stating any reason at all." I think that such a demand is not according to law or precedent or good sense, and that the defender should be assoilzied.

LORD TRAYNER—I do not dissent from the judgment which the Lord Ordinary has pronounced in the circumstances of this particular case. But at present I express no opinion on the question which may perhaps be incidentally involved here, viz., whether the only writs and evidents of a landed estate which are accessories of the estate, and go to a purchaser thereof, are the writs necessary to make up a prescriptive progress.

LORD MONCREIFF—In 1892 the pursuer obtained from George Henderson a disposition in his favour of the lands of Turfhills, and along with the disposition he received writs conform to inventory which it is admitted formed a prescriptive progress of titles to the lands.

He now, however, raises the present action in which he demands, not from the seller but from the defender William Horn Henderson, brother of George Henderson, who alleges that he holds them for John Henderson, who obtained them by gift from George Henderson prior to the sale to the pursuer, not merely exhibition, but delivery of the "whole writs, titles, and evidents of and relating to the lands of Turfhills" in so far as in possession of William Henderson. The pursuer claims those writs "as his own proper writs and evidents in all time coming as accessories to his property and lands of Turfhills."

It appears from the inventory of writs that the writs called for are 114 in number, none of them being later in date than the beginning of the present century, and the oldest being dated in 1699. The pursuer has been asked to point out which of those writs he wishes to inspect, but in the minute lodged for him he repeats his demand for exhibition and delivery of all the writs enumerated in the inventory.

The question therefore which we have to decide is, whether the pursuer is entitled not merely to exhibition (as to which there is no difficulty) but to delivery as his own property of all the deeds contained in the inventory. I am of opinion that he is not. We may take the case as if the question had arisen with the seller.

I am of opinion in the first place (and this is enough for the decision of this case) that the pursuer is precluded by the terms of the conveyance which he accepted from George Henderson from claiming delivery (for the purpose of permanently retaining them) of any other writs than those of which he has already obtained possession. The purpose of assigning the writs and evidents on a transfer of land is to enable the purchaser to maintain and enforce his rights as proprietor of the lands conveyed. It is a matter of arrangement what titles shall or shall not be delivered or made forthcoming. No purchaser will be content with less than a prescriptive progress; but that is sufficient, and even if he were entitled to more, there is no reason why he should not be willing to accept a prescriptive progress in implement of the seller's obligations. That is what was done in the present case. In the disposition in favour of the pursuer the clause runs thus—"And I assign the writs and have delivered the same conform to inventory thereof hereto annexed and subscribed by me as relative hereto." It has been suggested that the inventory simply serves to specify those writs which have been delivered, but I think it plays a more important part; it is the measure of the writs which the seller binds himself to deliver and the purchaser is content to accept. And in practice, even where the writs are not all delivered, those which the seller undertakes to make forthcoming in order to maintain the purchaser's right are also enumerated in an inventory.

But even if the clause had only run "I assign the writs," I am by no means satisfied that the pursuer's claim could have been sustained. He is, in my opinion, only entitled to delivery of such writs and evidents as are required to establish or enforce his rights as proprietor of the lands. He has not as yet pointed out any one of the deeds in the inventory which is requisite for that purpose. Now, I am not prepared to say that the deeds, perhaps centuries old, which are not required to establish and maintain the purchaser's right, fall to be handed over *per aversionem* to the purchaser as accessories in the absence of express stipulation.

Such deeds may fairly be held to have ceased to be, for practical and conveyancing purposes, the writs and evidents of the lands, while they may have a peculiar value for the seller as family records, and may even possess a market value quite irrespective of the lands.

The Court adhered.

Counsel for Pursuer — W. Campbell — Sandeman. Agents—Mack & Grant, S.S.C.

Counsel for Defender W. Horn Henderson — Ure, Q.C. — Dewar. Agents — Tods, Murray, & Jamieson, W.S.

Friday, February 18.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

GORDON *v.* KERRS.

Bill of Exchange—Promissory-Note—Sum Payable in Instalments—Presentment—Bills of Exchange Act 1882 (45 *and* 46 *Vict. cap.* 61), *secs.* 52 (2), 89 (1).

