

1893.  
NEW ZEALAND.

## PUBLIC PETITIONS A TO L COMMITTEE

(REPORT OF, ON THE PETITION OF DAVID ANDREW AND FIVE OTHERS *RE* FERNHILL COLLIERY AND RAILWAY LINE, TOGETHER WITH THE PETITION AND MINUTES OF EVIDENCE.)

*Brought up 29th September, 1893, and ordered to be printed.*

PETITIONERS pray that, in the event of the Government paying for the Fernhill Railway line in cash or otherwise, a sum or sums may be deducted from the amount so agreed to be paid, sufficient to meet the claims of the petitioners for the land taken for the railway, wages, &c.; that, in the event of a Bill being introduced to vest the said railway line in any person or persons, a clause may be inserted providing that he or they, before assuming possession of the said railway line or in any way dealing with it, pay to petitioners such sum or sums of money as may be found to be due to them.

I am directed to report,—

1. That the Fernhill Railway line was made by the Government in 1882 for a private company, and afterwards, under "The Government Railways Act, 1887," was vested in the Railway Commissioners.

2. That the Committee recommends an inquiry should be held before a Judge of the Supreme Court, to ascertain who are the legal representatives of the said Fernhill Railway and Colliery Company.

3. That the Railway Commissioners take the necessary steps to re-vest the Fernhill Railway line in the legal representatives of the said company.

4. That, if after due inquiry, it is found that John Hamill, one of the petitioners, has been constantly employed on the said railway line, the Railway Commissioners be recommended to pay him such wages due.

5. That, as the other petitioners have not exhausted their legal redress against the legal representatives of the said company, the Committee cannot express any opinion on the merits of their claims.

29th September, 1893.

C. H. MILLS, Chairman.

### PETITION.

To the Honourable the Speaker and Members of the House of Representatives of the Colony of New Zealand, in Parliament assembled.

THE HUMBLE PETITION of DAVID ANDREW, of Green Island, Otago, farmer; JAMES GRAY, of the Fernhill Colliery Company, Green Island aforesaid, coal-miner; JOHN HAMILL, of Green Island aforesaid, platelayer; JOHN TOOMEY, of Dunedin, commission agent; LATHAM OSBORN BEAL, of Dunedin, civil engineer; and ROBERT BLAIR DENNISTON, of Dunedin, mining engineer, humbly sheweth:—

1. That the branch line of railway leading from the main trunk line from Dunedin to Invercargill at Abbotsford to the Fernhill Coal-mine was formed and constructed in 1882–83 by the Fernhill Railway and Coal Company (Limited), having been previously projected by the Provincial Government.

2. That the said branch line was formed and constructed on behalf of and at the expense of the Fernhill Railway and Coal Company (Limited), under the supervision of the Public Works Department of the Colony of New Zealand.

3. That the intention of so constructing the said branch line under such supervision was that the Government of the colony might ultimately purchase the said branch line, as otherwise the said branch line could have been constructed in such a manner as would have suited the purposes of the said company at much less cost than was incurred.

4. That the said company entered into a written contract with the contractor of this branch line, and paid him by progress-payments as the work proceeded, on orders furnished by the Engineer of the Public Works Department, the total cost to the company when completed being over £7,000, and of this sum about £1,300 was for rails.

5. That the said company, to enable them to construct the said branch railway, entered into an agreement with Messrs. Brown, Freeman, Samson, D. Andrew, and J. Andrew, the owners of the freehold, for the purchase of the land, and paid them, or some of them, about the sum of £850 on account of the purchase-money for the same.

6. That the officers of the Public Works Department and the Minister for Public Works of the colony always recognised and treated the said company as the owners of the said Fernhill Branch line, and the said company did at its own cost maintain the said line from its construction for several years.

7. That, in or about the month of February, 1889, your petitioner James Gray acquired the Fernhill Colliery, including all the rights and interests of the company and its successors to and in the Fernhill Branch Railway, and to and in all the rent, interest on cost of construction, or other compensation claimed in connection therewith.

8. That the practical effect of the decision of Mr. Justice Williams in the case of *Hazlett and Another v. Allen and Others* (8 N.Z. L.R., p. 500) was that your petitioner, James Gray, was, by virtue of "The Government Railways Act, 1887," and "The Public Works Act 1882 Amendment Act, 1889," deprived of his title to this branch line made and paid for by the money of the Fernhill Coal Company (Limited).

9. That your petitioner, James Gray, was and is humbly of opinion that when the said Acts of 1887 and 1889 were passed they were intended to apply only to public railways made with the moneys of the colony, and not to private lines, such as the Fernhill Branch line.

10. That accordingly your petitioner James Gray, in 1891, presented to this honourable House a petition setting forth the facts above narrated, and humbly praying that, if the law should be as laid down in Mr. Justice Williams's decision (referred to as above), your honourable House should take steps to pass an Act declaring that the said Acts or any other Act do not apply to the said Fernhill Branch line, your petitioner James Gray's private property.

11. That the said petition presented by your petitioner, James Gray, was so presented under the advice and with the concurrence of Sir Robert Stout, who was fully aware of all its terms.

12. That on the 28th day of August, 1891, the clerk of your honourable House notified your petitioner, James Gray, that the Waste Lands Committee of your honourable House had reported on the said petition as follows: "Committee recommend that the Government purchase petitioner's railway branch."

13. That there is now due to your petitioner, James Gray, the sum of £321 16s. 4d., being wages due at £3 15s. per week, for managing the said Fernhill Colliery.

14. That there is now due to your petitioner, the said John Hamill, the sum of £299 13s. 10d., being wages due at £3 per week, for managing and supervising the said Fernhill Branch line of railway.

15. That there is now due to your petitioner, the said David Andrew, the sum of £310, made up as follows:—

Purchase-money of land on which portion of Fernhill Branch Railway	
is built, 3 acres at £50	£150
Ballast supplied for Fernhill Branch Railway line	160
	<hr/>
	£310

16. That there is now due to your petitioner, John Toomey, the sum of £59 10s., for moneys from time to time advanced and guarantee given for the purpose of enabling the Fernhill Colliery and the Fernhill Branch Railway line to be worked by the proprietors.

17. That there is now due to your petitioner, Latham Osborn Beal, C.E., the sum of £212 16s., for professional services rendered in inspecting the Fernhill Colliery, making surveys, and attending to give evidence in an action brought in 1888 by one A. H. Logan, the then proprietor of the Fernhill Colliery, against the Corporation of Dunedin.

18. That there is now due to your petitioner, Robert Blair Denniston, the sum of £160, in respect of professional services rendered in inspecting the Fernhill Colliery, and making surveys and giving evidence in the said action.

19. That the whole of the said several debts due to your petitioners as aforesaid were incurred by them, relying for payment on the assets of the Fernhill Colliery, including the Fernhill Branch Railway, which has always been worked along with the coal-mine, and has been considered as a part of the assets of the Colliery Company.

20. That your petitioner, David Andrew, provided portions of the land required for the said railway line, and also the ballast required for the construction of the same, and has never been paid therefor.

21. That your petitioners, James Gray and John Hamill, are working-men who have expended their labour for a long time on the said mine and railway-line respectively, without receiving the wages contracted to be paid to them in respect of such labour.

22. That your petitioner, John Toomey, for a considerable time provided the moneys required for working the said mine and railway, and now claims to be repaid such moneys.

