application for arbitration was competent, and should remit to the Sheriff-Substitute to proceed with the same.

The Court answered the question of law in the negative, therefore sustained the appeal, remitted to the arbitrator to proceed, and found the appellant entitled "to his expenses of the stated case."

The Auditor having lodged his report on the appellant's account of expenses, the respondents objected thereto, "in respect that the Auditor has allowed the following items, which are excessive and ought not to be charged at more than £2, 2s." After setting forth the various items and the sums charged for them, amounting to £5, 9s., and the sums allowed amounting to £5, 0s. 8d., which included a fee of £1 to the Sheriff-Clerk for preparing the case, the note of objections proceeded—"In any event, the Auditor in allowing the whole of the above items has allowed more than is fair and reasonable for the preparation of the case prior to its actual presentation to the Court."

Argued for the respondents—£2, 2s. was a fair and reasonable amount for preparing such a stated case—*London and Edinburgh Shipping Co.* v. *Brown*, February 16, 1905, 7 F. 488, 42 S.L.R. 357. Reference was also made to *M'Govern* v. *Cooper & Company*, November 30, 1901, 4 F. 249, 39 S.L.R. 164.

Argued for the appellant—The amount allowed was fair and reasonable. It included £1 paid to the Sheriff-Clerk in terms of the Act of Sederunt of 3rd June 1898. Two guineas was too little if it were to include that. In *Brown* (*cit. sup.*) expenses in connection with counsel's assistance in revising and adjusting the case were disallowed, but these were not charged for here. *Brown's* case did not decide that £2, 2s. was the amount to be charged in such cases, but that expenses meant fair and reasonable expenses.

LORD STORMONTH DARLING—We shall adopt the practice in *Brown's* case, to the extent of modifying the fee to be allowed to the appellant at three guineas, which includes the one pound paid to the Sheriff Clerk.

Counsel for the Appellant—G. Watt, K.C.—Spens. Agent—J. A. Kessen, S.S.C.

Counsel for the Respondents—M'Clure, K.C.—Horne. Agents—M. J. Brown, Son, & Company, S.S.C.

Wednesday, February 19.

FIRST DIVISION.

(EXCHEQUER CAUSE.)

[Lord Johnston, Ordinary.

INLAND REVENUE *v.* CALEDONIAN RAILWAY COMPANY.

Revenue — Stamp Duty — Property Purchased under Statutory Power—Finance Act 1895 (58 *Vict. c.* 16), *sec.* 12—*Compulsory Purchase under Power Contained in Special Act—Production of Conveyance —"Completion of Purchase"—Railway—Statute.*

The Finance Act 1895, sec. 12, enacts—"Where after the passing of this Act, by virtue of any Act, whether passed before or after this Act, either

(*a*) any property is vested by way of sale in any person; or

(*b*) any person is authorised to purchase property,

such person shall, within three months after the passing of the Act or the date of vesting, whichever is later, or after the completion of the purchase, as the case may be, produce to the Commissioners of Inland Revenue a copy of the Act printed by the Queen's printer of Acts of Parliament or some instrument relating to the vesting in the first case, and an instrument of the conveyance of the property in the other case, duly stamped with the *ad valorem* duty payable upon a conveyance on sale of the property; and in default of such production the duty with interest thereon at the rate of five per centum per annum from the passing of the Act, date of vesting, or completion of the purchase as the case may be, shall be a debt to Her Majesty from such person."

Held that the section applied to property purchased in the exercise of compulsory powers contained in the Special Act of a Railway Company or other party.

Opinion per curiam (1) that a conveyance which had been produced at the Collector's office in order to be provisionally marked with the duty payable, and which had then been impressed with the proper amount of duty, had not been produced duly stamped to the Commissioners in the sense of the section; and (2) that the date of "the completion of the purchase" was that of the final payment of the price.

On 6th December 1906 the Lord Advocate, as representing the Commissioners of Inland Revenue, raised an action against the Caledonian Railway Company, in which he craved—(1) declarator that "under and in respect of section 12 of the Finance Act 1895 (*v. sup. in rubric*) . . . the defenders, when authorised by virtue of any Act to purchase property, are bound to produce to the Commissioners of Inland Revenue, within three months after completion of the purchase, an instrument of conveyance

of the property, duly stamped with the *ad valorem* duty payable upon a conveyance on sale of the property;" and (2) decree ordaining the defenders to produce to the Commissioners of Inland Revenue the instrument of conveyance or disposition disponing to the company St Columba's Gaelic Church in Glasgow, duly stamped with the *ad valorem* duty payable thereon, or, in the event of their failure to do so, decree for £223, 10s. (or such other sum as might be found to be the amount of the duty), with interest thereon at five per cent. from 3rd June 1901 till payment.

