

Counsel for Pursuers and Real Raisers—Chree, K.C.—M. P. Fraser. Agents—Webster, Will, & Company, W.S.

Counsel for the Lord Advocate—Solicitor-General (Morison, K.C.)—Forbes. Agent—James Ross Smith, S.S.C.

Counsel for the Rev. Thos. Burns, D.D.—Anderson, K.C.—W. T. Watson. Agents—Hill, Dougal & Company, W.S.

Thursday, June 28.

FIRST DIVISION.

LANARK COUNTY COUNCIL v.  
INLAND REVENUE.

*Revenue — Local Government — Stamp — Exemption — Housing of the Working Classes Act 1890 (53 and 54 Vict. cap. 70), secs. 57 (1) and 94 (3)—The Housing, Town Planning, &c., Act 1909 (9 Edw. VII, cap. 44), secs. 31 (1) and 53—The Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38), sec. 168.*

*Held (dis. Lord Johnston)* that a feu contract granted to a county council as local authority for the purposes of the Housing, Town Planning, &c., Act 1909 is not exempt from stamp-duty under section 168 of the Public Health (Scotland) Act 1897, in respect that it is not granted under and in pursuance of the powers conferred by the Act of 1897.

The Housing of the Working Classes Act 1890 (53 and 54 Vict. cap. 70) enacts—Part III—*Working Class Lodging-Houses*—Section 57 (1)—“Land for the purposes of this part of this Act may be acquired by a local authority in like manner as if those purposes were purposes of the Public Health Act 1875, and sections 175 to 178 both inclusive of that Act (relating to the purchase of lands) shall apply accordingly. . . .” Part V—*Application of Act to Scotland*—“In the application of this Act to Scotland the following provisions shall have effect:—Section 94— . . . (3) The Public Health (Scotland) Act 1897, and the Acts amending the same shall be substituted for the Public Health Acts, and in particular (a) with respect to the purchase of land a reference to section 90 of the said Public Health (Scotland) Act 1897 shall be substituted for a reference to sections 175 to 178 of the Public Health Act 1875.”

The Housing, Town Planning, &c., Act 1909 (9 Edw. VII, cap. 44) enacts—Section 31 (1)—“The expenses incurred by a rural district council after the passing of this Act in the execution of Part III of the principal Act (*i.e.*, *Housing of the Working Classes Act 1890*) shall be defrayed as general expenses of the council in the execution of the Public Health Acts. . . .” Section 53—“In addition to the provisions of the principal Act respecting the application of that Act to Scotland the following provisions shall have effect in the application of the Housing Acts to Scotland:— . . . (3) The expression Public

Health Acts means the Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38), and any Act amending the same. . . . (4) The reference in section 57 of the principal Act to sections of the Public Health Act 1875, relating to the purchase of lands shall be construed as a reference to the corresponding sections of the Public Health (Scotland) Act 1897. Provided that for the purposes of Part III of the principal Act the procedure under section two of this Act for the compulsory purchase of land shall be substituted for the procedure for the compulsory purchase of land under section one hundred and forty-five of the Public Health (Scotland) Act 1897. (5) The district and the local authority for the purposes of the Public Health (Scotland) Act 1897 shall respectively be the district and the local authority, and the public health general assessment shall be the local rate for the purposes of the Housing Acts. . . .”

The Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38) enacts—Section 168—“All bonds, assignments, conveyances, instruments, agreements, receipts or other writings made or granted by or to or in favour of the local authority under this Act shall be exempt from all stamp-duties.”

The County Council of the County of Lanark, *appellants*, being dissatisfied with a determination of the Commissioners of Inland Revenue, *respondents*, charging them with stamp-duty upon a feu contract obtained by the appellants for the purposes of the Housing of the Working Classes Acts 1890 to 1900, appealed by Stated Case.

