

Means in the House of Commons of the 21st day of March in the case of the same Draft Order, proof had been produced of the consent of the County Council of Bute to so much of Tramway No. 3 as affected the interest of the County Council acting as road authority.

Thursday, March 20, 1902.

AMENDING GENERAL ORDER 148.

Private Legislation Procedure—Provisional Orders—Amending General Order No. 148—Fees Payable by Promoters, Opponents, and other Petitioners.

The following Amending General Order (dated March 20, 1902) under the Procedure Act has been laid before Parliament and is now in force:—

“Leave out General Order 148, and insert in lieu thereof the following—

“*Fees Payable by Promoters, Opponents, and Other Petitioners.*

“148. The following scale of fees, fixed with consent of the Treasury, shall be a General Order—

Scale of Fees under the Private Legislation Procedure (Scotland) Act 1899.

(1) Fees payable by promoters of a Provisional Order—

On application	£25
On issue of modified draft Provisional Order	£25
On signature of Provisional Order	£25

[The above fees to be increased by one-third when the capital or money to be raised exceeds £100,000 and does not exceed £250,000, and to be doubled when the capital or money to be raised exceeds £250,000, or is not defined in amount. The fee payable on application to be returned to promoters if it is decided that the proposed Provisional Order can only proceed as a bill.]

For every day on which the Examiner shall inquire into compliance with General Orders

	£3
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For the first day on which the promoters appear at a local inquiry before Commissioners

	£10
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For each subsequent day

	£5
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The promoters in addition to provide at their own expense suitable accommodation for the inquiry in the place determined by the Commissioners, and also to provide verbatim shorthand notes of evidence and transcript, under arrangements to be approved by the Commissioners or the person appointed to act as Clerk to the Commissioners, the transcript to be handed in daily to the Commissioners; and the shorthand writer's fee and the cost of transcription in respect of any day to be divided between the promoters, who shall pay one-half, and the petitioners appearing on such day, who shall jointly pay the other half in equal shares. Any dispute as to the amount payable by any party for

shorthand writer's fee or transcript to be referred to the person appointed to act as Clerk to the Commissioners.

(2) Fees payable by opponents and other petitioners—

On deposit of memorial complaining of non-compliance with General Orders, £1

For every day on which the Examiner shall inquire into such memorial

	£3
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On deposit of petition praying to be heard against a proposed Provisional Order

	£2
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On deposit of petition in favour of or against a proposed Provisional Order not praying to be heard

	£1
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On deposit of petition in favour of a proposed Provisional Order, and praying to be heard against alteration therein

	£2
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For the first day on which an opponent or other petitioner appears at a local inquiry before Commissioners

	£8
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For each subsequent day

	£4
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[The fees payable on deposit of petitions to be returned to petitioners if it is decided that the proposed Provisional Order can only proceed as a bill.]

(3) General—

For each witness to whom an oath or affirmation is administered at a local inquiry before Commissioners, payable by the promoters, opponents, or other party calling such witness

	10s.
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For each order for the attendance of witnesses or for the production of books, papers, plans, or documents, payable by the applicants for such order”

	10s.
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April 22, 23, 24, 25, 26, 28, and 29, 1902.

(Before Lord Clifford of Chudleigh, *Chairman*; Lord Frankford de Montmorency; Mr Charles Guy Pym, M.P.; and Mr Eugene Wason, M.P., at Edinburgh.)

BUCKIE BURGH EXTENSION AND BUCKIE (CRAIGENROAN) HARBOUR PROVISIONAL ORDER.

Private Legislation Procedure—Provisional Order—Condition Precedent Inserted Suspending the Operation of the Order—Adjustment of Clause—Report by Commissioners.

The Town Council of Buckie promoted a Provisional Order having for its principal object to enable them to make and maintain a new harbour at Craigenroan, Portessie. Along with the leading purpose of the Order there was sought power to extend the existing burgh of Buckie so as to include the site of the new proposed harbour and the adjoining fishing village of Portessie. The estimated expense of constructing the proposed harbour was £44,800. The scheme of the Provisional Order was that this sum should be raised by a grant from the Treasury of £15,000, a grant from

the Fishery Board of £5000, and a borrowing power of £30,000. The promoters adduced evidence that the Public Works Loan Commissioners were prepared to grant a loan of £30,000. The grant of £15,000 from the Treasury and the grant of £5000 from the Fishery Board were authorised subject to certain conditions set forth in letters from the Treasury and the Fishery Board respectively.