Under their Special Act, the Caledonian Railway (General Powers) Act 1899 (62 and 63 Vict. cap. ccxv), the defenders were authorised to take for the purposes of their undertaking certain lands in the City of Glasgow adjoining the west side of their Central Station there, including the subjects held in trust for St Columba's Gaelic Church, Glasgow. These subjects were acquired compulsorily, the price being fixed by arbitration. Following on the award, the trustees executed and delivered to the defenders a conveyance dated 24th, 25th, 27th, and 29th May, and 3rd June 1901. On 7th June 1901 the conveyance (the deed, production of which was called for in the summons) was taken by the defenders to the office of the Inland Revenue Commissioners in Glasgow to be marked provisionally with the amount of stamp duty payable, and was then impressed with a stamp duty of £223, 10s., the duty payable.

The pursuer, *inter alia*, averred—"(Cond. 2). . . . It is explained and averred that the stamps which the deed in question bears were impressed in Glasgow on 7th June 1901, when it was presented at the Collector's office there to be stamped, but the deed was not then nor afterwards produced duly stamped to the Commissioners of Inland Revenue in compliance with the provisions after mentioned of section 12 of the Act 58 Vict. c. 16 (*v. sup. in rubric*). Had the deed been presented in order that it might be produced as a duly stamped instrument to the Commissioners in terms of that section, the Collector in Glasgow would have forwarded the deed to the Comptroller at Edinburgh, or have instructed the agent to do so himself. . . . (Cond. 4) Information has been asked from the defenders as to the deeds of conveyance relating to the property purchased by them in recent years under powers conferred by statute, and they have been repeatedly reminded of the obligation imposed on them by the Finance Act of 1895 to produce to the Commissioners of Inland Revenue stamped instruments of conveyance on acquiring property by purchase under statutory powers. The defenders, however, have declined to furnish any information as to the conveyances in their favour of property so acquired, and they refuse to make production of any instrument of conveyance or disposition of such property, denying that they are under any obligation to do so. . . ."

In answer the defenders stated—"(Ans. 2) The conveyance . . . was on 7th June 1901 produced by the defenders at the office of the Commissioners of Inland Revenue at Glasgow, and was then duly impressed with a stamp duty of £223, 10s., being the amount of the *ad valorem* duty payable upon a conveyance on sale of the foresaid land or property . . . The defenders, by said production, satisfied the whole requirements of the after mentioned section 12 of the Finance Act 1895." . . . (Ans. 4) Admitted that the Commissioners of Inland Revenue demand the defenders to produce to the Commissioners conveyances of all property purchased by the defenders for the purposes of the defenders' Special Acts within three months after the purchase of such property, and that the defenders deny that they are bound, under the Finance Act 1895, to produce to the Commissioners conveyances of such property within three months after the purchase thereof. Explained that in many cases where property is purchased by the defenders for the purposes of their Special Acts no conveyance has been granted to the defenders within three months after the purchase or until long after the purchase thereof, and that the said Finance Act does not apply to property scheduled to the defenders' Special Acts for the purpose of conferring on the defenders power to take such property compulsorily, subject to the provisions of the Lands Clauses Consolidation (Scotland) Act 1845. . . ."

The defenders, *inter alia*, pleaded—"(2) The defenders are entitled to absolvitor, in respect that, upon a sound construction of the Finance Act 1895, the pursuer is not entitled to decree in terms of the declaratory conclusions of the summons. . . . (5) *Separatim*—The defenders having made production of the said conveyance in terms of section 12 of the Finance Act 1895, and having made payment of the sum of £223, 10s., being the amount of the *ad valorem* duty payable on the conveyance in question, should be assoilzied."

On 10th July 1907 the Lord Ordinary (JOHNSTON) pronounced this interlocutor:—"Finds that the instrument of conveyance or disposition referred to in the summons has already been produced to the Commissioners of Inland Revenue in the sense of the Finance Act 1895 (section 12), and therefore assoilzies the defenders from the conclusions of the summons, and decerns."

Opinion.—"This case is brought to test the duty of railway and other public companies and bodies under the 12th section of the Finance Act 1895 (58 Vict. cap. 16), or, perhaps more properly stated, to determine what the Inland Revenue may insist on as the due compliance by such companies, &c., with that enactment.