The *Case* set forth—“ . . . By a feu contract, dated 16th and 21st February 1916, entered into between William Hugh Murray, W.S., Edinburgh, Francis John Carruthers of Dormont, in the county of Dumfries, and Robert Octavius Pitman, W.S., Edinburgh, the trustees acting under the testamentary writings of the late Miss Isabella Dennistoun Meiklam, The Towers, Havant, Hampshire, of the first part, and ‘the County Council of the county of Lanark incorporated by law, acting under the powers conferred on them by the Public Health (Scotland) Act 1897 and the Housing of the Working Classes Acts 1890 to 1900, for themselves and for behoof of the District Committee of the Middle Ward District of said county as a local authority under the said Public Health (Scotland) Act 1897 and Housing of the Working Classes Acts 1890 to 1900, of the second part, the first parties feued to the second parties the said ‘the County Council of the County of Lanark and their successors according to the true intent and meaning of said Public Health (Scotland) Act 1897 and Housing of the Working Classes Acts 1890 to 1900, and to their disponees and assignees whomsoever,’ a portion of the lands of Unthank, extending to five acres or thereby, lying in the parish of Bothwell and county of Lanark. It is provided in the said feu contract, *inter alia*, ‘that the second party shall be bound and obliged to erect upon the said area of ground hereby feued within twelve months from the term of entry after mentioned buildings to be used and occupied as and for dwelling-

houses and relative offices only, and said buildings shall not on an average of the whole extent of the said area of ground hereby feued contain more separate dwelling houses than twelve in number per acre nor fewer separate dwelling-houses than ten in number per acre, and said buildings shall be built of brick, rough cast and slated, and of the value of £5000 at least, which shall be capable of letting for and yielding a yearly rent of at least treble the amount of feu-duty hereinafter stipulated to be paid, so as to afford the first party a sufficient security for payment of the said feu-duty in all time coming, and said buildings shall be erected according to plans and elevations already submitted to and approved by the first party. . . . And it is further provided and declared with reference to the said area or piece of ground hereby feued that the second party shall be bound to lay out the same in blocks as shown on the plan already submitted to and approved of by the first party so as to correspond with the general feuing plan of the rest of the first party's lands, and so as that the roads or streets to be formed within the said area of ground hereby feued shall be formed on levels to be fixed by the first party's surveyor to fit in with the roads or streets formed or to be formed on the estate of the first party shown on the said feuing plan of the first party, and for this purpose no alteration which may affect the lines or levels of the roads or streets to be formed within the area of ground hereby feued at the points of their junctions with the said roads or streets formed or to be formed on the estate of the first party shall be allowed on the said plan of general lay out of the area or piece of ground hereby disposed without the consent of the first party thereto in writing first had and obtained.' The feu-duty under the said feu contract is £60 per annum.

"The said land was acquired by agreement for the purpose of the erection of houses or cottages for the working classes under the powers in that behalf conferred by the said Housing of the Working Classes Act 1890 and the Housing, Town Planning, &c. Act 1909. The Public Health (Scotland) Act 1897 does not confer on the local authorities under that Act power to acquire land for the said purpose. The Housing of the Working Classes Act 1890 was not adopted by the said County Council or District Committee.

"On 24th February 1916 Messrs J. & F. Anderson, W.S., Edinburgh, on behalf of the said County Council, presented to the said Commissioners the said feu-contract, and required them, in terms of section 12 of the Stamp Act 1891 (54 and 55 Vict. cap. 39), to express their opinion as to whether it was exempt from stamp duty, and if not as to the amount of stamp duty with which it was chargeable.

"The Commissioners were of opinion that the said feu contract was chargeable with stamp duty in respect that the exemption from such duty contained in section 168 of the Public Health (Scotland) Act 1897 applied only to writings made or granted by or to

local authorities acting under and in pursuance of the powers conferred by that Act, and that the said County Council in entering into the said feu contract were not acting as a local authority under the said statute, and had no power under it to acquire land for the purpose of the housing of the working classes, or for any of the purposes set forth in Part III of the Housing of the Working Classes Act 1890 and the Housing, Town Planning, &c., Act 1909. The Commissioners accordingly assessed the said feu contract as liable to a stamp duty of £12 in terms of the said Stamp Act 1891 and the Finance (1909-10) Act 1910, sec. 73. Whereupon Sir Thomas Munro, clerk to the said County Council, on their behalf paid to the collector of Customs and Excise at Edinburgh the said sum of £12, and the said feu contract was thereupon stamped with the stamps denoting the said duty of £12 assessed as aforesaid, and also with the particular stamp provided by the said Commissioners to denote that the full amount of stamp duty with which it was by law chargeable had been paid.

