

# The Melbourne Tramway & Omnibus Co. LIMITED.

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## ANNUAL MEETING

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**R**EPORT OF PROCEEDINGS AT THE ANNUAL MEETING OF THE SHAREHOLDERS OF the above Company, held at the Board Room, National Trustees' Building, 121 Queen Street, Melbourne, on Tuesday, August 21st, 1917, at 2 p.m.

Sir John Grice presided.

The Secretary read the notice convening the meeting.

The Minutes of the last Annual Meeting were read, and were unanimously confirmed on the motion of the Chairman.

CHAIRMAN: On the retirement of Mr. Clapp, the Directors elected your old friend, Mr. W. G. Sprigg, who has been connected with the Company since its incorporation, as Chairman, but owing to a slight indisposition to-day he has asked me to take his place at this Meeting.

### CHAIRMAN'S REMARKS.

LADIES AND GENTLEMEN,—

In moving the adoption of the Report and Balance Sheet, it will not be necessary for me to say a great deal, as the Report on this occasion has been made a very full one, in order that those Shareholders who are unable to be present at the General Meeting should understand clearly the position of the Company.

My duty therefore will be to slightly amplify what has been already placed before you in the Report.

Turning first to the Profit and Loss account, you will understand that the interest on the investments has been earned by loans on fixed deposit of about £275,000, which were all placed at 4 per cent.

On the Expenditure side, there was, in the shape of Income Tax, paid to the State, £9,584/8/-, and to the Commonwealth, £1,522/8/-, making a total of £11,106/16/-. The Company had ceased to carry on business, and the assessment by the State was made as a compromise on the profits for a half of the preceding year and the income for half of the present year. As the High Court had decided that the Federal Commissioner was wrong in considering that the Dividends of any year were paid, first, out of the amount brought forward, and afterwards out of the profits for the year, under which system the tax for 1915/1916 had been assessed, a rebate of £3,367 was allowed. This reduced the £11,106 to £7,739, as shown in the Profit and Loss Account.

The Law Charges are heavy and include those in connection with the cost of the Arbitration and Appeal, as well as with the Claims of the Tramway Board, under the Leases.

Salaries of Staff, and Directors' and Auditors' Fees.—This covers the work of the staff in preparing the evidence for the Arbitration Court, and in the realisation of Assets during the year, in addition to the ordinary office work, a large portion being confined to the first half of the year.

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Turning to the Balance Sheet, all Properties have been taken over by the Tramway Board or sold, except three pieces of land, one of which is still in use as a storeyard for rails, and another is the balance of one of the properties, the greater part of which was sold.

The Debts due the Company are shown in detail and the items on the other side, "Sundry Creditors," consists mostly of unpaid accounts due by the Company to the Tramway Board.

With reference to the Arbitration between the Company and the Tramway Board, to ascertain the amount the Board was required by the Act of Parliament to pay the Company for its lands and buildings used as Car Houses, its Trams, Machinery, Tools and stock of Materials at the Repair Shops for building and repairing cars, &c., of spare Ropes, Pulleys, &c., for use on the lines, and the Office Furniture, Stationery, &c., which were taken over by the Board on the 1st July, 1916, I have to say that the Company's inventory of this property and claim therefor was, on the advice of counsel, based on the cost of construction at the date of transfer, or at some earlier convenient time, less a fair deduction for depreciation. The total claim of the Company came to £422,000.

Before the Arbitration began, or during its early stages, the price to be paid for most of the Land, for a property which had at first been rejected, but afterwards the Board decided to take (the Feed Works), for the Office Furniture and Stationery, and for some other items, amounting to a total of £52,334, was settled between the parties.

The Arbitration commenced on 21st August, 1916, occupied 23 days, and the award of £335,000 was given on 11th January, 1917. This was equivalent to a reduction by the Arbitrator of 25 per cent. on the amount of the Company's claim, which came before the Court. The Tramway Board contended that the Award should be based on the market value of the cars, buildings and plant, but without reference to its value to the Tramway Board as a Luser, and that the probability of the Cable Lines being electrified in the course of a few years should be considered as affecting the values.

