

Wednesday, April 30, Thursday, May 1,  
and Friday May 2, 1902.

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

### IRVINE CORPORATION PROVISIONAL ORDER.

*Private Legislation Procedure—Provisional Order—Water Supply—Extension of Water Supply—Locus standi of Objectors—Objection to Priority Conferred by Past Legislation—Demand for Representation on Trust to be Created—Rights of Trade Consumers and County Authorities—Suspension of Order for a Year.*

The Corporation of Irvine promoted a Provisional Order for power to construct additional waterworks, and to take water from an extended catchment area defined in the Order. The water supply of the burgh was administered by the Corporation under the Irvine Burgh Act 1881, by which Act the burgh of Irvine was given a priority in the water supply. The proposed Order was mainly founded on the statement that it was necessary in order that Irvineshouldsupplyitselfandfulflitsagreements with the surrounding districts that the water supply should be extended.

#### NOBEL'S EXPLOSIVES COMPANY, LIMITED, OBJECTING.

The Provisional Order was opposed by Nobel's Explosives Company, Limited, whose works at Ardeer were all outside the limits of the burgh of Irvine. They stated as follows:—“(1) The petitioners take large supplies of water from the Corporation for the purpose of their works, and of all the consumers contribute much the largest sum annually to the water revenue of the Corporation. . . . (2) The Order proposed would be prejudicial to their rights and interests. The works proposed by the Order, and the power to divert and appropriate the waters of the streams known as Caaf Water and Bradshaw Burn and the other waters mentioned in the Order would seriously diminish the flow of water in the river Garnock, which passes your petitioners' works at Ardeer, and into which the above-mentioned streams now find their way. The waters of the river Garnock are of great value to your petitioners for certain purposes in connection with their works, and they object to any diminution or interference with the present flow of water from that river. . . . (3) The proposed works are also badly designed and unsuitable to meet the requirements of the district, inasmuch as no adequate provision is made for the proper storage of water to meet any drought or other exceptional circumstances, and to secure to your petitioners and other consumers their water supply at all times. . . . By the Act of 1881 the rights of parties to a supply of water from the Corporation within the

limits of the Act (which limits are continued in the Order) are regulated in a manner most unfair and prejudicial to your petitioners and other traders outside the burgh of Irvine,” in respect that their right to a supply of water from the works was postponed to that of persons within the burgh. “The present arrangement whereby the water supply of the district is in the hands of the Corporation, who have little or no interest in these outside districts, but who control and manage the undertaking mainly in the interest of the consumers and traders in the burgh, is unsatisfactory, and there is no justification for giving the traders of Irvine a prior right of supply to the prejudice of your petitioners. Your petitioners submit that no further powers should be granted in connection with the water undertaking of the Corporation unless provisions are made for securing to consumers outside the burgh of Irvine equal rights with those in the burgh to a supply of water both for domestic and trade purposes, and provisions made for placing the undertaking in the hands of some trust or public body representative of the interests of all parties.”

The promoters objected to Nobel's Explosives Company, Limited, being allowed a *locus*.

Argued for the promoters—The only good ground for opposition set forth on the part of Nobel's was that of landowners under (2) of the above-mentioned objections, and their *locus* as landowners could be one only for the limited purpose of securing sufficient compensation water. Further, it would be shown that Nobel's were not even entitled to a landowners' *locus*, in respect that their works were below high-water mark, and that being so, the promoters were not, under General Order No. 14, bound to give them notice. The claim by Nobel's to a general *locus* as trade consumers under (1) and (3) of the above-mentioned objections was absolutely incompetent, because they partly consisted of a complaint against priority conferred by past legislation and partly of a demand for representation—a demand which went beyond the scope of what was before the Commission. The only right that Nobel's could have as consumers was under agreement. A trade consumer had no right to compulsory powers for taking water for commercial purposes. It had been tried some years ago in the application relating to Loch Ericht, and had failed. The opponents here had promoted a bill in Parliament during the current year to take a supply from another source, but apparently they were wisely advised before going on that it was hopeless, and the bill was withdrawn. If Nobels were granted a general *locus* by the Commission, the Commission would be doing what Parliament had never done before. The objection based on the demand for representation was absurd. It was unheard of that Nobels, whose works were at the limit of the district, and who had no claim except for a trade supply, and whom the burgh of Irvine had no obligation to supply under any private or

public Act, should make this Provisional Order the occasion for demanding representation on a trust which was to take the place of the burgh of Irvine in controlling the supply, the more so that the burgh of Irvine had always done their very best in the past to meet the demands of Nobel's, and were now supplying them at the rate of a quarter of a million gallons a day.

