

way which was laid by the Trustees under an Act of 1895 in connection with the construction of the Talla reservoir. The said Act provided that upon the completion of the Talla works the railway should be taken up and the lands treated as superfluous lands. In the Order powers were sought to continue the railway as a convenience of access to the Talla works for the purposes of repair, supervision, or extension thereof. This part of the Order was opposed by Sir Basil Montgomery, the owner of certain lands the access to which was crossed by the said railway by a crossing on the level. In 1895, under an agreement with the Trustees, the objector's author had conveyed to the Trustees for the construction of the railway certain lands over which this right of access existed, under reservation of his right of access in future. The objector claimed that the agreement of 1895 was entered into in view only of the construction of a temporary line, and that his interest would be prejudiced by its continuance. The Commissioners found the preamble proved, but were of opinion that certain provisions for Sir Basil Montgomery's protection should be made, reserving to him the right of opposing any application by the trustees to sell or lease the railway for public traffic, and in such a case reserving his claim for further compensation, and securing reasonable arrangements to avoid inconvenience to him or his tenants and facilitating access to his lands.

Heard in Edinburgh 23rd and 24th July 1907.

VI. GALASHIELS DRAINAGE AND BURGH EXTENSION.

This Order was promoted by the Provost, Councillors, and Magistrates of Galashiels to obtain powers to construct a new system of drainage and purification works for the burgh. Powers were also sought to include within the burgh boundaries the site of the proposed purification works, being a piece of ground extending to 31 acres, partly agricultural and partly waste land, lying in immediate proximity to the burgh. There was no opposition to the preamble, but a report was put in under section 11 (3) of the Private Legislation Procedure Act by the County Council of Roxburgh objecting to the Order on the grounds that the proposed annexation was not necessary for the purposes of the Order and that the reporters would be prejudiced by loss of rateable area and in respect of capital sums laid out in connection with the construction of a bridge partly within the area. Evidence was led for the promoters and an explanation made that the usual clauses for the adjustment of property liabilities between the two authorities concerned had been inserted in the Order. The Commissioners found the preamble proved. On clauses certain provisions were inserted in the Order to protect the interests of the Tweed Commissioners in

the case of temporary discharges of effluent direct into the river Gala being necessitated either during repair of the works or during floods.

Heard in Edinburgh 25th July 1907.

VII. PAISLEY AND DISTRICT TRAMWAYS ORDER.

The main object of this Order was to obtain authority to construct a tramway about three miles in length between Barrhead and Thornliebank, thus giving direct tramway communication between Glasgow and Barrhead. The Order was opposed by the County Council of Renfrew, the Clyde Valley Electrical Power Company, and by Sir John Stirling Maxwell of Pollok. In the course of proceedings a settlement was arrived at with all the objectors. To meet the views of the County Council the promoters agreed to expend £750 towards the expense of widening a certain bridge. The opposition of the Clyde Valley Electrical Power Company was met by an undertaking by the promoters not to enter into any agreement with the Corporation of Glasgow for the supply of electrical energy without the consent of the objectors. The promoters agreed to construct the tramway line on ground belonging to Sir John Stirling Maxwell at the side of the public road instead of in the centre of the road as proposed in the draft Order.

Heard in Edinburgh 25th and 26th July 1907.

VIII. DUNDEE CORPORATION ORDER.

25th and 26th July 1907.

(Before Mr John Dewar, M.P., *Chairman*, Lord Saltoun, Lord Torphichen, and Lord Dalrymple, M.P.)

Provisional Order—Locus—Burgh—Extension of Boundaries—Tramway Company Opposing—General Locus of Tramway Company qua Ratepayer and Proprietor within Area Proposed to be Annexed.

This Order was promoted by the Corporation of Dundee. Its main object was the extension of the burgh boundaries by the annexation of the suburb of Downfield to the north, and of a strip of land lying to the north and east and adjoining the burgh of Broughty Ferry, and all situated in the county of Forfar. The County Council of Forfar did not oppose the Order. It was opposed by the Broughty Ferry and District Tramway Company, who own and work a tramway within the district proposed to be annexed. The Broughty Ferry and District Tramway runs from the existing boundaries of Dundee first for a distance of about one-sixth of a mile through that part of the county lying between Dundee and Broughty Ferry which it was proposed by the Order to annex, thence through the

burghs of Broughty Ferry and Monifieth, and again through the county. It has also running powers over the Dundee Tramways line into the centre of the town.

