

1783. June 17. MRS JEAN DONALDSON *against* JAMES HAY of SEGGIEDEN and his TUTORS.

HUSBAND AND WIFE.

Found that the sums due to the Child of a Minister, under the Act establishing a Fund for their Widows and Children, though declared by the Act not to be arrestable, do yet fall under the *jus mariti*, and may be attached for Debts of the Husband of such Child.

[*Fac. Coll. IX.* 168; *Dict.* 5949.]

GARDENSTON. Suppose that, instead of this sum provided by statute to the minister's children, there had been a bond simply alimentary: is it possible to suppose that an alimentary bond would not have gone, *jure mariti*, to the husband, whose duty it is to aliment?

HAILES. The pursuer misunderstands the meaning of the Act of Parliament. It is said that this provision shall not be arrestable; that is, that it shall not be arrestable in the hands of the Collector of the Widows' Fund, which is saying, in other words, that the Collector shall not be put under the necessity of bringing a multiplepointing on every competition of arresters. After the money is once paid to the minister's children, I do not see how the money can continue not affectable by arrestment; for how can that money be distinguished from any other? But, granting it to be incapable of being *arrested*, it is still *assignable*, and so the statute says; and marriage, no doubt, is a legal assignation. As to the objection, that the money was not exigible till after the time at which the husband died, there is nothing in it; for the money was due, and so fell under the *jus mariti*. And the argument proves too much; for it follows from it, that, if Mrs Jean Donaldson had died before the money became exigible, it would have been lost to her heirs; which is just the reverse of what the statute intended.

SWINTON doubted, from some refined interpretation of the statute.

On the 17th June 1783, "The Lords found that the ann and the money due by the Trustees of the Widows' Fund to the pursuer fell under her husband's *jus mariti*; and that the defender is not accountable for those, except so far as may extend to the interest due on the balance of the pursuer's tocher."

Act. A. Ferguson. *Alt.* G. Ferguson.

Reporter, Hailes.