Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Demerara Electric Company, Limited v. *White and others, from the Supreme Court of British Guiana; delivered the 26th April* 1907.

Present at the Hearing:

THE LORD CHANCELLOR.
LORD MACNAGHTEN.
LORD DAVEY.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

This case, which was heard *ex parte*, was an appeal by the Demerara Electric Company, Limited, from a final sentence of the Supreme Court of British Guiana.

At the instance of the Respondents, who are owners and occupiers of house property in the City of Georgetown in the immediate neighbourhood of the power house or generating station belonging to the Appellants, the Supreme Court awarded an injunction restraining the Appellants from using their machinery and engines so as to occasion a nuisance by noise and vibration to the Respondents, or any of them, or the owners or occupiers of their houses. And the Appellants were ordered to pay $100 to each of the Respondents by way of damages.

The defence to the action was twofold. The Appellants maintained (1) that there was no nuisance in fact, and (2) that they were protected by statutory authority in doing what they had done. They also argued that if there was a nuisance in fact and if they were not protected by their statutory powers, the matter complained of was not of such a character as

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to entitle the Respondents to an injunction—damages, they said, would be the more appropriate remedy.

On each of these three points the Supreme Court decided against the Appellants.

As regards the existence of the nuisance complained of and its serious character their Lordships agree with the learned Judges of the Supreme Court who heard the oral evidence and saw the witnesses produced at the trial.

The defence set up on the ground of statutory authority remains to be considered.

The Appellants were incorporated by the Demerara Electric Company Ordinance, 1899, with a capital of 500,000. The objects of the Company included the acquisition, construction, maintenance, and operation of electric works and appliances for the purpose of generating, supplying, and distributing electricity for lighting and heating purposes and as a motive power, and the acquisition, maintenance, and operation of electric tramways in the Colony, including power houses or stations in connection therewith, and the obtaining of orders or licenses under the Electric Lighting Ordinance, 1890, or any other Ordinance for any such purpose.

The Company seems to have been formed for the purpose of acquiring and combining two separate undertakings—the undertaking of the Georgetown Tramways Company, Limited, which was then worked by animal power, and the undertaking of the British Guiana Electric Lighting and Power Company, Limited.

By the Georgetown Electric Lighting Order, 1899, the undertakers for the purposes of that Order acquired "the exclusive right for the "period of thirty years, and any extension "thereof under the provisions of the principal "Ordinance," meaning thereby the Electric Lighting Ordinance of 1890, as subsequently

amended, "to supply energy for all public and "private purposes, and to use the same for the "purposes of any undertaking lawfully carried "on by the undertakers within the area of "supply" (Section 7). The expression "the "undertakers," as defined in the Order, included the Demerara Electric Company and their lessees or assigns. The expression "the area of supply," included the City of Georgetown and its environs within a distance of five miles of the limits of the city.

Section 66 of the Georgetown Electric Lighting Order, 1899, is in the following words: "Nothing in this Order shall exonerate the "undertakers from any indictment, action, or "other proceeding for nuisance in the event "of any nuisance being caused by them."

On the day on which the Georgetown Electric Lighting Order, 1899, was issued the Appellants obtained a license under the Tramways Ordinance, 1899, authorising them to construct, maintain, and operate tramways in the City of Georgetown and its vicinity. The licensees were thereby granted the exclusive right, and were thereby required, within the area thereinafter defined, which was co-terminous with the area of supply mentioned in the Georgetown Electric Lighting Order, 1899, to lay down, make, maintain, and operate daily, and every day, the tramways thereinafter described. They were also thereby "authorised "and empowered to generate, accumulate, dis-"tribute, and supply electrical energy as a "motive power and for the lighting of the cars "and carriages used thereon, and of the offices, "stations, buildings, and works of the licensees," *anything in any Ordinance of the Colony notwithstanding.* And they were directed to do and execute all and any works necessary for the efficient construction, equipment, and operation of the tramways.

Armed with the powers thus conferred, the Appellants purchased and combined the undertakings formerly carried on by the two old Companies, using as their power house or generating station the power house or station of the old Electric Company. There they erected larger engines and more powerful machinery in order to work both branches of their business. The two branches were worked together. It was, as their manager, Mr. Bruce, said, "all one system "under one roof." So working they caused the nuisance of which the Respondents complained.

It will be observed that at the time when the tramways license was granted the Appellants were already in possession of the exclusive right of generating and distributing electrical energy for all public and private purposes and using it for the purposes of any undertaking lawfully carried on by them within the area of supply. It would seem, therefore, that the authority "to "generate, accumulate, distribute, and supply "electrical energy," contained in the tramways license of 1899, was unnecessary so far as the Appellants were concerned, and so long as they worked the tramways themselves. That authority, on which so much reliance was placed by the learned Counsel for the Appellants, is to be found in "The Tramways Ordinance, 1899." It therefore naturally has a place in the license itself. A reason for its insertion, if a reason is wanted, may be that, although such a provision is superfluous and idle so long as the Appellants continue to work the tramways, it would be effective and useful in the event of the local authority electing to purchase the tramways under the compulsory powers contained in the Ordinance of 1899. The final words "anything "in any ordinance of this Colony notwith-"standing" seem to point to the Georgetown Electric Lighting Order, 1899, and to have been added in order to prevent the working of the

tramways being interfered with in any event by the monopoly already granted to the Appellants.

It is quite true that the condition imposed by Section 66 of the Lighting Order is not repeated in the license. It appears to their Lordships, however, impossible to infer from this circumstance that in connection with one of the two main purposes for which electricity was required by the Appellants they are by implication relieved from an obligation imposed by a contemporaneous instrument, and accepted by them as applying to the production of electricity for every purpose, motive power as well as lighting and heating.

The learned Judges of the Supreme Court treated the authority to generate and distribute electrical energy contained in the tramways license as superseding the authority to generate and distribute electrical energy as a motive power contained in the Demerara Electric Ordinance, 1899. So treating it on a careful review of the authorities bearing on the subject, including *Metropolitan Asylum District* v. *Hill*, 6 A.C. 193, and *London and Brighton Railway Company* v. *Truman*, 11 A.C. 45, and on consideration of the provisions of the tramways license and all the circumstances of the case, the learned Judges came to the conclusion that the Appellants were not authorised by the Tramways License of 1899 to cause a nuisance. Their Lordships agree in that conclusion, although they think the same result might have been reached by a shorter and simpler road.

Their Lordships will humbly advise His Majesty that the Appeal should be dismissed, but that such dismissal should be without prejudice to any application which the Appellants may be advised to make to the Supreme Court for the suspension of the injunction awarded by the final sentence of the said Court.