"The said County Council admitted, and hereby admit, that if stamp duty was chargeable on the said feu contract the said duty of £12 was properly assessed, but declared themselves dissatisfied with the determination of the said Commissioners on the ground (1) that the stamp duty on the said feu contract is an essential part of the expenditure incurred by the County Council acting as the local authority in connection with the carrying out of a housing scheme under Part III of the said Housing of the Working Classes Act 1890; (2) that on a true construction of sections 31 (1), 53 (3) and (5), of the Housing, Town Planning, &c., Act 1909, and section 168 of the Public Health (Scotland) Act 1897, the stamp duty on the feu contract would be part of the ordinary expenses of the execution by the local authority of the Public Health (Scotland) Act 1897; (3) that in so carrying out the provisions of Part III of the Housing of the Working Classes Act 1890 the local authority are acting in their capacity as local authority under the Public Health (Scotland) Act 1897; and (4) that on this construction of the statutes the feu contract is 'a conveyance or instrument' granted by or to or in favour of the local authority under the Public Health (Scotland) Act 1897, and is therefore under section 168 of that Act exempt from stamp duty."

The question for the opinion of the Court was—"Whether the provisions of section 168 of the said Public Health (Scotland) Act 1897 apply to the said feu contract and exempt it from the stamp duty of £12 otherwise chargeable?"

Argued for the appellants—The appellants were the local authority for the purposes of the Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38). They were therefore also the local authority for the Housing of the Working Classes Acts 1890 to 1900, and Housing, Town Planning, &c., Act 1909 (9 Edw. VII, cap. 44), sec. 53. The powers of the appellants as local authority under the former Act were extended in the

later Acts. Thus the Housing of the Working Classes Act 1890 (53 and 54 Vict. cap. 70) dealt, Part I, with unhealthy areas, and Part II with unhealthy dwelling-houses, while Part III was remedial. Those were public health matters. Further, the rate for the purposes of the Housing Acts was the public health general assessment—Act of 1909, sec. 53 (5). That was the view taken in *Commissioners of Inland Revenue v. Miller*, 1915 S.C. 469, per Lord Johnston at p. 473, 52 S.L.R. 423. If so the Public Health (Scotland) Act 1897, sec. 168, applied, and the feu contract should be exempt from stamp duty.

Argued for the respondents—The Housing Acts 1890 to 1909 neither amended, nor were to be read and construed with, the Public Health (Scotland) Act 1897. If they had section 168 would have applied to the present case. But all that the Act of 1909 did was to use the authority under the Act of 1897 for the purpose of new powers. The powers of the authority under the Act of 1897 were found in section 66 *et seq.* The expense of executing those powers was provided for in section 135, and section 168 related to conveyances for the execution of those powers. The powers under the Housing Acts were new and different powers, e.g., borrowing was not under the Public Health Acts, but to be carried out in the same way as under those Acts—Act of 1890, secs. 25 (4) and 43 (1). The acquisition of land was similarly dealt with (section 57 (1)). The compulsory acquisition of land was dealt with in a new way—1909 Act, secs. 2 and 53 (4). Further, there was a limit to the public health rate—1897 Act, sec. 137. There was no such limit under the Housing Acts. Further, the Housing Acts were not limited in application to Scotland, and in England there was no exemption from stamp duty. Accordingly it was not to be supposed that the Scottish authorities were to have an exemption which the English authorities had not. The reference to the Public Health Act was simply a matter of machinery, and did not extend the exemption from stamp duty. *Miller's case (cit.)* was a decision on a local Act, and in any event the passage referred to was *obiter*. An example where the exemption applied was found in the *County Council of Lanarkshire v. Inland Revenue*, 1895, 22 R. 615, 22 S.L.R. 480. *Beattie v. Corporation of Glasgow*, 1916, 54 S.L.R. 24, would have been differently decided had the accident occurred when the powers under the Housing Acts were being exercised. It was for the appellants to show they came within the exception. They had failed to do so.