The granter of a promissory-note dated 30th October 1895 promised therein to pay to X at a specified address in Glasgow the sum of £500 for value received, by monthly instalments of £50 each, commencing on 28th December 1895, and the like sum each and every succeeding 28th day of every month

thereafter until the sum of £500 should be fully paid, "and if default shall be made in any one payment of the aforesaid instalments, all the instalments remaining unpaid shall at once become due and payable immediately thereafter."

None of the instalments were paid, and the note was not presented at the maturity of any one of them. On 2nd January 1897 the note was presented for payment of the whole sum at the specified address (in terms of an intimation to the debtors), but payment was not made.

In an action raised by the creditor on the promissory-note to recover the whole sum, *held* (*aff.* judgment of Lord Kyllachy) that the presentment was sufficient as against the maker of the note, and that decree must be granted for the sum contained therein.

"It is not the law that the presentment on the day of payment is a condition of the obligation either of the acceptor of a bill or the maker of a promissory-note"—*per* Lord President.

Isaac Gordon, Birmingham, carrying on business at 62 Buccleuch Street, Glasgow, under the name of John Kerr, raised an action against Thomas and George Kerr, farmers, Oatridge, for payment of £500, "being the principal sum contained in a promissory-note granted by the defenders in favour of the pursuer, dated 30th October 1895."

The promissory-note was in the following terms:—"*Glasgow, October 30th*, 1895.—£500 0 0.—We jointly and severally promise to pay to John Kerr or order, at 62 Buccleuch Street, Glasgow, the sum of Five hundred pounds sterling, for value received, by monthly instalments of Fifty pounds each, commencing on December 28th, now next, 1895, and the like sum of Fifty pounds each and every succeeding 28th day of every month thereafter, until the above named sum of Five hundred pounds shall be fully paid, and if default shall be made in any one payment of the aforesaid instalments, all the instalments remaining unpaid shall at once become due and payable immediately thereafter.—THOMAS KERR, GEORGE KERR, Oatridge and Hangingside, Uphall."

The case, so far as the point of law is concerned, proceeded on the assumption that no presentment was made for payment of any of the instalments, but that presentment was made for payment of the whole sum of £500 on 2nd January 1897, at 62 Buccleuch Street, Glasgow.

The Bills of Exchange Act 1882 (45 and 46 Vict. cap. 61), sec. 9 (c), enacts that "the sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due."

Section 45—"Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented, the drawer and indorsers shall be discharged. A bill is duly presented for payment which is presented in accordance with the following rules— . . . (4) A bill is presented at the proper place: (a) where a place of payment is specified in the bill and the bill is there presented."

Section 52 (2)—"When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures."

Section 87 (1)—"Where a promissory-note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable."

Section 89 (1)—"Subject to the provision in this part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory-notes." (2) "In applying these provisions the maker of a note shall be deemed to correspond with the acceptor of a bill."

On 18th June 1897 the Lord Ordinary (KYLLACHY) repelled the defences and decerned against Thomas Kerr for payment of £500.

Opinion.— . . . "I have come to the conclusion that the pursuer has a good action upon this promissory-note, and that the defences urged, and in particular the defence founded on the want of due presentation, are not substantial. I see no reason to doubt that the note is a good note; and with regard to the presentation for payment, it appears to me that the presentation on 2nd January 1897 at the place mentioned in the note was perfectly good. Therefore I think the pursuer must have decree." . . .

The defender reclaimed, and argued—There had been no due presentment of the promissory-note. The only day for the presentment of the note was the day of maturity. The acceptor of a bill or the maker of a promissory-note was not bound to attend the specified place every day after maturity during the six years' currency of the bill, in the expectation that it would be presented. Presentment should have taken place for the first instalment when it became due, and so on with the other instalments. Until presentment had taken place for each of the several instalments, there could be no presentment for the lump sum. It was not pretended that any presentment for the instalments had taken place.

The pursuer's argument sufficiently appears from the opinion of the Lord President.