The Provisional Order was opposed by the trustees of the late John Gordon of Cluny, the Great North of Scotland Railway Company, and Lady Seafield.

After evidence had been led and counsel heard, the CHAIRMAN said:—I should like to ask you, Mr Wilson, if the promoters have any objection to make this perfectly clear, if it is not made perfectly clear already, that the promoters cannot proceed with their works if the Government do not make the grant of £15,000 and the Fishery Board do not make their grant of £5000?

Mr WILSON (for the Promoters)—I am desirous to have that made quite clear. We think ourselves that, as a condition of getting our first or second instalment, the work must be done to the satisfaction of the Government but not of the Fishery Board. We have got a promise pretty definite from them, but we would make it a condition that we should get their money.

Mr WASON—From both?

Mr WILSON—Yes.

The CHAIRMAN—What the Commission wish to guard against is putting the promoters in any position to go on with their £30,000 which they undertake to raise without this additional public money which they profess they will get.

The Chairman intimated that the Commission found the preamble proved.

At the adjustment of clauses the CHAIRMAN said:—Supposing for any reason which does not appear on the face of that agreement the Government should refuse to give the £15,000, would there still be power under your Order to proceed with the work independently?

Mr WILSON—As it stands, I think there would be.

The CHAIRMAN—That is what the Commission desire should not be the case.

Mr WILSON—That being so, while we do not in the least distrust the payment from the Treasury, I was going to insert this clause.

After further discussion of the clause suggested by Mr Wilson for the promoters, the CHAIRMAN said:—Whatever the reasons might be, notwithstanding the letter, the Lords of the Treasury might refuse to give the grant for any reason they like, and our view is that if for any reason they withhold the grant, then the promoters should not be at liberty to proceed with the Order.

Mr WILSON—We read this as binding the Lords of the Treasury, who have seen the plan.

The CHAIRMAN—We cannot go into that.

Mr WILSON—We would get money from them only upon condition that we began the works. Now if you make it a condition precedent that we should get the £15,000 before we go on with the Order, then we are in a dilemma.

The CHAIRMAN—That you should get the undertaking, not necessarily the money. This is rather a judicial point, and we cannot hold whether the Treasury are bound or not bound by that letter.

Mr WASON—You cannot get your half until you have spent a certain amount of money.

Mr WILSON—Yes, and if we fulfil these conditions and spend that money, then we will get our grant, because there is the voucher for it.

The CHAIRMAN—But we cannot decide whether the Treasury would be bound by that or not.

Mr WILSON—The plans have been before them, and there is no condition put forward that the plans are to be to their satisfaction at all. The only conditions are those which I have read.

Mr PYM—I should imagine this—we are granting the Order, it is not the Treasury. The Treasury are subject to our Order, and our Order is that you must not go on with the works supposing they do not give their grant—you must make a new Order, a new proposal altogether.

The CHAIRMAN—That is what is the view of the Commission. I think our better way would be to leave this question in the meantime.

Mr WILSON—I think so.

Mr DUNDAS—Yes. I think it should be a substantive clause.

The clause ultimately adjusted (section 63 of the Provisional Order), by which the Order was restricted from coming into operation until the conditions in question were purified, was in the following terms:—“None of the provisions of this Order except the provisions relating to the payment of the costs of this Order shall come into operation, or have any force or effect, unless and until the Secretary for Scotland is satisfied (which shall be sufficiently proved by a letter signed by him or by the Under-Secretary for Scotland, and addressed to the Town Council) that arrangements have been made for a grant of £15,000 from His Majesty’s Treasury and a grant of £5000 from the Fishery Board for Scotland in aid of the construction of the harbour.”

Lord Clifford of Chudleigh, Chairman, reported to the Secretary for Scotland, on behalf of the Commissioners, of date May 2, 1902, that they had agreed to the following report:— . . . “Evidence was laid before the Commissioners that the Treasury, on a recommendation made by the Board of Trade, were prepared to make a grant of £15,000, and that the Fishery Board for Scotland was also prepared to make a grant of £5000 in aid of the construction of the proposed harbour, subject to certain conditions. . . . The Commissioners have examined the allegations of the preamble proved, and recommend the

issue of the Order provided these grants are assured to the promoters, and accordingly they caused a provision to be inserted suspending the operation of the Order till the Secretary for Scotland be satisfied that arrangements have been made for these grants being obtained."