23. That, so far as your petitioners have been able to ascertain, the position of affairs with regard to the title of the said Fernhill Mine and railway-line is somewhat as follows:—

The said mine and line in 1883 were owned and occupied by the Fernhill Railway and Coal Company (Limited), now defunct, subject to a mortgage for £5,000 to the New Zealand Mortgage and Investment Association.

In or about 1886 the said association agreed to sell their interest in both mine and line to Mr. John Logan, and placed him in possession thereof.

In 1886 or 1887 Mr. John Logan sold and transferred his interest in the mine and line to his son, Mr. A. H. Logan.

On the 10th of May, 1887, Mr. John Logan agreed to mortgage all his interest in the mine and line to Messrs. Stout and Mondy for £500.

In February, 1889, Sir Robert Stout agreed to sell and transfer to your petitioner, James Gray, the said line and mine.

In the said month of February, 1889, the said A. H. Logan became a bankrupt.

24. That, since the said month of February, 1889, the said James Gray, your petitioner, has been in possession of the said mine and line, and latterly has been working the same on his own account.

25. That, in or about the month of March, 1893, Sir Robert Stout wrote to the railway authorities calling their attention to the fact that, under the Acts of 1887 and 1889 referred to, the line vested in them.

26. That the Railway Commissioners then asserted their right to the line, and objected to your petitioner, James Gray, working same as his own property, along with the coal-mine, as he had been in the habit of doing.

27. That the said Railway Commissioners prosecuted your said petitioner, James Gray, for insisting on his right so to work the said line.

28. That the said Railway Commissioners have taken possession of the said railway line as thrown, and have expended money in putting same in thorough repair.

29. That your petitioners are informed and believe that it is intended to introduce into your honourable House a Bill dealing with the branch railway line in question.

Your petitioners therefore humbly pray,—

(1.) That, in the event of the Government of New Zealand paying for the said railway line in cash or otherwise, a sum or sums may be deducted from the amount so agreed to be paid sufficient to meet the claims of your petitioners, as above set out.

(2.) That, in the event of a Bill being introduced to vest the said railway line in any person or persons, a clause may be inserted providing that he or they, before assuming possession of the said railway-line, or in any way dealing with it, pay to your petitioners such sum or sums of money as may be recommended to be paid by the Petitions Committee of your honourable House.

(3.) That such further or other steps may be taken in the the premises as may, in the opinion of your honourable House, be required in order to protect the interests of your petitioners.

And your petitioners will ever pray, &c.

Dated at Dunedin this 18th day of August, 1893.

DAVID ANDREW.

JAMES GRAY.

JOHN HAMILL.

JOHN TOOMEY.

L. O. BEAL, Jun., C.E.

ROBT. B. DENNISTON.

## MINUTES OF EVIDENCE.

TUESDAY, 5TH SEPTEMBER, 1893. (Mr. C. H. MILLS, Chairman.)

Mr. William C. Macgregor, in opening the case for the petitioners, said : The object for which this petition is presented is nowhere more clearly stated than in a reply by Mr. Seddon to Mr. Fish, which appears in *Hansard* of the 25th July, 1893, page 114, "*Fernhill Railway*.— . . . The Government were not aware that any compensation was payable either to Mr. Andrew or to anybody else in connection with the matter. The company had undertaken to acquire and pay for all lands required for the line, and so far the Government understood that had been done, and the Government were not at all liable. . . . A Bill was being prepared declaring the line to be vested in the company, and the Government would introduce it: and if any person was aggrieved, and had a good case, he could bring it before the honourable member with a view to having an amendment made in the Bill." That is the object of our petition. The petitioners are here to prove their claims, and they will be aggrieved if this line is vested in any person or persons without provision being made for the payment of these claims. The report from the Railway Commissioners (just read by the clerk), which I have now heard of for the first time, appears altogether to discourage any legislation, other than an Act vesting the line in what they call "the equitable owners." That is precisely what the petitioners wish to be done, provided always that the said "equitable owners" are made to pay for such claims as are stated in the petition and proved. Now, at the risk of wearying the Committee, I shall state as shortly and concisely as I can the history of this line.

*The Chairman.*] Is that something beyond what is in the petition?—Yes; it is in a different form. This line was constructed so far back as 1882. It was formed, constructed, and worked by the company in conjunction with certain coal-mines, to which only they had access. A few years afterwards, about 1885, the company unfortunately lost all its capital and became practically defunct. It has not been paying licence fees for many years, and the records in the Government Stamp Office bear a significant memorandum opposite the name of the company: "Sold to one person." Who that one person is, we do not accurately know, for there is no record of it. However, this much appears to be clear: That, in 1885, Mr. John Logan (father-in-law of Sir Robert Stout) was apparently the owner of the mine, subject to certain incumbrances; that in 1886 Mr. John Logan transferred his interest to his son, Mr. A. H. Logan—his interest in both the mine and the railway-line. I do not think it is suggested that this Mr. A. H. Logan was in any real sense the proprietor of the mine. He was, I am instructed, penniless, and practically a "dummy." Then, in 1887, we find that a mortgage was given over this mine and railway-line for £500 to Messrs. Stout and Mondy, of which firm Sir Robert Stout is the senior partner. Still, Mr. A. H. Logan continued in possession, or ostensible possession, working the mine and line under the name of the "*Fernhill Colliery Company*." In 1888, in or about September or October, Mr. A. H. Logan, posing as the proprietor, brought an action against the City Corporation of Dunedin for damage caused to this mine by the Silverstream Water-race. He lost that action, and heavy costs were given against him. In January or February, 1889, the judgment was given. In February, 1889, on being pressed for the costs, Mr. A. H. Logan became bankrupt on his own petition. Curiously enough, some fourteen days before he became bankrupt, the line and mine were transferred to Mr. James Gray by an agreement of transfer from Sir Robert Stout. Again, I do not think it will be suggested that Mr. James Gray was in any real sense—he may have been in a legal sense, not in any substantial sense—the owner of this line; because, curiously enough, shortly before this, application had been made to the petitioner, John Toomey, to know whether he would allow a transfer of the line to be made to him. Mr. Toomey, having something to lose, said that he could not think of such a thing. The object of

these successive "dummy" transfers is of course obvious—namely, to throw dust in the eyes of the creditors (who were numerous and heavy), and to prevent any responsible person being, even nominally, owner of the line. That is the history of the line down to 1889, in February of that year. Then from that time Mr. Gray worked the mine and line (and works the mine still) under the name of the "Fernhill Colliery Company." A bank account was opened for him, and Mr. A. H. Logan operated on it in his name. Gray is a working collier; he managed the colliery, and Mr. A. H. Logan looked after the books. The business was financed in a mysterious fashion; bills were flying about, and so forth, but we will hear more of them afterwards. "The Government Railways Act, 1887," and the 1889 amendment of the Public Works Act, were passed, and the Shag Point Railway case (*Hazlett, &c. v. Glendining*) was decided in 1890–91. In 1891 a petition was presented to this Honourable House, as stated in the second paragraph of the petition. This present petition is practically a transcript, up to paragraph 10, of that original petition. Now, in that original petition—I will not weary you by reading it again—it is stated that, in or about February, 1889, James Gray "acquired the Fernhill Colliery, including all the rights of the company and its successors to and in the Fernhill Branch Railway, and to and in all the rent, interest on cost of construction, or other compensation claimed in connection." That petition is founded on the basis that James Gray was owner of the railway then—in 1891; and the Committee recommended the Government to purchase the railway, which was represented to be "James Gray's private property." This recommendation was unfortunately not carried out. We have procured a draft of the 1891 petition, and, strangely enough, a difficulty seems to have arisen as to who was the proper person to petition. This was solved by my learned friend, Sir Robert Stout, inserting the name of "James Gray," in his own handwriting, which sets any doubts at rest as to what knowledge Sir Robert Stout had, at the time, as to the facts.

