up certain things in respect of the mother having agreed to make over to her daughters certain sums of money on the conditions stated in the deed; and I concur with your Lordships in holding that that deed is not a revocable deed at the instance of the creditors of the husband.

Lord Shand—The transfer of this stock, which as we know from other cases was prepared in the bank itself, bears that the stock was conveyed by the executrices *qua* next-of-kin of the late James Thomson in favour of Christina Breckenridge Thomson or Forbes, exclusive of the *jus mariti* and right of administration of her husband, or any future husband she might marry; and the entry in the register or stock ledger of the bank is in the same terms. So that *prima facie* the stock stands registered in such a way as to exclude all liability on the part of the husband. But it is maintained that the bank are entitled to get behind that registration and the terms of the transfer, and to show that although the stock appeared to be the property of the wife it was truly the property of her husband. It may be that they are entitled to get behind the terms of an entry of this kind if it could be clearly shown that the stock was the property of the husband, or that he was entitled to revoke the gift of the stock and at once to claim it as his own. But I am of opinion with your Lordships that the liquidators have failed to show that that was the case. The question turns on the validity and terms of the agreement of June 1878. By that agreement each of the husbands of the daughters of the late Mr Thomson contributed £990, while on the other hand his widow contributed £455, to form a separate provision for each of her daughters. The deed does not expressly bear that Mrs Thomson gave the £455 in consideration that each of the husbands agreed to renounce his *jus mariti* over the £990, but although that is not expressly stated upon the face of the agreement, there is no doubt that that is the substance of it; and I take it that it comes to this, that the mother purchased from each of her sons-in-law a provision of £990 in favour of his wife by agreeing herself to advance £455. So far as the mother was concerned, it was a purchase from each of the husbands of a renunciation of his *jus mariti*. That being so, the transaction was plainly an onerous one. There was nothing illegal in it so far as I can see, or contrary to the rights of husbands. The husband had a very legitimate and proper interest in entering into an onerous contract of that kind with a person who was willing to purchase a provision in favour of his wife. That being the nature of the transaction, it appears to me that it was not revocable by the husband, but was an onerous transaction. The result was that the stock became the lady's own, and I am of opinion that the husband could not revoke the provision. That being so, it cannot be represented as his property, and I think he is entitled to succeed in his application to have his name removed from the register.

The Court therefore directed the removal of the petitioner's name from the list of contributories.

Counsel for Petitioner—Gloag—Mackintosh. Agents—Wilson & Dunlop, W.S.

Counsel for Liquidators—Kinnear—Asher—Darling. Agents—Davidson & Syme, W.S.

Friday, June 27.

FIRST DIVISION.

[Lord Adam, Bill Chamber.

VALLANCE *v.* FORBES (BLYTH BROTHERS & COY.'S TRUSTEE).

Bills—Promissory-note—Document constituting Promissory-note.

A letter in the following terms:—

"97 *Kirkgate, Leith, 30th August* 1878.

"Received from Mr David Vallance, in behoof of Mrs Mary Lockie, for the children of the late Mr William Lockie, Dunbar, the sum of £100 sterling, for which we herewith agree to pay him 4 per cent. per annum. This amount to be refunded twelve months after date." "Blyth Brors. & Co.

"30/8/78."

held to be a promissory-note, and void as not being stamped at time of execution.

Stamp—Stamp Duties Act (33 *and* 34 *Vict. cap.* 97), *secs.* 18 *and* 53—*Power of Commissioners of Inland Revenue to Stamp Bills of Exchange and Promissory-notes.*

Held, upon a construction of sections 18 and 53 of the Stamp Duties Act (33 and 34 Vict. cap. 97), that the Commissioners of Inland Revenue have no power under that statute to stamp, after its execution, a promissory-note which was otherwise void through want of stamp.

The estates of Blyth Brothers & Coy. of Leith were sequestrated, and Mr Simon Forbes was appointed trustee in the sequestration. Mr David Vallance claimed on the estate as a creditor to the amount of £100 in virtue of a document in the following terms—[*quoted supra*]. The trustee rejected the claim, on the ground that the document was null, being a promissory-note and unstamped. The document having afterwards been taken before the Commissioners of Inland Revenue, they, in virtue of sec. 18 of the Act 33 and 34 Vict. cap. 97, stamped it with an adjudication stamp and also with the appropriate agreement stamp. The section in question was as follows:—"(1) Subject to such regulations as the Commissioners may think fit to make, the Commissioners may be required by any person to express their opinion with reference to any executed instrument upon the following questions—(*a*) Whether it is chargeable with any duty? (*b*) With what amount of duty it is chargeable? . . . . (3) If the Commissioners are of opinion that the instrument is chargeable with duty, they shall assess the duty with which it is in their opinion chargeable, and if or when the instrument is duly stamped in accordance with the assessment of the Commissioners, it may be also stamped with a particular stamp denoting that it is duly stamped. (4) Every instrument stamped with the particular stamp denoting either that it is not chargeable with any duty, or is duly stamped, shall be admissible in evidence, and available for all purposes notwithstanding any objection relating to duty." The section then proceeds under the head "pro-

visoes"—"(*a*) An instrument upon which the duty has been assessed by the Commissioners shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the assessment of the Commissioners . . . (*c*) Nothing in this section contained shall be deemed to authorise the stamping after the execution thereof of any instrument prohibited by law from being so stamped."