Argued for Nobel's Explosives Company, *objecting*—The objectors were persons drawing water out of the river Garnock beyond the highest point of the tide. [The CHAIRMAN—That is a landowner's right]. It was not exactly a landowner's right. Under General Order No. 14 any person who drew water was entitled to it, and did not require to be an actual riparian owner if he was using the water of the stream. They had a special right to take the water under their conveyance. [The CHAIRMAN intimated that the objectors as landowners would get a *locus standi*.] The objectors were also here as consumers, and were entitled to a general *locus* to oppose. They were not here asking the Commissioners to alter one bit of past legislation. The position of matters was this—the burgh of Irvine came here not requiring this supply, but wanting to get this supply entirely to enable them to trade in water with the outside area. The existing supply of water for the burgh of Irvine was ample for double its population, and they wanted to come and rule as a private company in this matter. If it was a bill that was proposing to get water for the necessities of Irvine, then the objectors could not come forward and say anything against it, but it was not a bill for that purpose at all. The Corporation of Irvine in promoting this bill were coming forward as private promoters. They were a Corporation asking for themselves power solely for the purpose of trading and selling to others. Nobel's was to be absolutely at the mercy of the Corporation. There was to be no appeal to the Sheriff, and yet it was in respect of Nobel's demands, and the demands of other outside people, that this Order was promoted. If the Irvine Corporation, which was here really as a private company, was seeking this Order for the profit of Irvine, and not for the necessity of the locality, it would be most unfair if any consumer, small or large, in this area which was proposed to be affected should not be open to come to the Commissioners and oppose this Order. *Caterham Spring Water Bill*, Rickards & Michael's Rep. p. 12. *Partick, Hillhead, and Maryhill Gas Bill* 1890, showed that where persons were consumers and were affected by the provisions of the Act they were entitled to a *locus* to oppose. In these circumstances they were not here at all proposing to alter previous legislation; they were simply here asking that the Commission should not give what was purely a trading preference to the Corporation of Irvine without listening to those who would be the customers of the tradesman when he set up his business.

The Commission granted the objectors a *locus*.

The opposition of Nobel's Explosives Company, Limited, was during the inquiry withdrawn upon an agreement being made with the promoters, under which, *inter alia*, the priority of the Irvine traders was abolished, and the quantity of water to be supplied to the company and the rates were fixed. The operation of the main part of the Order having been suspended (as reported *infra*) the Commissioners in their report stated, with reference to this agreement—“The operation of this agreement is suspended along with the suspension of the Order as a whole. This agreement having been entered into before the decision of the Commissioners on the Order was reached, it was pointed out to the parties that according to the intention and decision of the Commissioners the operation of the agreement would also be suspended; and the parties intimated that they acquiesced in this, and so construed the agreement.”

COUNTY COUNCIL OF AYR ON BEHALF OF  
SPECIAL WATER SUPPLY DISTRICTS,  
AND BURGH OF SALTCOATS, OBJECT-  
ING.

The petition for Provisional Order promoted by the Corporation of Irvine was also opposed by the County Council of the county of Ayr on behalf of the special water supply districts of Stevenston and Kilwinning, and the Provost, Magistrates and Councillors of the burgh of Saltcoats. The objectors represented that they were responsible for the adequate provision of water for the use of the inhabitants of their respective districts. They gave details showing a large increase in the rental and population of their respective districts since the year 1881, and averred as follows:—“Your petitioners submit that in these circumstances—circumstances which are very different from those which existed in 1885—it is not right that they should contribute not only to the revenue of the undertaking in such undue proportions, but also, as will be afterwards shown, should be charged with something like seven-tenths of the £104,200, which it is proposed by the Order to raise for the purposes of the works, without any representation whatever on the body which is entrusted with the management of the undertaking. . . . Your petitioners support their claim for representation on the ground that there ought not to be taxation without representation. The waters now sought to be appropriated in the first place to Irvine and its traders are the natural and proper source from which your petitioners ought to be supplied, and to which they have a prior right. . . . Your petitioners are prepared to promote an order in the ensuing session. . . . Your petitioners are not promoters of the Order, and yet the effect thereof might and probably would be to subject them to increased rating, while leaving them with their water supply for domestic purposes liable to be cut off under the provisions of the Act of 1881 should the supply of water within the compulsory limits for domestic, trading,

manufacturing, railway, and other purposes prove insufficient. Your petitioners, looking to the very large proportion which they contribute to the water revenues, maintain that the supply of water for domestic purposes within their districts should come before the supply of water for trading, manufacturing, and railway purposes within the burgh, and that it is not reasonable to ask them to become in effect partners in an application for a supply of water which is not necessary for the accommodation of the Corporation at a cost which, although primarily falling upon the Corporation (who borrow the money and grant the bonds) is mainly raised on the security of assessments levied by your petitioners."