"To lead up to a consideration of the Act of 1895, it is desirable to examine the state of matters which preceded it. The object of the 12th section of that Act being ostensibly to secure the revenue in the duties, expressing it generally, upon the transfer of property authorised to be purchased by railway companies, &c., by way

of a general enactment of universal application, it is understood that the same object had previously been in use to be attained by special clauses, inserted at the instance of some public department, probably the Board of Trade, in all private Acts, where the necessity for such arose.

"At my request the defenders, who are the Caledonian Railway Company, have lodged in process specimens of such clauses.

"Their Act of 1889, while it gives them compulsory power (sec. 4) to acquire lands in usual terms, expressly sanctions (sec. 33) four agreements for the acquisition of lands, 'provided always that within three months from the date of completion of each of the purchases contemplated by the agreements comprised in schedules (C, E, and F) to this Act, the companies shall produce to the Commissioners of Inland Revenue a duly stamped deed of conveyance in respect of such purchase; and if the company shall not produce such deed as aforesaid, the *ad valorem* stamp duty, with interest thereon at the rate of five pounds per centum per annum from the date of such completion to the date of payment, shall be recoverable from the company, with full costs of suit, and all costs and charges attending the same.'

"Their Act of 1891 (sec. 4) gives them compulsory power to acquire lands in usual terms. But (sec. 39) also empowers the company, in conjunction with the Glasgow and South-Western Railway Company, to purchase by agreement a certain private railway, and to maintain, improve, and work the same, 'provided any such purchase shall be evidenced by a duly stamped conveyance, which shall within three months from the date of vesting' of the said private railway in these companies be produced to the Commissioners of Inland Revenue, *mutatis mutandis*, as in the before recited Act.

"Then their Act of 1894 (secs. 40 and 41) authorises them to acquire the undertaking of the Forfar and Brechin Railway Company on terms fixed by the Act, and (sec. 42) on payment, transfers to and vests that undertaking in the Caledonian Company as from the date of the passing of the Act, 'provided that within three months after payment of the consideration of the transfer the company shall produce to the Commissioners of Inland Revenue' a Queen's printers' copy of the Act, duly stamped as if it were a deed of conveyance, all as provided, *mutatis mutandis*, in the first recited Act.

"Now, it is here to be noted in passing that though two of these Acts at least provide for the compulsory acquisition of lands in general terms, their enactments regarding the production of a duly stamped conveyance or copy of the Act apply only to the cases of statutory vesting, or statutory confirmation and sanction of provisional agreements for purchase. And it is patent that some such provision was necessary for the protection of the Revenue, because otherwise in the case of a statutory vesting no conveyance or transfer was necessary, and therefore nothing came into existence naturally requiring to be stamped; and in the case of lands acquired by provisional agreement scheduled to an Act, and expressly confirmed and sanctioned by it, there was always the risk that the company would, at anyrate for a period of years, if not altogether, rest content with possession on such an agreement with statutory confirmation and sanction, and take no feudal conveyance requiring to be stamped. It does not therefore appear to have been considered necessary, prior to 1895, to require production, under the same condition or penalty, of conveyances of lands taken in the ordinary way by compulsory purchase, where a feudal title by conveyance would follow, as in similar voluntary transactions.

"Subsequent to the passing of the Finance Act 1895 these particular clauses in protection of the Revenue were dropped out of the defenders' private Acts, and I presume out of all other similar Acts, as, for instance, in the defenders' Act of 1902, where (sec. 16) compulsory powers in ordinary form are given; (sec. 17) certain prior agreements for the purchase of lands are confirmed and sanctioned; and (sec. 34) certain subordinate independent undertakings are statutorily vested in the company, and no provision in protection of the Revenue follows. Examples might be multiplied, but this example is a complete and comprehensive one.

"Now the section of the General Finance Act 1895, which I have to interpret and apply (sec. 12), is as follows:—

"'Where, after the passing of this Act, in virtue of any Act, whether passed before or after this Act, either

'(*a*) any property is vested by way of sale in any person; or

'(*b*) any person is authorised to purchase property, such person shall within three months

'(*a*) after the passing of this Act or the date of vesting, whichever is later, or

'(*b*) after the completion of the purchase,

as the case may be, produce to the Commissioners of Inland Revenue

'(*a*) a copy of the Act printed by the Queen's printer of Acts of Parliament, or some instrument relating to the vesting in the first case, and

'(*b*) an instrument of conveyance of the property in the other case,

duly stamped, with the *ad valorem* duty upon a conveyance on sale of the property; and in default of such production, the duty, with interest thereon at the rate of five *per centum per annum*,

'(*a*) from the passing of the Act, date of vesting, or

'(*b*) completion of the purchase,

as the case may be, shall be a debt to Her Majesty from such person.'

