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

by a deed of entail granted by his mother Elizabeth Forbes Lady James Hay, dated 16th February 1859. Under the provisions of the Rutherfurd Act (11 and 12 Vict. cap. 36), sec. 25, the petitioner sold part of the lands for £56,500, and that sum was thereupon consigned in bank. Warrant was granted by the Court to uplift £53,324, 8s. 4d., and to apply it in the payment of entailer's debts. There thus remained consigned the sum of £3175, 11s. 8d. A petition was presented by Mr Gordon Hay for warrant to uplift and apply this sum in payment of improvements on the estate. The Lord Ordinary (ADAM) after remits pronounced an interlocutor disallowing two items specified in the petition—1st, "Amount of tenants' ameliorations, £759, 5s. 3½d.," due under the terms of leases granted some by the entailer and others by her father, to whom she succeeded as heiress-at-law; and 2d, "amount expended on Waterton estate, being the lands sold to Messrs Pirie, £1211, 11s. 0½d." He added this note—

"*Note.*— . . . The sum of £759, 5s. 3½d., disallowed above, consists of money paid by the petitioner to tenants on the estate in respect of ameliorations due to them under their leases. This appears to the Lord Ordinary to be clearly not money expended by the petitioner in improving the entailed estate, and he has therefore disallowed it.

"It was maintained, however, by the petitioner that the sum so paid was truly an entailer's debt, and that authority might be granted to apply the consigned money in payment of it on that ground. It is said that the leases were granted by the petitioner's predecessors before the estate was entailed, but that the claims for payment of the meliorations due under them only merged after the petitioner had become heir of entail in possession of the estate. The claims were paid by the petitioner, and discharged by the tenants as they became due.

"It does not appear to the Lord Ordinary that these were entailer's debts. It appears to him that the petitioner was himself liable in payment of them. If, however, the money is to be applied in payment of them on that ground, the petition will have to be amended, as such an application of the consigned money is beyond its scope.

"The further sum of £1211, 11s. 0½d., which the Lord Ordinary has disallowed, consists of money expended on improvements executed, not upon the entailed estate of which the petitioner is in possession, but on that portion of it which he sold to Messrs Pirie, and which is now in their possession. It appears to the Lord Ordinary that such an application of the consigned money is not competent under the statute. The statute only contemplates the repayment of money expended on the estate of which the petitioner is in possession at the time of the application, and not in repayment of money which may have been expended by him on an estate of which he may have been at some former time in possession."

The petitioner reclaimed, and argued—The improvements allowed and those disallowed were of the same kind, only carried on in different parts of the estate. The whole estate was benefited by them, and at the time they were made the petitioner was clearly in the position of having a claim on the entailed estate. The burden was not a burden on the one part of the estate on which the improvements was made, but was chargeable over the whole. The expenditure here came under the provisions of the Rutherfurd Act (11 and 12 Vict. c. 36), sec. 26, which enabled the heir of entail to lay out consigned money in circumstances like the present "in or towards payment of entailer's debts, or in or towards payment of any money charged on the fee of such entailed estate under this or any other Act, or in redemption of the land tax affecting such entailed estate, or in permanently improving the same, or in repayment of money already expended in such improvements."

Authorities—*Maitland*, Feb. 23, 1854, 16 D. 651; *Macdonald Lockhart*, Dec. 15, 1835, 14 S. 150; *Mackenzie* v. *Mackenzie*, Feb. 15, 1849, 11 D. 596; *Cochrane*, Dec. 11, 1850, 13 D. 293.

At advising—

LORD PRESIDENT—The fund proposed to be applied here arose from the sale of part of an entailed estate. It was sold to Messrs Pirie, of Aberdeen, for the sum of £56,500. That sale was approved by Lord Adam as Lord Ordinary, and the price was consigned. It was applied to the extent of £52,000 in paying off entailer's debts, that being the true object of the sale. This, of course, left a considerable balance, £3175, 11s. 8d. remaining consigned. It was proposed to apply this balance to several different purposes. As regards two of these, objections were suggested by the Lord Ordinary and given effect to. Against his Lordship's interlocutor the petitioner has reclaimed. The Lord Ordinary has disallowed expenditure to the amount of £2215, and one portion of that to the extent of £1383, 0s. 10½d. is the value or expense of improvements made on the entailed estate before the sale to Messrs Pirie, and the peculiarity of this point is that the improvements were made on that portion of the lands which was afterwards sold. The Lord Ordinary has disallowed that, but I am disposed to differ with him, and to think that it is properly an improvement expenditure within the statute. The 26th section of the Act 11 and 12 Vict. cap. 36 (Rutherfurd Act), authorises an heir of entail to lay out consigned money such as we have here "in or towards payment of entailer's debts, or in or towards payment of any money charged on the fee of such entailed estate under this or any other Act, or in redemption of the land tax affecting such entailed estate, or in permanently improving the same, or in repayment of money already expended in such improvements."