The promoters objected to these objectors being allowed a *locus*.

Argued for the promoters—The objecting petitioners, the county authorities and the burgh of Saltcoats, were not entitled to a *locus*. The petition of the objectors did not traverse the preamble of the bill, but disclosed two grounds of attack—(1) It demanded the repeal of the priority of the burgh of Irvine imposed by the legislation of 1881, and (2) It made a claim for representation on a new governing body for the control of this water undertaking. Now, according to Parliamentary practice it was incompetent to hold that the objectors were entitled either to go against past legislation or to secure representation. As regards the securing of representation, the petitioners were not entitled to object to the Order with a view to extend its scope and objects, or to propose to insert what the Order did not contemplate, and what the notices under General Order 3 did not cover. In the case of the *Falkirk District of the Stirling County Council* (1 Saunders & Ashton 85), it was settled that the question of representation must be eliminated in considering an order of this sort, and that the only remedy of the objectors was to bring in a bill for themselves to provide their own supply. The case of *Manchester (Thirlemere case)* in 1896 was to the same effect—1 Clifford & Stephens, 95. Again, in so far as the petition of the objectors was a complaint against past legislation they were not entitled to a *locus*—*Bradford case*, 1878, Clifford & Rickards, p. 73; *South Stafford Water Bill*, 1875, 1 Clifford & Rickards, p. 187; *Barrow-in-Furness Bill*, 3 Clifford & Rickards, p. 14; *Edinburgh Municipal and Police Bill*, 1891, Rickards & Saunders, part 1.

The Commissioners, without calling on counsel for the objectors, intimated that they were of opinion that the objectors were entitled to a *locus standi*.

It was admitted on behalf of the objecting petitioners that under the notice it was not competent for the Commissioners to put anything into the Order as to representation. At the same time they intimated that they were willing to allow the Order to pass upon the footing that an agreement should be come to that there should be a joint board, and representation cor-

responding to the respective valuations of the authorities on the joint board. They cited the precedent of the *Airdrie and Coatbridge Act* of 1899 for this course being followed.

Counsel for the promoters declined to be parties to an agreement as to representation such as was suggested, pointing out that even if they were willing to concede representation the question of the number of representatives was vital. The supply of water had been inaugurated by the promoters twenty-four years ago; the arrangement under it had worked without difficulty. It was an unprecedented claim that the objectors put forward after benefitting by the supply for twenty-four years, that they now should be practically made partners in the undertaking.

The Commissioners having retired, on resuming the CHAIRMAN said—"The Commission wish to intimate that as far as the promoters' case refers to two points they have decided in the following way. The first is that with regard to the priority of water supply they wish a clause put in to the effect that as long as the agreements as to water supply are in force the domestic supply should have a priority over the trade supply. The other point is that they think that this Order should not take effect if within a year an Order is obtained by the County Council on account of the Special Supply District of Stevenston, Kilwinning, and Saltcoats for the formation of a joint board to take over and purchase the water undertaking of Irvine. . . . [The Chairman referred to the plan adopted in the *Airdrie and Coatbridge Act* of 1899 as explaining what was in the minds of the Commission]. The Commission only wish to hang up this Provisional Order for a year so as to give time for the opponents of the Order, the County Council on behalf of the districts within the non-compulsory area, to promote a scheme for a joint board. If they do not avail themselves of that opportunity, of course the powers of the Order will come into force. I wish again to say that the Commission are not putting this as a condition of their passing the preamble of the bill at all, and therefore they do not think it right to insist that the Irvine Corporation should agree not to oppose such an Order if that is brought in."