Counsel for the Promoters, the Town Council of Buckie—Wilson, K.C.—Munro. Agents—John L. McNaughton, Solicitor, Buckie; Sim & Garden, S.S.C., Leith.

Counsel for the Trustees of the late John Gordon of Cluny, *Objecting*—Dundas, K.C.—Hunter. Agents—Skene, Edwards, & Garson, W.S.

Counsel for the Great North of Scotland Railway Company, *Objecting*—Campbell, K.C.—Ferguson. Agent—James Ross, Aberdeen.

Counsel for Lady Seafield, *Objecting*—Constable. Agents—Mackenzie, Innes, & Logan, W.S.

Monday, April 28; and Tuesday,
April 29, 1902.

(Before Lord Clifford of Chudleigh, *Chairman*, Lord Frankfort de Montmorency, Mr Charles Guy Pym, M.P., and Mr Eugene Wason, M.P.—at Edinburgh.)

ABERDEEN SUBURBAN TRAMWAYS.

Private Legislation Procedure—Provisional Order—Locus Standi—Railway Company Opposing Electric Tramway Company Order—Electric Tramways Competing with Railway—Supply of Electric Power by Corporation for Use Outside Municipal Area—Objection by Ratepayers.

Certain individuals presented this Order with a view to form a private company for making and working by electricity certain suburban tramway lines in Aberdeen. Two lines of tramways were proposed—one for Deeside and one for Donside—both lying in the county of Aberdeen.

The Great North of Scotland Railway Company appeared as objectors. They objected mainly on the ground that the proposed tramway was in competition with the railway; and as ratepayers, on the ground that power was sought under the Order to enable the Corporation of Aberdeen to enter into an agreement for working tramways and supplying electricity outside the municipal area.

The promoters maintained that the objectors were not entitled to a *locus standi*.

Argued for the promoters—(1) The objectors had no *locus standi* on the ground that the tramway lines would compete with the railway. There were numerous cases where tramways ran alongside railways, but a tramway was not a railway, and that point underlay the whole question of *locus standi*. The principle that governed the granting of *locus* on the ground of competition, was that the person who sought the *locus* must be carry-

ing on the same or substantially the same business as the promoter of the undertaking to which he objected. The electric tramway was not a railway. The whole undertaking was different. The tramway did not carry goods. It would be a misfortune if the *locus* of a railway to oppose a tramway scheme of this kind was recognised in Scotland when the referees of the House of Commons refused to recognise it—*Dublin Southern Tramways Bill 1893*, Rickart & Saunders, 242; *Dublin United Tramways Bill 1897*, 1 Saunders & Austin, 157; *Greenock and Port-Glasgow Tramways Bill 1899*, 1 Saunders & Martin, 322. The only exception was *Dublin Southern District Railways Bill 1898*, 1 Saunders & Austin 242, in which case the railway got a *locus*, but the railway there was a suburban railway running trains every three minutes, and it might have been held that that was the same sort of service as a tramway. (2) As regards the opposition of the Railway Company as ratepayers, the tramways were to be run outside the city in the county. There was no danger of any loss due to the supply of electricity by the Corporation falling on the objectors as ratepayers. The Corporation would get a good return if they supplied the power. The electricity, too, would all be delivered to the promoters within the boundaries of the city, and carried thence to be used.

Argued for the objectors—(1) There would be here a real competition between the railway and the tramway which it was proposed to run alongside the railway. That was sufficient to give a *locus*. It would be impossible to conceive a tramway scheme more in competition with a railway than this one, because it was actually laid side by side with the railway. (2) They were interested as the largest ratepayers in the city in objecting to powers being taken to enable the Corporation to enter into agreements for working tramways outside the municipal area. Within the city the Corporation were restricted by their Acts requiring them to fix such rates as would be remunerative and not involve falling back on the assessments. But if the Corporation worked the tramways proposed they would be free from such restrictions. Also as ratepayers they had a *locus* to object to the Corporation being authorised to deliver large quantities of electricity at their boundary for the purpose of being used outside their boundary. That was traffic and trade to which ratepayers might well object. The cases mentioned by the promoters did not apply, because they were cases of the conversion of existing schemes from horse haulage to electrical or mechanical power.

The Commissioners granted the objectors a *locus standi*. In the course of the proof the CHAIRMAN, dealing with the relevancy of certain questions put by counsel for the objectors, said—"You (the objectors) have asked for a *locus standi* on the ground that you would be injured by the competition of this tramway, and on these grounds