surrender from the company, so that it might be inferred that the breach was with the deliberate intention of forcing a cancellation of the Orders.

But this would seem to lead to a most unjust result. Presumably the company would cease to run trains because the running of trains has ceased to be profitable. If the obligation is perpetual, penalties will continue to accrue (and would no doubt be imposed) so long as the company had any assets. Should the other branches of the company's business be unprofitable the alternative remedy would no doubt be exercised as soon as the company's assets were swallowed up in penalties. But if the company were carrying on other branches of business successfully, the monetary penalties would no doubt continue to be imposed for a much longer period, and it would be doubtful whether the company could wind up so long as such penalties were accruing.

Such a result seems to us to be extraordinary, and we are of opinion that there must be some limit to the company's obligations.

It would appear from the cases cited by Brice ("Tramways," p. 111) that unless restricted by proper language or by a special jurisdiction a company may abandon its rights under a provisional order (this is the equivalent under the English Act of "Order in Council" under our Act).

That this is so is, we think, recognized by Regulation 26 in the schedule to the Tramways Act, 1908, which is similar in language to the corresponding regulation in the Board of Trade Rules. Regulation 26 appears to us to contemplate a determination of its rights on the company failing to carry on for a period of three months, unless cause is shown to the contrary, and we think the Orders in Council must be read in conjunction with this regulation.

It would seem to us extraordinary that, if the company realized that the tramway was no longer a paying business proposition, it could be compelled to pay penalties for failure to carry on for an indefinite period until all its assets had been absorbed.

We are confirmed in our opinion by referenue to the law relating to mining and the rules as to abandonment dealt with in Walhalla Gold-mining Company *v.* Mulcahy (40 L.J. P.C. 41) and Chin Fan *v.* Davis (11 N.Z. L.R. 396). There is, we think, a similarity between the rights granted by the Crown to a miner under the Mining Act and rights granted to the company under the Tramways Act. Such rights are in the nature of easements, and will therefore be regarded as extinguished on evidence of abandonment. If, therefore, the company abandon all use of the line as a tramway-line under the Order in Council, with the intention of giving up its privileges under the Order in Council, it must, we think, be held that it thereby loses its rights and consequently is no longer bound by the requirements of the Order in Council.

In our opinion the proper way to regard this question, in the absence of any express covenant by the company in the Order in Council binding it to carry on for any particular time or in perpetuity, is to treat the concession contained in the Order in Council as a franchise which it can exercise only so long as it fulfils and complies with the conditions upon which the franchise is granted. The penalties referred to are imposable only so long as the company retains the franchise and claims the right of exercising it. Any other view would result in the absurdity that, even if there were no traffic available, owing to, say, radical changes in the condition of the land through which it passes, and the running of trains would therefore result in a crushing financial loss, yet if the view that the company must continue to run trains in perpetuity be correct the company would have to suffer that loss.

Dated this 25th day of November, 1920.

C. P. Skerrett.
J. G. Findlay.

No. 4.

Book Value of Tramway and Appurtenances at 30th April, 1920.

	£	s.	d.
Tramway-line, Mokai to Putaruru ...	118,592	4	6
Share of fencing adjoining property at 31st October, 1920 ...	592	6	1
Extension to Taupo ...	5,378	10	10
Platelayers' cottages ...	188	0	0
Other railway buildings, loco. sheds, &c. ...	18	0	0
Locomotives ...	4,346	10	11
Flat cars ...	3,132	9	7
Workshops plant, railway ...	734	15	8
Platelayers' tools ...	75	0	11
Blacksmiths' stock ...	434	18	4
	133,492	16	10
Railway land (freeholds only) ...	1,182	8	10
	135,375	5	8
Does not include Putaruru land for sidings, nor freehold from river to near Mokai: for these add (say) ...	624	14	4
	£136,000	0	0