*Sir Robert Stout*: I was quite willing to give it over on payment of the money.

*Mr. Macgregor*: However, nothing was done; Gray continued to work the mine and railway-line up to March, 1892, when the mine ceased working. The Bank overdraft was called up, and the sinews of war came to an end. Consequently the work stopped; the mine was idle or practically idle for about eleven months. The railway-line stood idle also; but Gray, who is a working collier, had to stand by it all that time. A coal-mine is a property which, if left to itself, will depreciate, and on that account, if for no other, Gray had to stand by the mine. Hamill, another of the petitioners, who was in charge of the railway for many years, had also to remain looking after the line itself; and so they continued until early in this year—January or February, I think, of 1893. Mr. Gray early this year made a fresh start, and has, from February to the present day, occupied and worked the mine as his own private property, without the assistance of Mr. A. H. Logan or any other person. Then, we have the Railway Commissioners' account of how they came to step in; but I understand that some letters were laid on the table, as passing between Sir Robert Stout and the Railway Commissioners. Curiously enough, and significantly too, on the 22nd of January, 1893, Sir R. Stout writes one to the Railway Department in which Gray is attacked behind his back:—

"DEAR SIR,—

"Dunedin, 22nd January, 1893.

"Mr. James Gray, who was, or is, lessee of the Fernhill Coal-mine, has openly threatened to lift the sleepers and rails of the Fernhill Railway-line. I respectfully ask you, as this line is vested in the Railway Commissioners (the Supreme Court having so decided in the case *re* the Shag Point line), to see the Fernhill line is not touched by any one. I am entitled, as equitable owner of the line; and the reason Mr. Gray has made this threat is because I decline to allow him the use of the line for nothing.

"Yours obediently,

"A. Grant, Esq., Railway Department, Dunedin."

"ROBERT STOUT."

This, of course, brought about an open rupture between Sir Robert Stout and Mr. Gray, and the Railway Commissioners have, no doubt properly, from their point of view, insisted on Gray relinquishing his right, or alleged right, to this railway-line. Gray, like a determined man, resolved to stick up for his rights, until compelled to desist by actual physical force. He was evicted by strength of numbers, and, on account of his persistence, was eventually prosecuted by the Commissioners, and fined £3 for insisting on his right to work the line, which, he said, was his own private property, and which Sir Robert Stout said, in 1891, was his property. There the matter has rested until the present. Gray is in occupation of the mine; he is a practical collier, and is working the mine for a living. He has now resigned to the inevitable, having made an arrangement with the Railway Commissioners for running the coal out of the mine by the line on their terms. I do not know what those terms are. That is how the case stands at present, and the object of the petitioners coming here is, in view of the projected legislation by the Government, to endeavour to have justice done to them by providing for their claims. The petitioners themselves will give evidence. They are all here except Mr. Beal. As to Mr. Beal, his case is identical with that of Mr. Denniston, and Mr. Denniston will satisfy the Committee of the genuineness of his claim—of both claims. Messrs. Gray, Hamill, and Andrew, will give evidence before the Committee, who will also hear the case of Mr. Toomey. In Mr. Andrew's case, the company leased his coal-mine; and they also constructed part of the railway-line on three acres of his land, without, almost, saying by your leave; they helped themselves to his ballast, they constructed the line with his ballast, and they have ever since occupied his three acres of land without paying him a sixpence for it. They took ballast from his ballast-pit worth £160 at a low estimate of price, but they have never paid him a sixpence for that. He has asked for it, but has never got it; one explanation being that the company had been, from its inception, like a good many other New Zealand companies, in a chronic state of "hard-up" through want of capital. Gray's claim is simply for wages, that have accrued to him in working this coal-mine. Mr. Hamill's claim is for a balance of wages, due to him for working the railway; he is a platelayer. Mr. Gray is a coal-miner. Mr. Toomey's claim is for moneys lent, or advanced by him—£6 on one cheque and £50 on another cheque. This £50 cheque represents the proportion that Mr. Toomey had to pay, or was compelled to pay, of James Gray's overdraft at the Colonial Bank in Dunedin, while he was trading under the name of the Fernhill Colliery Company, in conjunction with Mr. A. H. Logan, after the latter's bankruptcy.

Mr. Toomey had refused to give a guarantee for this overdraft until he should receive some indemnity, which indemnity A. H. Logan was good enough to promise him, saying that he should have what was as good as a guarantee, in the form of a letter of indemnity from Sir Robert Stout. Toomey then signed the guarantee, but he never got the letter of indemnity. After considerable delay he threatened to have the account called up at once unless some security were forthcoming. He was then told that he would get as good as a letter of indemnity from Sir Robert Stout, and a cheque was brought to him for £69 10s., endorsed by Sir Robert Stout. This he was told to hold as a security against his liability under the Bank guarantee. He put this cheque away in his safe, in all good faith, and awaited events. The Bank called up the guarantee, and Mr. Toomey was compelled, "at the point of the bayonet," to pay up £50, his share of the guarantee. When he paid in the cheque given to him as security—£69 10s.—it was politely returned to him marked "stale cheque." He then consulted his solicitor, who told him that he could not recover at law against either the drawer or the indorser. He is now endeavouring to recover at the hands of a Parliamentary Committee. The other cheque for £6 was money advanced to Logan on behalf of the Fernhill Company. Mr. Toomey still holds this cheque which he got for his hard cash. Messrs. Beal and Denniston are both engineers; they were the principal expert witnesses for Mr. A. H. Logan in the action which was brought in his name against the City of Dunedin Corporation. They spent a very long time and gave themselves a great deal of trouble in surveying the line, Mr. Beal especially, at the risk of his life in the mine. They incurred debts in the performance of that duty to the extent of £200 apiece, understanding that they were working for the Fernhill Company, whose assets they presumed would include both mine and railway-line, and which was represented by Mr. A. H. Logan; but when the case was over, and they sent in their bills, Mr. Logan failed. They proved against his estate, expecting to get a share in the assets—namely, the assets of the Fernhill Company—only to find, some time afterwards, at his bankruptcy examination, that he had disposed of, or Sir Robert Stout had disposed of for him, all his interest in these assets to Mr. James Gray, after endeavouring to get Mr. Toomey to take them. That, gentlemen, is the case for the petitioners. The object of this case is not so much to fix any person or persons with the absolute legal ownership of this line, as to provide that whoever is proved to be the owner of the line shall satisfy the claims of the present petitioners, which have undoubtedly been incurred on the strength of the assets of the company, including the railway. I take it that this is not a narrow legal inquiry, but one which will proceed on the broad lines of equity and justice. If that is so, I think these claims will be properly provided for. I need scarcely say that some of these petitioners are working-men; none of them can afford to lose this money. They seem now to be in danger of being unjustly deprived of the fruit of their labours, without getting one penny of compensation. I have to express to the Committee my regret for taking up so much of their time; but the matter is an important one from our point of view, and requires some little explanation to make it clear to outsiders. I need scarcely add that I shall make every effort I possibly can to shorten the proceedings and the evidence in order to save your time as much as possible.

