

stration executed deeds with intention to defraud his wife of her legal interest, such deeds would be declared null and void.

Every deed fell under this rule, where it could be proved it was done with a design to deprive the widow of her share. The circumstances, in the present case, were strong, and sufficiently indicated the design in view. Independent of those already mentioned, the deed itself contained a clause, expressly declaring that it should take place of any claim the defender might have; and as the pursuers were the grantor's natural heirs, the deed had evidently been made for no other purpose than to defeat the defender's legal right. Dirleton's Doubts, *voce* JUS RELICTÆ. Thomson *contra* Creditors of Thin, No 141. p. 5939.; 10th January 1679, Grant *contra* Grant, No 142. p. 5943.; Fac. Col. 26th June 1760, Campbells *contra* Campbell, No 145. p. 5944.

The Judges rested their opinion upon its appearing to be the intention of this bond to disappoint the wife; and therefore 'found, that the sum due in the bond cannot affect or impair the relict's share of her husband's moveables.'

Upon advising a reclaiming petition and answers, the COURT unanimously adhered; there being a strong appearance, as well from the circumstances as from the terms of the deed, of a design to defraud the wife.

For Sorlies, *D. Graeme*.
Lord Ordinary, *Pitfour*.

For Robertson, *D. Smith*.
Clerk, *Gibson*.

R. H.

Fac. Col. No 114. p. 338.

1783. June 17.

JEAN DONALDSON *against* JAMES HAY.

MR DONALDSON, minister at Glamis, died in September 1779, leaving one daughter, who was married to Mr Hay.

Mr Hay died in March 1781; when a question arose, whether the sums due to his wife, as the child of a minister, in consequence of the statute 17 Geo. II. c. 11. had fallen under his *jus mariti*.

The merits of this question depended on the construction of the following clauses.

'And be it enacted, by the authority aforesaid, That the payments herein after directed shall be made to the children or widows respectively named in the warrants; if the persons so named are majors, and to the tutors of such of them as are minors; and if they have no tutors or curators, to such person or persons as shall be authorised for that purpose by an act of the presbytery or university respectively, of which the person under whom the provision is claimed was last a member.'

'And be it enacted, &c. That the foresaid annuities payable to the widows, and the provisions payable to the children of the aforesaid ministers of the Church of Scotland, and of the heads, principals, and masters of the aforesaid

No 148.

Found, that the sums due to the child of a minister, under the act establishing a fund for their widows and children, tho' declared by the act not to be arrestable, do yet fall under the *jus mariti*, and may be attachable for debts of the husband of such child.

No 148.

universities, shall not be liable to any arrestment, but shall be paid to the widows and children themselves, or to their tutors or curators, or trustees aforesaid, or to their executors, administrators, or assignees, any law or usage to the contrary notwithstanding;

‘And be it enacted, &c. That the provisions to the children of ministers, &c. falling due in consequence of the death of their respective fathers, or of the death or marriage of the widows of their said fathers, in any one year, computed from the 22d day of November in the year following, shall be payable on the 13th of August thereafter, in the manner herein after mentioned.’

Pleaded for Mrs Hay the relict; *imo*, It was the intention of the Legislature by this statute to secure to the widows and children of ministers a fund of a personal and alimentary nature. As care has been taken that it should not be attachable for their debts, it would be highly incongruous, that by falling under the *jus mariti*, it should become attachable for those of their husbands.

2do, In terms of this statute, the period of Mr Donaldson’s death must be held to have been the 22d of November 1780. The provision, therefore, to his daughter was not exigible till the 13th of August 1781. Of course, Mr Hay, her husband, having died in March 1781, the money due from this fund never vested in his person *jure mariti*.

Answered, imo, A husband being the legal curator of his wife, and marriage a legal assignment of her personal estate, the sums due to the children of ministers, which are exigible by their tutors and curators, and transmissible by assignation, must belong to the husbands of such as are married.

Nor do the consequences supposed to flow from this doctrine tend to any thing absurd or irrational. While the persons who are the objects of this enactment remained unmarried, it was exceedingly proper that what was intended for their subsistence should be unattachable by their creditors. But as by marriage, a claim of aliment of a more permanent, and generally of a more beneficial nature, arises in their favour, the restriction formerly affecting this species of property was no longer necessary.

2do, The sums now in dispute, although not exigible till August 1781, became due to Mrs Hay the moment her father died.

THE LORDS found, ‘That the sums due to Mrs Hay, as the daughter of a minister, had fallen under the *jus mariti* of her husband.’

Lord Reporter, *Halles*.

Act. *Crosbie, Geo. Fergusson, Alex. Fergusson.*

Alt. *Nairn, Sir John Ramsay.*

Clerk, *Robertson.*

C.

Fol. Dic. v. 3. p. 279. Fac. Col. No 106. p. 168.