very of the writing come in aid of that preponderance, for if the writing was not deposited by Mr More it is not possible to believe it genuine; and if, as I think, it was not in 1870 and 1871 in the place where it was found, then it is not possible that it could have been deposited by Mr More.

It is, however, our duty to apply ourselves to the task of judging of the genuineness of this writing by our own careful observation. It is not without diffidence and misgiving that I venture to rely on my own observation in such a matter. But, so far as I can judge from repeated and anxious examination, I have formed the opinion on comparing this document with the many genuine writings of Mr More laid before us, that this writing is not genuine.

I am led to this result, first, by comparing its general character with that of the other writings; and, secondly, by observing some marked characteristic differences. The general character of this writing is, in my opinion, quite different from that of Mr More. I am satisfied that the word "Monkrigg" was not written by Mr More. We have the word often written by him, and never in the least like this. I think the date, both in the writing and in figures, differs from any writing or figures of his. The spacing, or division of lines and words, is different from his, and gives a different character to the writing. The angularity of the writing with the horizontal terminations is a peculiar feature of this document, and is in marked contrast to the free round hand of Mr More. The letter H in the word Hundred, and the letter P in three different words, are formed in a manner quite different from his. The word "Ellen Shannon" is spelt in a manner in which he was not wont to spell it, for we have the same name of the same person twice written "Helen" by himself in other writings. It were easy to point out other differences between this writing and the genuine writings of Mr More. But I forbear. Whether I look at the writing as a whole, or at the particular formation of the letters, the result to my mind is the same. I cannot think the writing genuine. We are told, however, that we must make great allowances for the extreme weakness of Mr More as tending to affect his writing and explaining the apparent difference. Now, in the first place, if his weakness caused a falling off in his writing, the handwriting would have got worse as it proceeded. But the worst part of this writing is at its commencement, a fact which does not support the pursuers' theory. Then the words most like the genuine writing are the signature and the word "More" in the middle of the writing, which is just what might be expected if a person forging the writing had only a genuine signature, or little more than a genuine signature, before him for imitation. But in suggesting the explanation of physical weakness the pursuers have another difficulty. When dealing with the question of the personal depositation of the writing, the pursuers say that Mr More was strong enough to stand up in the bed and pin the writing within the valance. But, when dealing with the question of handwriting they say that Mr More was so weak that his handwriting was materially altered. I cannot see any indication of much weakness of hand in this writing, and we have a genuine letter of Mr More written when he was in great weakness which does not resemble this.

But I have already occupied too much of your Lordships' time in explaining the grounds of an opinion, in regard to which, taking all the points together, I have not much doubt. The Solicitor-General pressed us strongly to treat the case as involving a charge of forgery. It cannot be denied that logically we must meet that point, and we must come to the conclusion that the writing is forged if it is not genuine. But we are not called on to decide, and we may not be able to say by whom it was, or may have been, forged; and it is better to refrain from any suggestions on that matter, which I do, merely adding that I agree in many of the remarks of Lord Deas. It is in law sufficient for this case that the pursuers have not discharged themselves of the burden of proving this writing to be genuine and holograph of Mr More. But I think it right to add that in my opinion it is proved that the writing is not genuine. Therefore, notwithstanding the very able and elaborate Note of the Lord Ordinary, I am of opinion that the defender is entitled to absolvitor.

The interlocutor of the Lord Ordinary reversed.

Counsel for Pursuers—Solicitor-General (Clark) Q.C., and Scott. Agents—Wotherspoon & Mack, S.S.C.

Counsel for Defender James More—Mackintosh and Watson. Agents—Gifford & Simpson, W.S.

Counsel for Thomas Arthur—Mackie. Agents Adamson & Gulland, W.S.

Wednesday, July 9.

FIRST DIVISION.

WILLIAM STEVENS, PETITIONER.

Inhibition—Titles Act (1868), § 156.