DAVID ANDREW, examined by Mr. Macgregor.

2. *Mr. Macgregor.*] You are a farmer living at Green Island?—Yes.
3. You know the Fernhill Railway line?—Yes.
4. I believe you own the freehold of a portion of the land on which that railway was constructed?—I do.
5. And on which the coal-mine is situated?—Yes; the mine, and the railway as well.
6. Has any portion of this land, of which you speak, been accurately surveyed?—Not to my knowledge.
7. That part on which the railway is constructed?—It is not fenced in. I do not know that it has ever been surveyed.
8. What is the acreage of it?—I estimate it at about three acres, or three acres and a half, as near as I can judge. It might be a little more, or a little less. It is there or thereabouts.
9. What is this land worth?—I do not know exactly what it is worth. As far as I can learn, my neighbours have got for some of theirs something like £50 an acre. A lot of it is not coal-bearing. Mine is coal-bearing. I do not think it can be worth anything less than my neighbours have got.
10. Your neighbours? Whom do you mean?—Brown, Freeman, and Sampson.
11. At any rate, you have never paid for these three acres?—No; I never got a sixpence for it.
12. Since 1882? That was the year when it was constructed?—Yes.
13. When the line was constructed, you were living up country, were you not?—Yes. I was living near Gore.
14. You were not on your farm at Green Island?—No.
15. But you paid occasional visits there?—Yes; I was occasionally down there on business, but very seldom.
16. Now, we understand that there is a ballast-pit on your land?—Yes.
17. From which ballast has been taken?—Yes; that is part of the lease of the coal-mine.
18. Do you know what material this line was ballasted with?—Yes; the ballast was taken from there, and the practice has been kept up ever since to take it from there.
19. That is your ballast?—Yes.
20. Did the company just go there and help themselves?—Yes, I suppose so; whoever took it away never asked for permission; at all events I was never consulted about it.
21. Have you been paid for it since?—No.
22. I believe you got an estimate made of the ballast taken away; what does it come to?—Somewhere about £160, taking it at the usual depth and breadth—8ft. wide and 1ft. deep; but since that estimate was made I find that in some places sand and gravel have been put in to a depth of 5ft., according to the shrinkage where it was, and used on the railway line required.

23. So that your estimate is a good deal below the mark?—Yes, certainly, a good deal under the mark.

24. Did you apply to any one at the time for payment of your claim?—No; I did not apply for payment, for they were a struggling company, and they always put me off. They said that when they got properly started they would see what could be done. This was what Mr. Alves said.

25. He was a director of the company?—Yes.

26. The company, you say, was always hard-up?—Yes; it appeared so, whenever I wanted to get any money out of them for "royalty."

27. And they owe now a considerable amount under your lease for rent and royalty?—Yes; there is a nice little pot of money due if one could only get it.

28. You cannot claim that here?—No.

29. This was in 1882-83: afterwards, when A. H. Logan came into possession, did you apply to him?—I mentioned it several times to him, but I was always put off; he always said they were struggling away; he had the affair in his hands, he said, and that he was struggling to make a living out of it; as long as he was paying royalty I never troubled him much about it.

30. Why was it that you did not insist upon payment at the time?—It was simply this: that the company had been formed to make the railway to my own land; knowing that they were struggling I did not press my claim. Those that were not interested in the mine pressed their claims and got paid, that is about the substance of it.

31. Last year (1892) you had some negotiation with Sir Robert Stout—he asking you to come and see him?—Yes.

32. You did go?—Yes.

33. What did he want?—We had some talk over matters.

*Hon. Sir R. Stout*: The terms are in writing—

34. *The Chairman*.] Was there a lease made to the Fernhill Coal Company from you at first?—No, it was between John Alves and myself.

35. Then as to the ballast; you said it was part of the lease to the Coal Company; had they any right according to the lease to deal with it?—Yes, by paying royalty. It was worked at first by an aerial tramway, but that was found to be not satisfactory. They then started to make the railway; how it was taken I cannot say, I was never consulted in the matter. Whether it was taken by Proclamation or not I cannot tell.

36. *Mr. Macgregor*: But about this consultation with Sir Robert Stout, what did he want you to do?

*Hon. Sir R. Stout*: It is all in writing, I would prefer to have the writing produced.

37. *Mr. Macgregor*.] But you can tell us generally what he wanted?—He made a formal offer the next day to sell the line to me. I did not say much; I was not in his presence more than a few minutes; it was Mr. Haggett that he principally had to do with.

38. *Hon. Sir R. Stout*.] Do you mean to say, Mr. Andrew, that you did not agree to give your land for nothing to the company if they would build the railway upon it—you and your brother?—No.

39. No written agreement?—No.

40. No verbal agreement?—No. Howorth wrote out a paper to sign, but we would not sign it. Sir Robert Stout was acting for me, and advised me not to sign it.

41. Did you not agree to give the land for nothing; and is it not a fact that you never sent a claim in for a penny piece upon this land: that even up to the present you have sent in no claim—not a single claim in writing, to anyone—on account of this land, to Logan or anyone else?—I do not think it was done formally; but I never did so in writing at all; at least I do not think so.

42. Or your brother?—I cannot answer for my brother.

43. The first is not the whole expense; the aerial tramway was practically to develop the coal-mine that belonged to you and your brother?—I think it was.

44. Are you aware that £20,000 were expended on that, to which you contributed not a cent; is not that the fact?—I believe that Mr. Logan spent his fortune on it.

45. To benefit you and your brother, and your mine. How many thousand pounds of "royalty" have you taken out of that line?—I do not think I have taken out of it £1,000 clear in royalty all the years that it has been running.

46. Would you show your accounts? Would you be prepared to say that you have not taken £1,000 out of it?—I am speaking verbally.

47. Are you prepared to swear that you have not taken out £2,000?—Well, I believe—perhaps I have had £1,000.

48. Have you had £2,000 in royalties? I ask you to be cautious?—It is rather a hard question to answer; I am not here to exaggerate one way or the other; I cannot answer that question distinctly, but what I say is this: that from first to last I have received very little benefit from that mine. It cost me a lot in legal expenses to get what I did get, as Sir Robert Stout very well knows.

49. What was the value of the land before the railway was made? What was the selling value of the land adjoining? What is the value of Allen's fifty-acre section?—I do not know, although he has been trying to sell for the last twenty years.

50. What did your brother's land-sale fetch; for that would be a test?—£4 10s., I think it was.

51. Now, from these ten acres of land you swear that you have not received more than £2,000? I ask you, was your land worth £4 10s. an acre if this railway had not been made?—Of course it would; but what is the good of all the £40,000 expended if nothing is left on the land but a heap of rubbish?

52. Could your sand or coal have been taken away without the rail or the tramway?—Yes, alongside it is the road.

53. But I want to know from you whether your coal-mine could be worked without a tramway or a railway?—No, not to the same advantage.

54. Could it be worked so as to pay?—I cannot tell.

55. What is your opinion?—I cannot tell. I do not know anything about mining; I am a farmer.

56. *Mr. Macgregor.*] You say you do not know how much the company have paid you in royalties. Can you tell us how much they owe you?—When it was closed up, about £506.

