No 328.
falling under a ratification although, if reducible, not legally made.

that he could not quarrel the same, because his father, to whom he is heir, and the other brethren and sisters of the defunct, had approved whatsoever testament, legacy, or disposition, made, or to be made, by the defunct, of her goods and gear, debts and sums of money, and others whatsoever, that she had, or should have the time of her decease; so that she having made this disposition, he cannot quarrel the same. The pursuer *answered*; 1*mo*, That the ratification in the terms foresaid could not be extended to lands or annualrents constituted by infeftment, there being no mention of lands, annualrents, or heritage therein. 2*dly*, It could not be extended to any disposition, but legally made, and therefore not to dispositions on death-bed. The defender *answered*, That the ratification bearing expressly sums of money, did comprehend all sums, although infeftment of annualrent were granted for security thereof, which being but accessory to the sum, follows the same. 2*dly*, There could be no other effect of the ratification, if it were not to exclude the heir from quarrelling thereof, as being *in lecto*, for if the same was made by the defunct in her *liege poustie*, it were valid and unquarellable in itself; and albeit it bear not mention of death-bed, yet it expresses disposition of all goods she should happen to have the time of her death; so that if she had acquired rights after her sickness contracted, she might dispone the same validly by this ratification, and yet behoved to be on death-bed.

The Lords found this ratification not to extend to sums whereupon infeftment of annualrent followed, which was carried but by one vote, and so they came not to the second point.

Stair, *v.* 1. *p.* 416.

1729. *January.* Alves *against* Brown.

No 329.

Andrew Alves, indorsee to a bill of exchange, drawn by Scot of Harden upon, and accepted by, one Brown, having charged for the sum, the accepter obtained suspension, upon this ground, that the bill was accepted by him as the grassum of a tack, which Harden had agreed to set to him of certain lands, and which tack Harden refused to implement, having set the lands to another, and therefore the bill was void, *causa data, causa non secuta*; that there was a legal presumption that Alves the indorsee was in the knowledge of this fact, being Harden's factor at the time, overseer of all his affairs, an especial branch of which was setting of tacks, and overlooking the tenants; so that, *esto* he were an onerous indorsee, he is not presumed to have *bona fides*. The same objections were found competent against Alves the indorsee which would have been relevant against Harden. See Appendix.

Fol. Dic. v. 2. *p.* 165.