

Enclosure.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL ON THE APPEAL OF COATES (THE RECEIVER FOR DEBENTURE-HOLDERS OF THE NEW ZEALAND MIDLAND RAILWAY COMPANY, LIMITED) *v.* THE QUEEN, FROM THE SUPREME COURT OF NEW ZEALAND; DELIVERED 17TH FEBRUARY, 1900.

Present at the Hearing: The Lord Chancellor, Lord Macnaghten, Lord Morris, Lord Shand, Lord Davey, Lord Robertson. Delivered by Lord Macnaghten.

THE controversy between the parties to this appeal turns upon the true construction of two statutes of the Legislature of New Zealand—"The Railways Construction and Land Act, 1881," and "The East and West Coast (Middle Island) and Nelson Railway and Railways Construction Act, 1884." The question in substance is whether the right of the Crown under the Act of 1881 to retain possession of the railway which the New Zealand Midland Railway Company (Limited) began to construct but were unable to finish is or is not subject to a charge in favour of the holders of debentures issued by the company.

The company was formed in England under "The Companies Act, 1862," for the purpose of constructing and working the railway. Its nominal capital was £500,000, but it had unlimited borrowing-powers. The contract for the construction of the railway, which was subject to the provisions of the Acts of 1881 and 1884, was made under the authority of "The Midland Railway Contract Act, 1887," between Her Majesty the Queen, represented by the Governor, of the one part, and the company of the other. The railway was to be completed within ten years from the 17th January, 1885. The proposed line was about 235 miles in length. It was intended to connect the east and west coasts of the Middle Island, and at each extremity to form a junction with Government railways then in operation. The total estimated cost was £2,500,000. In aid of the enterprise Her Majesty agreed to deliver to the company possession of all lands then in the possession and at the disposal of the Crown required for the purposes of the undertaking, and also to grant to the company, out of the public domain, as the works proceeded and successive sections of the line were completed lands of the value of 50 per cent. of the total estimated cost of construction.

The company raised £745,000 by the issue of debentures, and began the work of construction. In 1894 about seventy-five miles of the railway were completed. The cost of the work actually completed was, according to the estimate in the contract, £470,000, and the company received from the Crown grants of public land to the extent of 50 per cent. of that sum. Early in the year 1894 the operations of the company came to a standstill. The period fixed for the completion of the railway expired in January, 1895. In the following May, under the powers of the Act of 1881, section 123, the Governor took possession of the railway, and assumed the management of the part which had been completed, and went on with the construction of the line. In accordance with the provisions of that section, accounts were rendered half-yearly, showing the amounts expended and received by the Government, and the balances due from the company. For a time the company, or the debenture-holders in the name of the company, satisfied the demands of the Government out of the proceeds of sale of their land-grants. The last payment was in respect of the accounts for the period between the 1st March and the 31st August, 1897, and was made on the 26th January, 1898. Since that date nothing whatever has been paid by or on behalf of the company to the Government, and there is a large sum now due.

It is not disputed that the Governor was acting within the powers conferred upon him by section 123 of the Act of 1881 in taking possession of the railway and assuming the management thereof and proceeding with the works; nor can it be denied that the company have failed to make good public moneys spent on the line which by their contract, and the Act of 1881, they were bound to repay. The only question is whether there is anything to prevent the Governor availing himself of the further powers conferred upon him by sections 125 and 126 of the Act of 1881, and thereby acquiring an absolute title to the railway to the exclusion of the company and its debenture-holders.

Sections 125 and 126 of the Act of 1881 are in the following terms:—

Section 125: "If the company, for the space of one year after the Governor has taken possession . . . shall fail to repay all sums of public money which have been expended in or towards completing the said railway and the equipment thereof, and all sums of public money which shall have been expended on the repair or management of the railway or in connection therewith in excess of the receipts therefrom, it shall be lawful for the Governor, at any time after the expiration of the one year, to give three months' notice to the company that he intends to retain the said railway as Government property."

Section 126: "On the publication of an Order in Council at any time after the expiration of the said three months, to the effect that possession has been taken as aforesaid and will be permanently retained by the Government, the said railway and stations, and all plant, equipments, and appurtenances belonging thereto, shall, unless a satisfactory arrangement be in the meantime made between the Government and the company, become and be absolutely vested in Her Majesty the Queen without any conveyance or transfer whatsoever."

It seems that on the 9th May, 1898, after the half-yearly accounts from the 1st September, 1897, to the 28th February, 1898, had been rendered, the Governor gave notice of his intention to retain the railway as Government property; but, in order that the question which it was known the debenture-holders intended to raise might not be prejudiced, the Governor very properly abstained from issuing any Order in Council. It must therefore be taken for the purposes of this case that the Governor is rightfully in possession, and that the company are in default, but that no further step has been taken on behalf of the Government to exclude the company and the debenture-holders.