The report by Lord Clifford of Chudleigh, Chairman, on behalf of the Commissioners to the Secretary for Scotland on this part of the Order was in these terms:—"The Commissioners were of opinion that it was not proper that the Corporation of Irvine should continue to be the sole Water Authority in a district and population so very much larger, as appeared from the evidence, than their own, and that an opportunity should be given for the formation of a joint board representative of all the communities served. The Commissioners accordingly desired to suspend the operation of the chief part of this Order for a year, to give time to the local authorities (Saltcoats, Stevenston, and Kilwin-

ning), or one or more of them, to promote an Order for the formation of a joint board on which these three authorities and Irvine should be fairly represented, and to which the water undertaking should be transferred. At the same time the Commissioners did not desire to limit the freedom of action of Irvine in regard to such an Order, and accordingly Irvine was not prohibited from opposing it. If no such Order be promoted or passed this Order will come into operation at the end of next session.

In order, however, to prevent inconvenience to all parties from delay in obtaining an additional supply of water, the Commissioners allowed certain clauses authorising such works to come into operation at once. The terms of a clause were accordingly adjusted by the representatives of Irvine and the local authorities concerned, giving effect to the Commissioners' decision.

In the course of the inquiry it was intimated by the promoters that they were ready to depart from the priority provision of the Act of 1881, under which the traders of Irvine had a preference over both the domestic and the trade supply of the outside district. A clause was accordingly adjusted by the parties and approved by the Commissioners."

*Private Legislation Procedure—Water Supply—Waterworks—Time Limit for Completion of Works Authorised—Clause of Exception, Extending Indefinitely the Time for Completion of Works—Report by Commission.*

Clause 16 of the Draft Order required the completion of the Works within ten years, "except where otherwise agreed on between the Corporation and any person whose land may be affected."

William Archer Tait, the engineer of the Irvine Waterworks, gave evidence with respect to the intention as to the construction of the Waterworks Reservoirs, as follows:—"Q) Why do you give two reservoirs instead of one?—(A) It is not a place that is really suitable for one reservoir to store the water at a reasonable cost, and there is an advantage in having two reservoirs, in that the cost of making them may be spread over a little time. Q) I believe you do not anticipate that it will be necessary to construct both at first?—(A) No, but we should go on immediately with one of them."

The Commissioners specially reported on what they termed this "unusual exception" as follows:—"The promoters treated the matter as unimportant, the landlord having no objection, but added as a special reason for the exception in this case that, as explained in the engineer's evidence (*supra*), it was proposed to proceed at once with the constructing of one only of the two proposed reservoirs which would be sufficient for the wants of the locality for a considerable period. The Commissioners did not in the circumstances delete the exception, but undertook to report specially on it. The obvious objection is that it extends indefinitely the time for completing the works, which is quite

against the practice of Parliament. If, notwithstanding the reason assigned, the Secretary for Scotland considers the exception objectionable on general grounds it may be struck out of the modified Order."

*Private Legislation Procedure—Sinking Fund—Water Supply—Waterworks—Investment of Sinking Fund—Power of Burgh to Invest Part of Sinking Fund of Waterworks in the Burgh's own Securities—Report by Commissioners to Secretary for Scotland.*

It was pointed out by the Clerk to the Commission that part of the sinking-fund of the Irvine Waterworks was invested in harbour securities and on security of the common good, these not being trust securities. The Chairman pointed out that the promoters of the Order took no power to do so under the Order. The Clerk having indicated that it might be desirable to put in a prohibition, the Chairman intimated that he would report to the Secretary for Scotland that they considered it undesirable that the Corporation have such power, and leave it to him to make any alteration in the Order if he should think it necessary.

The report of the Chairman in this matter was as follows—"It appeared from the balance-sheet of the Irvine Waterworks as at 15th May 1901, produced in the inquiry, that of the sinking-fund of £10,293, the sum of £6740 was invested in the Burgh of Irvine and £2600 in the Irvine Harbour Trust. The attention of the Commissioners was called to this, and to the fact that under the Irvine Burgh Act 1881, sec. 174, the sinking-fund could only be invested in proper trust securities, and that neither harbour bonds nor the securities of Irvine itself were such. It was suggested that a prohibition should be inserted against investment of the sinking-fund in bonds or other securities of Irvine itself. It was explained by the promoters that the power to invest in its own securities had been granted both to Edinburgh and Glasgow, but that no power was taken in this Order to do so. Considering that the promoters did not ask in this Order authority to go beyond trust securities in investing the sinking-fund, the Commissioners thought the matter might be left on the same footing as in 1881. They considered it, however, improper that the Corporation should invest in other than trust securities, and with this expression of opinion they now report the points to the Secretary for Scotland, that if there has been any irregularity he may be in a position to deal with the matter."