Held that the Titles Act introduced no change in the form of letters of inhibition with respect to the necessity of alleging fully and explicitly the ground of debt upon which the diligence proceeds.

In this case the petitioner was indebted to Robert Campbell, iron merchant, Grassmarket, Edinburgh, in the amount of a bill at four months from 6th December 1872, and the bill fell due on 9th April 1873. The amount was £59, 10s. 9d.

At the time the bill became due it was arranged between the said Robert Campbell and the petitioner, that the petitioner should grant two new bills in lieu of the same, and the petitioner did so. The said two bills were for £25 and £35, 3s. respectively, and they fell to be due on, respectively, 31st May and 31st July, both 1873. The amount, in whole, of the said two bills was £60, 3s., and the difference, viz., 12s. 3d., between said amount and the amount foresaid of the old bill, viz., £59, 10s. 9d., was made up of a charge for interest, and of the expense of the stamps of the new two bills. On granting the said two bills the petitioner did not obtain possession from the said Robert Campbell of the old bill foresaid. On May 22, 1873, the petitioner advertised as for sale a part of his heritable property in West Calder, and on May 28, 1873, the said Robert Campbell raised and executed letters of inhibition against the petitioner, and recorded a notice of the same in the Register of Inhibitions.

The letters of inhibition proceeded upon the old bill foresaid for £59, 10s. 9d., the sole

ground of complaint in said letters of inhibition being expressed in the following terms, viz.:—"That the complainer is holder of a bill for the sum of £59, 10s. 9d. sterling, drawn by him upon and accepted by the said William Stevens, dated the 6th day of December 1872, and payable four months after date, which bill, when duly presented for payment, was dishonoured by the said William Stevens."

This inhibition the petitioner sought to have recalled without caution, as nimious, and oppressive, and illegal; that it proceeded upon a bill which the respondent (Mr Campbell) had no right to have in his possession, and under which he had no claim against the petitioner, and upon which inhibition was inept; and further, that the petitioner was not only not *vergens ad inopiam*, but that his estate, heritable and moveable, if realised, would show a large surplus.

In his answers to the petition the respondent, besides averring that the petitioner was *vergens ad inopiam*, and that he (the respondent) required therefore to use diligence in security of the debt due to him by the petitioner, alleged an agreement between him and the petitioner that the original bill was not to be delivered to the petitioner, but was to be retained by the respondent as the foundation of the debt thereby constituted, until the new bills proposed to be granted, and which were granted by the petitioner, should be paid. This agreement was not disputed by the petitioner. The respondent was all along willing to withdraw the inhibition on security being found by the petitioner for payment of the debt due to him within reasonable time.

Argued for the petitioner—By acceptance of renewal bills, the debt in the original bill was altered from being a past-due debt at the date of the inhibition complained of to a future debt, upon which therefore no diligence could be used except upon an allegation of *vergens ad inopiam*, contained in the application for diligence, and inserted in the letters of inhibition issued thereon.

Authorities cited—Byles on Bills, p. 235; Chitty on Bills, p. 126.

Argued for the respondent—

1. Inhibition was used upon a bill in the hands of the creditor *ex facie* good, and was therefore a perfectly valid diligence.

2. Under the new form of letters of inhibition introduced by the Titles Act of 1868, no allegation of *vergens ad inopiam* was necessary, it being sufficient if the fact were proved.

3. (*Separatim*) The agreement entered into between the parties was to the effect that, in spite of the new bills, the creditor was to be entitled, at his option, to use the old bill: and (1) that was a perfectly lawful agreement if proved; and (2) in virtue of that agreement the creditor was entitled to take his stand upon the original bill—his statement to be taken with all its qualifications, and if any proof were allowed at all, it must be limited to the creditor's writ or oath.

Authorities cited—31 and 32 Vict. cap. 101, § 156, Sched. QQ.; A. S., 18th Nov. 1871, § 1.

At advising—

Lord President—The inhibition which has been used in this case, and which it is the object of the petition to recal, is a somewhat peculiar writ in the circumstances, and the facts of the case require to be carefully attended to.