Now, when money was expended on the estate before the sale, there can, I think, be no doubt that it was expended on the whole estate, and therefore at that time the heir became potentially a creditor of the estate and of the heirs of entail. Until he took steps to charge the debt on the estate or to get payment of it he was only potentially a creditor, but still he was in such a position as to entitle him to repayment of the money from the heir of entail or from the estate. Can it be said that the fact of a part of the estate being sold so altered that position as to deprive him of the right? I venture to doubt the soundness of that principle. It does not follow that improvements on a particular farm or field are only local in their effect—that is to say, only benefit the land on which they are made. They might very possibly benefit the whole estate, as,

for example, the making of a road or an embankment. I do not say that is the case here, but it shows that in certain cases local improvements may be made which will have a very wide effect. It is very hard if, where that part of the estate on which the improvement is made is sold, the heir has no rights under the statute against the other heirs, and yet if the Lord Ordinary is right I am afraid we should have to go that length; that consideration renders me doubtful of the soundness of the principle. To my mind the safest way of dealing with this Act of Parliament is to adhere reverently to it. The heir here has made improvements that put him in a position to assert certain rights, and I cannot see that though he has sold a part of the estate there is either justice or equity in relieving the succeeding heirs from that claim—for if the improvements were judicious, as we must assume them to have been—they having passed through the ordeal to which all such cases are subjected before they are allowed—does it not follow as matter of course that the value of the land was thereby enhanced, and consequently that the lands sold for a higher price than they would otherwise have done. The fund realised by the sale was thereby enlarged, and that fund is the property of the heirs of entail; therefore the whole body of them was benefited by the enhanced price. According to the letter and spirit of the statute, I am therefore of opinion that the heir in possession is entitled to be repaid for these improvements.

The other part of the Lord Ordinary's note relates to the payment of certain meliorations paid to tenants due to them under their leases. The question is, whether these are not of the nature of entailer's debts? The state of the facts was not very clearly brought out either in the petition or in Court, and we requested counsel to furnish further information. A minute was put in by the petitioner in which it is stated that certain of these meliorations were granted under leases granted by James Forbes of Seaton, the father and predecessor of the entailer, Lady James Hay, in the estate of Seaton, and from whom she acquired the same as heiress-at-law. The remainder of the payments were made under obligations in leases granted by Lord James Hay, the husband of the entailer. He had no written commission or authority from his wife, but during the whole period of her possession he administered it as if he were owner, and any obligations undertaken by him were invariably fulfilled by her. The leases having expired, the tenants were by their leases entitled to be repaid money expended upon their farms. Assuming that Lord James Hay was entitled to bind his wife in making leases, it is clear that Lady James Hay was debtor as regards leases made both by her father and her husband, and if so it is difficult to say that these meliorations were not entailer's debts. They were obligations by which she was personally bound, and for which her estate had she held it in fee-simple, would have been liable. But when they are upon an entailed estate, that is just the position in which entailer's debts always are. Creditors might have attached the estate, and therefore the heir of entail was entitled to pay these debts so as to free the estate from the burden. Apart from the fact that these leases were granted by Lord James Hay without express consent from Lady James Hay, I think they must be allowed. As regards the authority of Lord James Hay, there might be a nice question, but I cannot help thinking that, as he and his wife were living together, and he was managing the estate, and possession followed the leases made by him, the authority implied is sufficient to come in place of an express mandate from the wife. I am therefore for recalling the Lord Ordinary's interlocutor.

Lord Deas, Lord Mure, and Lord Shand concurred.

The Court therefore recalled the Lord Ordinary's interlocutor, and remitted to his Lordship "to allow the two items of expenditure, amounting respectively to £759, 5s. 8½d and £1,211, 11s. 0½d.; to allow the petition to be amended, if necessary, so as to embrace more clearly the said item of £759, 5s. 3½d.; and to proceed further as shall be just."

Counsel for Petitioner (Reclaimer)—Balfour—Keir. Agents—Webster, Will, & Ritchie, S.S.C.

Friday June 27.

FIRST DIVISION.

[Lord Curriehill, Ordinary.

STEELE AND OTHERS (WALKER'S TRUSTEES) *v.* M'KINLAY.

(Before Seven Judges)

Bills—Acceptance—Collateral Obligation—Mercantile Law Amendment (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 60) *sec.* 11—*Bills of Exchange Act* 1878 (41 *Vict. c.* 13), *sec.* 1—*Where a Person who was not Addressee Endorsed a Bill.*

The Bills of Exchange Act 1878 provided that "Whereas by the Mercantile Law Amendment Act 1856 and the Mercantile Law Amendment Act (Scotland) 1856 it is enacted that no acceptance of any bill of exchange, whether inland or foreign, made after 31st December 1856, shall be sufficient to bind or charge any person, unless the same be in writing on such bill, or if there be more than one part of such bill, on one of the said parts, and signed by the acceptor or some person duly authorised by him: And whereas doubts have arisen as to the true effect and intention of the said enactment, and as to whether the signature of the drawee alone can constitute a sufficient acceptance of the bill so as to satisfy the requirement of the said statute, and it is expedient that the meaning of the said enactment should be further declared: Be it therefore enacted . . . . as follows: 1. An acceptance of a bill of exchange is not and shall not be deemed to be insufficient under the provisions of the said statutes by reason only that such acceptance consists merely of the signature of the drawee written on such bill."

Held (*rev.* Lord Curriehill, Ordinary) (1) that under the Acts of 1856 and 1878 a mere signature, without other words signifying acceptance, was not sufficient to infer liability