The 53d section provides—"(1) Where a bill of exchange or promissory-note has been written on material bearing an impressed stamp of sufficient amount, but of improper denomination, it may be stamped "with the proper stamp" under certain penalties therein mentioned. The section then proceeds—"(2) Except as aforesaid, no bill of exchange or promissory-note shall be stamped with an impressed stamp after the execution thereof."

Mr Vallance appealed against the deliverance of the trustee to the Lord Ordinary on the bills.

The Lord Ordinary on the Bills (ADAM), after a record had been made up, pronounced an interlocutor finding (1) that the instrument founded on was a promissory-note; (2) that it was not duly stamped when drawn or made; and (3) that it was prohibited from being stamped thereafter. He added this note:—

"*Note.*—The Lord Ordinary is of opinion that the instrument founded on is a promissory-note. The amount payable is certain. The date of payment is certain, and it appears to the Lord Ordinary to be clear that *ex facie* of the document the person to whom payment is to be made is David Vallance. It does not seem to be material that it also appears that Vallance is acting for behoof of another person. The terms of the document, however, raise some difficulty as to whether it is a bond or a promissory-note.

"The granters agree to pay him 4 per cent. per annum. The Lord Ordinary thinks, on the authority of *Macfarlane* v. *Johnston*, June 11, 1864, 2 Macp. 1210, that this is equivalent to a promise to pay 4 per cent. The amount is "to be refunded twelve "months after date." The word "refunded" appears to the Lord Ordinary to have the same meaning as "repaid," which again is equivalent to "paid,"—*Pirie's Representatives* v. *Smith's Executrix*, Feb. 28, 1833, 11 Sh. 473. In this case therefore, the words employed may be taken to have the same meaning as if they had run, "the amount to be paid twelve months after date," which the Lord Ordinary thinks amounts to a promise to pay twelve months after date—*M'Cubbin* v. *Stephen*, July 9, 1856, 18 D. 1224. See also Smith's Mercantile Law, 9th ed., p. 201.

"If the Lord Ordinary is right in holding the instrument to be a promissory-note, it appears to him to be prohibited from being stamped after its execution—33 and 34 Vict. cap. 97, secs. 18 and 53."

Vallance reclaimed, and argued that this was not a promissory-note, there being no specific payee, and that that being so, the Commissioners were entitled to stamp it after execution.

Authorities—Those mentioned in the Lord Ordinary's note. No specific payee—*Martin* v. *Brash*, June 25, 1833, 11 S. 782; *Tennent* v. *Crawford*, Jan. 12, 1878, 5 R. 433.

At advising—

LORD PRESIDENT—In this case the Lord Ordinary has found that the document founded on is a promissory-note—that is, the document on which the reclaimer claims in a sequestration—and also that it was not duly stamped when drawn, and that it is prohibited by law from being stamped after execution. He has not proceeded to apply these findings, but the application is that they cannot be founded on in evidence. The writing is in these terms—[*his Lordship here quoted the letter as above*]. That part of this document which acknowledges receipt of the sum of money is not of great importance except that it fixes the sum; beyond that the document contains a promise to repay twelve months after date, and to pay in the meantime 4 per cent., and the party to whom it is to be repaid is the party from whom it was received. As I had occasion to show in the case of *Macfarlane*, a promise to pay is something different in principle from a pollicitation or offer; it requires acceptance; it is further still from a paction or agreement, which requires the mutual consent of two parties. There must be in a promissory-note a promise to pay; it must be made to a person named; the sum must be fixed and the date of payment; but if all these things are present, and there is nothing of the nature of an agreement between the two parties, then I think we are bound by authority to hold that the document is a promissory-note. Therefore I cannot refuse to agree with the Lord Ordinary upon this point, for the document fulfils all these requirements.

But there is another point, depending on the construction of the Stamp Act (33 and 34 Vict. c. 97). The holder of this document has procured from the Commissioners of Inland Revenue a stamp on this document, under authority of the 18th section of that Act, and undoubtedly the provisions in that section are implicit, and require careful consideration—[*His Lordship here quoted the section*]. One of the provisoes makes the determination of the Commissioners final and conclusive as to the sufficiency of the stamp on any document in all questions to which the section is applicable, and this new provision in the statute is in some respects very expedient, and brings relief to courts of law, freeing them as it does from the task of determining what duty is applicable to a particular document. We shall be most happy in all cases to which the 18th section applies to give implicit obedience to the Commissioners, but we must first be satisfied that the section applies, and there are certain provisoes attached to the section, one of which is of great importance—[*His Lordship here quoted proviso* (*c*)].