57. *Hon. Sir R. Stout.*] What was the value of the plant left when you took possession?—I could not say; I never got a record of it.

58. Was it not over £500?—If I remember right it was £150. But this is hearsay; there were only a lot of broken boxes. The whole thing was damaged. That was all I had for my arrears of royalty due to me. £616 was due to me when the valuation was made.

JOHN TOOMEY, J.P., examined.

59. *Mr. Macgregor.*] What are you?—I am a commission agent.

60. You have a claim against the Fernhill Company for £59 10s.?—Yes.

61. Have you any vouchers to show for this?—Yes, I produce two cheques—one for £6 and the other for £69 15s.

62. Both are signed “James Gray, per A. H. Logan,” the latter indorsed by Sir Robert Stout?—Yes.

63. How much is due to you in respect of these two cheques?—The large cheque, £50.

64. What does this £50 represent?—A portion of a guarantee of £250, guaranteed by Sir Robert Stout and D. D. Macdonald and myself.

65. To what bank?—The Colonial Bank, at Dunedin.

65A. Was that the guarantee of the Fernhill Colliery Company?—Gray’s account, “James Gray, per A. H. Logan.”

65B. That is the account you were one of the guarantors for?—Yes.

66. The account was called up, and you had to pay how much?—£50.

67. You now claim that amount and interest?—Yes.

68. When you signed this guarantee, were you to get any security?—I declined to sign the guarantee, and requested Mr. A. H. Logan to get Mr. Short to sign it. He declined.

69. Who declined?—Mr. Short. Mr. Logan came back to me again. I then signed it, on the understanding that Logan was to get me a letter of indemnity from Sir Robert Stout. I never got that letter of indemnity.

70. Did Logan give you any reason why you should give this guarantee?—Yes; he said Sir Robert Stout would not be sufficient; that the Bank had declined to take Sir Robert Stout’s name alone.

71. Mr. A. H. Logan is Sir Robert Stout’s brother-in-law, I understand?—Yes; I believe so.

72. About what date was this guarantee given: was it shortly after Gray took possession? Shortly after Gray took possession; some time in 1889. I could not be positive, but I think it was some time about 1889.

73. Did you ever get this promised letter of indemnity from Sir Robert Stout?—No.

74. Did you ask Mr. A. H. Logan for it?—Several times; repeatedly; weekly; and also my solicitor, Mr. Macdonald, that was then.

75. *Sir Robert Stout.*] You say that you asked Mr. Macdonald?—Yes; several times. He said it would be all right. One time he said, “Did you not get it, as Sir Robert Stout had written it?”

76. But you did not get the indemnity?—No, I did not.

77. What did you do when you found you could not get it?—Some time after the guarantee was given, when I saw how things were going, I told Mr. A. H. Logan that I would go to the Bank and stop him from operating on the guarantee account unless I got it. When he found I was determined he brought me this cheque. [Produced.] When I asked him for the letter of indemnity he said, “I cannot get it, but I have brought you something as good”: so he gave me this cheque indorsed by Sir Robert Stout.

78. What did he tell you about it?—He told me to hold it, and, should the guarantee be called up, Sir Robert Stout would be all right for the money. The amount of the cheque would not cover the amount of the guarantee; but Logan and I were constantly transacting business together. As a matter of fact, half the cheques that were issued by Logan on behalf of the company or “James Gray” were either cashed by me or by my brother, and were held over to suit his convenience.

79. You advancing the money?—Yes.

80. What did you do with this cheque?—I kept it in my safe.

80A. You held it as security?—Yes.

81. Was the overdraft called up?—Yes, it was called up.

82. The cheque is dated April, 1891?—Yes.

83. About what time was the account called up?—Some considerable time after that.

84. Was it the time when the row was between Gray and Logan: in August, 1892?—It was about the end of March or April.

85. *Mr. Macgregor.*] Which was it?—When I got the letter from the Colonial Bank calling up the overdraft I paid this cheque in.

86. You mean the cheque for £69 15s.?—Yes; but it was returned marked “stale cheque.”

87. You were compelled to pay this £50?—Yes. Before paying, I consulted my solicitor; he said I had no redress. Then, before I paid it and the writ was issued, I met Messrs. Andrew, Gray, and Hamill—

88. Never mind that; but you had to pay this £50?—Yes.

89. Then, as regards this cheque for £6: for that you gave the cash to Mr. Logan?—Yes.



90. Did he tell you at the time what it was for ; was it an ordinary transaction with him ?—He might have told me at the time, but I do not remember.

91. But you used to cash all this company's cheques ?—Yes, for some time more than half the cheques they issued.

92. Wages cheques ?—Yes, the majority of them.

93. And you used occasionally to discount bills for them ?—Yes, I have done so.

94. I want to ask you what took place about the time of A. H. Logan's bankruptcy ; about the 14th February, 1889. In January, 1889, judgment was given against Logan for a large sum for costs ?—Yes.

95. When pressed for these costs he came to you and made a proposition ?—He proposed to me to take over the mine and railway to protect them from the creditors. He also sold some book-debts of the company for their face-value, in order to keep them also from the creditors.

96. You did buy some of these book-debts ?—Yes.

96A. Did you take over the line ?—No, I declined to do that ; but there is something else I wish to say : When the guarantee was called up I did not know the amount it was for ; Mr. Macdonald, who was my solicitor then, said that this cheque, which was then dishonoured, was given instead of Sir Robert Stout's letter of indemnity. I asked him whether he was not present when the promise was made. He said he did not remember the circumstances, but he did remember that we were to be responsible for £50 each. This is what I was trying to get out a little while ago, when I was asked another question. I was wroth that my own solicitor should turn against me ; as a matter of fact he then ceased to be my solicitor.

97. *Hon. Sir R. Stout.* Did not your own solicitor denounce you for having made an attempt to suborn him as a witness against me ?—He never denounced me in his life.

98. You kept a publichouse when you gave this guarantee, did you not ?—No, not at the time I gave the guarantee.

99. But about that time ?—At any rate, when the guarantee was given, I was not keeping a publichouse.

100. Not in 1890 or in 1891 ?—It might have been ; but not at the time the guarantee was given ; it might have been in 1891.

101. When did you cease to keep a publichouse ?—The last time about eighteen months ago ; I have kept several.

102. Was not Logan in the habit of drinking and gambling in your publichouse ?—No, not any more than playing a game of euchre for drinks.

103. Do you mean to swear that ?—Logan, I believe, has lost money, but not by me.

104. Did he not ruin himself by drinking and gambling in your house ?—No.

105. Have you ever mentioned to me, either through your solicitor, or in writing, or orally, or by letter, that you held a cheque of mine ?—I never did ; only through my solicitor.

106. When ?—When the guarantee was called up.

107. Will you swear that your solicitor ever spoke to me about this cheque, or that he ever mentioned the existence of this cheque in any way ?—Mr. Stewart became my solicitor after that.

108. Were you not told it was to lift a bill of Penman's in the Colonial Bank ?—No.

109. You swear that ?—Yes.

110. And you say you advanced the money to him on this cheque ; why did you not sue me if you could make or had such a claim against me ?—I have told you the reason already ; because I was advised that I had no redress.

111. But if I was to give you a letter of indemnity, how was it that you never asked for it ? Why did you not ask for it ?—I never did. I never asked Sir Robert Stout to indorse the cheque ; but when I got it it was brought to me indorsed.

