

PROVISIONAL ORDER COMMITTEES.

Tuesday, December 1, 1903.

NOTICES TO AGENTS.

Proofs.

All persons acting as agents under the Private Legislation Procedure (Scotland) Act are requested to take note that they are responsible for the accuracy of the statements contained in the formal proofs of compliance with the General Orders. It is the duty of the Agent in every case to call the Examiner's attention to any instance in which the requirements of the General Orders have not been fully complied with, and he will be held responsible for any neglect of this duty and for the consequences thereof.

In proving compliance with General Orders Agents are requested in every case to use the printed statements of proofs, which may be obtained from the usual Government publication agents.

Fees.

All fees under General Orders must be paid to the Secretary for Scotland's office.

Fees should be remitted to the Scottish Office by letter addressed to the Under Secretary for Scotland. Bank drafts and cheques should be made payable to His Majesty's Postmaster-General and crossed to the account of that officer at the Bank of England. As regards fees in respect of proceedings before the Examiner or Commissioners, it has been arranged that a daily note of these fees shall be handed or forwarded to each party appearing at such proceedings. As soon as the proceedings are closed the total amount due should be remitted to the Scottish Office in the manner above mentioned.

In remitting fees by bank draft or cheque Agents are requested not to add any sum in respect of anticipated bank charges. If such charges are actually made Agents will be notified, and the accounts will be collected from them in due course.

Applications for Fresh Borrowing Powers.

Parties applying for Provisional Orders and their respective agents are requested to note that where new borrowing powers are applied for by town councils or other bodies possessing power to levy rates

which will form the security for the repayment of the loans, it will save time and correspondence if the application to the Secretary for Scotland, or the estimate required under General Order 36, is accompanied by a full statement showing the existing borrowing powers and conditions of repayment, the amounts which have been annually repaid or paid into sinking fund since the loans under existing borrowing powers were incurred, and the outstanding debt. Such statements should be supported by copies of annual accounts for three years preceding date of application.

Variations from Model Bill Clauses.

It is also desired that in those of the prints of Draft Provisional Orders deposited in the Scottish Office for the use of the Secretary for Scotland and his counsel, extracts from and variations of the Model Bill Clauses should be marked so as to show whether they are adopted with or without variation. It is suggested that when the whole or part of a model clause has been adopted, a marginal note "model" would suffice, and that where a model clause is intentionally altered, it should be either underlined or side-scored, and marked "model varied." Where clauses of an unusual character are inserted, especially in the case of Improvement Orders, a marginal reference to precedents would in many instances facilitate business.

General Orders.

The General Orders under the Procedure Act are issued as a Stationery Office publication, and may be obtained from the usual agents for the sale of Government publications, price one shilling. An Amending General Order not incorporated in the publication was made on 20th March 1902, and is issued as No. 254 of the Series of Statutory Prints and Orders 1902, price one penny. (No further alterations have been made.)

Warrants under the Parliamentary Deposits Act 1846.

A Form of Requisition for Warrants and a Form of Warrant under the Parliamentary Deposits Act 1846, as read with General Order 145, may be obtained on application to the Scottish office.

Monday, Tuesday, Wednesday, 21st, 22nd,
 and 23rd March 1904.

(Before Lord Herries, Chairman, Lord
 Muncaster, Mr J. Dennistoun Mitchell,
 and Mr Edward Wilson—at Edinburgh.)

LEITH CORPORATION TRAMWAYS
 PROVISIONAL ORDER.

*Provisional Order — Private Legislation
 Procedure — Locus standi — Tramways —
 Interference with Pipes — Electrolytic
 Action — Tramways Act 1870, secs. 30 to 32
 — Board of Trade Regulations.*

This was a Provisional Order to authorise the Corporation of Leith to acquire the existing tramways within the burgh and to convert them to the electric overhead system.

The Edinburgh and District Water Trustees and the Edinburgh and Leith Corporations Gas Commissioners appeared as objectors. The grounds of their objections were that under the proposed Order they were not adequately protected in the matters of (1) interference with their pipes, and (2) electrolytic action. The proposed Order incorporated the Tramways Act 1870, secs. 30 to 32, in the matter of pipes, and in the matter of electrolytic action the regulations of the Board of Trade formed upon the recommendations of Lord Cross's Committee. The objectors desired to have reserved to themselves the right to carry out the alterations on the position of the gas and water mains (a right conferred by the Tramway Act upon the promoters), and to have fuller protection against electrolytic action in the shape of a provision to the effect that if any damage were thereby done to the plant it should be made good by the person causing it.