"I have quoted the *ipsissima verba* of the Act, though the spacing and lettering is mine, to assist in its consideration.

"What is meant by (*a*) a statutory vesting by way of sale, and how the want of a formal conveyance on sale in such a case

is to be supplied, is quite clear and needs no comment.

"But a question of some difficulty is raised on the interpretation of the alternative expression (*b*) 'authorised to purchase property.' The Department maintains that it covers every case of purchase by a railway or other company, &c., by virtue of statutory powers, whether by agreement receiving statutory confirmation and sanction, or by exercise of compulsory powers statutorily conferred. The defenders, on the other hand, maintain that it applies only to the case of statutory confirmation and sanction of an agreement to purchase.

"The defenders maintained with great force that the general provision was only the crystallising of the particular clauses in use to be inserted in private Acts; that the necessity was the same, and is the measure of the general, as it had been of the particular, provisions. I did not receive any explanation from the Department of a more extended necessity or purpose, leading to a more extended interpretation. The terms of this part of the provision are no more happily chosen than are those of another part to be immediately noticed, and I feel the full force of Mr Clyde's argument. If I found it necessary for the disposal of the case to determine this question, I should feel much hesitation, notwithstanding that the general expressions 'authorised to purchase,' 'in virtue of any Act,' are capable of covering more than merely confirmations and sanctions of provisional agreements, and might perfectly well cover acquisition by the exercise of statutory compulsory powers. My hesitation is not diminished by the impression that the extended construction is not necessary for the protection of the Revenue. There was a time in which instances occurred, and I remember of more than one in my own particular practice, where the railway companies in Scotland were in the earlier days of railway enterprise dilatory in taking, or the landowners in granting, conveyances of land compulsorily acquired, and both rested on possession following on the exercise of compulsory powers and a settlement of the price. But I think that these days are past, and that railway companies and proprietors now treat compulsory purchases just like ordinary transactions, and that conveyances are taken and recorded in ordinary course.

"Nor is my hesitation diminished by the difficulty of interpreting the expression 'completion of purchase.' This expression is vague, and the Crown have not assisted to elucidate it. They have evidently felt the difficulty, for they have not attempted distinctly to interpret it, but have in their summons somewhat vaguely assumed that at latest it must be the date of execution of a disposition of the lands acquired. Now according to the generally accepted doctrine, the Act which confers compulsory powers is the equivalent of an offer of the property, and the company's notice to treat is the acceptance, and on offer and acceptance, even when the offer has to be fixed by arbitration, a purchase is completed past resiling on either side. But as arbitration, failing agreement to fix the consideration, must follow in compulsory purchase, and often takes months, even years, to carry to an award, before which an execution of a conveyance on sale is not possible, it is evident that the statute cannot mean to fix the date of the notice to treat as the date within three months of which an instrument of conveyance of the property duly stamped must be produced to the Commissioners of Inland Revenue. It is not, however, easy to say what other date is intended. It must either be the arbiter's award, as I think the Crown are inclined to argue, or the execution of the conveyance. Now, once the notice to treat is given, either party can, under the Lands Clauses Act, compel arbitration proceedings resulting in the fixing of a price. And the landowner, after the award, may compel the company to take a title—see *in re Carey Elwes' Contract*, [1906], 2 Ch. 143. But the Inland Revenue cannot interfere to hasten the parties. It is difficult therefore to see, if this is the meaning and intention of the phrase, how in such cases the assumed object of the statute is attained, if that object is the mere speedy collection of the revenue.

"But assume the extended interpretation contended for by the Department, and that the completion of the purchase is, in the sense of the statute, the execution, and I think it must be added the delivery, of the conveyance, it falls now to be considered what it is that the Department demand. It is this, that conveyances on compulsory sale shall, in the matter of stamping, go through forms and ceremonies not required in the case of any other conveyances on sale.

"To test the question, the Department have fixed on a certain conveyance to the Caledonian Railway Company, by the Trustees of the Church of Scotland, of St Columba's Gaelic Church, Glasgow, which followed on a compulsory taking and arbitration proceedings. The duty has been paid, and the document has been stamped in ordinary course. But the Department says to the defenders, you must produce the conveyance again in order that it may be examined, and entered on a register we have instituted, and be marked with a certificate we have adopted accordingly; and as a compulsitor on the company to bring the document back to the Department, they sue for the duty already paid, with 5 per cent. interest, from the date three months after its execution, which took place six years ago.