112. Was this at the time you were keeping the "Shades," and Logan was constantly drinking in your publichouse ?—No.

113. What other hotel was it ; was it the "Royal George" ?—No.

114. Did you receive any letter from Logan on the 15th of September, 1892 ; and, if so, will you produce it ?—I might have received it, but did not file it.

115. But you have it ?—I might have received it, but I do not know that I have it.

116. It was about this transaction, you know ?—I might have received it.

117. *Mr. Kelly.* What length of time did you keep this cheque ?—I kept it about twelve months, until I required to use it.

118. *The Chairman.* Why did you keep this cheque without making a demand on Sir Robert Stout, seeing that he indorsed the cheque ? When you found you had to make good the guarantee, why was it that you did not then make a demand for the money on Sir Robert Stout ?—I went to my solicitor, asking him to make the demand, and he said it was fruitless, for there was no redress.

119. But why did you not make an application to Sir Robert Stout, asking him to redeem a cheque of that kind indorsed by him ?—That is the only reason I can give you : I understood I had no redress ; in fact, Sir Robert Stout kept out of my road.

120. *Hon. Sir R. Stout.* Did you not speak to me about more than these matters ; and did you ever once tell me about, or make any mention whatever of this cheque ; did you ever refer to such a cheque as being in existence ?—I do not remember speaking to you.

121. Did you not meet me one day in the street, opposite the Bank of New Zealand, and did you ever mention the existence of this cheque then ?—After the guarantee was called up ?

122. Yes ; after the guarantee was called up ?—I never spoke to you.

123. *The Chairman.* You say you took this cheque in place of an indemnity from Sir Robert Stout ; did you consider that you had any right to use that cheque until the guarantee was called up ?—No. I was asked to keep the cheque until such time as the guarantee was called up.

124. Did you consider that you could not use it ?—Only for the purpose I got it for. As far as I can make out since, if I could not get the indemnity I was nailed for the whole ; instead of one-



third of this, if each one paid his share as I presumed they would. I cannot say more than that Logan may have drawn this cheque for some other purpose than he gave it to me for; as he could not draw for the actual amount, he must give some reason for drawing.

125. *Mr. Macgregor.*] You have stated that Mr. Macdonald and Sir Robert Stout are very intimate; in fact, Mr. Macdonald is an old clerk of Sir Robert Stout's?—Yes, they are very intimate.

MR. R. B. DENNISTON examined.

126. *Mr. Macgregor.*] You are a mining engineer?—Yes.

127. Do you know the Fernhill Railway Company?—Yes.

127A. About 1888 there was an action brought in the name of A. H. Logan against the City Corporation of Dunedin for damages caused to the mine by the Silverstream Water-race?—Yes, that was so.

128. You and Mr. Beal were associated in making the survey and inspection of the mine for the purposes of that action?—Yes; we were retained in the case.

129. Mr. Ford had also something to do with it?—Yes, he was also engaged.

130. Do you produce your account for doing that work?—Yes; I inserted in the petition from memory £165. That account you have there is for £205.

131. You also represent Mr. Beal, jun.?—Yes; his is £212.

132. Are both these accounts correct?—Yes.

133. And you know that the work was done?—Yes.

134. And that the charges made are the usual professional charges?—Yes.

135. They are the same charges that were allowed in the principal case, the Fernhill Company against Andrew—

*Hon. Sir R. Stout:* John Andrew.

136. *Mr. Macgregor.*] You say you know the Fernhill Coal-mine and Railway for some years?—Yes, ever since it was constructed.

137. Have they always been worked as one?—Yes, to the best of my knowledge.

138. Do you know to whom they belonged?—They belonged to the Fernhill Coal-mine Company.

138A. Who instructed you in respect of that action?—Mr. A. H. Logan.

139. Do you know who he was acting for, or what name he was trading under?—He was trading under the name of the Fernhill Coal Company.

140. Logan lost the action?—Yes.

141. You were present before the Court?—Yes.

142. Sir Robert Stout appeared in that action?—He was the solicitor for the company.

143. Logan was put forward then as the proprietor of the colliery?—Yes.

143A. And judgment was given in January, 1889, against Logan for some £300 of costs?—Judgment was given against him, but I do not know the amount.

144. Logan failed in February?—Yes; both Beale and myself proved against the estate, but afterwards we found out, a few days before Logan had failed, that the railway was “dummied” over by Sir Robert Stout to Gray.

145. This transpired at a meeting of the creditors?—Yes; Beal and myself took no particular notice at the time, until there was a falling-out between Gray and Sir Robert Stout. Then we began to see a little bit of daylight let into it, and that Logan must be a “dummy” too, so that we were deceived to a certain extent. At present we claim against one person what otherwise we should have claimed against another person.

146. At the time you did this work, Mr. Denniston, you understood that the person or persons for whom you are working were the owners of this mine and railway-line?—Yes; I understood them both as one, so that there could be no doubt about it.

147. *Hon. Sir R. Stout.* Did you not come to ask me, before going into Court, to become a guarantee?—You declined, but we did not know then that you had “dummied” it over to Gray.

148. Before the action?—After the action.

149. Did you not know that there was a mortgage over it?—I do not mind that; there are few things there is not a mortgage over in this country.

150. Did you not know that my firm held a mortgage over it?—No; I did not know that.

151. Did you not come to me and ask me to guarantee you, before there was a mortgage on the line?—I came to you, as I might come to any one, to get a guarantee for any money due to me; security is a very desirable thing in these matters.

152. But I declined?—Certainly you declined; there was nothing about a mortgage.

153. Were you present at Logan's bankruptcy meeting?—Yes.

154. Did you know that Gray purchased under an agreement?—I knew that you “dummied” over to Gray.

155. You knew, then, at the time you voted for Logan's discharge, that Gray had become the owner?—I saw at the bankruptcy meeting that Gray was in Sir Robert Stout's confidence, and thought it was all right until daylight was let into it.

156. Who first saw you about this transaction, within the last few months; was it Andrew or Toomey?—We all went together.

157. What brought you together?—Well, I could not swear as to that; I met them all in the street, the “bunch” of them.

158. Who made up the “bunch”?—The lot together: Hamill, Gray, Beal.

159. Where did you meet them in a “bunch”?—In the street.

160. Where and when?—Through the day; I could not say where.

161. How long ago. A week, before the petition was signed. When daylight was let into these transactions I began to see how I was “had.” I was glad to see that these two had fallen out, for when “dummies” fall out you begin to see better.

162. *The Chairman.*] Who made the engagement direct with you to do this work?—It was Logan. We did all our business with Logan. He represented himself to be the owner; but now it appears that he was not.

163. *Sir R. Stout.*] You should not make such a statement on oath unless you were sure?—There is no doubt about it.

164. But there is a doubt about it; it is absolutely untrue.

165. *Mr. Macgregor.*] You have told us that you went to Sir Robert Stout to ask him to guarantee your expenses?—Yes.

166. He was then acting as solicitor in the case, and it was in that capacity that you went to him. Had you any idea of Sir Robert Stout's connection with the line?—I knew nothing about it until the "dummies" themselves fell out.

167. *Sir R. Stout.*] You came to me because I was the mortgagee; you said so?—I knew nothing about a mortgage.

167A. When you were asked to do this work did you make any inquiry whether Logan was the *bona fide* employer?—No.

