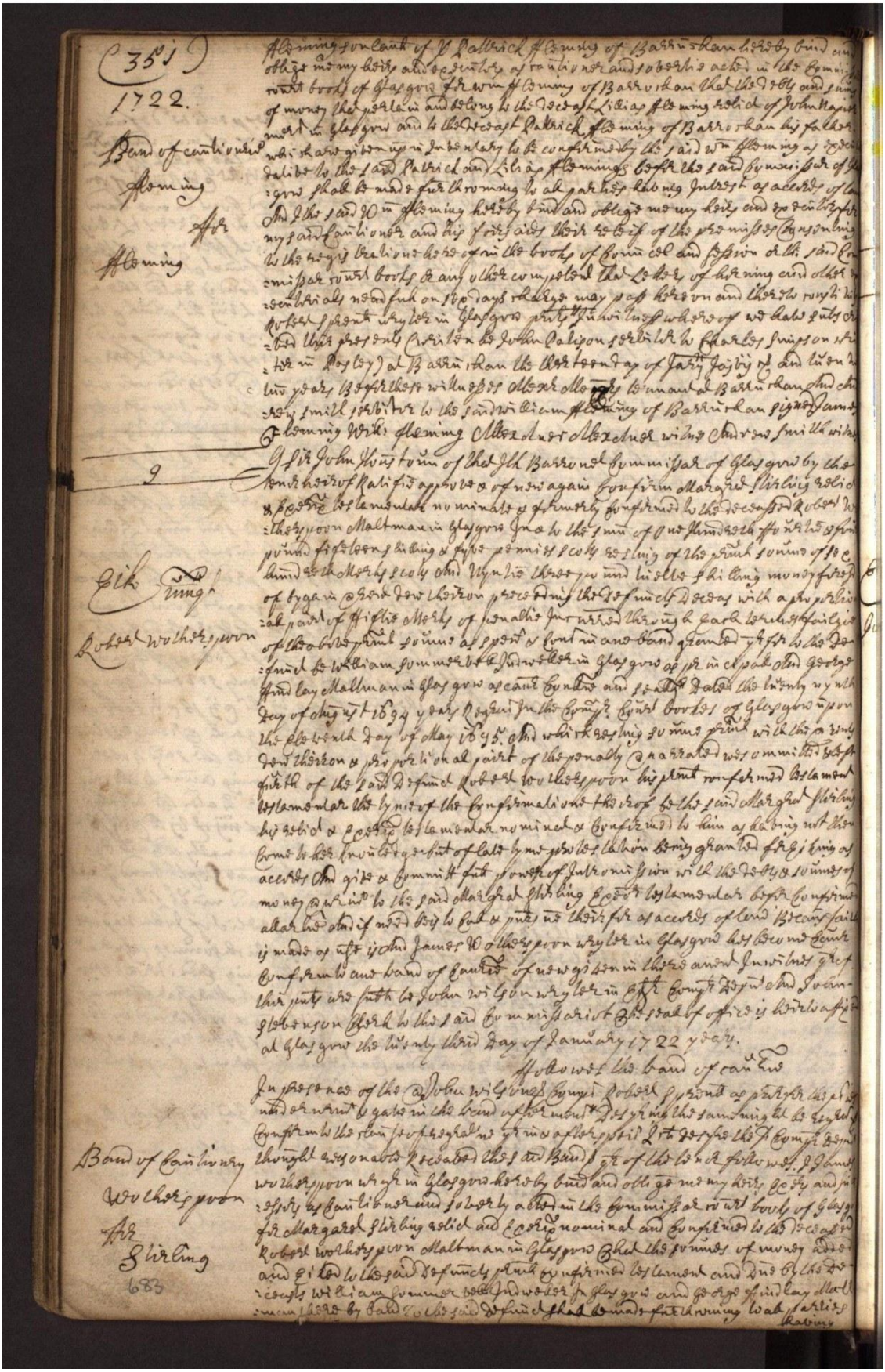


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Transcription

Fleming sone [laull?] of ye Patrick Fleming of Barruchane hereby bind and
oblige me my heirs and executors as cautioner and sovertie acted in the Commissr
court books of Glasgow for Wm Fleming of Barruchan that the debts and sums
of money that pertain and belong to the deceast Lilias Fleming relict of John Napier
merct in Glasgow and to the deceast Patrick Fleming of Barruchan his father
which are given up in Inventary to be confirmed by the said Wm Fleming as Execr
dative to the said Patrick and Lilias Flemings before the said Comnr of Glas-
gow shall be made furthcoming to all parties having Interest as accords of law
And the said Wm Fleming hereby binds and obliges me my heirs and executors for
my said cautioner and his foresaids their releif of the premisses Consenting
to the registratione hereof in the books of Councill and Session or the said Com-
missar court books & any other Competent that Letters of horning and other ex-
ecutorials needfull on six days charge may pass hereon and thereto Constitute
Robert Sprent wryter in Glasgow pror In witness whereof we have subscri-
bed these presents (written be John Alison servitor to Charles Simpson wri-
ter in Paisley) at Barruchan the thirteen day of Jany Jajvijc and tuen[ty]
two years Before these witnesses Alexr Morison [?] servt at Barruchan and Andrew
Smith servitor to the said William Fleming of Barruchan signed James
Fleming Wm Fleming Alexr Alexr witnes Andrew Smith witnes
[Below this the page continues with a ratification and bond of caution for Margaret Stirling,
relict of Robert Wotherspoon, maltman in Glasgow – not transcribed]

5. Readings to check

- All Roman-numeral sums in the five bonds and the Summa on 682, and the month-day of the 1705 assignation (read 17 November) and of Sir John Houstoun's declaration.
- The words after "James Fleming" on 682/683 (read "sone [lawful?] of … Patrick Fleming"): whether James is William's brother.
- The identity of the aunt Lilias and of the Patrick Fleming of Barrochan of whom she was sister (an earlier laird).
- Whether the 1697 testament dative of Margaret Fleming (her sister) can be found, as it would name the family further.