At advising—

LORD PRESIDENT—The County Council of Lanark, acting as local authority under the Housing of the Working Classes Acts 1890-1909, feued out a certain portion of land for the erection of working men's dwellings, in pursuance of the powers conferred on them by the statutes I have mentioned. It is here claimed that the feu contract is not chargeable with stamp-duty by virtue of the 168th section of the Public Health Act

of 1897, which provides that conveyances by or to or in favour of the local authority under the Public Health Act of 1897 are exempt from all stamp-duties.

In my opinion this contention is ill founded, for the simple reason that the feu-contract in question was granted in favour of the local authority under the Housing Acts and not in favour of the local authority under the Public Health Act. It is quite certain that the Public Health (Scotland) Act of 1897 does not confer on the local authorities under that Act power to acquire land for the purpose of the erection of houses or cottages for the working classes. It is equally clear that the Housing Acts are not amendments or extensions of the Public Health Act, and are not even appointed to be read along with the Public Health Act, although, no doubt, the object and purpose of the Housing Acts is closely allied with the aim and object of the Public Health Act. It is nothing to the purpose, I think, to say that the same body of men who act as local authority under the Public Health Act constitute the local authority under the Housing Acts, or that the expenses of administration of the Housing Acts are to be taken from the public health general assessments. These considerations appear to me to be irrelevant in relation to the question which we have now to consider.

The Commissioners were of opinion when they considered the case that the feu contract was chargeable with stamp-duty in respect "that the exemption from such duty contained in section 168 of the Public Health (Scotland) Act 1897 applied only to writings made or granted by or to local authorities acting under and in pursuance of the powers conferred by that Act, and that the said County Council in entering into the said feu contract were not acting as a local authority under the said statute, and had no power under it to acquire land for the purpose of the housing of the working classes, or for any of the purposes set forth in Part III of the Housing of the Working Classes Act 1890 and the Housing, Town Planning, &c., Act 1909." I am unable to detect any flaw in their reasoning, and therefore I am of opinion that the question put to us ought to be answered in the negative.

LORD JOHNSTON—The Commissioners of Inland Revenue have I think taken in this case too narrow a view of the 168th section of the Public Health Act 1897 (re-enacting section 120 of the Act of 1867), and in doing so have neglected to consider the general purview of the legislation which is comprised in the Public Health Act 1897 and the Housing of the Working Classes Acts 1890 and 1909, and its bearing upon the application of the 168th section of the first-mentioned Act. It is true that, as has been done in the case of other sets of Acts having a common remedial object, it is nowhere said in the Act later in date that these Acts shall be treated as in combination and shall have a common citation, but it is none the less true that they have a general common object and a general interdependence. The

end and object of the Public Health Act is improved sanitary conditions and the sphere of the Housing Acts is just another road to that end.

