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.

I.—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 damnified 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

run the omnibuses in question, and the Corporation of Leith had nothing to do with the Edinburgh tramway lessees—Dick, Kerr, & Co. If Dick, Kerr, & Co. thought they had a grievance, that was a question which ought to be settled between them and the Corporation of Edinburgh. What they complained of in Leith was that by a side issue the tramway lessees tried to get rid of their obligation without coming to any fair agreement. The cost of meeting this petition was of itself considerable. But he thought the money would be well spent if it hindered the creation of what he conceived to be an extremely vexatious precedent, and one which would set aside the whole spirit of the Act.

"Mr PARKER SMITH (Lanarkshire, Partick) said that those who represented the Court of Referees had an interest in this matter. The scheme of the Private Bill Procedure Act of 1889 was to have a hearing in Scotland, but it was not its intention to be absolutely and finally satisfied with that hearing. Mr Munro Ferguson complained of the evil effect that would be produced on Leith if it were condemned to a double hearing. But, after all, that was simply what would have been the case under the old system before inquiries were heard in Scotland, when after having been heard before one House, they could of right come before the other.

"Mr MUNRO FERGUSON said his main point was that they were not under the old system, and that under the Act as it stood the question of *locus standi* had necessarily to be decided in Edinburgh, and was so decided.

"Mr PARKER SMITH said that the Act by no means intended absolutely and in all cases to cut off the possibility of a second hearing, though the House had been unwilling to grant that second hearing as a matter of right. It would be a step beyond anything the House had said if now the House were to decide not only that a man should be unable to come there after he had been heard on the merits, and his petition had been rejected, but that when his petition had been rejected, and had been set aside altogether, he should be denied the right of coming and asking a *locus standi* there. They continually had to decide questions of locus on grounds of competition.

"Mr MUNRO-FERGUSON said that petition did not allege competition.

"Mr PARKER SMITH said that surely it did. The whole claim of locus was a competitive locus, and it was purely, as he understood, on the ground of competition that the petitioners wished to be heard. Looking to the facts as they had been brought before the House, it did seem to him that there was a substantial case of competition. He thought it would be a very unsatisfactory result if it were found that petitioners did not get fully heard, or were prevented from being heard at all, upon grounds which, if the case came before Parliament, they would get a hearing. He thought the effect of such a feeling as that getting abroad, of its being supposed that people did not get a fair hearing before the tribunal, would be much more serious than the putting of a certain amount of expenses upon those who were coming there to ask for an appeal. He thought the weight of probable advantage would be most decidedly in favour of allowing the petitioners to have an opportunity again of making themselves heard.

"Sir ROBERT REID said the importance of this discussion was not local, but it arose from the question whether the House of Commons was going to sanction a rehearing in regard to a matter which had been investigated under the Act. He thought it was essential they should refuse a rehearing except in a very exceptional case. It appeared to him that the Tramway Company wished to get rid of some contractual obligations with the Leith Corporation, and it was a very strong thing to ask them to relieve from the effect of a contract which the other contracting party objected to being put an end to. If a case of that kind was to be treated as an exceptional case so as to authorise departure from the spirit of the Act, he could not help hoping that the Government would not allow the Act to be frustrated, and would not allow the whole thing to be reduced to a mere futility by allowing a rehearing in a case of this kind.

"Mr WORSLEY TAYLOR (Lancashire, Blackpool) said he was very much in the position of the member for Partick. He had no local interest in the question, but he took an interest in it as one who had the honour of sitting in the Court of Referees. The Scotch Act provided that a motion might be made that the Bill should be referred to a Joint-Committee of both sides. But it also provided that the Joint-Committee should hear and determine on the question of *locus standi*. For many years past they had relegated the question of *locus standi*, not to the House, because they thought the House was incapable of dealing with it, but to the Court of Referees. To his mind he ventured to say there was a clear *prima facie* ground for locus. He did not suggest that if they were allowed to be heard they would persuade the Committee their case was right. The provisions of the Bill were that the Coporation of Leith, with the rates at their back, might run omnibuses. It came to this, that they could run omnibuses in competition with the people who were under statutory obligation to continue the service by which they were losing money. If the Corporation ran a service in competition, and cut the fares down, it was clear they were in a position to ruin them. The Corporation might run an electric service, and because that it would be so much quicker, although the cars might run through different streets, the competition might be effective, especially as they would have the public rates behind them. The root of the matter seemed to be competition, and he asserted, therefore, that if an application to the Court of Referees of the House of Commons was possible the locus would

be granted, and he hoped therefore in the interest of justice the House would allow the petitioners to be heard.

