

*Privy Council Appeal No. 138 of 1913.*

**The West India Electric Company, Limited** *Appellants,*

*v.*

**The Mayor and Council of Kingston** - *Respondents.*

FROM

**THE SUPREME COURT OF JUDICATURE OF JAMAICA.**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 21ST JULY 1914.

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*Present at the Hearing :*

LORD DUNEDIN.

LORD SUMNER.

LORD ATKINSON.

SIR JOSHUA WILLIAMS.

*[Delivered by LORD SUMNER.]*

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On 28th June 1912, the Mayor and Council of Kingston, Jamaica, as the local authority, having previously caused the appellants, the West India Electric Company, Limited, to be served with notice to treat under Section 36 of the Parochial Boards Laws Consolidation Law (No. 17 of 1901), issued a plaint in the Kingston Court for assessment of compensation to be paid for taking a small portion of Oxford Pen, a piece of land which belongs to the appellants. Thereupon the appellants began the present action, in which they claimed an injunction to restrain the respondents from acquiring the site in question, and from proceeding further with the plaint. The hearing of a summons for an interim injunction was, by consent, treated as the trial of the cause, and the action was dismissed. An appeal was unsuccessfully taken

and the case now comes before their Lordships on appeal from the Supreme Court of Jamaica.

It is admitted that, as against a private owner or a company not possessed of any compulsory power of taking land, the proceedings of the respondents were competent and regular. The appellants seek to distinguish their position in respect of the land in question from that of private owners, and the burden is upon them to do so. They affirm that, in respect of the site, they were in a position to have acquired it under compulsory powers prior to the respondents' notice to treat; that they can be in no lower or worse position merely because they bought it by private treaty; and that, in a competition between their compulsory powers and those of the respondents, priority must be given to those first exercised, as they claim that in substance their powers must be deemed to have been, and hence that it would be inequitable and unlawful for the respondents to seek to take from them by compulsion what they must be treated as having previously taken from others compulsorily for the purpose of their undertaking and in exercise of their statutory powers as undertakers.

The substantial question on this appeal is whether the appellants had any compulsory powers of taking the site in question, if they had chosen to exercise them. It may be conceded for present purposes that they are not prejudiced by having bought the land as a voluntary transaction of purchase and sale, when they might have acquired it by compulsion on paying an assessed compensation for it, without inquiring whether there are any, and if so, what cases in which this proposition would not hold good. It may be conceded further, and similarly without further enquiry, that for the purposes of this case it is true that, if the land

had been acquired compulsorily by the appellants the respondents had thereafter no power to take it away under their statutory compulsory powers.

The appellants are a company, which among other things works the electric tramways of Kingston. The Board of Directors decided that it was necessary to employ a staff of European inspectors for the regulation of the tramways. In tropical conditions such a staff required special housing accommodation, airy and spacious, quiet and attractive, with sufficient room for recreation and exercise. Accordingly the Company bought a site of considerable size, called Oxford Pen, in a convenient position. Part of this is occupied by residences, part is used as a common recreation ground. It is a strip at the extremity of this site furthest from the houses and only 33 feet wide that the Local Authority proposes to cut off the bottom of the garden in order to make a new road over it.

There is no question that the purchase and user of Oxford Pen are *intra vires* the appellant Company, but whether the acquisition of it for such a user would have been within its compulsory powers is a very different matter. Section 5 of the Kingston and St. Andrews Tramways License, 1897, is as follows:—

“ Subject to Section 9 of the Tramways Law, 1895, the provisions of the Lands Clauses Law, 1872, except Sections 84 and 88, are hereby incorporated with this license.”

It is not necessary to set out the provisions of the Lands Clauses Law, 1872, above referred to; they are of a familiar type, and would suffice in themselves for the acquisition of Oxford Pen, if applicable. Section 9 of the Tramways Law, 1895, is as follows, so far as is material:—

“ In case the construction of any tramway, or of any works or building necessary for the working thereof

“ pursuant to the terms of the license granted, involves the  
 “ acquisition of any land adjacent to any street or road and  
 “ extending to a distance not exceeding 150 feet from the  
 “ roadway, it shall be lawful for the Governor in Privy  
 “ Council, in and by the license, or at any time subsequent  
 “ to the granting thereof, to grant to the applicants com-  
 “ pulsory power to acquire any such land.”