The petitioner was debtor to the respondent in the sum of £59, 10s. 9d., contained in a bill dated 6th December 1872, and payable one month after date. It was not paid at maturity, however, and an arrangement was made for renewal of the bill. This was done by the creditor taking two new bills, the one for £35, and the other for £25, 3s.; but the old bill remained in the creditor's hands, and, according to his allegation, remained in his hands in pursuance of a special agreement, the terms of which are set forth in the answers to the petition.—(*Reads agreement.*)—Now, this no doubt is a very peculiar arrangement, and if it were necessary to investigate the matter, some questions of considerable nicety might arise as to the burden of proof and the mode of proof. But, according to the view I take of this case, it is not necessary to decide these questions, because, assuming the respondent's own statement to be correct, the question is, whether in these circumstances, as stated by himself, he was justified in using the inhibition. It seems to be supposed that the Lands Clauses Act of 1868, and particularly section 156, materially alters the form of letters of inhibition, and I shall deal with that question presently. In the meantime, the letters of inhibition actually used here bear to be on "a bill for the sum of £59, 10s. 9d. sterling, drawn by (the respondent) upon and accepted by the said William Stevens, dated 4th December 1872, and payable four months after date, which bill, when duly presented for payment, was dishonoured by the said William Stevens." That is the whole groundwork of the inhibition—a dishonoured bill past due, *i.e.*, a liquid document of debt, and no more is said. But that does not represent the true state of matters between the parties, on the representation of the respondent himself. He was only entitled to do diligence in the circumstances indicated in the agreement. Now, putting out of view the Act of 1868, what was necessary under the old form of letters of inhibition? When a bill past due is presented in the Bill Chamber, no doubt it is unnecessary to say any more in the letters issued thereon but when something more is agreed to be held as necessary in order to entitle the creditor to use letters of inhibition, an additional statement to that effect was necessary. For example, if the debt is not yet due, it is necessary to allege that the debtor is *vergens ad inopiam*, and without such a statement letters will not be granted. Now, in the present case it is quite inaccurate to say simply that the inhibition was issued on a past due bill; and, according to my view of the case, it would have been necessary for the creditor to add to the statement in the letters what he has stated in his answers to the present petition.

But, then, there comes the question, Does the Act of 1868 make any change in all this? I apprehend not. No doubt it provides a short form.—(*Reads section* 156.)—Now, the schedule referred to in this section is very much in the same form as that used previously, but only shorter. It requires the party making application for letters of inhibition to set forth concisely the document on which inhibition proceeds. Certainly this statute does not abolish the necessity of presenting a bill in the Bill Chamber in order to obtain letters of inhibition. And the Act of Sederunt passed in pursuance of this Act specially provides—"That the mode of obtaining warrant for signeting let-

ters of inhibition, in the form mentioned in section 156, and schedule (QQ) of the said last recited Act, shall be by production of a *Fiat ut* petition, duly obtained in the Bill Chamber on a bill presented along with a proper ground of debt, or along with a depending summons upon which the inhibition is to be raised." The same Act provides that this enactment is not to apply to inhibition used on the dependence where the summons contains the warrant. But, with this exception, while the bill is still necessary, it seems to follow that the purpose for which it was formerly required is the very purpose for which it is still kept up, viz., to set forth the ground of debt; and the statement, where the facts are not simple, as here, must be something fuller and more explicit. So in this case the letters of inhibition should have contained the statement on which the creditor now relies. On these grounds, I am of opinion that the inhibition should be recalled.

LORD DEAS—I am of opinion that the only way in which the creditor could use diligence of inhibition was by founding on the original bill, and the renewal bills as well. I am not prepared to say that the setting forth of a verbal agreement would have entitled the creditor to diligence had it not been otherwise incompetent.

