

Early in the year 1894 the Company ceased the work of construction, and in the month of May, 1895, the Governor, in pursuance of the powers conferred upon him by "The Railways Construction and Land Act, 1881," section 123, took possession and assumed the management of the constructed part of the railway, and since then has continued in such possession and management. The Governor has also continued the construction of the line, and has rendered accounts to the Company showing the amounts expended and received by him. For some time the Company paid the amounts appearing by such accounts to be due by it, but there are at present moneys claimed to be due by the Company to the Crown on such accounts. The period of one year mentioned in section 125 of the Act of 1881 has, however, apparently not expired.

It is not contested in these proceedings that, as between the Crown and the Company, the acts done by the Governor on behalf of the Crown are lawful, but it is contended that the debenture-holders have a first charge upon the railway, overriding the rights given to the Crown under sections 123-126 of "The Railways Construction and Land Act, 1881," and that they are entitled to an order for the absolute sale, free from any right or claim of the Crown, of the constructed portion of the railway, and of all the plant, rolling-stock, &c., used in connection with it.

This contention is mainly founded upon the wording of sections 9-17 of the Act of 1884, No. 15, which empower the Company to raise money upon debentures upon certain conditions; and especially upon the wording of section 13, which provides that "All such debentures and the interest payable thereon shall be a first charge on the entire assets of the Company, including the railway and everything pertaining thereto."

It was contended by counsel for the debenture-holders that this provision gives to the debenture-holders a charge upon the constructed portion of the line paramount to the rights reserved to the Crown by section 123 of the Act of 1881, No. 37, and that they have a right to an absolute sale of the constructed portion of the line, free from all conditions; that they may, if they please, cause the rails to be torn up and disposed of as old iron, and the land upon which the railway is constructed to be sold for grazing or any other purposes. It appears to me that this contention is entirely without foundation.

The purpose of the statutes under consideration, and of the contract entered into subject to them, plainly is that facilities should be given for the construction, by private enterprise, of a railway which should serve the public purposes of the colony. To this end provision is made by clause 11 of the contract that, so soon as the railway or any section thereof had been surveyed, the Crown should put the Company into possession of all lands then in the possession and at the disposal of the Crown for the purposes of the construction of the railway, and of any land adjacent thereto which might be required for side-cuttings, &c., or for the protection of the railway, or for workshops, stations, &c. Provision is also made for granting to the Company, out of the public estate, lands of the value equal to 50 per cent. of the total estimated cost of the construction of the railway. Provision is further made by section 123 of the Act of 1881 enabling the Governor, in the event of unreasonable or inexcusable delay in the prosecution of the works, or in the event of neglect to run trains at the times and in manner fixed by the regulations made under the statutes, or in the event of a wilful breach of the contract, to take possession and assume the management of the railway, and, if he should think fit, to complete the same, and conduct the traffic thereon, charging the Company with all outlay and expenditure which may be entailed, and crediting the company with all earnings and receipts. In this event there is to be paid by the Governor to the Company, or by the Company to the Governor, as the case may require, the balance appearing on such accounts. The Governor is also empowered to restore the railway to the Company, or to waive any breach of contract, upon such terms as he may think fit. Provision is also made for an appeal to the Supreme Court against any act done by the Governor in pursuance of these provisions. There is also provision that if the Company shall, for the space of one year after the Governor shall have taken possession under these powers, fail to repay all