Oxford Pen was adjacent to two roads, and no part of it was distant more than 150 feet from one or other of them.

The appellants were incorporated as a Company in Jamaica by Law 33 of 1897, which was afterwards amended by Law 38 of 1898. Among the objects specified by Section 2 of the former Act, for which the Company was incorporated, are  
 “ the construction, acquiring, maintaining, and operating an  
 “ electric tramway . . . . including power houses,  
 “ factories, stations, and laboratories in connection there-  
 “ with, and the doing of all things reasonably necessary or  
 “ incidental to the attainment of such objects,”

and by Clause 6 of the license it was made obligatory on the Company “to construct  
 “ . . . . maintain . . . . and operate  
 “ all the tramways ” therein described  
 “ with all . . . . necessary and convenient . . . .  
 “ buildings . . . . for the due and efficient working  
 “ of the said Tramways ” . . . .

and it was further provided as follows :

“ generally the licensees shall do and execute all and any  
 “ other works necessary for the efficient construction,  
 “ operation, and equipment of the tramways. ”

Their Lordships are of opinion that under these provisions the exercise of compulsory powers of acquiring land is subject always to the words of Section 9 of the Tramways Law, 1895, and that it must be shown that the acquisition of the land to be taken is involved in and by the construction of buildings necessary for the working of the tramway, pursuant to the terms of the license. This has not been shown. The erection of houses or the adaptation of existing houses for the use of European

inspectors was no doubt a proceeding on the part of the Company at once enlightened and humane, and was doubtless beneficial to the Company and calculated to promote the efficient and profitable working of its tramways, but it was in no sense necessary for the working, unless the word is to be stretched until it becomes merely a synonym for convenient or advantageous. Neither do the words "working of the tramway pursuant to the terms of the license" assist the appellants' argument, for the terms of the license, which impose obligations with regard to the working of the tramway, deal with things to be done to maintain the efficiency of the tramway and not the efficiency of the Tramway Company's servants. The fact that the Company is empowered to "do all things . . . reasonably necessary or incidental to the attainment of" the object, *inter alia*, of operating the tramways, does not enlarge the area of that necessity for the working, which is the test of the application of the compulsory powers given by the Act of 1895 and the license of 1897.

The appellants, however, contended that a new and less limited power to take land by compulsion was given by the Law No. 38 of 1898, Section 3 of which runs as follows:—