"I thought the demand unreasonable on my own knowledge of the practice of the Department. But as I could not trust to that, I thought it proper to remit to the Depute-Keeper of the Signet to report. His report has confirmed me in thinking that, whatever view may be taken of the matters I have already referred to, the Department are not justified in their demand.

"If all conveyances were in use to be

written on paper already stamped, then, on their interpretation of the statute, the Department would be entitled and bound to demand production of such documents, and I do not think that the defenders would oppose the demand. But the practice is otherwise. For manifest good reasons, the practice has long prevailed, for which the internal arrangements of the Department provide, of writing conveyances and all more important documents on plain paper, and then handing them in to be stamped with the proper stamp, and so giving opportunity to the party sending the document to be stamped, and the Department, to come to a *prima facie* agreement as to the stamp to be impressed. I refer to Mr Paul's report, the details of which I need not repeat. For my purpose the gist of it is this—A deed which it is desired to have stamped is handed to the 'deeds marker.' The ingiver pencils on the left-hand top corner the amount of duty which he proposes to pay. The deeds marker examines the deed sufficiently to satisfy himself whether he can pass it for the amount so proposed. If he can do so, he initials it and passes it on to be stamped. If he cannot, and cannot agree with the ingiver on an altered duty, he passes the deed on to the Solicitor's office for consideration—not for formal adjudication, unless that is desired and an extra fee paid—but that the superior officer of the Department may consider the matter of the stamp. Whether the deed goes direct to the 'stamper' or through the 'check clerk' is immaterial for the present purpose. What is material is this—In Scotland the Controller of Stamps and Taxes represents the Commissioners of Inland Revenue, the 'deeds marker' is an official in the Controller's Department. The Commissioners cannot act personally in the matter, nor can the Controller. If the conveyance is produced to the 'deeds marker,' or (if he is not satisfied and submits the deed to the Solicitor for his opinion) to the Solicitor, and if the deed remains in the hands of the Inland Revenue Authorities until it is stamped *prima facie* to their satisfaction, it appears to me that the obligation to produce it duly stamped to the Inland Revenue is reasonably complied with, for the emphasis is not on the word 'duly,' but on the word 'produce.'

"Where one finds an enactment with a practical object drawn with some indefiniteness, and not altogether contemplating the customary practice, alongside of which it has to be applied, I think that a reasonable application consistent with the object should be sought.

"Now, there is nothing in the matter of duty to differentiate conveyances to railway companies from any other conveyances. And the object of the enactment is not, I am persuaded, to enforce a compulsory adjudication of the stamp duty, as if the essence of the enactment was contained in the word 'duly.' For one reason, that however often the document is produced to the Commissioners, unless the stamp is formally 'adjudicated' and the adjudication fee paid, the mouth of the Inland Revenue is not closed. But nevertheless the document has been as 'duly stamped' as any other document which has passed through the mill of the Stamp Office, and the ingiver has done his *duty* on that behalf. The object of the enactment is to secure that the revenue from stamps is promptly collected; and if they choose, the Inland Revenue officials can secure all that, in my opinion, the Act intends, when the document is in their hands for stamping; and before it is given out again duly stamped if it has not been timeously stamped they can exact interest on the duty. If they cannot trust to their 'deeds marker' to see to this, they have only to instruct him to pass on all such documents *per aversionem* to the solicitor, or to some special official, as I presume they would be passed on if the Department were warranted in insisting on the system they seek to initiate.

"I have all sympathy for a public Department which is in any way thwarted by members of the public in the execution of a statutory duty. But I cannot myself see, and though I have asked for it I have not received from the Department, any satisfactory reason for their insistence in the present demand. It appears to me that in the present case, by bringing, according to practice, their conveyances to the Department for stamping, and, as I humbly think, for 'due stamping' in the sense of the statute, the defenders are putting the Department in a position to perform all their functions under the statute in a reasonable way, and that the Department is not justified in saying to them, 'You must take your deeds away out of this door, and you must bring them back again by that door, in order that we may keep certain registers and write certain certificates which have no statutory warrant, and, so far as I can see, no statutory or other effect.'

"I am confirmed in this view when I consider the particular circumstances of the case and the conclusions of the summons.

"Notice to treat was served on 25th November 1899. The owners intimated their claim on 8th December 1899. The oversman pronounced his award on 22nd March 1901. A conveyance was executed by the owners on 3rd June 1901. The conveyance was handed in, the duty paid, and the stamp impressed in ordinary course on 7th June 1901. The conveyance was recorded on 8th June 1901, while the action was not raised till 6th December 1906. The duty was thus paid four days after the execution of the deed, and the action not raised till four and a-half years after the duty was paid.

