

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

should be heard as regards the necessity of the extension.

After evidence had been led for the promoters and for the objectors the Commissioners found the preamble proved, so far as concerned the extension along the Gorgie Road, and also so far as concerned the remainder, but subject to the condition that the Tramway Company should not be bound without their consent to work that part or pay rent in respect thereof until the cattle market, the slaughter-house,

and the corn market were completed and opened for public use.

Counsel for the Promoters—Wilson, K.C.—W. J. Robertson—Macpherson. Agents—Thomas Hunter, W.S., Town Clerk, and A. & W. Beveridge, London.

Counsel for the Tramway Company—Scott Dickson, K.C.—Macmillan. Agents—Davidson & Syme, W.S., and Sherwood & Company, London.

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