The tramway was incorporated under Provisional Order in 1904. The Confirming Act of that Order contains (sec. 93) the following provisions as to the purchase of the undertaking by local authorities:—"Sec. 43 of the Tramways Act 1870 shall in its application to the undertaking and to the company in relation thereto be modified as follows—that is to say—(1) The local authorities in whose districts the tramways are situate (if by resolution passed at a special meeting of the members constituting each of such local authorities they so decide), may within six months after the expiration of a period of thirty years from the commencement of this Order, and within six months after the expiration of every subsequent period of seven years, with the approval of the Board of Trade (which approval the Board of Trade are hereby authorised to give), by notice in writing require the company to sell, and thereupon the company shall sell, to them the whole of the tramways situate within such districts as one undertaking upon the terms of paying the fair market value of the undertaking as a going concern." Section 47, sub-section (7) —"If at any time after the construction of the tramways the municipal boundary of the city shall be extended eastwards so as to include the portion of the tramways between the eastern boundary of the city and the western boundary of the burgh of Broughty Ferry as existing at the commencement of this Order, the provisions of the section of this Order of which the marginal reference is 'As to purchase of undertaking,' shall cease to apply to such portion of the tramways, and the Dundee Corporation may, notwithstanding anything in the Tramways Act 1870 contained, on the expiry of the period of ten years from the commencement of this Order, and on the expiry of every succeeding period of five years, by six months' previous notice in writing, require the company to sell, and thereupon the company shall sell, to the Dundee Corporation the said portion of the tramways, including the overhead equipment thereof, but excluding any generating station of the company situate within the extended area, at the structural value thereof at the date of such notice as such value shall, failing agreement, be determined."

The opposition of the company was mainly upon three grounds, set forth in paragraphs 5, 6, and 7 of their petition respectively. That in paragraph 5 was to the effect that in the case of annexation the conditions applying to purchase of the tramway by the city would be those of the Act of 1904, section 48, which were more onerous upon the Tramway Company than these of purchase in the hands of the county authority within the county area. Paragraph 7 dealt with apprehended loss to the Tramway Company should the city acquire a certain private road which had been constructed by the company for the use of

their tramway. Paragraph 6 contained a general opposition to the proposed extension on the ground that there was no public expedience or desire therefor, nor was there any dissatisfaction with the present administration by the county of the area proposed to be annexed, that the area was only sparsely built upon, and in no sense a populous place, and that there was no congestion of population within the city, and that no new circumstances had arisen since 1899, when a similar application had been refused.

The promoters did not oppose a limited *locus* of the objectors upon paragraphs 5 and 7, but opposed the granting of a general *locus* upon paragraph 6.

Argued for the objectors—The objectors were entitled to a general *locus* as ratepayers and as proprietors within the area proposed to be annexed. They were proprietors of the whole tramway within the area. They were entitled to be heard as to whether their property should be within or remain outside the burgh. Further, in virtue of section 45 (7) of the Act of 1904 the objectors were entitled to oppose this extension, as it would or might have the effect of accelerating the period at which they might be deprived of the most valuable part of their concern.

Argued for the promoters—The objectors had no general *locus* in virtue of clause 45 (7). They were, further, neither proprietors nor landowners in the sense of the General Orders. *Qua* ratepayers they could not be heard against the County Council who were consenting to the Order.

After hearing counsel for the Tramway Company the Commissioners by a majority disallowed the *locus* founded on in paragraph 6, Viscount Dalrymple in the minority. The company's *locus*, based on other grounds (paragraphs 5 and 7), was allowed by the Commissioners.

Evidence was then led for the promoters, for these objectors, and for Mr W. B. Balingall, a tenant of subjects proposed to be acquired for the purposes of a street widening, who objected to the terms upon which the said subjects were to be acquired.

The Commissioners found the preamble proved.

Counsel for the Promoters—Clyde, K.C. — Macmillan. Agents—Morton, Smart, Macdonald, & Prosser, W.S., and W. H. Blyth Martin, Town-Clerk, Dundee.

Counsel for the Dundee, Broughty Ferry, and District Tramways Company—Lyon Mackenzie. Agents—Guild & Shepherd, W.S., and E. Cowan, Solicitor, Dundee

Counsel for the Dundee Harbour Trustees—Wilson, K.C.—Lyon Mackenzie. Agent—John P. Kyd, Solicitor, Dundee (Appearance Reserved.)

Counsel for R. Haldane's Trustees and Another—Munro. Agents—W. & F. Haldane, W.S. (Appearance Reserved.)

