

1791. May 19. JEAN MACKENZIE *against* WILLIAM MORISON.

MR MORISON, a minister of the established church, having, in the year 1776, incurred an arrear of L. 40 to the collector of the fund, provided by act 17th Geo. II. for the support of the widows and children of ministers, it was discharged by his son William Morison, upon getting an assignment from the collector. The son, at the same time, in recompence of the risk he was supposed to come under, obtained from Jean Mackenzie, his father's wife, who was his step-mother, a deed conveying for ever to him, one half of the annuity to become due to her, after the death of her husband. The annuity amounted to L. 25 *per annum*.

Mr Morison senior, who was nearly of the same age with his wife, died in 1777, having run still farther in arrear. It was not till 1781 that it was cleared off out of the annuities due to the widow, which were retained by the collector.

In 1790, the sum of L. 40, advanced by William Morison, with the interest upon it, was also paid up.

Mrs Mackenzie, the widow, having then insisted that she should be at liberty to levy the whole of her annuity, notwithstanding the assignment, the question arose, how far the sums due in virtue of the statute of his late Majesty, could be assigned? For William Morison, it was

Pleaded; It had been provided, by act 17th Geo. II, that the sums thereby due to the widows and children of the established clergy, shall not be arrested; but from thence it does not follow, that they may not be transferred by a voluntary or onerous deed. In the same manner, the sums due by bills of exchange, though not affectable by arrestment, may be transferred by assignment. The reason of the exclusion is different in the two cases, the advantage of trade in the one, and the favour intended to the families of the national clergy in the other, having made way for an exception from the general rule: But as it would be injurious to commerce if bills of exchange could only be transmitted from one person to another by indorsation, so it would be no less inconsistent with the intention of the legislature, if onerous and voluntary bargains respecting these statutory provisions, made by the widows or children of clergymen, were to be altogether restrained.

Of that nature was the deed in question; the risk undertaken by the assignee in paying the arrears due by his father, on the chance of his mother-in-law's surviving him being very great. The words, however, of the statute, appear to put an end to all dispute, it being declared, that the foresaid annuities, &c. 'shall not be liable to any arrestment, but shall be paid to the children or widows themselves, or their executors, administrators, and assigns.' It is to be noticed, too, that as a minister is only obliged to pay such a yearly rate as intitles his widow to an annuity of L. 12, every addition must be considered as voluntarily purchased by him, and therefore ought to be governed by the ordinary rules of law.

No 90.

Annuities due to the widow of a Scots clergyman, in virtue of the act 17th Geo. II. c. 11. cannot, before the term of payment, be transferred for any cause whatever.

No 90.

Answered; As the provision made by the act in the late reign for the families of the clergy, cannot be attached by legal diligence, it would be singular if the purpose of the legislature could be entirely frustrated by the rash and improvident deeds of the parties themselves. On this head, however, no particular regulation was necessary, the general rule in Scotland, with regard to alimentary rights, being, agreeably to the Roman law, that they cannot, before the term of payment, be assigned, or conveyed away, by any deed, whether onerous or gratuitous. So the law is laid down by all our authors, ancient and modern; and the propriety of it is evinced by the circumstances of the present case.

It was not necessary, for securing the annuity due to the widow, that the arrears should be paid in the manner here followed, the collector having been authorised to levy as much of the stipend as might be necessary for the purpose. The whole transaction, therefore, ought to be considered as a *donatio inter virum et uxorem*, which at any time may be revoked. The extent of the annuity, it is to be farther remarked, cannot have any influence, the legislature having made no distinction; and as to the expression of assigns, occurring in the statute, and joined to those of administrators and executors, it is to be considered as relating to deeds with regard to aliments already due; L. 8. D. *De Transactionibus*; Voët. lib. 2. tit. 15. § 14.; Dirleton, *voce* ALIMENT; Craig, lib. 1. dieg. 15. § 7.; Stair, b. 3. tit. 1. § 2.; Bankton, b. 1. tit. 6. § 14. b. 3. tit. 1. § 19.; Erskine, b. 3. tit. 5. § 2.; Dictionary, *voce* ANNAT, and *supra*, b. t.; 22d December 1676, Dick, No 67. p. 10387.; 15th December 1738, Urquhart, No 82. p. 10403.

The Lord Ordinary, 'in respect of the circumstances of the case,' determined the cause in favour of Mr Morison.

A reclaiming petition was preferred by the widow, which was followed with answers.

The Court appointed memorials to be given in on the point, 'how far the annuities due to the widows of ministers, might be assigned.'

And this having been done,

THE LORDS altered the judgement pronounced by the Lord Ordinary; thus determining the general point, that the funds secured to the families of ministers, by act 17th Geo. II. cannot, before the term of payment, be transferred for any cause whatever.

Ordinary, *Lord Ankerville.* Act. *Elphinstone.* Alt. *Honeyman.* Clerk, *Heme.*

Fol. Dic. v. 4. p. 76. Fac. Col. No 180. p. 365.

* * * See Halliday against Mackaile, 23d February 1773, No 58. p. 729. where the rents of the booths in the outer Parliament-house, which constituted part of the emoluments of the keepers of the Parliament-house, were not held to be of an alimentary nature, so as to exempt them from arrestment.