The promoters objected to the *locus standi* of the objectors, arguing that where the provisions of the Tramway Act and the Board of Trade Regulations were incorporated in a proposed Order only an averment of very special circumstances, wanting in this case, would give a *locus standi*—*Airdrie and Coatbridge Company*, Saunders & Austin, vol. ii, p. 3. The objectors referred to the *Scarborough Tramways Bill*, Saunders & Austin, vol. ii, p. 145.

The Commissioners allowed the Edinburgh and District Water Trustees and the Edinburgh and Leith Corporations Gas Commissioners a locus as far as the adjustment of clauses.

The Water of Leith Purification and Sewage Commissioners also appeared as objectors, claiming that a clause should be inserted in the Order giving them the right themselves to carry out any operations near or upon their sewers necessitated by the tramway undertaking. The promoters contended that they had no *locus standi*, this being a question merely of physical interference and not electrolytic action, and that to grant a locus in a question of physical interference where the

promoters of an Order had incorporated the provisions of the Tramways Act of 1870 was unheard of.

The Commissioners refused a locus, holding that the objectors' case was covered by section 31 of the Tramways Act of 1870.

Evidence was subsequently led on behalf of the promoters and the Edinburgh and District Water Trustees and the Edinburgh and Leith Corporations Gas Commissioners, and thereafter the CHAIRMAN of the Commission after consultation answered that they were not prepared to put in any new clauses.

*Provisional Order — Private Legislation
 Procedure — Locus standi — Tramway
 Scheme Promoted by Burgh — Lessees of
 Omnibuses in Adjoining Burgh Oppose
 on Ground of Competition.*

The Edinburgh and District Tramways Company (lessees of the Corporation of Edinburgh, who objected to the Order upon various grounds and obtained a *locus standi*) were also among the objectors. They were, they pointed out, at present compelled by statute to run a line of omnibuses between Newhaven and Leith, and they contended that the proposed extension of the Leith tramway would tap the very district which they served with this line of omnibuses. They did not oppose the passing of the preamble, but argued that they had right to a locus to see that their interests were adequately protected. The omnibuses were run at the present time at a loss, and that loss would be largely increased if they were compelled to run the omnibuses against the tramways. The Tramway Company should either take over the whole traffic of the district, and relieve them of their obligations, or should not interfere with it at all.

The promoters objected to the *locus standi* of the Tramways Company, on the ground that they had no right to appear, inasmuch as no tramway of theirs was touched or physically interfered with—*The Landsdowne Road Tramway Bill*, 2 Clifford & Rickard's Reports, p. 177.

The CHAIRMAN—I do not see that the lessees (the Edinburgh and District Tramways Company) have any *locus standi* because of the omnibus.

*Provisional Order — Private Legislation
 Procedure — Tramway Scheme Promoted
 by Burgh — Proposal to Make Police Rate
 Ultimately Liable for Deficits in Working
 Disallowed.*

Section 73 of the proposed Order provided —“The Corporation shall once in each year, after the first year's working by the Corporation, cause to be laid before them a statement and balance-sheet of the tramway accounts, . . . and the Corporation shall thereupon fix the tolls, fares, and charges to be levied by them for the use of the tramways . . . for the said year then ensuing: . . . Provided further, that if in any year the revenue exceeds such expenditure the Corporation shall deal with the surplus in manner provided by . . . this

Order, . . . and that should there be a deficiency in any year it shall be provided for in the estimate for the following year by drawing from reserve account, or varying the tolls, fares, and charges, or reducing working expenses, or be carried to a suspense account and reduced gradually over a period of years not exceeding five, and failing these from the police rate."

The Caledonian Railway Company objected to the words "and failing these from the police rate," arguing generally that it was exceedingly inexpedient that unsuccessful municipal trading should be carried on at the expense of the rates, and specially that it struck the Caledonian Railway particularly hard, inasmuch as they were large ratepayers in Leith, and were at the same time bound to run certain trains and to keep the fares within certain limits for the benefit of Leith.