The Public Health Act 1897, which superseded, as I have said, with certain amendments and extensions, that of 1867, is a purely Scottish statute. It adopted as the central authority for the execution of the Act the Local Government Board of 1894. The powers of the central authority under the Act of 1897 are to be found scattered throughout the Act, and they are expressly in addition to the powers conferred on or transferred to it by the Local Government Act 1894. Its duties are correlative to its powers. The Act of 1897 further adopted (section 12) as the local authorities "to execute this Act" certain existing bodies, viz., town councils, &c., in burghs, district committees where counties have been divided, and county councils where they have not, in counties. And these local authorities are, section 15, required to appoint medical officers and sanitary inspectors, whose functions it will be found are not confined within the four walls of the Public Health Act. Part II of the Act deals with sanitary provisions properly so-called under the heads general nuisance, offensive trades, scavenging, and unsound food, and lays down the duties and defines the powers thereanent of the local authorities and their medical officers and sanitary inspectors. Part III deals with prevention and mitigation of disease; Part IV with prevention in particular of epidemic disease; and Part V with the regulation of common lodging-houses. For the performance of the duties of the local authorities in relation to these matters the acquisition of property may be in some cases necessary but of comparatively minor importance. But in Part VI of the Act we come to the subject of drainage and water supply, regarding which little can be done without the acquisition of property or rights in property and without capital expenditure. I do not refer to any of the clauses of this part of the Act but content myself with noting what is the class of work committed by it to local authorities, under the central authority, and the relative provisions for meeting capital expenditure. The means for performing these duties and executing necessary works is provided to local authorities under Part VII of the Act in the power to lay on a public health general assessment distinct from any other rate which they are authorised to levy and in the power to borrow. And as lands and rights in land have to be acquired in the exercise of the powers of a local authority Part VIII of the Act contains a fasciculus of clauses bearing on that subject. Then follows Part IX, entitled legal proceedings. Embodied in this part is found section 168, the effect of which is in question in this case. It provides—"All bonds, assignations, conveyances, instruments, agreements, receipts, or other writings made or granted by or to or in favour of the local authority under this Act shall be exempt from all stamp duties."

The Commissioners of Inland Revenue

have decided that the benefit of this exemption is strictly confined to writings executed by, to, or in favour of a local authority, when acting under the powers conferred upon them by this Act, and under these powers alone, or, as they put it, by, to, or in favour of a local authority "acting under and in pursuance of the powers conferred by that Act." The words of the statute may be susceptible of this restrictive gloss. They are not so necessarily. They are simply "by, to, or in favour of the local authority under the Act," and the simple and natural meaning of these words is by, to, or in favour of the local authority for the particular area in question created by the Act.

Examine now the Housing of the Working Classes Act 1890. It is an Act of the United Kingdom, and has unfortunately to be applied to Scotland by Part V, comprising sections 94 to 97, a method of legislation which does not conduce to perspicacity. In its main operative portion it is from start to finish as much concerned with sanitary matters as is the Public Health Act. The first thing to note is that it assumes a local authority having jurisdiction in the matter of Public Health, and that it does not create one. I do not pretend to be acquainted with English public health legislation, but I take it from the very first sections onwards of the Act that in 1890 there existed in England local sanitary authorities with their medical officers of health just as there were in Scotland. As applied to Scotland the Public Health Acts are defined to be the Public Health (Scotland) Act 1867 and Acts amending the same, and therefore now the Act of 1897. "Urban sanitary authority" is defined to mean the local authority under the Public Health (Scotland) Act of 1867, now of 1897, being a town council, &c.; "rural sanitary authority" is defined to mean a district committee, or where a county has not been divided into districts the county council; and "medical officer of health" is defined to mean medical officer, who is therefore no new or different official but merely the existing local authority's existing medical officer.

Part I of the Act, confined to urban sanitary districts, is concerned with unhealthy areas, Part II with unhealthy dwelling-houses, and Part III with working class lodging-houses. Its scheme is in Part I to lay upon the existing local authority the duty, on being satisfied that the sanitary defects in any specified area within its district cannot be effectually remedied otherwise than by an improvement scheme involving demolition and reconstruction to proceed to such scheme. Enabling machinery is provided, including means of compulsory acquisition of lands, and of raising money by rates and borrowing, the rates being merely described as the local rates, *i.e.*, the rates which the local authority are already empowered to raise. And the reliance on the medical officer is just what it is under the Public Health Acts. The scheme in Part II is to impose on the local authority and its medical officer the duty of dealing with houses unfit for human

habitation, as dangerous or injurious to health, and confers the power of making closing orders and orders for demolition, and to undertake where necessary minor schemes of reconstruction of the area. Acquisition of land and compensation were therefore involved under this head also, as also additional rating and borrowing. Scotland, as regards the powers of county councils under this part of the Act was, section 98 (16), excluded from its operation. Part III, as regards Working Class Lodging-Houses, which were to "include separate houses or cottages," was permissive and had to be adopted by the local authority. But where it was adopted power was conferred on the local authority to carry it into execution by acquisition of land, &c., and the expenses incurred were, section 65, to be defrayed as general expenses of the local authority in the execution of the Public Health Acts—(but see the Act of 1909, section 31, the application of which, however, to Scotland is not very easy).