Counsel for Sir Reginald Ogilvy and Another—Orr Deas. Agent—H. K. Ogilvy, W.S., Dundee.

Counsel for Mr J. B. Ballingall—Morison, K.C. Agents—Cowan & Stewart, W.S., and Andrew Hendry & Sons, Dundee.

Agent for Certain Ratepayers and Owners in Dundee and Others—Edward Cowan, Solicitor, Dundee.

IX. EDINBURGH CORPORATION (TRAMWAYS, &c.) ORDER.

24th and 25th July 1907.

(Before Lord Sanderson, Chairman, the Earl of Galloway, Mr J. D. Hope, M.P., Major Anstruther Gray, M.P.)

Provisional Order—Tramway—Locus—Burgh Authority Proprietor of Tramway Leased to Tramway Company—Lessees Bound to Work any Extension to be Made by Lessors—Application by Burgh Authority for Extension of Tramway—Locus Allowed to Tramway Company to Oppose Extension.

This Order was promoted by the Corporation of Edinburgh with the object of obtaining (1) authority to construct an extension of one of the existing Corporation cable tramways; (2) authority to make money contributions to reformatories and industrial schools; and (3) amendments of statutory provisions regarding the licensing of entertainments. The Order, which was otherwise unopposed, was opposed upon the first point by the Edinburgh and District Tramways Company, Limited, who are lessees from the Corporation, along with Messrs Dick, Kerr, & Company, Limited, of the whole tramways within the city.

It was proposed to extend the existing tramway from the present terminus at Gorgie for a distance of about three-quarters of a mile, some 570 yards of its course being along the Gorgie Road, a road with buildings on either side, and thence along a road in course of construction through agricultural land to the site upon which the Corporation slaughter houses and markets were in course of construction.

By lease dated 1898 the promoters leased to the objectors "the whole tramways belonging to the Corporation or that may hereafter be constructed or acquired by the Corporation within the City of Edinburgh." The said lease authorised the Corporation from time to time to construct such other tramways within the city and suburbs, "either in addition to or in prolongation of the existing tramways as they (the lessors) think expedient . . . , which additions and extensions . . . shall fall under the present lease to the second parties (the lessees) under all the conditions and obligations hereof in the same way as if the same had formed part of the original subjects hereby let." It was stipulated under the lease that the Tramway Company should pay a fixed rent of 7 per cent. upon the total expenditure upon tramway works. The lease contained two arbitration clauses, the first providing

for reference on questions of fact or skill to a named arbiter, the second providing for the reference "of any question arising under this lease, except as otherwise provided," to a named arbiter whose decision shall be final.

The Tramway Company objected to the proposed extension on the grounds, *inter alia*, that the new line was unnecessary in the public interest or otherwise; that it passed through a thinly populated district and would be incapable of being worked at a profit by the objectors under the terms of their lease; that it was designed to exploit at the expense of the objectors an undertaking of the promoters.

The promoters opposed the granting to the objectors of a *locus* upon the preamble, but conceded to them a *locus* upon clauses.

Argued for the promoters—The provisions of the lease left to the Corporation an absolute discretion in the matter of extensions. The objectors were not entitled to a discussion with the Corporation as to whether the proposed extension would or would not be remunerative. It was not averred that the Corporation were seeking to break the terms of the lease or to prejudice the objectors. The objectors were not without remedy. Even if the order should pass they were protected by the arbitration clauses against a possible abuse of discretion or powers on the part of the Corporation, at least in so far as the lease in its terms would carry. It was true that the present objectors had been allowed to appear against the Corporation when the latter in the previous year were promoting a Private Bill in Parliament, but on that occasion the Corporation had not opposed their *locus*.

Argued for the objectors—The Commissioners were not entitled to decide upon this question without hearing the only other party who had an interest. The objectors should not be called upon to lease a tramway which ran through agricultural land, with no population, to a market not yet in existence. The objectors were not barred by the terms of their lease from appearing in Parliamentary proceedings in reference to extensions. Such a prohibition had been contained in a previous lease between the parties dated 1893, but had been omitted from the present lease. As to the arbitration clauses, it was the duty of the promoters to have referred any question to the arbiter and not to have come before this tribunal. The objectors had been heard in the previous year against a precisely similar application in Committees both of the House of Lords and of the House of Commons, and effect had been given to their objections. If there was room for the question of *locus* it should then have been raised. The objectors would not oppose that part of the proposed line which was on the public road, but confined their objections to that through what was at present agricultural land.

The Commissioners decided that, following the precedent of last year, the objectors