The Commissioners deleted the words objected to.

Counsel for the Promoters—Wilson, K.C.—Constable. Agents—T. B. Laing, Town-Clerk, Leith—John Kennedy, W.S., Parliamentary Agent, London.

Counsel for the Edinburgh and District Water Trustees, *Objecting*—Clyde, K.C.—Cooper. Agent—W. Whyte Millar, S.S.C.

Counsel for the Edinburgh and Leith Corporations Gas Commissioners, *Objecting*—Clyde, K.C.—Cooper. Agent—James M. Jack, S.S.C.

Counsel for the Water of Leith Purification and Sewage Commissioners, *Objecting*—Cooper. Agent—H. Inglis Lindsay, W.S.

Counsel for the Caledonian Railway Company, *Objecting*—Clyde, K.C.—Cooper. Agent—H. B. Neave, Solicitor, Glasgow.

[See *infra* Proceedings in House of Commons and House of Lords, June 15th and June 17th 1904.]

Wednesday, June 15, and Friday, June 17.

LEITH CORPORATION TRAMWAYS ORDER CONFIRMATION BILL.

Provisional Order—Private Legislation—Procedure—Review—Confirmation Bill—Procedure in Houses of Commons and Lords—Locus standi—Petition to Refer Bill to Joint-Committee of both Houses of Parliament—Private Legislation Procedure (Scotland) Act 1899, sec. 9.

L.—IN THE HOUSE OF COMMONS.

"MR KERR (Preston) formally moved that the Leith Corporation Tramways Order Confirmation Bill be referred to a Joint-Committee of Lords and Commons.

"Sir LEWIS M'IVER (Edinburgh W.) said he desired to say a few words on this motion, as his hon. friend was pecuniarily interested, and could neither vote nor be

a teller. Under the Edinburgh Tramway system, which was now in the hands of the Corporation of Edinburgh, a line of omnibuses had to be run between Newhaven and Leith. That was a statutory obligation. The Leith Corporation, however, was now embarking on a system of electric tramways, and an Order was passed by the Commissioners. The Edinburgh Tramway Company applied to be heard, as they considered they would be damned by certain provisions in the Provisional Order. The chief objection was that the new tramways would compete with the omnibuses they were compelled to run by statute, and that they ought either to be protected by Parliament from unfair competition or relieved of the statutory obligation. The Edinburgh Tramway Company was not anxious to oppose the preamble of the bill. It was contended, however, that the Edinburgh Company was entitled to a locus, which the Commission refused. If the petition had come before Parliament a locus would certainly have been guaranteed. The only possible objection to the granting of the motion would be the fear that it might inaugurate a system of appeals from the Scottish tribunals on Provisional Orders. If he thought this would ensue, he would have hesitated to support the petition. But there was no question of fact raised, and he could conceive no case which more demanded the interference of Parliament, as Parliament had imposed an obligation on the company to run omnibuses, which would be rendered entirely unnecessary if the Bill became law. There was certainly a *prima facie* case for a locus, and there was no other way in which the company could get redress than by a petition to the House.

"Mr MUNRO FERGUSON said the petition raised a point which was new and of very considerable importance. The motion was against the spirit and letter of the Act of 1899. It was wholly vexatious and unnecessary, and it would reimpose burdens which the Act of 1899 sought to remove, while it would lower the status of local inquiries if appeals were allowed on questions of locus. The question was really a very large one. The Act imposed upon the Commissioners the responsibility of deciding questions of locus, and no case had been made out for Leith being put to the expense, and Parliament to the trouble, of a rehearing. The petition on which the motion was based really demanded an amendment of the Act of 1899. He appealed to the Government to maintain the Act. If such an appeal was allowed it would mean double inquiries, and in that case Scotland would be better without the 1899 Act altogether. If it were difficult to get members to sit on local inquiries now, it would be much more difficult if their decisions were to be open to appeal to Parliament. The object of the 1899 Act was to promote economy and efficiency, and relieve Parliament of a burden. All those objects would be frustrated if this motion was adopted. The Corporation of Edinburgh did not seek to get rid of the obligation to