The Housing of the Working Classes Act 1890 was amended and extended in 1909. But it is only necessary to note that by the Act of that year Part III of the Act dealing with Working Class Lodging-Houses was applied absolutely, without the necessity of adoption, to the districts of all local authorities.

When, then, the general purview of this whole scheme of legislation is attended to; when it is seen that the subject of the two statutes, that of 1897 (formerly 1867) and of 1890, is the same, different in detail merely; that the two Acts are expressly linked together though not consolidated; that the local authority created by the first is not even expressly adopted, but impliedly assumed to be the local authority under the second; that the second contains truly only an extension of the powers conferred by the first; and that the cost of administering the powers under the second are left to be defrayed out of the rates authorised to be levied under the first, and out of money to be borrowed on the same account by the same authority, I cannot hesitate to conclude that the incidental exemption or relief conferred on the local authority under section 163 of the Act of 1897 is carried into the Act of 1890 along with the local authority itself and all that belongs to it, including, in particular, its power of levying one public health general assessment.

The present question is very analogous to that decided in the *County Council of Lanarkshire v. Inland Revenue*, 22 R. 615, 32 S.L.R. 480, in 1895, and though this is not a direct authority, I think that the Court reached their conclusion on somewhat similar grounds to those which I have adopted here. I think, then, that the determination of the Commissioners of Inland Revenue was wrong, and that the question in the case should be answered in the affirmative.

**LORD MACKENZIE**—I agree with the Commissioners' finding for the reasons stated in the case.

**LORD SKERRINGTON**—The purposes of the Housing Acts are, on my construction of these statutes, regarded and treated as something different from the purposes of the Public Health Acts, although in certain defined and limited respects the purposes of the first-mentioned statutes must be deemed to be purposes of the second-mentioned statutes. Thus section 57 (1) of the principal Housing Act enacted that for the purposes of that Act land might be acquired by a local authority "in like manner as if those purposes were purposes of the Public Health Act." Even this limited invocation of the powers conferred by the Public Health Act upon local authorities was still further limited by the Housing Act of 1909, so as to exclude the compulsory acquisition of land for the purposes of the Housing Acts—a matter in regard to which a new and special code was provided by the Act of 1909. Again, by section 53 of the Act of 1909 the public health general assessment is declared to be the local rate for the purposes of the Housing Acts, but the identification of the two rates is left incomplete both as regards the calculation of the statutory limit and also as regards the assessable area. Accordingly the scheme of the Housing Acts is to make use of and to adopt for their own special purposes certain defined portions of the legislative machinery already in existence and constituted for the purposes of the Public Health Acts, and notably the administrative bodies which had been incorporated by and for the purposes of these statutes. There is, however, in the Housing Acts no general adoption of the enactments of the Public Health Acts such as would have been implied if Parliament had chosen to make the Housing Acts amendments of the Public Health Acts.

Accordingly I am unable to hold that section 163 of the Public Health (Scotland) Act 1897 has been applied to deeds granted by or to local authorities in the execution of the purposes of the Housing Acts. On the contrary, I think that it is confined in its application to deeds granted in pursuance and execution of the Public Health Act. In my opinion the determination of the Commissioners is right.

The Court answered the question in the negative.

Counsel for the Appellants—Blackburn, K.C.—C. H. Brown. Agents—J. & F. Anderson, W.S.

Counsel for the Respondents—The Lord Advocate (Clyde, K.C.)—R. C. Henderson. Agent—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.