"Now, the logic of their position obliged the Department to say there has been default, the duty and interest is due in consequence, and for that we sue. But they cannot face up to this, for they know that the duty has been paid and accepted nearly six years ago, and that they cannot recover it twice over, and have no statutory warrant for suing for interest, owing to delay in producing only. So they frame

a conclusion, which, however reasonable from their point of view, is not in accordance with the situation which the enactment contemplated.

"I think I must therefore find that the instrument of conveyance or disposition referred to in the summons has already been produced to the Commissioners of Inland Revenue in the sense of the Finance Act 1895, section 12, and therefore assoilzie the defenders from the conclusions of the summons, with expenses."

The Lord Advocate reclaimed, and argued —(1) The words of the section clearly covered the present case. That was the Lord Ordinary's view, though he did not find it necessary to decide the point. The Railway Company were persons "authorised to purchase property." The pursuer was therefore entitled to declarator in terms of the first conclusion of the summons. (2) The Lord Ordinary was in error in thinking that the section had been complied with. The object of the section was to prevent companies relying on their statutory transfers of property without obtaining a duly stamped conveyance, and so defeating the legitimate claims of the Revenue. It was not enough to lodge a conveyance for stamping, even though the stamp duty were then paid; it must be produced duly stamped to the Commissioners—*Eastbourne Corporation* v. *Attorney-General*, [1904] A.C. 155, *per* Lord Lindley, 157; *Attorney-General* v. *Felixstowe Gas Light Company* (1907), 97 L.T. 340; *Inland Revenue* v. *Irvine and District Water Board*, December 5, 1905, 43 S.L.R. 649. The date when it was so produced was important, for otherwise the amount of any penalty that might be due could not be ascertained. (3) "Completion of the purchase" meant the final act done by the purchaser, *i.e.*, the payment of the last instalment of the price —*Lewis* v. *The South Wales Railway Company*, 1852, 22 L.J. Ch. 209. It could not mean after the "completion of the deed," for that would be futile; nor could it mean after the "date of the contract," for that was the notice to treat. The *terminus a quo* therefore was the final payment of the price.

Argued for respondent—(1) The section did not apply to cases of compulsory purchase. It only applied to cases where statutory authority had been interponed to private arrangements, viz., "agreements" to purchase. Prior to the Finance Act 1895 similar provisions were in use to be inserted in private Acts, and the object of section 12 was to embody such provisions in one general statute. A purchaser was not bound to execute and record a conveyance. He might, if he liked, be content with an unfeudalised conveyance or a personal right. He was not bound to execute and record a conveyance merely to benefit the Revenue. (2) *Esto*, however, that the company were bound to produce a duly stamped conveyance, that had been done, and therefore section 12 had been complied with. The section did not contemplate double presentment, otherwise the enactment would have been absurd. There was no penalty for failure to produce a second time. No penalty was due in any event, for the section declared that the duty, if unpaid, was to be a "debt" to the Crown, and "debt" could not be read as "penalty." (3) The Lord Ordinary was right in holding that the date of the completion of the purchase was the date of the delivery of the conveyance.

At advising—

LORD PRESIDENT—In this case two questions were argued to us. The first is the purely general question of whether the 12th section of the Finance Act imposes a duty upon persons in the position of the Railway Company here, to produce, within a period of three months after the completion of the purchase, an instrument of conveyance of property, where that property is acquired in respect of the exercise of compulsory powers; and then there was the second question, whether a particular conveyance by which the Caledonian Railway Company acquired St Columba's Gaelic Church in Glasgow had been duly produced to the Inland Revenue authorities.

The Lord Ordinary has discussed the first general proposition, but he has not actually come to a decision upon it. In his view, as the pursuer, the Department, were wrong upon the second question, he thought that that disposed of the conclusions of the summons; but he has, I think, indicated in his opinion a certain amount of sympathy with the view of the defenders, namely, that the provisions in the statute were not really meant to apply to cases of property taken in the ordinary manner under compulsory powers, but were meant to embody in one general statute a class of provision which in the past it had been customary to put into special statutes, where, for instance, some railway company, or other great corporation, took over by special statute the whole undertaking of some other company, and where accordingly the conveyance was really contained in the statutory enactment itself—a condition of circumstances which make it unnecessary to execute a formal conveyance which would in the ordinary way bear a stamp.

