

No 327.

A minor having raised reduction of a bond, which bore expressly, that he was major, it was found, that the bond was not reducible, unless he could prove that the creditor knew he was a minor, or induced him to insert the clause.

1665. February 23.

KENNEDY against WEIR.

KENNEDY of Auchtifardel having charged William Weir upon a bond of 300 merks, he suspends, and raises reduction, upon minority and lesion. The charger *answered*, Minority takes no place where the minor is *in dolo*, as *si minor se esse majorem dixerit*; but, in this bond, the suspender expressly acknowledged himself to be then major. The suspender *answered*, That *eadem facilitate* that he was induced to subscribe the bond, he might be induced to insert that clause; which therefore cannot prove, unless it were otherwise proved, that he did induce the charger to lend him money on that ground.

THE LORDS found his acknowledgement in the bond was sufficient, unless he instructed that he was induced to insert that clause, not on his own motion, or that the charger knew that he was minor, or was obliged to know the same, by his being tutor or curator, or might have visibly known the same by the sight of his age; and thought it not reasonable to put it to the debtor's oath, to dis-appoint the creditor.

Fol. Dic. v. 2. p. 165. Stair, v. 1. p. 274.

* * * Gilmour reports this case:

WILLIAM WEIR of Clarkston being charged at the instance of William Kennedy of Auchtifardel, for payment of a sum of money contained in his bond, suspends upon a reason of minority and lesion. To which it was *answered*, That he cannot be heard to object minority, because, in the bond, he acknowledges himself to be major, and, by the law in such cases, restitution is not competent, *quia minoribus deceptis non decipientibus jura subveniunt*. *Replied*, That *eadem facilitate* he was induced to subscribe the acknowledgement, as he was to subscribe the bond; neither can the acknowledgement operate in favour of the charger, who was tutor or curator to the suspender, and consequently obliged to have known or tried his age. Likeas, there is a clause in the bond obliging the suspender not to revoke the bond upon any ground whatsoever; and there can be no imaginable ground beside minority and lesion; which clearly evinceth, that the charger has conceived the suspender to be minor, when he took him so obliged.

THE LORDS repelled the answer, in respect of the reply.

Gilmour, No. 139. p. 101.

No 328.

Debated whether a disposition under reduction as *in lecto* was to be held as

1666. December 21.

CORSTORPHIN against MARTINS.

JAMES CORSTORPHIN pursues a reduction of a disposition made by his father's sister *in lecto*. It was *alleged* by Martins, to whom the disposition was 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*; *imo*, 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. *2dly*, 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. *2dly*, 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 unquarrellable 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 dispoñe the same validly by this ratification, and yet behoved to be on death-bed.

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

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 acceptor 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.