

Friday, July 25, 1902.

(Before Mr D. Brynmor Jones, M.P., *Chairman*, Sir Walter Thorburn, M.P., Mr C. E. H. Hobhouse, M.P., Mr A. K. Loyd, M.P., at Edinburgh.)

#### POST OFFICE SITE, OBAN

*Private Legislation Procedure — Provisional Order — Compulsory Acquisition of Ground Previously Compulsorily Acquired by Railway Company — Superfluous Land — Macfie v. Callander & Oban Railway Company, 1897, 24 R. 1156, 25 R. (H.L.) 19.*

The Postmaster-General promoted this Order to obtain compulsory powers to acquire a site for a post office in the town of Oban. The ground sought to be acquired had been acquired under compulsory powers by the Callander & Oban Railway Company in 1878. In 1893 negotiations were nearly completed between the Postmaster-General and the Railway Company for the sale of the ground in question by the latter to the former for the site of a post office, but, owing to questions having arisen as to the power of the Railway Company to sell the land, the negotiations fell through. Mr Macfie, the proprietor from whom the land had been compulsorily acquired by the Railway Company, brought an action to have it declared that the land was "superfluous" land to the Railway Company, and as such, under the provisions of the Lands Clauses Act, had reverted after the lapse of ten years to him without payment. The House of Lords held that the land was not "superfluous land" within the meaning of the Act—*Macfie v. Callander and Oban Railway Company, 1897, 24 R. 1156, 25 R. (H.L.) 19, 34 S.L.R. 828, 35 S.L.R. 413.*

The Callander and Oban Railway Company and the Caledonian Railway Company objected to the Order.

Evidence was led.

Argued for the objectors—The granting of the Order would be a serious injury to the objectors. The Post Office authorities had misconceived the duty which lay upon persons who sought to acquire compulsorily the property of others. Their whole case was that the only available site for a Post Office in Oban was this ground belonging to the Railway Company. The word available was not to be construed as meaning empty and cheap, and, unless so construed, it was proved that there were several other available sites. It was entirely without precedent, and it would be to admit a very vicious precedent if the Commission were to sanction the doctrine that a public body like the Post Office was to be entitled to compulsorily take land belonging to another statutory corporation, namely the Railway Company, which had acquired it compulsorily for its own ends, paying a full price by arbitration for it, and which was of the greatest and most vital importance for it. It had been shown that there was a prospect of a very great extension of the railway traffic at Oban, and

the ground in question would be necessary to meet the requirements of this extension of traffic. This had been held to be so by the House of Lords in *Macfie v. Callander and Oban Railway Company (supra)*. The preamble of the Order should be held not proved.

Argued for the promoters—This land had been acquired by the Railway under compulsory powers, but that fact did not prevent another public body from acquiring right to compulsorily take the land. The question was which of the two public bodies had a case of greater necessity or higher urgency. This land had been in possession of the Railway Company for twenty years, and had not been used for railway purposes. In 1893 they had been willing to sell it to the Post Office authorities. Six years had passed since the case of *Macfie v. Callander and Oban Railway (supra)*, and the land was still unoccupied. There was no other land in Oban so suitable as this for a post-office—certainly no land unoccupied by buildings—and when land covered with buildings was wanted by the Post Office the prices demanded were prohibitive. In these circumstances the preamble of the Order should be held proved.

The Chairman intimated that the Commissioners were of opinion that the preamble was not proved.

Counsel for the Promoters—C. N. Johnston, K.C.—Pitman. Agent—Sir Robert Hunter, Solicitor, London.

Counsel for the Objectors—Dundas, K.C.—Deas. Agent—H. B. Neave, Solicitor.

Monday, July 28, 1902.

(Before Mr D. Brynmor Jones, M.P., *Chairman*; Sir Walter Thorburn, M.P.; Mr C. E. H. Hobhouse, M.P.; Mr A. K. Loyd, M.P., at Edinburgh.)

#### WICK BURGH EXTENSION PROVISIONAL ORDER.

*Private Legislation Procedure — Provisional Order — Extension of Burgh — Inclusion of Part of Area of County — Competency — Financial Adjustment as between Burgh and County.*

A Provisional Order was promoted by the Magistrates and Town Council of Wick, the Town Council of Pulteneytown, and the Wick and Pulteneytown Harbour Trustees, for the extension of the Burgh of Wick, so as to include in the burgh the harbour of Wick and an area of ground which previously had formed part of the county of Caithness.

Counsel for the County Council of Caithness *objecting*, intimated that they did not oppose the preamble in so far as it provided that the harbour should belong to the burgh. They submitted that while the application for the extension of the burgh over the harbour—the harbour being regulated by statutes—was one that could only

be dealt with by Parliament, and was therefore appropriately before the Commissioners, the matter of the inclusion of the landward area proposed was in a different position. The Police Act of 1892 provided, under sections 11 and 12, that such extension of a burgh could be effected by application presented to the Sheriff. The Sheriff had means to lay off boundaries and see what was suitable. That was outside the province of a Commission of this kind. When the matter of how a burgh was to be extended was regulated and provided for by public law, and the parties concerned had a right not merely to an inquiry before the Sheriff, but also the statutory right of appealing to the Court of Session upon the matter—because that was specially given to the County Council—these rights should not be taken away under a private Act. The Magistrates of the burgh could go to the Sheriff when the Order was framed, and get the extension. The matter

being amply provided for by ordinary judicial procedure and by a local inquiry by one who knows the spot, should not be dealt with in the Order.

The Chairman intimated that the Commissioners were of opinion that the preamble of the Order was proved, conditionally on the insertion of a clause adequately protecting the interests of the county of Caithness in respect of any financial adjustment which was necessary.

Counsel for the Promoters — Guthrie, K.C. — M'Lennan. Agents — Melville & Lindesay, W.S.

Counsel for the County Council of Caithness, *Objecting* — C. N. Johnston, K.C. — Chree. Agents — Henderson & Jackson, W.S.

Counsel for G. A. O. Green, Town-Clerk, Pulteneytown, *Objecting* — Watt, K.C. — Laing.

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