168. It is a large bill?—Yes, it mounted up very quickly to a big bill; they thought it was too much, and that it was better not to have to pay it, I suppose.

169. *Mr. Valentine.*] When Logan, or the official representing the Fernhill Company, asked you to do certain work, did they ask you in writing?—They never wrote to me at all; I was trading with the company; there was no writing.

170. Mr. Logan was the official manager?—We used to get our cheques signed "Fernhill Coal Company"; afterwards, when it was "dummied" to Gray, it was "A. H. Logan, for James Gray."

171. *The Chairman.*] Do you know if any cheques were paid, after Logan took possession, in the name of the Fernhill Company?—There were apparently two companies, for their invoices and accounts used to be headed "The Fernhill Coal Company"; but the invoices used by Logan at this time were by "The Fernhill Railway and Coal Company (Limited); and afterwards it was altered at my suggestion to Logan, to "The Black Boy Coal Company." Seeing there was no money to get out of them, the name would be appropriate as a truly Black Boy concern.

WEDNESDAY, 6TH SEPTEMBER, 1893.

DAVID ANDREW cross-examined.

1. *Hon. Sir R. Stout.*] Who gave you the land at Fernhill? From whom did you obtain it? Who conveyed the land to you, and when?—That question I really cannot answer. It is over twenty years since that was done.

2. Did you not get the land from your father, at the time of Lonney's trouble?—Yes; it was at that time.

3. From your father?—Yes.

4. Was not the land after that date treated by your father as his own? Did he not have his sheep on it, and did he not negotiate with Logan and Alves about the construction of the railway, and you were not consulted in the matter?—My father never had sheep on that land. When I went up-country he managed the farm for me when no tenant was in it.

5. Did he not convey the land to you because he was a guarantor of Lonney, your brother-in-law, and was afraid the creditors would come upon him?—These matters are beyond my memory.

6. Did your father not make the arrangements with Alves and Howorth?—I cannot say. There is no one who knows more about this affair than Sir Robert Stout. He acted as my adviser for years.

7. About this lease you are wrong?—Mr. Logan told me he did it in your office.

8. Had you anything to do with giving the land for the railway, or was it done wholly by your father?—I had nothing to do with it. You advised me not to sign it; and it was not my father's to give.

9. *Mr. Macgregor.*] At this time Sir Robert Stout was acting as your solicitor?—Yes.

10. And the knowledge which he gained then he is now using against you. He advised you not to sign the document?—That is so.

11. You changed your solicitor?—Yes; shortly after that.

12. For what reason?—I found out that Sir Robert Stout was connected with his father-in-law (Mr. John Logan) in this matter, and I thought that he could not advise me properly. I was in a fix about that company, and wanted to get out of it; therefore I changed my solicitor.

13. That suggestion, that you agreed to give this land for nothing, is absolutely untrue?—I never consented to give it. I refused to sign the document to that effect. Sir Robert Stout advised me not to sign it.

Mr. JAMES GRAY examined.

14. *Mr. Macgregor.*] What is your name?—James Gray.

15. You are a collier?—Yes.

16. You have had a good deal of experience in colliery work?—Yes.

17. Do you know the Fernhill Colliery?—Yes, very well, and also the railway; it being in conjunction with the colliery.

18. You have been working at the Fernhill Colliery for a number of years?—Almost from the start.

19. You are one of the petitioners in this petition?—Yes.

20. You work at the said Fernhill Colliery. Do you produce an account for your wages?—Yes. [Account produced.]

21. That comes to £141 16s. 4d. In addition to that sum for wages, you say you have a claim for about £160 for looking after the colliery, from April, 1892, to March, 1893?—Yes.

22. Do you abandon this because you are advised that you have no legal claim to it?—Yes; but I still consider I am entitled to be paid it.

23. These two sums make up the claim of £321 16s. 4d. mentioned in the petition?—Yes.

24. When did your wages begin to go in arrears, Mr. Gray?—They began to get into arrears when Mr. Logan became manager of the concern.

25. Had they been gradually getting further into arrears ever since?—Yes.

26. Did you act as manager of the coal-pit?—Yes.

27. Do you remember, then, Mr. A. H. Logan bringing an action against the Corporation of the City of Dunedin?—Yes.

28. Were you working in the coal-mine then?—Yes.

29. You were a witness in that case?—Yes.

30. At a weekly wage of how much?—At £3 15s., latterly.

31. The action was lost by Mr. Logan, I believe?—Yes.

32. Well, after that action, Mr. Gray, what was the next thing to take place, as far as you know?—Well, before the action there was a bit of a mock agreement drawn up, making over the mine property to Mr. Logan, in order that he might sue the Corporation instead of Sir Robert Stout.

33. How do you know that?—I heard Mr. Logan tell Mr. D. D. Macdonald to be very careful in making out this agreement, because it was not very easy to “blink” Mr. Chapman, the Corporation’s solicitor.

34. How long was this before the action commenced?—A week, or perhaps ten days.

35. What was the next thing to take place?—After the action, Mr. Logan was sued for costs, and I was summoned to town. Mr. D. D. Macdonald told me that Mr. Logan was getting sued by the Corporation for costs, and that he was going to go through the Court. We were getting uneasy about our wages. I spoke to Mr. Logan about it, and asked him when we were going to be paid our money. He said that Sir Robert Stout had decided to settle the mine and line in my name, in order to secure us our wages. I went to Mr. D. D. Macdonald, he was attending to my business for me, to get his advice on it. I did not put much reliance on Mr. A. H. Logan at that time.

36. After this conversation, what else was done?—An agreement was drawn up between Sir Robert Stout and myself, and I signed it, to secure the wages of myself and the other men. [Agreement produced.]

37. Is that the agreement you signed, Mr. Gray?—Yes, I believe that is it. That is my signature on it. [Document here read, signed 1st February, 1889.]

38. At the time this was signed, Mr. Gray, what took place? Was Mr. A. H. Logan present?—Yes, he presented it to me to sign.

39. It is witnessed by Mr. John Toomey?—Yes.

40. After this document was signed, there was another document prepared and advertised. Who was that document prepared by?—Mr. D. D. Macdonald. [Document here produced and read.]

41. At the time this agreement was signed, Mr. Gray, you were mine-manager?—Yes.

42. After the agreement was signed, was there any change in your position?—There was no alteration in the work. I was in the same position, and Mr. A. H. Logan still managed.

43. You managed the mine, and Mr. Logan looked after the business?—Yes.

44. It was still called the “Fernhill Colliery Company”?—Yes.

45. The office in town was attended to by Mr. Logan?—Yes.

46. What about the bank account. Was an account opened?—Yes, a day or two after the agreement was signed.

47. Was it with your money that the account was opened?—No. Mr. Logan got it from Stout and Mondy’s office. He came down and handed it to me in the form of a roll of notes. I never opened it. There might have been some silver amongst it.

48. About how much would it be?—Between £30 and £40.

49. The account was opened in your name. Were you allowed to operate on the account?—No.

50. Who operated upon the account?—Well, I know that Mr. Logan operated upon it for one.

51. Cheques were signed in the form of “James Gray, per A. H. Logan”?—Yes.

52. You lately applied to the Bank to get the bank-book, but you found it had been given up?—Yes.

53. Had it been got away from the Bank?—Yes.

54. You continued to work in the mine during 1889?—Yes.

55. Do you remember being sent for to go into Dunedin in connection with a projected new company?—Yes.

56. To be called the Freeman’s Coal Company, Limited?—Yes. [Copy of prospectus here produced.]

57. Is that a copy of the proposed prospectus?—Yes.

58. *Mr. Mills*: Does this bear on the claim, Mr. Macgregor?

