

going concern, or the railway alone, or to associate its business with the Crown and Native timber in the district on fair business terms, or to consider any alternative proposal. Its books show clearly that the timber business in this locality is very profitable, and in the ordinary course of events will become increasingly so.

19. This matter needs the urgent attention of the Government. The company cannot hold its funds idle indefinitely, the settlers are in urgent need of transport facilities, and the development of the Wairakei thermal resort and of farming lands on Lake Taupo, for which the funds are available, is only awaiting the extension of this line to Taupo.

20. The company urges immediate investigation of this matter by Government experts, when it will be found that this railway, properly associated with the timber in the district, is a sound and immediately profitable business proposition, and that there is no locality in New Zealand where so much valuable land and timber can be so quickly given transport facilities, at so small a capital expenditure, as in the case of this line.

For the Taupo Totara Timber Company (Limited):

F. G. DALZIELL, Chairman.

### No. 3.

OPINION OF C. P. SKERRETT, K.C., AND SIR JOHN FINDLAY, K.C., *re* ABANDONMENT OF ORDERS IN COUNCIL UNDER THE TRAMWAYS ACT, 1908.

THE Taupo Totara Timber Company (Limited) holds three Orders in Council under the Tramways Act, 1908, and the question upon which we are asked to advise is whether the company can abandon its rights under such Orders in Council.

The history of such Orders in Council is as follows: The company began to take out timber in 1905, and at first used the Government branch line from Putaruru to Lichfield (about five miles) under an annual license from the Railway Department, and beyond that its own tramway without any Order in Council. The line was, of course, used simply as a private tram-line for the conveyance of the company's own timber. Apart from that portion which was Government property, it was laid entirely on the company's land (freehold or leasehold) except where it crossed roads. In no place did it run along a road, nor does it now. Consents were duly obtained to such road-crossings—in places where there is a local authority, from the local authority—in East and West Taupo Counties (where the Counties Act is not in force) from the Public Works Department.

In 1908 the first Order in Council was applied for and granted. This Order in Council did not confer on the company any new rights as far as the line was concerned, but merely affected the company's power of user. The reason for applying for such Order was principally that the company anticipated raising capital on the English market, and the statutory title to the line, with the right to operate as a railway company, was expected to appeal to the English investor.

A second Order in Council was applied for and obtained in 1917. This Order was primarily for the purpose of authorizing an extension of the existing line from Mokai (the then terminus) to Taupo. Power was given by this Order for the company to take land under the Public Works Act. Apart from this, the only additional power given to the company was that of crossing further roads for the purpose of the extension.

The third Order in Council merely extends the time within which the extension to Taupo shall be completed.

It is to be observed that there is nowhere (either in the Act or in the Orders in Council) any provision for the determination of the company's rights either upon the expiration of some period or upon the doing of certain acts. So far as the Orders are concerned, they deal chiefly with the obligations of the company rather than its rights, these obligations being for the protection of outside users of the line.

The position would at first sight, therefore, seem to be that the company is bound to carry on business as a railway company in perpetuity. This, of course, would only be the case if the local authority or the Government would not agree to accept a surrender of the company's rights and privileges. There is, of course, power for the company to discontinue with the consent of the Government or the local authority.

If a surrender of the company's rights be not consented to by the local authority, or if the Government refuse to revoke the Orders in Council, it would seem that under the terms of the Orders in Council, unless the company carry out its obligations, it is liable, at the option of the Governor, to revocation of its Orders, or a monetary penalty for each day during which default continues, such penalty being recoverable as a debt. Included in its obligations is a requirement that a train shall be run in each direction at least three times per week. If, therefore, the company desired to discontinue the line and an offer of surrender by it was not accepted, it would apparently have to continue or be liable.

Should there be opposition in the district to such a proposal by the company to cease running trains, the Governor might well prefer, so long as the company was in a satisfactory financial position, to inflict monetary penalties upon it for its failure to comply with the terms of the Orders, rather than revoke the same. This would more especially be the case if failure to run trains (or any other continuing breach) was subsequent to a refusal by the Crown to accept a