"Mr DALZIEL said that when the Scottish Private Procedure Bill was before the House the idea was that only on rare occasions would there be an appeal to the House. Indeed, he thought the appeal clause was only inserted to secure the passage of the measure. If they were to reconsider decisions of the Commissioners in Scotland in regard to *locus standi* the Bill would no longer serve the purpose for which it was brought forward. He doubted very much the wisdom of two hon. gentlemen, who were members of the Court of Referees, stating what as members of the Court they would do in certain circumstances. It was no part of the duty of the members of that Court to sit in judgment on Commissioners appointed by the House. The important question of precedent was involved in this matter. He held that they should support the action of the Commissioners, who would, after hearing all the evidence, give their decision. No case had been made out for passing a vote of censure on the Commissioners, as they would do if they agreed to the motion.

"MR GRAHAM MURRAY said he would willingly not have taken part in the debate, but as the Minister answerable for the conduct of these Provisional Orders in the Scottish Office he supposed it would not be right that he should not tell them how the matter struck him. He could not say he thought the case altogether an easy one, and he would be very far from taking up the position of even attempting to direct the House in the matter. The House would understand that he was very far from dogmatising and very far from indicating that it was at all necessary to follow any advice he gave. It was for the House alone to determine this matter. But it would not be fair if he did not state how the matter appeared to him. It was not necessary that he should go into the history of how the appeal clause, such as it was, got into the Bill, although he thought the hon. member who last spoke was not quite accurate in his statement with reference to it. As a matter of fact, he thought the original Bill gave the right to appeal as a right, and the present clause was inserted in its place. The clause provided that if before the expiration of seven days after the introduction of a Confirmation Bill a petition was presented against any Order confirmed by the Bill it should be lawful for any member to give notice that he intended to move that it should be referred to a Joint-Committee of Parliament. If the motion was carried the Bill was referred to the Joint-Committee, where opponents might appear and oppose, and the Joint-Committee, among other things, should hear and determine any question of *locus standi*, so that doubtless there was an appeal in certain cases. The Act did not give any indication of what those cases were. But in the one or two discussions that had arisen on this matter before he thought the House had shown very clearly its view that unless a clear case was made out, unless there was something equivalent to—'denial,' perhaps, was too strong a word—some perversion of justice, it was not anxious to take up the matter on its merits. He did not think there would be much doubt that the House would have entertained the Bill, but the case was not quite that. It was a case of denial of *locus standi* to a person, which meant that he was not to be heard to argue his case, that he was turned out of the door. Was that a denial of justice or not? That might be rather difficult to say. He thought it his bounden duty to give the best of his judgment to the question whether the *locus standi* had been rightly or wrongly refused, and he was bound frankly to say he thought the *locus standi* was wrongly refused. He entirely disagreed with the hon. member who had just sat down when he rather criticised the two hon. members who spoke earlier—Mr Parker Smith and Mr Worsley Taylor—and deprecated their speaking in the House as members of the Court of Referees in a difficult question like this. He (Mr Graham Murray) thought those two hon. members were just the two to whom they should turn, and that they were almost entitled to ask them in a difficult matter of this sort for their guidance just as they would be entitled to ask the guidance of the Chairman of Commissioners as to whether a *prima facie* case was made out of a locus. In his view he was certainly rather backed up by the fact that both of these honourable members agreed with him. That was one side of the question. The other was that undoubtedly this question of locus was argued by both sides and every opportunity given them to be heard upon it, and that it was after that that the Commissioners sitting in Edinburgh gave their decision. There was difficulty in this case, and from it the House must extricate itself. He did not think it was a case in which he would be entitled to take up a position as representing the Government, and he did not propose to do so. Questions were always difficult when they were questions of degree. When did the question arise on which they were to allow an appeal? There was to be an occasion sometimes or else there would not be an appeal section. Was this or was this not a case in which an appeal should be allowed? If it was a question depending at all on the merits of the case, or upon the inference to be drawn from the facts, then he would say at once, 'Do not let us take up in the House what has been done by the tribunal below.' But where the question of the locus stood upon a very narrow and very obvious basis then he thought it was such an obvious injustice that a person should not be heard in support of his case, that he thought the preferable course, in his judgment, was to give him an opportunity of showing before the Joint-Committee that he had a locus. If he had got none he would have to bear the costs. If, on the other hand, it was found he had a locus, then it was obvious he would have been done a great injustice if he had not an

