contract, the words have, I think, no bearing on the present question. If only part of the line had been constructed, the Governor, when he took possession, might properly be said to take possession of that part, though the effect would be to take possession not only of the completed part, but of all the property of the Company falling within the interpretation of the term "railway," including the concession or right to construct and work the line. In the argument on behalf of the bondholders it was urged that the Legislature, by expressly providing in the 52nd section of the Act of 1881 that mortgages should be subject to the right of purchase reserved to the Governor by the Act, was inferentially a provision that such mortgages should be subject to no other right reserved to the Governor under the contract or in the Acts. In my opinion, the provision was introduced only for caution's sake. It is, I think, impossible to conclude that no other terms of the contract or provisions in the Act were to affect mortgages issued under the Act of 1881. But section 52 of the Act of 1881 is repealed as to the railway in the present case; and, even as to mortgages under the Act of 1881, it is clear from other provisions in that Act that it was quite unnecessary to make any such express declaration. However, in the Act of 1884 there is no similar provision expressly saving the Governor's right of purchase, though it is clear from the provision that the debenture-holders' rights are subject to this reserved power.

It was also urged that the express provision (3) in sections 11 and 12 of the Act of 1884, that debenture-holders and other creditors of the Company are to have no claim against the revenues of the colony, and that there should be a notification of this on the debentures, showed that other provisions of the Act or contract subjecting the charged property to liabilities were not to apply to bondholders. But here, again, it is, I think, clear that, without any such provision as those in sections 11 and 12, the revenues of the colony would not have been legally liable to bondholders or other creditors for defaults of the Company. Similar provisions are to be found with regard to other loans authorised by statutes. The object of such a provision is to prevent lenders and other creditors setting up a pretended moral claim based on the circumstance that the authority to borrow is given by statute.

I have already dealt with the argument based on the provision that the debentures are to be a "first charge" on the entire assets of the Company. It is unnecessary to consider whether, even if the bondholders were asking for a sale of the entire railway subject to the Governor's rights arising out of his having taken possession, such an application could in the circumstances have succeeded.

The application made on behalf of the Receiver and bondholders must be refused, and the application on behalf of the Governor allowed—that is, restricting the operation of the order for the appointment of a Receiver to such assets of the Company as do not include the railway and rolling-stock. If it is intended that the Receiver shall take possession of, and deal with any property other than the railway and rolling-stock, or that there should be a sale, the order should, I think, be amended, defining more particularly what the Receiver can deal with and what can be sold.

The Crown is entitled to the costs of both applications, to be paid by the Receiver.

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EDWARDS, J.:—

This is, in form, a motion to rescind or vary an order made by me, on the motion of certain holders of debentures issued by the Company, for the sale of the Company's property in New Zealand. The order in question is, however, merely a formal order, made at the request of all parties without argument or consideration, in order that the matters in debate between the parties might be determined in the course of further proceedings. The matter, therefore, now