

MIDLAND RAILWAY.

JUDGMENT of the COURT OF APPEAL (WILLIAMS, CONOLLY, and DENNISTON, J.J.) in the matter of the Petition of the Debenture-holders of the New Zealand Midland Railway. (Delivered in the Court of Appeal, at Wellington, 25th May, 1899.)

THE case for the petitioners is based upon the contention that their rights as debenture-holders, conferred upon them by sections 13 and 14 of "The East and West Coast (Middle Island) and Nelson Railway and Railways Construction Act, 1884," are prior to the rights vested in the Crown by section 123 of "The Railways Construction and Land Act, 1881," and that under the latter section the Crown has no rights against them. Unless they establish their contention their appeal must fail. The soundness or otherwise of the contention depends upon the true interpretation of the provisions of these Acts, and of the terms of the contract entered into between the Crown and the Midland Railway Company. The contract, as appears by its second clause, is for the construction of a line of railway from Springfield, in the Provincial District of Canterbury, to join a Government line of railway near Brunnerton, in the Provincial District of Westland, and thence from a point on the latter line of railway to Belgrove in the Provincial District of Nelson. The railway is to be completed within ten years from the 17th January, 1885. The contract itself contains no provision in the event of default being made in performance of the contract. The 123rd section of the Act of 1881, however, annexes a statutory term to the contract, and empowers the Governor, in the event of any unreasonable or inexcusable delay in the prosecution of the works connected with the railway, and in certain other events there specified, to take possession of the railway and, if he think fit, complete it, charging the Company with the outlay. The 125th and 126th sections give the Governor power of forfeiture if the Company fail to repay the sums expended by the Crown.

This is the weapon the law has placed in the hands of the Crown to compel the performance of the contract by the contractors, and to insure the completion of the work which the contractor has contracted for. It is on the face of it exceedingly improbable that the Legislature would compel the Crown to lay down this weapon in favour of persons claiming under the contractors. The object of the Act of 1884, and of the contract, was to secure the completion of a line of railway which, with the existing lines, would form a trunk line through the South Island from the Bluff to Nelson, and would have the effect of uniting by railway communication the West Coast and Nelson with the eastern coast of the Island. If the contention of the petitioners is sound, it would go far to frustrate the purposes for which the Act of 1884 was passed and the contract entered into. It would require, therefore, very plain language in the statute to show that the rights of the petitioners took precedence of the rights of the Crown. It was argued that the preamble of the Act of 1884 recited that it was desirable to give further facilities for the construction of this railway, and that this indicated that the Act was intended to give a higher security to persons who lent money than they would have had under the Act of 1881. The Act of 1884, however, affords a substantial additional facility for the construction of the line, in that by section 8, subsection (7), the value of the land to be granted to the Company is not to exceed 50 per cent. of the cost of the railway; whereas under section 106 of the Act of 1881 the value was not to exceed 30 per cent. To infer from the preamble any possible intention to postpone the right of the Crown in favour of debenture-holders would be altogether unjustifiable. The Act of 1881, in clauses 52 to 56 inclusive, contained provisions