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