LORD ARDMILLAN—There are two important rules of law which bear upon this case, though the case itself is one of some nicety. First, where a past due bill is renewed by means of granting a new bill, the creditor is not entitled to do diligence on the old bill during the currency of the renewal bill; and, in the second place, a creditor holding a bill of which the term has not arrived may use diligence, but only on alleging *vergens ad inopiam*, or other equally emergent and important fact. In the circumstances here, there can be no doubt that the two bills for £25 and £35 respectively were given as renewals, and the effect of taking these other bills was to postpone the payment of the first. It was, therefore, in the position of a bill the term of which had not arrived, and the creditor was not entitled to conceal the real circumstances of the case in obtaining letters of inhibition. If he had alleged *vergens ad inopiam* he would have been entitled to his diligence in security, and the law would not have considered it oppressive.

LORD JERVISWOODE concurred.

The Court accordingly recalled the inhibition, with expenses.

Counsel for Petitioner—Harper and W. Watson. Agent—Henry Buchan, S.S.C.

Counsel for Respondent—M'Kechnie and Scott. Agent—William Black, S.S.C.

Saturday, June 28.

SECOND DIVISION.

[Lord Gifford, Ordinary.

ELLIOT'S TRS. AND OTHERS *v.* BOWHILL AND OTHERS.

Testament—Period of Vesting—Alimentary Provision—Residue.

A testator by trust-disposition directed his trustees—(1) during the currency of certain leases yearly to divide the profits among the beneficiaries, his children, and provided that such sums were to be strictly alimentary and not assignable or liable to be attached by creditors; (2) on the expiry of the leases to realise the crop and stocking, and divide the capital among his children. *Held*—(1) that the whole rights of the surviving children vested *a morte testatoris*, and (2) in a question with assignees and creditors, that the provisions of the deed as to the alimentary nature of the annual payments were valid and effectual.

Observed (*per* Lord Justice Clerk) that in this case the condition in point of time was a character of the thing bequeathed, and that there was no interposed second party to take prior to the division of residue, the persons favoured in each purpose being the same.

Donation—Provision under marriage-contract—Share of Residue.

A father bound himself to pay £1000 to his daughter's marriage-contract trustees; subsequently he divided his property by a trust-deed equally among his children—*held* that in making this settlement he must have had the prior obligation in view, and that the trustees were bound to pay the £1000 as a debt, without imputing it to this daughter's share of the residue.

This case came up by reclaiming-note against the Lord Ordinary's (GIFFORD) interlocutor of 26th December 1872. The conclusions of the summons were—"(1) that it should be found and declared that the rights and interests of Henry Elliot, James Elliot, Dorothy Elliot or Bowhill, Mary Elliot or Railton, Robina Elliot or Turnbull, and of the deceased Elizabeth or Bessie Elliot and William Elliot, the surviving children of the deceased James Elliot, in the residue of the trust-estate of the said deceased James Elliot, as provided to them by the second and third purposes of the trust constituted by his trust-disposition and settlement, dated the 18th August 1865, including their interests in the tacks of the farms of Lamberton, Lamberton Shiells, and Bastleridge, and whole stock, crop, and others upon the said farms, vested in them and each of them respectively at and after the date of their said father's death: and that, from and after the said date, they had power to demand and receive from the trustees of their father, or from the judicial factor upon his trust-estate, a conveyance and assignation of the whole interest of the deceased under said tacks, and of the whole stock, crop, and others upon the said farms, and had also power to grant valid conveyances or assignations of their several rights and interests in the said leases, and in the said stock, crop, and others, and otherwise to dispose of them as their absolute property, except in so far as the same had been conveyed or assigned by them previous to their said father's death; and (2) that the sum of £1000 sterling, which by contract of marriage between Henry Turnbull and Robina Elliot or Turnbull, the deceased James Elliot bound and obliged himself, and his heirs, executors, and successors, within six months after his death, to pay to the trustees under the said contract of marriage, for the purposes therein mentioned, or to the survivors or survivor of them, together with interest from the 12th day of June 1867, being the date when the same was paid to