It may be, and I daresay it is true, that the historical reason, so to speak, of this section of the Finance Act was to effectuate that general object, but your Lordships, I am afraid, cannot construe statutes, when their terms are plain, by consideration of the historical reason for which they were passed. No doubt the history of a statute may often throw light upon a disputed provision, but if the language is plain, then there is nothing more to be done than to obey that language; and here it seems to me that the language is so exceedingly plain that it leaves no room for discussion. For reasons best known to itself the Legislature has gone beyond what was done before; but that it has included in perfectly plain terms not only the cases where a transference is made by virtue of a sta-

tutory provision, but also cases where transference follows upon the exercise of compulsory powers, is I think absolutely clear as soon as you read the words of the statute itself. The Lord Ordinary has set them forth very clearly in his note, and, leaving out the parts that do not apply, you have it enacted that when any person is authorised to purchase property in virtue of an Act—that is the ordinary case of a railway company which has compulsory powers—such person shall within three months after the completion of the purchase produce to the Commissioners of Inland Revenue an instrument of conveyance of the property, duly stamped. That seems to me to end the whole matter so far as the first question is concerned.

I now come to the second question. If the Inland Revenue in this case had insisted upon the penalty, I think the case would have been one of considerable difficulty, and I confess I think I should have probably arrived at the same practical conclusion as the Lord Ordinary, although not perhaps precisely on the same grounds. But the Inland Revenue have, I think very properly, conceded that they have no intention here of asking for the penalty in this case, because what happened in the case of this title to St Columba's Church was that the title was taken to the office in Glasgow with the view of having what is really a sort of preliminary marking put upon it as to what the stamp ought to be. We have had a long inquiry in the case, which I do not think I need detail, but it comes to this, that for the convenience of everybody—and I have no doubt it is most convenient and a perfectly proper plan—the Inland Revenue are in the habit of allowing persons to bring their deeds which are going to be stamped, and to have a sort of provisional opinion given as to what the stamp should be. It is only a provisional opinion, because everybody knows that it does not carry finality. If a person wants to be perfectly certain of the amount, and to be perfectly certain that that amount will never be questioned thereafter by the Inland Revenue, there is a well-known and statutory way of doing it, namely, by asking for an adjudication stamp, and of course if he gets an adjudication stamp, then the mouth of the Inland Revenue is shut for ever upon the question of the amount of the stamp. But side by side with that, which is the method when it is wanted to make the thing absolutely certain, there is the very convenient method which I have described. Now when the question had never been raised, it would perhaps have been rather hard if a penalty had been incurred when the deed had been brought in this way and when it had been stamped, and for aught seen perfectly properly stamped; but as I say that question is not raised.

But when we come to the question of what is to be done in the future, it seems to me that the Inland Revenue are entitled to make their own arrangements about what is a proper production in answer to the words of the statute. I do not mean to say that if they made utterly unreasonable arrangements they could not be interfered with; but within reason they are, I think, entitled to make their own arrangements; and I can quite understand, from their point of view, that it is not such a production as they wish, namely, this bringing of the deed before it is stamped at all in order to get a certain provisional view from the officials in the office as to what the stamp should be.

If you merely take the question literally, it is quite clear that the production of an unstamped instrument will scarcely fit the words of the statute, which puts a duty "to produce an instrument of conveyance duly stamped." And really I think all hardship is out of the matter, because there was a circular, which was brought before our notice in the case, which was sent out by the Inland Revenue and sent to the railway companies drawing attention to the provisions of section 12 of the Finance Act, and putting it to them perfectly clearly that it would be necessary in the future for them to produce their conveyances, in the case of lands acquired compulsorily, within three months.

Accordingly it seems to me that the proper disposal of the case is not to do as the Lord Ordinary has done, which is to assoilzie the defenders, but to pronounce a declaratory finding in the terms of the first conclusion, which, I confess, does nothing except simply to show that the case has been decided, because it is a mere echo of the statute, and then, in the circumstances, to find it unnecessary to dispose of the other conclusions of the case.

There is one other question which it is right we should make clear, and that is, what is the completion of the purchase. Now, the Lord Ordinary has given very cogent reasons why the completion of the purchase in cases of this sort cannot be taken to be the date of the notice. Upon the whole matter I come to the conclusion that the simple date to take as the completion of the purchase is the final payment of the price to the seller. That date seems to me to get rid of all real difficulties. It will never be too soon, because the railway company will take care that it does not pay the price finally until it gets a disposition from the purchaser. That it would do for its own protection. On the other hand, it will never come too late, because we can be pretty sure that the purchaser will not be content to wait for an indefinite time for his money. Accordingly, I think that is the date that is meant by completion of the purchase. There was an authority quoted—*Lewis* v. *South-Western Railway Company*, 22 L.J. Ch. 209—in which Lord Justice Turner seems to have come to the same conclusion upon a different matter, but he construed the same phrase in the same way. I do not really put that as an authority, but at the same time I think it does no harm to the conclusion at which I have independently arrived.

