Ordinary, but as confirming the contrary opinion. I hold Mr Sellar's evidence to be conclusive upon the fact that it was a condition made between the parties on the 11th September that all the members of the family should sign that document before any of them were held bound.

Might I add *en passant* that I am not surprised at such a condition in the circumstances of this case and of this family. They seem to have changed their view as to the distribution of their father's succession from month to month, and it would almost appear from day to day, and it was eminently necessary in a case of that kind that all the members of the family should know that all were bound.

I now come to the suggestion which is made that notwithstanding the writing having broken down because of this, that one signature of a member of the family has not been adhibited, and that two signatures, one of a beneficiary and one of an executor, have not been adhibited, still according to Mr Sandeman in a strenuous and clear argument it is established that verbally they had all agreed. Such a proposition is answered I think by this consideration, that the party asserting that all have agreed must be bound to state at what point of time that agreement was reached. By Mr Sellar's evidence, and it is the only evidence in the case, it is conceded that such an agreement for all was not reached until all the signatures had been adhibited. When then were all agreed? Says Mr Sandeman, they were all represented at the meeting of the 11th. By what nature of representation I am not at all clear in my own mind. Whether they were the powers of a plenipotentiary, to which my noble and learned friend on the Woolsack has alluded or not, I cannot say, but certain it is that before tho two signatures were obtained—and they have not been obtained yet—one of the parties who had not signed had resiled, and two of the daughters who had signed the document have declared that they had signed it under certain conditions which have not been fulfilled. Nothing looser in practice can be imagined than to found upon a contract under which, during any period of days or weeks, this situation should arise, that some parties to that contract were bound while the others remained free. Mrs Forbes and Mr Hay remained free to decline to adhibit their signatures on the document, and until they did so the others were either bound or they were free. In my opinion they too were absolutely free.

In addition to the authorities cited from the Woolsack I would beg to refer to this sentence in the judgment of Chief-Justice Lord Denman in the case of *Latch* v. *Wedlake* (11 Adolphus and Ellis, 959, at 965) — "Wherever an instrument," said that learned judge, "is to be executed by several parties, there must be some interval between the execution of each, and if all be not present at the same time that interval may be considerable, and it cannot be contended that the mere fact of execution by one conclusively binds him where that has been done on the faith that all will execute, and any one shall refuse." That is the present case. It was open, it is open now, to Mrs Forbes and Mr Hay to refuse to sign that document. How then can it be said that the other parties were all bound when and so long as one or more of the parties remained free? The thing seems to me to be a contradiction in logic and quite unfounded in law.

Their Lordships dismissed the appeal, with expenses.

Counsel for the Appellant—Sandeman, K.C.—R. C. Henderson. Agents—Wilson & Duffus, Aberdeen—Alex. Morison & Co., W.S., Edinburgh—Beveridge & Co., Westminster.

Counsel for the Respondents—Solicitor-General for Scotland (Morison, K.C.)—D. R. Scott. Agents—Adam, Thomson, & Ross, Aberdeen—Scott & Glover, W.S., Edinburgh—Slack, Munro, Saw, & Co., London.

Friday, June 7, 1918.

(Before the Lord Chancellor (Finlay), Viscount Haldane, Lord Dunedin, and Lord Parmoor.)

LANARKSHIRE COUNTY COUNCIL *v.* INLAND REVENUE.

(In the Court of Session, June 28, 1917, 54 S.L.R. 508, and 1917 S.C. 603.)

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

The Public Health (Scotland) Act 1897, section 168, enacts—"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 stamp duties.

The Housing of the Working Classes Act 1890, section 57 (1), enacts—"Land for the purposes of this part of this Act may be acquired by a local authority in like manner as if these purposes were purposes of the Public Health Act. . . ."

Held that the exemption from stamp duty applied only where the local authority was acting under the Public Health Act, and not where acting under the Housing of the Working Classes Act 1890 or the Housing, Town Planning, &c., Act 1909.

This case is reported *ante ut supra.*

The Lanarkshire County Council appealed to the House of Lords.

At the conclusion of the argument for the appellants—

LORD CHANCELLOR—This case has been very clearly argued by Mr Brown, and

every consideration has been put before your Lordships with such force that I am certain the case will not have lost anything by the absence of his leader.

The case appears to me an extremely clear one. The question is the construction of section 168 of the Public Health (Scotland) Act 1897, which is set out on page 4 of the appellant's case—"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." Now it is contended that the words "under this Act" relate to the local authority—that so long as the writings, deeds, and so on are made or granted by or to the local authority under that Act they enjoy the benefit of the exemption. In my opinion that is not the correct construction of the section. I think that in order to enjoy the exemption conferred the deeds must not merely be in favour of that authority, but they must be made or granted under the powers of the Act. It is not enough that the authority entrusted with the powers of that Act in some other capacity and for some other purpose has the deed. It is the same authority, but the deed in question is not one for the purposes of the Act in respect of which alone the exemption is granted.

I cannot put the matter more clearly than it is put in the words of the certificate granted by the Commissioners, which is quoted by the Lord President in his judgment. He says—"The Commissioners were of opinion when they considered the case that the feu-contract was chargeable with stamp duty in respect"—then follows a quotation from the certificate—"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 agree with that entirely. That seems to me really to exhaust the subject. I cannot agree at all with the construction put upon the section in Lord Johnston's judgment, where he appears to restrict these words "under the said Act" to defining a local authority—that is to say, that so long as it is a local authority under that Act it does not matter whether the deed had any connection with the purposes of that Act. That seems to me to contradict the plain meaning of the section.

The rest of Lord Johnston's judgment is taken up with showing how closely connected the purposes of the Housing of the Working Classes Act may be said to be with the purposes of the Public Health Act. All that may be perfectly true, but it is quite irrelevant. It is absolutely impossible to say that this certificate was granted under the Public Health Act. It was granted under an Act relating to purposes closely connected, it may be, with public health, but it was not granted under that Act.

It is admitted that the case cited in 22 Rettie (*Lanarkshire County Council* v. *Inland Revenue*, at p. 615, 32 S.L.R. 480) did not govern this case, and the matter seems so very clear that in spite of the extremely able argument we have listened to I think the appeal fails owing to its own inherent defect. For these reasons I think the appeal should be dismissed with costs.

VISCOUNT HALDANE—On both points I agree, and I do not desire to add anything to what has been said from the Woolsack.

LORD DUNEDIN—I concur.

LORD PARMOOR—I concur.

Their Lordships dismissed the appeal with expenses.

Counsel for the Appellants—Lawrence, K.C.—C. H. Brown. Agents—J. & F. Anderson, W.S., Edinburgh—Grahames & Company, Westminster.

Counsel for the Respondents—Lord Advocate and Dean of Faculty (Clyde, K.C.)—R. C. Henderson. Agents—Sir P. J. Hamilton Grierson, Edinburgh—H. Bertram Cox, C.B., London.