

Sir C. LILLEY : That is a kind of land-grant railway Act.

*Mr. Hutchison* : That, probably, sums it up—a land-grant railway Act. However, the change in the mode of selection is immaterial at present. Section 9 of the Act of 1884, under the head of “Borrowing Powers,” provided that “The company may from time to time, under the authority of this Act, borrow and take up such sums of money as may be necessary for completing the construction of the railway, and for such purpose may issue debentures under this Act.” Section 12 gives power to the company to borrow. The form of the debentures is that indicated in the schedule, but the Company might vary the form. This is the basis of contract, and the right and necessity are recognised from the first on the part of the company to borrow money for the purposes of the undertaking. That is also recognised in clause 9 of the contract itself. Clause 9 says, “The company shall not at any time assign, charge, or dispose of this contract, or any benefit or advantage thereof or thereunder, either in law or in equity, without the written consent of the Governor on behalf of the Queen first had and obtained; but this clause shall not be deemed to affect or interfere with or in anywise abridge the powers of borrowing given by the said Act.” If that be kept in mind, it will be seen that this provision especially has a most important bearing on the whole undertaking. Now, as to the particular terms of paragraph 5 of the particulars of claim, referring, as they do, to taxation, we do not suggest that the Legislature of the colony had not the power to alter the fiscal laws of the colony, but we contend that, as between this company formed in England on the one side, and the Executive of this colony on the other side of the world, it was not competent for the colony to make such change as we see has been done in this instance without incurring a claim for compensation. That the change was a material one, and affected the company most detrimentally, I think will be proved beyond any doubt. My learned friend says that the colony had the power not only to alter the taxation of land but to alter the tariff. Assuredly; but that reminds me that when the colony, after the date of this contract, did alter the Customs tariff of the colony, it was careful at that time to make an exception in favour of the company’s machinery and materials; indicating that in 1888, at any rate, the Legislature had a sense of the propriety of recognising the responsibility the colony was under in dealing with taxation affecting the company. As to the latter part of the paragraph of the claim, referring to the destruction of confidence in the undertaking of the company as a commercial enterprise, we will show very clearly that throughout it was recognised, in the first instance by the Agent-General of the colony in London, acting in concert with the chairman and directors of the company, and afterwards by the Executive in 1887, that it was considered to be an essential element of the enterprise that debenture capital would have to be raised from time to time, and that a change in taxation like this, affecting the land-grant that the company would earn under the contract, was one which went to the root of the stability of the company, and, being a change directly attributable to the Parliament of the country, directly affected the company, and rendered the Queen, as a party to the contract, liable at the instance of the company to damages. Now I come to paragraph 6, which is as follows: “That the Queen, by withholding for an unreasonable time consent to the deviation of the railway-line from the western to the eastern side of Lake Brunner, and to the substitution of the incline for the tunnel line at Arthur’s Pass, delayed and prevented the company from proceeding with the works under the contract.” With reference to the Lake Brunner deviation, there is no doubt that change in the plans was at the option of those representing the Queen in the colony. They need not have sanctioned any deviation, but they chose to do so; but in doing so said, “We must have legislation for the purpose; we are advised that the powers under the contract do not allow us to assent to a deviation without going to Parliament.” These powers were given in the shape of a public Act. In that way the Queen assented to a definite change in the contract, and necessarily affected the time of completion, for there was a considerable time taken up in connection with the deviation after the legislation that the Government considered necessary had been obtained. There was so much time taken in connection with it—in complying with the conditions imposed by the Act—that of 1891—as to enlarge the period for completion under the contract. As to the substitution of the incline line for the tunnel line over Arthur’s Pass, that was a matter for which the company under the contract had some right to expect special consideration.

Sir C. LILLEY : But not to payment?

*Mr. Hutchison* : The provision is contained in clause 4 of the contract, which says: “The company shall not, without the consent of the Governor first had and obtained, deviate from the line of railway as surveyed, or alter any gradients upon the said railway as the same are shown upon the plans of that portion of the said railway from Springfield to Brunnerton”—that is, the east and west line—“deposited in the office of the Minister for Public Works, marked P.W.D. 11554, 11555, 12007, and 12009, copies whereof have been handed to the company before the execution of these presents: Provided that so much of the sheets 54A, 46A, 47A, and 48A of the said plan 11555 as apply to the ‘incline line’ at Arthur’s Pass shall not be deemed to be part of the said plan: Provided also that the company may construct the incline line instead of the tunnel line, if the Governor, after having obtained the opinion of two eminent engineers to be nominated by him, is satisfied that the incline line when made will be suitable for mineral and other heavy traffic, and in his opinion worked at a satisfactory cost.” Here, then, there was a provisional right of change.

Sir C. LILLEY : Possibly.

*Mr. Hutchison* : And, as both parties assented to that change, they thereby also assented impliedly to an extension of time.

Sir C. LILLEY : What was the effect of changing from the tunnel; would that affect the time?

*Mr. Hutchison* : Not, I think, in construction.

*Sir R. Stout* : Yes, it would.

*Mr. Hutchison* : I am not advised as to that.