The Arbitrator, His Honour Mr. Justice Cussen, decided that "Construction Value" was the right basis of valuation, and that as the whole was taken over for the purpose of being used for Cable Tramways, its future possible obsolescence should not be considered, and gave his Award as stated. The intention of the Act that the amount awarded should be paid within three months has been defeated by an appeal by the Tramway Board to the Full Court on certain law points which were raised before the Arbitrator.

Your Directors and, we believe, the Tramway Board, thought when the Act was passed creating the latter body, that the Award given by the Arbitrator, who was to be a Judge of the Supreme Court, was to be final; otherwise what meaning can be attached to the following words in a section of Clause 46 of the Act:—

"(1). The authority of the Arbitrator shall extend to the settlement and determination by him subject to this Act and on such terms and in such manner as is most just and fit of the matters referred to him and also of all such matters and questions (including any adjustment of accounts between the parties to the Arbitration) as are in the judgment of the Arbitrator incidental thereto or consequential thereon, to the end that his award or awards may effect a final and equitable settlement."

The Tramway Board, however, appealed to the Full Court on the points raised, which were principally as to the method of valuation adopted by the Arbitrator. The Appeal was heard by the Full Court, consisting of their Honours the Chief Justice, and Justices Hodges and Hood, in March, 1917. Their reserved judgment was given on 1st June, and by a majority, the award was remitted to the Arbitrator on the ground that his method of valuation was wrong. The Chief Justice dissented and agreed with Mr. Justice Cussen, the Arbitrator, so that the matter now stands with two Judges in favour of, and two against the present award.

The Directors were advised by their counsel, the Hon. Sir William Irvine, K.C., and Mr. Starke, that the judgment of the Full Court should not be accepted, as it practically reduced the value of the trams to their market value for other purposes than cable tramways, inasmuch as the value to the Board, the only buyers for Cable Trams here, is not to be taken into consideration, when assessing their value. We have acted under this advice, and, as stated, have obtained leave to appeal to the Privy Council.

The Full Court has suspended the reference of the award back to the Arbitrator until after the appeal to the Privy Council has been decided, rejecting the claim of the Tramway Board, that the appeal should be subject to a condition that the Company should in the meantime accept a lower rate of interest than the 5 per cent. fixed by the Act.

Now we come to a second very important matter, involving possibly a larger sum than the one that has already been explained to you. I refer to the Claim by the Board for alleged default by the Company. The Tramway Act and the leases held by the Company provided that it should repair and renew the Lines and Machinery when necessary and hand them over at the end in "good working order and condition."

The Company carried out the Covenant respecting repairs and renewals all through the terms of the leases, and the Directors believe that the fact can be established, that the lines were "in good working order and condition" on the 1st July, 1916, when taken over by the Tramway Board.

As stated in the Report, the Tramway Board issued a writ in November, 1916, claiming some £250,000 as damages for alleged defaults by the Company under the leases, but giving no particulars, which were then demanded. In April, 1917, the Board's claim was increased to £367,000 on a statement couched only in general terms, without any details to enable the Company to check the claim and prepare its defence. Exact particulars were again demanded, but no statement of same was received until the 14th inst., only a few days ago, and even now they are not complete. Your Directors are of opinion that this long delay was quite unjustifiable.

The statement in the Report that the Board's engineers had been investigating for 18 months is not quite accurate, for they did not begin their work until March, 1916, and therefore have been at work 17, and not 18 months. We regret that this mistake, though only a trifling one, should have been made.

The leading engineers, who will be employed on behalf of the Company, must now examine and check the particulars of this Claim, in order that our Defence may be prepared. This will be done as soon as possible, but it cannot but take a considerable time.

Unless therefore some settlement is made in the meantime, which seems improbable, this litigation in connection with the Claim by the Board must also occupy a very considerable time.

Your Directors greatly regret all this litigation, and that, through their having to keep in hand sufficient to meet any decision that may be given on the Claim by the Board, they are unable to pay back any of the Shareholders' capital to them at present. But the amounts at issue are so large that we felt we would not be justified when acting on the advice of counsel and on your behalf, in accepting a decision not fortified by the highest Court in the Empire.

Some time ago efforts were made by the Directors to bring about a settlement and avoid the delay and expense of prolonged litigation. After preliminary negotiations, during which it was understood that an offer for a settlement of both matters in dispute would be favourably considered, they made an offer to the Board. This has been rejected, and the Tramway Board now seems disinclined to consider more than the settlement of the Arbitration Award at this stage.