Reference was made on this question to the Local Authorities Loans (Scotland) Act 1891 (54 and 55 Vict, c. 34), sec. 4.

Counsel for the Promoters, the Corporation of Irvine — Constable — Hunter. Agents—James Dickie, Town Clerk, Irvine; A. & W. Beveridge, London.

Counsel for Burgh of Saltcoats and the County Council of Ayr, on behalf of the Special Water Supply Districts of Stevenston and Kilwinning, *Objecting*—Wilson,

K.C.—Pitman. Agents—James Campbell, Town Clerk, Saltcoats; Messrs Shaw, County Clerks, Ayr.

Counsel for Nobel's Explosives Company, Limited, *Objecting*—Cooper. Agents—Webster, Will, & Company, S.S.C.; Moncrieff, Barr, Paterson, & Company, Solicitors, Glasgow.

Agents for William Baird & Company, Limited, Petitioners against Alterations—R. H. James, S.S.C.; Webster, Will, & Company, S.S.C.; J. & J. M'Cosh, Solicitors, Dalry.

Friday, May 2, 1902.

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#### ROTHESAY TRAMWAYS EXTENSION.

*Private Legislation Procedure—Provisional Order—Petition Deposited against Order and not Formally Withdrawn—No Appearance for Objectors—Procedure—General Orders No. 146.*

No. 146 of the General Orders provides, *inter alia*, as follows:— . . . “In any case where all petitions duly presented to the Secretary for Scotland in terms of General Orders, against the provisional order which has been referred to commissioners for local inquiry, have been withdrawn by requisition as aforesaid before commissioners have opened the inquiry into such draft provisional order, the draft provisional order shall be deemed to be withdrawn from inquiry before commissioners unless the Secretary for Scotland, in terms of the principal Act, thinks inquiry necessary, although there is no opposition, and directs such inquiry to proceed.”

When the Rothesay Tramways (Extension) Provisional Order was called before the Commission it was intimated that a petition had been deposited against a particular part of the Order. The part of the Order petitioned against had been withdrawn, but the petition had not been formally withdrawn. No one appeared for the objecting petitioners.

The agent for the promoters proposed, having regard to the provisions of No. 146 of the General Orders, to put a witness in the box to formally prove the preamble.

Mr Lorimer, Clerk to the Commission, explained as follows:—“The position we are in is this, that we have no information that there has been a requisition withdrawing the last petition against the Rothesay Order, and so far as the Commission are concerned it stands. When this case is called now, as I take it to be called, it stands, so far as is known, as an opposed Provisional Order.”

A witness was put into the box to formally prove the preamble, and the clauses

of the Order were then formally considered and approved by the Commissioners.

Lord Clifford of Chudleigh, Chairman, reported to the Secretary for Scotland on behalf of the Commissioners that when the inquiry was opened into the Order no petitioners against it appeared. “The Commissioners accordingly examined the allegations of the preamble and found the same to be true and the preamble proved, and they went through the Order and made amendments thereon.”

Agent for the Promoters—W. E. Tyldesley Jones, Solicitor and Parliamentary Agent, London.

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#### GREENOCK AND PORT-GLASGOW TRAMWAYS EXTENSION.

*Private Legislation Procedure—Provisional Order—Tramway—Locus Standi of Railway Company Objecting—Power to Run Motor Cars Beyond Tramway—Power of Parcel Delivery.*

The Greenock and Port-Glasgow Tramways Company promoted a Provisional Order which provided, *inter alia*, as follows:— Clause 9—“The Company may provide, maintain, work, and run omnibuses or motor cars in connection with their tramways, or when the running of carriages thereon is impracticable, or during the construction, alteration, or repair thereof, or in prolongation of any tramway route the extension of which may be contemplated by the Company.”

Power was also sought to carry on a parcel delivery by means of the motor cars.

The Glasgow and South-Western Railway Company opposed the Order, their objection being confined to clause 9.

The promoters objected to the Glasgow and South-Western Railway Company being allowed a *locus*.

Argued for the promoters—The Railway Company had no *locus standi*. The Railway Company had a system of railways which ran into Greenock, and they delivered and collected parcels in connection with the railway, but the Railway Company had no parcels delivery business independent of their railway. They were not common carriers in Greenock. It was only for the railway that they collected and delivered parcels. The Bill claimed no monopoly for the Tramway Company or right to interfere with the Railway Company's power to carry parcels or passengers. The sole effect of clause 9 was that they as a corporation might as between themselves and the shareholders and the general public to a certain extent use monies which were subscribed by their