Now, we are all perfectly familiar with the rule prohibiting bills of exchange and promissory-notes from being stamped after being drawn and executed, and unless the Act repeals these we cannot hold that bills of exchange or promissory-notes fall under the section. But so far from repealing these rules it seems to me in section 53 to confirm them, for that section provides—[*His Lordship here quoted the section ut supra*]. The only change made in the old law is where the objection to a stamp in a bill of exchange is not to the amount of duty, but to the denomination. In this case the objection is, that when the note was made and issued it had no stamp; therefore as the law prohibiting after stamping remains unchanged, the document does not fall under section 18.

Lord Deas, Lord Mure, and Lord Shand concurred.

The Court adhered.

Counsel for Vallance (Appellant and Reclaimer)—Jameson. Agents—Foster & Clark, S.S.C.

Counsel for the Trustee (Respondent) Trayner—Thorburn. Agents—Boyd, Macdonald, & Co., S.S.C.

Friday, June 27.

FIRST DIVISION.

[Lord Adam, Bill Chamber.

BLYTH *v.* FORBES (BLYTH BROTHERS & COY.'S TRUSTEE).

(See *Vallance* v. *Forbes*, *supra*, p. 643)

Bills — Promissory-note — Document Constituting Promissory-note — Stamp Act (33 *and* 34 *Vict. cap.* 97), *secs.* 18 *and* 53.

A document in the following terms:—

"Mr Alexander Blyth,

"3 Rosslyn Street, Edinburgh.

"Dear Sir—We beg to acknowledge receipt of yours of date covering cheque for £100 sterling, which we hereby agree to repay you in say two years and six months from date, with interest at the rate of 6 per cent. per annum. Interest payable half-yearly.

"In security we now enclose policies of the Life Association of Scotland on the lives of our Mr James and Mr David, No. 22,136, value £200, and No. 22,143, value £300 sterling, which are thus to be considered as assigned to you until repayment of the loan is made—Yours very truly,

"Blyth Brothers & Co.

"1st September 1877."

held to be a promissory-note, and null as being unstamped.

In this case Mr Alexander Blyth claimed on the sequestrated estates of Blyth Brothers & Co. in respect of the document *quoted supra.*

The circumstances were precisely similar to those in the preceding case. On appeal against the trustee's deliverance rejecting the claim, and after a record had been made up, the Lord Ordinary on the Bills (Adam) sustained a plea to the effect that the obligation was of the nature of a promissory-note, and void as not being stamped. He added this note:—

"*Note.*—The Lord Ordinary thinks that the words 'agree to pay' in the document founded on in this case are equivalent to a promise to pay —*Macfarlane* v. *Johnston*, June 11, 1864, 2 Macp. 1210; *Pirie's Representatives* v. *Smith's Executrix*, February 28, 1833, 11 S. 473.

"It was maintained by the appellant that there was no definite period of payment in respect of the word 'say' having been introduced before the words 'two years and six months from date.' It does not appear to the Lord Ordinary that the introduction of that word suggests any doubt or ambiguity as to the date of payment.

"It further appears to the Lord Ordinary that the document is not to be considered the less a note because it contains a statement that certain policies have been sent therewith to be held as securities for the loan. Smith's Mercantile Law, 9th ed. p. 203, and cases there cited."

Alexander Blyth reclaimed, and argued that on the face of the documents there was an obligation for repayment of a loan; that the date of payment was not specific; and that therefore the document was not a promissory-note.

At advising—

Lord President—The question here is substantially the same as in *Vallance's* case (*supra* p. 643). The document only differs in expression. The points of distinction urged were, that the date of payment is not absolutely fixed. But I agree with the Lord Ordinary that this is really a promissory note. There can be no doubt that the time of payment intended was "at the expiry of twelve months." Reference was also made to the fact of some policies of insurance being inclosed, and it is said that these were intended to act as securities for money advanced. I see no reason to think that this should deprive the document of its character as a promissory-note. The policies are enclosed, but no agreement is entered into about them. The document is as unqualified as if those words had never been there.

Lord Deas, Lord Mure, and Lord Shand concurred.

The Court adhered.

Counsel for Alexander Blyth (Appellant and Reclaimer)—Jameson. Agents—Foster & Clark, S.S.C.

Counsel for the Trustee (Respondent)—Trayner—Thorburn. Agents—Boyd, Macdonald, & Co., S.S.C.

Friday, June 27.

FIRST DIVISION.

[Lord Adam, Ordinary.

GORDON HAY, PETITIONER.

Entail—Rutherfurd Act (11 *and* 12 *Vict. c.* 36), *sec.* 26—*Entailer's Debts—Money Expended on Part of an Entailed Estate subsequently Sold—Meliorations.*

Part of an entailed estate was sold by an heir of entail to pay entailer's debts. *Held* (*reversing* Lord Adam, Ordinary) that it was competent under section 26 of the Rutherfurd Act (11 and 12 Vict. cap. 36) to apply a portion of the price which remained after the entailer's debts were paid in repayment of money beneficially expended before the sale upon that part of the entailed estate which was subsequently sold, and also in payment of certain ameliorations due to tenants under leases granted by the predecessor of the original entailer and by the entailer herself.

The petitioner James Gordon Hay was heir of entail in possession of the lands of Seaton and others