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IN THE SUPREME COURT.

1916 NO. 554.

TRAMWAY BOARD

- v -

MELBOURNE TRAMWAY & OMNIBUS COY
LIMITED.

THE CASE RELATING TO SPECIFIC
DEFECTS.

Mr Owen Dixon

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THE CASE RELATING TO SPECIFIC DEFECTS.

The third of the three branches into which the Plaintiffs' case naturally falls been given the above title. It is based upon allegations that the Tramways (exclusive of the paving) present objective defects by reason of which they were not at the conclusion of the lease in good running order and condition.

These defects have, for the purposes of this part of the case, been considered, so far as it is possible to do so, as if the planing of rails were a legitimate device and had no general objection made against it either upon grounds of Engineering Practice or upon grounds arising out of the covenants.

The defects are described as "objective" in order to indicate that this part of the case is dependent upon the actual observable physical condition of the tramways upon the given date and that the criticisms of that condition are independent of any objections to the mode adopted by the Defendant Company of maintaining or otherwise dealing with the Tramways.

The main portions of the System in which specific defects have been discovered in quantity or degree sufficiently great to rely upon are the following : -

1. The Rails.
2. Underground Gear.
3. Manhole Covers.
4. Certain Engines and Boilers.

These last are of little consequence.

The case is presented by the pleadings as follows : -

Paragraph 3 of the Statement of Claim sets out the covenant the material portion of which is expressed in these words : -

"The Company will maintain repair and when necessary renew the said Tramways and all Engines machinery &c and shall at the end of the term peaceably and quietly yield and give up all and singular the premises in good working order and condition."

Paragraph 5 proceeds to allege breaches simply by following the language above quoted in the negative.

Paragraph 6 alleges damages.

Particulars are then set out under Paragraphs 5 and 6.

The first deals with rails and fishplates - It is as follows : -

1. Failure to (maintain) repair or renew the rails and fishplates of the said Tramways and yield and give them up in good working order and condition. Such failure arises : -

(b) From the Company neglecting and omitting to maintain repair or renew rails and fishplates requiring the same inclusive of rails so reshaped and remodelled.

Net cost of removing and replacing such rails with new rails

£126,630.