LORD M'LAREN—I concur in all that has

been said by your Lordship in the chair. Upon the second point it seems to me that the date of the transaction must either be the date of the contract of sale or the date of completing the execution of the contract. Now, it could not be intended that the date of the contract of sale should be taken, because it would not always be possible to have the transaction carried through and a stampable deed executed within three months of the contract. I see no intermediate point of time, and it is plain that the company, in the case supposed, would not pay the price until they were put into possession of the subjects. In the general case they have possession of the subjects under their notice before the price is paid, so that, if the date of payment of the price were taken, that necessarily would be the date of the complete fulfilment of the reciprocal obligations under the contract.

LORD KINNEAR—I concur.

LORD PEARSON was absent.

The Court pronounced this interlocutor—

"Recal the said interlocutor: Find and declare in terms of the first conclusion of the summons, and in respect the pursuer does not now insist in the other conclusions of the summons, dismiss the same. . . ."

Counsel for Pursuer (Reclaimer)—Solicitor-General (Ure, K.C.)—Hunter, K.C.—Munro. Agent—Solicitor of Inland Revenue (P. J. Hamilton Grierson).

Counsel for Defenders (Respondents)—Clyde, K.C.—King. Agents—Hope, Todd, & Kirk, W.S.

Wednesday, February 19.

FIRST DIVISION.

[Town Council of Ayr.

GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY *v.* AYR TOWN COUNCIL AND OTHERS.

Burgh — Police — Road — Street — "New Street"—Railway—Dean of Guild—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. c.* 55), *sec.* 4 (31)—*Burgh Police (Scotland) Act* 1903 (3 *Edw. VII, c.* 33), *secs.* 11 *and* 103 (5), (6).

The owners, in a burgh, of building ground abutting on an unformed road subject to a public right-of-way for all purposes, petitioned the Dean of Guild for a lining. The Dean declined to grant the petition, on the ground that the proposal amounted to the formation of a new street falling under section 11 of the Burgh Police (Scotland) Act 1903. A petition under that section was accordingly presented to the Town Council seeking approval of the new street. This was opposed by a railway company whose lines touched on, but were separated by a retaining wall, from the opposite side of the road, and who owned at least the greater part of the *solum* of the road, having acquired it for extraordinary purposes by agreement.

Held (1) that the road did not form "part of any railway," and was a "street" within the meaning of section 4 (31) of the Burgh Police (Scotland) Act 1892, and under section 103 (5) and (6) of the Burgh Police (Scotland) Act 1903 was a "private street"; but (2) that section 11 of the Burgh Police (Scotland) Act 1903 was inapplicable inasmuch as it conferred no power save that of regulation and veto, and could not be invoked by one owner against another, and consequently that the petition to the Town Council was incompetent and must be dismissed; and (3) *following Mair* v. *Dumbarton Police Commissioners*, December 14, 1897, 25 R. 298, 35 S.L.R. 239, that the Dean of Guild was consequently, *pro tanto*, in error in declining to grant the lining.

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55), sec. 4 (31), enacts—"'Street' shall include any road, highway, . . . thoroughfare, and public passage or other place within the burgh used either by carts or foot-passengers, and not being or forming part of any harbour, railway, or canal station, depot, wharf, towing-path, or bank."

The Burgh Police (Scotland) Act 1903 (3 Edw. VII, c. 33), enacts—Section 11—"*Petition for warrant to form new streets.*—Every person who intends to form or lay out any new street, or to widen, extend, or otherwise alter any street, shall present a petition for warrant to do so to the town council, and along with the same he shall lodge a plan of the street as proposed to be laid out or altered, with longitudinal and cross sections, showing the proposed centre, building and kerb lines, and also the inner lines of the footway where these differ from the building lines, showing also the levels and means of drainage, specifying the proposed material and mode of construction, and having marked upon it the names of all persons owning the street or any ground abutting thereon affected by the proposal and appearing in the valuation roll. A copy of said petition shall be served by the petitioner upon all such owners and also upon the burgh surveyor, and the town council shall within fourteen days from the presentation of the petition afford the petitioner and all other parties interested an opportunity of being heard, and shall dispose of the application as soon as possible thereafter. If it shall appear to the town council that the proposed street, or any portion thereof, or any of the details shown on the said plan, does not fulfil the conditions required by the Burgh Police Acts, or is otherwise contrary to law or to private rights, the town council may either refuse the said petition, or grant the same subject to such alterations