opportunity of putting his case before the Commission. As to the merits of the case he had no opinion, because it was not any business of his. He was sorry he could not help the House more, while he hoped he had made it quite clear that he did not think the House need be guided by him in this matter, and that it was not a case in which the Government should interfere. He had indicated his reasons as a private individual why he should vote for the motion.

The House divided—

For the motion - - -	103
Against - - - -	88
Majority	—— 15"

II.—IN THE HOUSE OF LORDS.

"LORD BALFOUR OF BURLEIGH moved that the Commons' message relating to this Bill be considered, and that the Bill be referred to a Joint-Committee of both Houses of Parliament.

"LORD HERRIES, who was Chairman of the Committee which considered this Order in Edinburgh, said it was only fair that he should say a few words in defence of the decision to which that Committee had come. In the first place, he complained of the suddenness of the attack, stating that he had only heard of it when he read a few days ago that a petition had been presented to the other House asking that the decision of the Committee should be altered. He thought a report of the proceedings before that Committee should be put into the hands of their Lordships before they were asked to consider the matter. It was unfortunate that no member of the other House had been able to serve on the Committee, with the result that when the matter came before the other House there was no one to defend the decision of the Committee. The Bill which they had passed, and against which this petition was presented by the lessees of the Edinburgh tramways, was a Bill for electric tramways in the burgh of Leith. This was opposed by the Corporation of Edinburgh, to whom the Committee did not refuse a *locus standi*, but it appeared that the Edinburgh Corporation had let their tramways to certain lessees, who, besides working these tramways, had undertaken to run an omnibus to Leith. As far as he could make out from the discussion in the House of Commons, the only objection to the decision of the Committee was that they had refused these lessees a *locus standi* in respect to their omnibus. That refusal was based on the fact that the 'bus traffic was in another district altogether from that in which the proposed tramway was to be worked, and that the lessees of the Edinburgh tramways could not contend that they were to be competed with in their own burgh. The Committee heard counsel on both sides, and came to the conclusion that there was no *locus standi*, and that if anything arose the Corporation of Edinburgh were quite capable of dealing with it. They were informed that the lessees had never been recognised by the Board of Trade, and they refused the *locus standi* for the reason that the Corporation of Edinburgh, as proprietors of the tramways in Edinburgh, were sufficient to represent that interest, and for the reason that the proposed tramway was not infringing upon the territory which this omnibus served.

"LORD BALFOUR OF BURLEIGH, in the absence of any representative of the Scottish Office, explained the position of matters, which, he said, was peculiar, from the fact that there was no precise precedent, this being the first occasion on which either House of Parliament had taken advantage of the provisions of the statute under which these Provisional Orders were confirmed to grant an appeal, and to suggest the reference of a Bill to a Joint-Committee. He did not think the noble Lord had any ground for complaining that he had been put in an unusual position from the fact that the decision of his Committee had been attacked. It was certainly not the first time in the history of litigation, and he was perfectly certain it would not be the last, that a defeated litigant, disappointed at a decision of the Court, had taken any constitutional method of again raising the question. There was no real attack upon the noble Lord or his Committee. As regarded the suddenness of the attack, he pointed out that the statute provided that if after the introduction of the confirmation of the Bill, which might originate in either House, and before the expiration of seven days, a petition was presented against the Order comprised in that Bill, it was lawful for any member of the House of origination to give notice that he intended to move that the Bill be referred to a Joint-Committee. This Bill originated in another place, and within the last day or two a petition having been presented, a member of that House moved that the Bill be referred to a Joint-Committee. He was successful in his motion, and the ordinary communication of the decision of the other House had been sent to this House. It would have been impossible to move the motion in their Lordships' House, because until the other House had communicated to their Lordships there was no possibility of raising it at all. The statute went on to say that in that case a motion was moved, and if carried, the Bill should stand referred to a Joint-Committee of both Houses of Parliament. It might be said that their Lordships were masters of their own procedure, and might refuse to join in such a Committee, but he was quite certain the noble Lord would not suggest that course. He asked the House to join with the members of the other House to form a Joint-Committee. He expressed no opinion on the merits of the case, knowing that the noble Lord and his Committee had arrived at their decision on what they thought were fair grounds. That decision, however, had been appealed against, and the ordinary procedure was that opportunity of raising the question again should be given. He hoped the noble Lord would disabuse his mind of any idea that there had been any sort of attack made upon him."