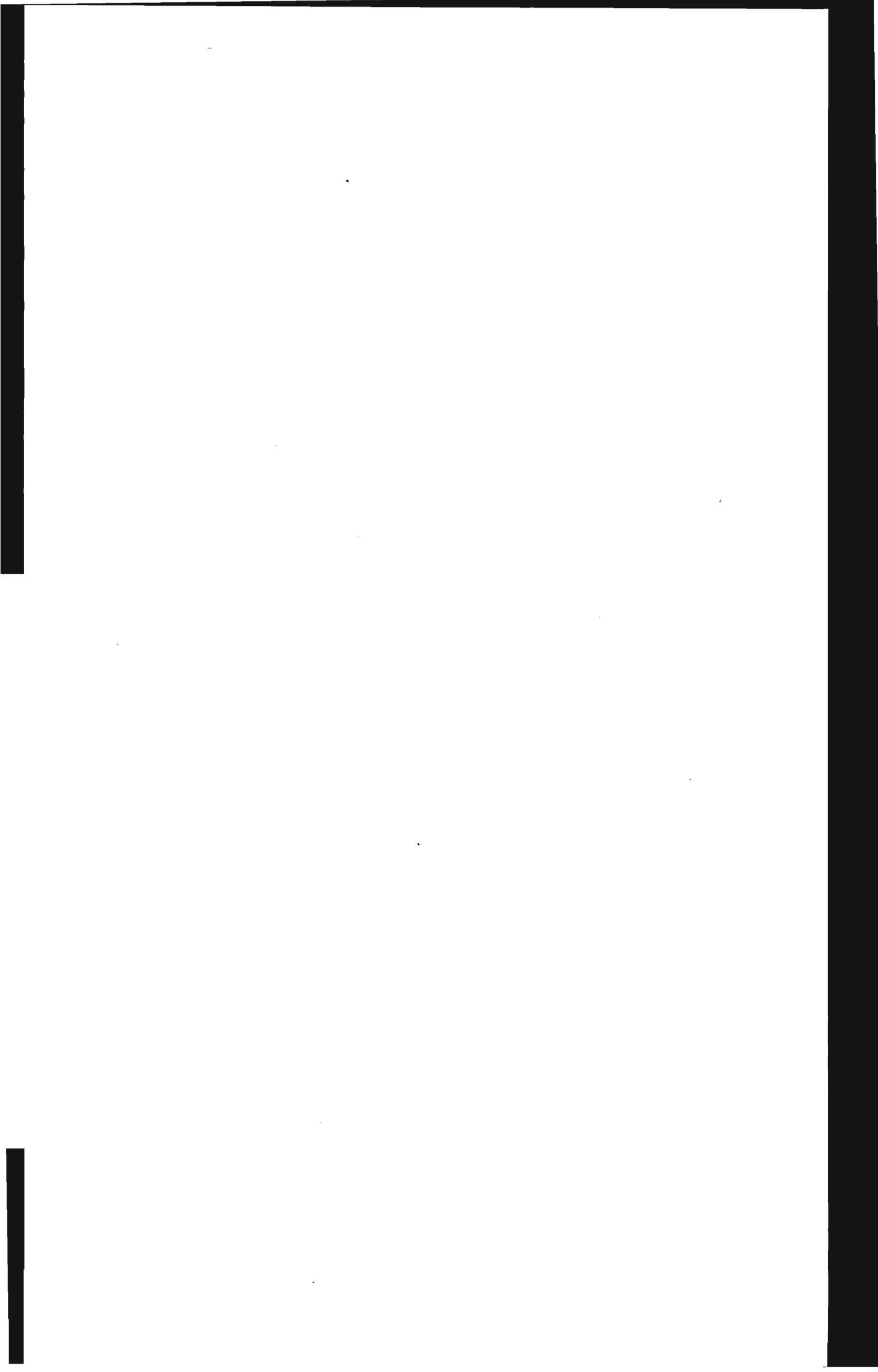
"The Provisions of the Lands Clauses Law, 1872, (Law 26), except Sections 84, 88, 104, 105, and 106, are incorporated with the Company's Special Law in respect of undertakings of the Company under any Law or any License approved by the Governor in Privy Council."

This section, unlike Section 9 of Law 27 of 1895, contains no words such as "in case the construction of any tramway or of any works or building necessary for the working thereof . . . involves the acquisition of land." From this it was inferred that Law No. 38 of 1898 conferred compulsory powers of acquiring

land in furtherance of all or any of the objects of the Company and particularly of "the doing of "all things reasonably necessary or incidental "to" the operating of the tramways. Their Lordships are unable to accept this inference. As appears from Section 2 of Law 26 of 1872, which is the definition section, "the Company's "Special Law," with which Law 38 of 1898 effects an incorporation of parts of the Lands Clauses Law, is Law 33 of 1897, and the incorporation is, so far as the tramway system is concerned, "in respect of undertakings of the "Company under any license approved by the "Governor in Privy Council," that is, the Kingston and St. Andrew's Tramways License, 1897. That license by Section 5 incorporates a larger part of that Lands Clauses Law, but does so "subject to Section 9 of the Tramways Law, "1895." So far, therefore, from repealing or annulling these words, the Law of 1898, which is some months later in date than the license, subjects the incorporation which it effects, "in "respect of undertakings of the Company under" the license, to them. The whole license must be read as one, that is, as though the incorporation effected by the Law of 1898 had been written into it, and then all the powers of compulsory acquisition, which the Company enjoys in respect of the Kingston Tramways undertaking, are subject to and prefaced by that reference to the Tramways Law of 1895, which makes necessity for the working of the tramways the touchstone of the right to take land by compulsion.

Their Lordships are accordingly of opinion that the order appealed from was right, and will humbly advise His Majesty that this appeal should be dismissed with costs.

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In the Privy Council.

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THE WEST INDIA ELECTRIC  
COMPANY, LIMITED,

*v.*

THE MAYOR AND COUNCIL OF  
KINGSTON.

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[DELIVERED BY LORD SUMNER.]

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