At advising—

LORD PRESIDENT—While the discussion in the Outer House would seem to have had a wider range, what was argued to us was a question in the law of promissory-notes. That the instrument sued on is a promissory-note could not well be disputed, especially having regard to section 9 (*c*) of the Act of 1882. But the defender maintained that in order to make him liable it was neces-

sary that the note should have been presented for payment when the first instalment fell due, and when each instalment fell due, and that this had not been done. In my opinion this defence is bad. I think that the presentment for payment of £500 on 2nd January 1897, having been made at the place stipulated in the note, was sufficient. The law as embodied in the Act of 1882 does indeed require, sec. 87 (1), that where a note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. But it is not the law that presentment on the day of payment is a condition of the obligation either of the acceptor of a bill or the maker of a promissory-note. The contrary is made clear in the Act of 1882. The 89th section applies certain provisions of the Act relating to bills to promissory-notes, with the necessary modifications, and among these provisions is section 52. Now, taking it that this is an instrument of which presentment is required, sub-section (2) of section 52 is the part of that section applicable, and it provides that the acceptor is in that case not discharged by the omission to present for payment on the day of maturity.

In the present case I treat the question on the footing that no presentment was made for payment of any of the instalments. But then, on the expiry of the twelve months and the days of grace, the whole £500 was due, unless the want of presentment for each instalment discharged the maker of the note. Presentment having been then made at 62 Buccleuch Street, Glasgow, the condition as to place has been fulfilled. Had there been no place specified, and the first sentence of section 87 (1) therefore not been applicable, it should appear that under the second sentence the maker might have been sued without any presentment at all.

I am for adhering.

LORD ADAM concurred.

LORD M'LAREN—I should have been surprised to find in a code Act of Parliament any deviation from such a very well-established and very convenient rule as that the acceptor of a bill is liable on his obligation without the necessity of charging him by presentment. What are called the requisites of negotiation—presentment, protest, and notice of dishonour—are only necessary to preserve the holder's recourse against the drawer and endorsers, in order that each may be in a position without delay to enforce his recourse against those who are liable to him; but the acceptor is always liable in terms of his obligation for his signature without notice. If there be a condition that the bill is payable at a particular place, then, following a distinction that had been already established by decision, the Bills of Exchange Act made that condition as to place of payment applicable to the acceptor, because that is a condition of the contract. But as regards time there is no limit. I agree with your Lordship that, applying those principles to the present action, there was sufficient presentment at the prescribed place, because the holder of the bill was there and ready to receive payment in terms of his intimation to the debtor. I think that under the Act the creditor is excused from further presentment if he does all that is possible to present the bill at the place prescribed. I therefore am of opinion that the objections to the procedure for enforcing payment of this promissory-note are not well founded.

LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuer — Salvesen — Gray. Agent—J. M. Glass, Solicitor.

Counsel for the Defenders—Lees—Cullen. Agent—David Dougal, W.S.

Friday, February 18.

FIRST DIVISION.

[Lord Low, Ordinary.

FRASER *v.* LORD LOVAT.

Prescription — Act 1617, *c.* 12 — *Ex facie Valid Title—Reference to Former Titles —Effect of Nullity of Former Titles — Enabling Act* 1774 (14 *Geo. III. cap.* 22)—*Saving Clause Vesting Act* 1747 (20 *Geo. II. cap.* 41), *sec.* 22.

The estates of L, who was found guilty of high treason, were confiscated in 1747, in which year an Act was passed by the provisions of which estates of persons attainted were vested in the Crown, and it was provided that a register of such estates should be kept. Section 22 of the Act provided that any person having a claim to or against a forfeited estate should enter his claim before the Court of Session within six months of the entry of the estate in the register, or in default such claim should be null and void.

In 1774 an Act was passed to enable the Crown to grant the estates to S the eldest son of L. It also contained a saving clause of all rights which any person possessed in them before the passing of the Act. Following upon this Act the Crown conveyed the estates to S by charter of novodamus "as they were vested in our predecessor by the attainture of L, and as they were possessed by the said L before his attainture."

An action was raised against the present proprietor of the estates by a person claiming to be descended from an elder brother of L, whom he averred to have been the rightful owner of the estates at the time when they were forfeited.

The defender pleaded that the estates had been possessed by himself and his ancestors for more than the prescriptive period on a series of *ex facie* valid irredeemable titles, and in particular he founded on two decrees of service in favour of his father and himself, the