The motion was agreed to.

Tuesday, March 22.

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

LEITH BURGH PROVISIONAL ORDER.

Provisional Order—Private Legislation Procedure—Proposed Clause Disposing of Pecuniary Dispute between Burghs—Competency—Locus Standi—

Into this Provisional Order, which dealt, *inter alia*, with the suppression of betting, bookmaking, and wagering in public places, the promoters, the Corporation of Leith, proposed to introduce a section dealing with a pecuniary dispute between themselves and Edinburgh. The Burgh of Leith being like other burghs in Scotland entitled to redeem its land tax made certain payments with that object. These payments however accidentally were set down as contributed by Edinburgh, and under the Agricultural Rates Act 1896 Edinburgh obtained from the Treasury certain repayments in respect of these payments. The Corporation of Leith claimed that they were entitled to the sums repaid. The promotion of the Order proposed to introduce into the Bill a section leaving the whole matter for the Secretary of Scotland to adjust.

The CHAIRMAN—I do not think we are a Court of Arbitration between two burghs in a question of this sort. I think you must leave other parties to decide as to that. . . . I quite see that this is a dispute between two burghs as to the money. I do not see that a dispute of that sort should be bought into a burgh Bill of this kind. It is entirely without our powers. We certainly prefer not to take it up. . . . I think it is a *locus standi* case whether this is a subject which should be brought into the Bill at all.

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 Lord Provost, Magistrates, and Council of the City of Edinburgh—Clyde, K.C.—Cooper—Wallace. Agent—Thomas Hunter, W.S., Town Clerk.

Counsel for the Leith Dock Commission—J. H. Millar. Agent—Victor A. Noel Paton, W.S.

Wednesday, March 23, and Thursday, March 24.

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

GRANGEMOUTH BURGH EXTENSION PROVISIONAL ORDER.

Provisional Order—Extension of Boundaries of Burgh—Opposition by County Council—Application to Sheriff under Burgh Police (Scotland) Act 1892, secs. 11, 12, 13; 1903, sec. 96—Water Rights—Assessment.

The Burgh of Grangemouth, which was about to construct new docks, desired an extension of its boundaries so as to include the area which would be occupied by the docks and the houses necessary for the workmen employed. This was the object of the present Provisional Order.

The existing area of the burgh contained some 651 acres or thereby of which about 100 acres were unbuilt on, and the total area proposed to be added under the Provisional Order consisted of three separate portions, amounting in all to 1223 acres. The population of the burgh as existing was 8500, that of the portions proposed to be added 72. The Caledonian Railway Company, Limited, supported, the County Council of Stirlingshire and the Eastern District Committee of Stirlingshire objected to the Provisional Order.

The promoters maintained that it was expedient and desirable that these areas should be added to the burgh before they were built upon, in order that the burgh might from the outset exercise a supervision over the erection of houses and streets, and that for this a Provisional Order was necessary, the powers conferred on the Sheriff of the County by various Acts of Parliament being applicable only to the case where a burgh found the population on its borders growing in number and where consequently it desired further extension and control. The objectors maintained, *firstly*, that a Provisional Order was unnecessary, provision having been made by public general statutes for extending the boundaries of burghs by application to the Sheriff with appeal to Court of Session, the Burgh Police (Scotland) Act 1892, secs. 11, 12, 13, and the Burgh Police (Scotland) Act 1903, sec. 96. Further, the present was not a case for extension, as the areas in question were not urban or suburban in character, and required neither municipal government nor legislation. Such matters as police protection, drainage, and lighting had been provided for by the objectors, and no advantage would be derived by the inhabitants of the areas from the proposed change. *Secondly*, that the objectors had in the year 1900 promoted and procured an Act by which a special Water Supply District had been created, including the areas proposed to be annexed to the burgh, and water-works had been