

MIDLAND RAILWAY.

JUDGMENTS of the CHIEF JUSTICE and Mr. JUSTICE EDWARDS in the Application of the Receiver for an Order to sell the Railway, and in the Application of the Crown to rescind or vary the Order appointing Mr. J. H. B. Coates as Receiver. (Delivered in the Supreme Court, at Wellington, 1st February, 1899.)

PRENDERGAST, C.J. :—

Under the authority of several Acts of the General Assembly power was given to the Government of New Zealand to contract for the construction and working of a Railway—spoken of as the Midland Railway—of a length of about 230 miles—connecting a Government line of railway on the west coast of the Middle Island with a Government line of railway on the East Coast, and with another Government line in Nelson Province, on the north of that Island.

The principal consideration for the contract to construct and work the line of railway was to be grants of Crown land, with provision for making such grants by instalments as the construction proceeded and the constructed parts became ready for working. As a security for the due prosecution of the construction and for the due working of the constructed line or parts, the Government had power in certain events, expressed in one of the Acts and in the contract, to take possession of the railway, and, so far as not completed, to complete it; and, if the default was in not duly working it, to work it; this power of taking possession, &c., being also exercisable generally in case of any wilful breach or non-performance of the contract. Provision was, however, also made for charging the contractors with the expenditure incurred by the Government in the exercise of this power; provision was also made enabling the contractors to appeal in a summary way to a Judge of the Supreme Court against the exercise by the Government of these powers. If after notice to the contractors and the lapse of a specified time the contractors failed to reimburse the Government its expenditure, or an agreement was come to between the Government and the contractors, the Government was to remain in possession of the railway.

But in one of the Acts relating to the subject—that of 1884—there are provisions enabling any Company that should be the contractor to give security over the property of the Company, including the railway, by way of mortgage or mortgage-debentures, such debentures to rank *pari passu*, and to be a “first charge.” Power is given to debenture-holders, in case of non-payment of principal or interest, to apply to the Supreme Court for the appointment of a Receiver, and for leave to the Receiver to sell “absolutely” such part of the charged property of the Company as the Court might think fit, and to pay the debenture-holders out of the proceeds. The estimated cost of the whole line was about two millions and a half; upwards of three-quarters of a million has been borrowed by the contracting Company, which was formed in England. The Company constructed about one-third of the whole length, this one-third being the least costly part of the whole line to construct and work. Then, about three years ago the Company ceased carrying out the contract as to construction from want of capital. The Government thereupon, in exercise of its powers, took possession of the whole railway, including the completed parts, and has proceeded with the construction of the line and the working of the completed parts; and now, after the lapse of three years, the debenture-holders apply for the appointment of a Receiver and for the sale of the completed part of the line. The contractors have received the stipulated instalments of land-grants. A Receiver was appointed, such appointment being made without prejudice to the right of the Crown thereafter to contest the right of the debenture-holders to have such appointment made in the circumstances. The order making the