A Conference recently held between the Directors and the Board was unsuccessful, but it will probably be renewed.

The present views of the Directors are that any settlement to be of use to the Company must include the Claim by the Board. We shall be very glad to know that by your adoption of the Report you concur with them, and leave these matters entirely in their hands, to be dealt with as they think best in your interest.

I will conclude by saying that we fully recognise the great responsibility which rests on us in dealing with the very large amounts which these disputes involve, and we shall do everything with a full sense of that responsibility.

I beg to move the adoption of the Report and Balance Sheet.

MR. JOSEPH LEVI: I have pleasure in seconding the motion. We are very glad to have such excellent Directors looking after our interests. This immense litigation is not their fault, and I think the best thing we can do, is to follow our Directors' advice and leave these matters in their hands to look after our interests. (Hear, hear).

CHAIRMAN: If there are any questions, ladies and gentlemen, that you would like to ask, it is now quite in order to ask them.

There being no questions asked by the Shareholders, the Chairman put the motion for the adoption of the Report and Balance Sheet, and it was carried unanimously.

## RE-ELECTION OF DIRECTORS.

CHAIRMAN: As there are no fresh nominations, I have much pleasure in declaring Messrs. W. G. Sprigg, and D. Hunter, who are eligible and offer themselves for re-election, duly re-elected, as Directors.

## RE-APPOINTMENT OF AUDITORS.

CHAIRMAN: The next business is the election of two Auditors. This is a matter for the Shareholders to deal with.

MR. W. R. McCOMAS: I desire to move that Mr. John Bishop and Mr. S. J. Warnock, the retiring Auditors, be re-elected at a remuneration of Twenty Guineas each.

MR. C. T. SMITH: I second the motion. The motion was carried unanimously.

CHAIRMAN: That concludes the business, ladies and gentlemen. I am sorry to say I cannot add the words we used to add, "You can call for your dividends at the office."

## SUGGESTIONS BY SHAREHOLDERS.

MR. C. T. SMITH: There is one remark I would like to make, and it is this: There are many Shareholders who feel that they will have to sacrifice their shares at 8/3. We all know that that is rather an absurd price; but it is a hard position to be in, and I was going to ask if the Directors could see any way of helping these needy Shareholders to get a small advance on their shares or something of that kind to enable them to stick to their shares until a settlement. There are many shareholders who, like myself, will have to forfeit, or I will say, accept 8/3 or 8/- for their shares. It is a shocking position for some of the Shareholders to be in. I know that you would be only too glad to alleviate their sufferings if you could.

CHAIRMAN: I am afraid that our Articles of Association render it impossible for the Company to do that. We have no power to lend on our own shares.

A SHAREHOLDER: Would it not be possible to pay Shareholders, say, 5/- on account of the return of capital, and still have enough left to meet this litigation? It seems to me this appeal by the Tramway Board in regard to not keeping the lines in order, must fall through, because after 15 months' running they cannot claim very much in the shape of want of repairs. It is over 15 months since it was taken over, and they have not had anything extra to spend on it.

ANOTHER SHAREHOLDER: With a big profit, too.

CHAIRMAN: I understand that the Tramway Board has not been put to one shilling more expense for repairs or renewals to the lines than the ordinary expense during the last few years. (Hear, hear). You all know that the tramway lines of this Company have always been kept up to the mark. (Hear, hear). There was no letting things go, and repairing them at a later stage. They were always repaired and kept in good order. At the same time, we cannot get away from the fact that we do not know what will be the result of this litigation. We believe that these claims will certainly, or the largest part of them, fall to the ground. At the same time the dispute concerns a matter of £335,000 to which we think we are entitled, but we do not know what will come of it. We have on deposit £275,000. That is all the cash we have now, and we have a claim against us for £367,000. Although we feel confident in our own minds that the result will be all right, at the same time, people in a position of trust, like Directors, must be prepared to settle all legal claims. I do not know whether a small amount could, or could not, be handed over. That will receive very careful consideration by the Directors; but we do not know what this claim of £367,000 might yet reach, because the Board first put in a claim for £250,000, and in less than six months raised it to £367,000. They might raise it higher yet.

A SHAREHOLDER: With less prospect of getting it, too.

CHAIRMAN: You are aware of our difficulties.

THE MEETING TERMINATED.