

1769, December 13. ALVES against ALVES.

WILLIAM ALVES, doctor of medicine, son to Andrew Alves, writer to the signet, being desirous of sending a sum of money to his father and aunt from the East Indies, where he was settled, bought a bill for L.200, drawn upon London, of which he transmitted four duplicates, in as many different letters, of date 27th and 29th December 1759, 8th February and 5th March 1760.

By subsequent letters, the Doctor's intention appeared to have been that L.150 of the money should go to his father, and L.50 to Henrietta Alves, his aunt, wife to Richard Cockburn of Clerkington.

Andrew Alves died on the 23d of January 1760, long before the first duplicate arrived; and, upon hearing of his father's death, Dr Alves wrote to Richard Cockburn, that, after paying the L.50 to Mrs Cockburn, he might dispose of the remainder as he pleased.

Meanwhile the bill came into the hands of Alexander Gray, writer to the signet, the husband of Margaret Alves, sister to the Doctor, who immediately sent it to London, and obtained payment, after procuring letters of administration in favour of his wife, as executor to her father.

Dr Alves died in April 1762, leaving his whole effects to Henrietta Alves, his aunt, who brought an action against Mr and Mrs Gray, for payment of the L.150.

*Pleaded* in defence; The bill was indorsed to Andrew Alves upon the 27th of December 1759, some weeks before his death. Its contents, therefore, were transferred to him during his life, as effectually as by an intimated assignation, and, of consequence, were *in bonis* of him at his death. The indorsation carried right to the value in the hands of the person drawn upon; and, even supposing him not to have had money of the drawer's in his hands, it carried the action of recourse against the drawer.

And, though it should be supposed to have been competent to the Doctor to recall the bill at any time before it was actually delivered into his father's hands, yet that was *naturally* impossible the moment the ship set sail; and, at any rate, the right of Andrew Alves must be deemed complete, since no such step was taken during his life.

Some of the Roman lawyers have held, that donations are incomplete until they be followed by a formal acceptance. But this subtlety has not been received with us. Lord Bankton, l. 9. 9. says, "a donation may become effectual without acceptance;" and Sir James Stewart, *v. Donatio non acceptata*, "If a donation be made and not repudiated, it is thought it will be held as accepted; so as if a creditor should affect it, the donatar could not thereafter repudiate the same."

*Answered*; It is a point established in the Roman law, that a donation cannot become effectual until it is known to the donee, and accepted of by him;

No 37.  
A donation to a person abroad found to fall by the donee's death, before it came to hand.

No 37.

*L. 55. D. De Oblig. et Act. L. 10. D. De Donat. See also Voet ad d. tit. num. 11.; Perez. ad d. tit. C. § 23.; Sande dec. Fris. l. 5. tit. 1. def. 1.*

Nor is this rule rejected by the law of Scotland: The quotation from Lord Bankton does not prove the defender's doctrine; for, taking the whole passage together, the meaning is clear, that donations do not become effectual without acceptance, unless in the special case where delivery is made to a third party for behoof of the donee.

The authority of Sir James Stewart is still less applicable. He does not say, that a donation is effectual without acceptance; but, in treating of the nature of implied acceptance, he lays it down that a donee who does not repudiate, is held to accept, which must proceed upon the supposition that the donee is in the knowledge of the gift, else he can neither repudiate nor accept.

In the present case, there was no delivery to the donee, or to a third party for his behoof. The bill therefore remained in the power of Dr Alves, who was intitled to dispose of it in his last will, or otherwise. Indeed it was the duty of the bearer of the letter to have restored it to the Doctor, when he found that his father was dead; and his accidentally or improperly giving it out of his hand, cannot make any alteration upon the matter of right.

“THE LORDS, in respect that Andrew Alves died within a few weeks after the bill was indorsed; and sent to him from Calcutta in the East Indies, and that thereby the said bill was never received by Andrew Alves in his lifetime, and that the indorsation appears to have been intended as a present, and that Dr Alves, after hearing of his father's death, by his letters to Richard Cockburn, his factor, desires him to receive the money due by the said bill, find that the money due by said bill belongs to the pursuer as executor to Dr Alves.”

*A. E.*

*Act. Solicitor Dundas.*

*Alt. Wight.*

*Reporter, Kennet.*

*Fac. Col. No 105. p. 363.*

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## S E C T. VII.

A final Settlement frustrated in some particulars, how far effectual as to the remainder.

No 38.

A person  
disponed  
his whole

1671. February 1.

PRINGLE *against* PRINGLE.

PRINGLE of Soutray having only three daughters, does in his testament, done upon death-bed, dispone his whole lands to his eldest daughter, and constitute