*Mr. Macgregor*: Yes; it bears on the line. [Prospectus here read.]

59. *Mr. Macgregor*.] How long did you continue to work in the mine in this way, Mr. Gray?—Up to the end of February, 1892, I think.

60. That was when the account was closed at the Bank?—Yes; but there was trouble before that.

61. After February, 1892, you still retained possession of the coal-mine and railway line?—Yes; the wages were getting behind, and things were getting disagreeable about the mine, and I began to think I would be better out of it.

62. You saw Mr. D. D. Macdonald, and what took place?—They had been dabbling with the money. Sir Robert Stout was taking money out of the concern, and Mr. Logan and Mr. D. D. Macdonald were also taking money out of it.

63. *The Chairman.*] Was that from the business you were running?—Yes; the three of them were taking money out, and not paying wages.

64. *Mr. Macgregor.*] How many men were employed in the mine?—About fifteen.

65. *The Chairman.*] Had you no cheque-book to operate upon the account you had opened?—No; this is what started the disturbance. I wanted to get out of it. I could get nothing for the men.

66. *Mr. Macgregor.*] Did you see Sir Robert Stout about the payment of the wages?—Yes.

67. What took place?—He said he would indemnify me against everything but Andrew's royalty if I would go out of it.

68. *Mr. Macgregor.*] To give up possession?—Yes.

69. Well, and what then?—I did not see that I was to be left in debt and part with the property, and I would not go out unless he indemnified me for everything. We had no money then, just enough to wear through it. We got that far exhausted that the men had not that much food in their houses as would set a mouse-trap. They got fairly exhausted.

70. They were getting coal out of the pit and money for it?—Mr. Macdonald and Sir Robert Stout were taking money out of it.

71. Did you go to Sir Robert Stout and press him for payment of the wages?—Yes.

72. Did you tell him the position the men were in?—I went to Mr. Logan first, and told him the men were starving. He told me to go out, and tell the men to go to hell if they did not like it.

73. Did you go to Sir Robert Stout then?—Yes, or sent my solicitor, Mr. J. F. Fraser.

74. You had an interview with Sir Robert Stout about these wages?—Yes, previous to February, 1892, I had an interview with him. He said we were surely getting dissatisfied. We had, he said, ample security in the two large mines and two miles of railway. I told him the men could not eat that. He said "It has not paid you to get rid of it then." I told him I would only be too glad to get rid of it if he would pay the wages due to me and the men.

75. *Hon. Sir R. Stout.*] How long was this before February, 1892?—I cannot say.

76. *Mr. Macgregor.*] Were there many bills discounted in connection with this business of yours?—Oh, yes.

77. Before this time, you signed and presented a petition to the House, Mr. Gray, in 1891, and this is a rough draft of it? [Draft of petition produced]—Yes.

78. Who prepared it?—I believe it is Sir Robert Stout's work.

79. Part of it is his handwriting?—Yes, so I believe.

80. That petition says that this railway line was your private property?—Yes.

81. At this time you had charge of the pay-sheets, had you not?—Yes.

82. Are these two of them? [Pay-sheets produced.]—Witness: Yes.

83. *The Chairman.*] Was this pay-sheet for one month?—No, for a fortnight.

84. Was this for the full number of men employed?—Oh, no.

85. *Mr. Moore.*] I see your name does not appear on the pay-sheet at all?—No; they told me not to put my name on the pay-sheet.

86. And yet you put in a claim for wages. Who told you not to put your name down?—Mr. Logan, as Sir Robert Stout's manager.

87. Did you consider at the time that the pay-sheet was put in that you were not entitled to wages?—I did consider myself entitled to wages. It was a "blind" at the time, in order to transfer to my name.

88. *Mr. Macgregor.*] But you had received occasional sums of money on account of wages?—Yes.

89. In what form did you receive it?—In bills.

90. *Mr. Moore.*] Any acknowledgments you gave to Mr. Logan, were they in the shape of receipts for wages?—Yes.

91. *Mr. Macgregor.*] What became of the books of the Fernhill Company?—My lawyer advised me to get the colliery books. I went down to do so, and Mr. Logan sent for Mr. D. D. Macdonald, who told me that if I touched a thing about the place he would put me in gaol.

92. You did not get the books?—No.

93. What became of the books?—I do not know; they disappeared that night.

94. Who had the key to the office and the books?—Mr. Logan.

95. Where is this Mr. Logan?—I do not know.

96. So far as you know Mr. Logan has got the books now? You have not got them?—I have a few cheque blocks. That showed me where some of the money went to—to shoemakers and butchers in town.

97. Did you get any of the money?—No.

98. *The Chairman.*] Have you no statement to lay before the Committee, showing the amounts paid away, and the cheques, cash, and bills that you received?—I have no statement.

99. *Mr. Valentine.*] You bought the plant and effects; did you not get the books pertaining to the business?—It was only a "blind"; I was never intended to pay anything.

100. You said a minute ago that Mr. Logan would put you in gaol if you took the books. Mr. Logan could do nothing if you took the books if they were yours. Did you consider the books yours or not?—Mr. J. F. Fraser told me to take the books. I was only a "dummy" in the concern; that was all, and a troublesome time I got.

101. *Mr. Moore.*] From the time you went into the agreement to purchase the property, had you any control over the books?—I had no control over them, and I never saw them. I had nothing to do with them.

102. *The Chairman.*] When you received that first sum of money, which you say was between £30 and £40, did you pay it into the Bank?—Yes.

103. How did you pay it in, with slips?—Mr. Logan gave me a pay-in slip, and I went to the Bank with it; that was all.

104. Did the Bank not ask you to give your signature at that time?—Yes; that was to open the account.

105. *Mr. Macgregor.* Did you do that?—Yes.

106. *Mr. Valentine.*] Then you must have given Mr. Logan authority to sign and issue cheques?—Yes.

107. *Mr. Moore.* After you opened the account, did you sign cheques yourself?—I signed three. It was too expensive for me to be always going into town; and I got tired of doing that.

108. *Mr. Macgregor.*] You say that this came to an end about February, 1892?—Yes.

109. Well, then, in April of this year (1893) you were prosecuted by the Railway Commissioners for obstructing the Inspector of Permanent Way at the Fernhill Railway?—Yes. At the end of eleven months there were no signs of a settlement, and I made a shape for starting work to make wages out of it.

110. You have been working the mine ever since?—Yes.

111. You are using the railway now, under the control of the Railway Commissioners?—Yes.

112. During this eleven months that you spoke of, had you been negotiating with Sir Robert Stout to get this matter settled?—Just so.

113. Who was your solicitor during this time?—Mr. J. F. Fraser, of Dunedin.

114. It was proposed, I believe, that you were to transfer the mine and your interest in the railway-line back to Mr. A. H. Logan again?—Yes.

115. Sir Robert Stout was to indemnify you against all claims in respect of the mine and line?—Yes, with the exception of Andrew's claim.

116. These negotiations fell through ultimately; you could not come to a definite conclusion?—Yes. [Mr. Macgregor here put in two letters from Sir Robert Stout.]

117. *Mr. Macgregor* (to witness).] You say you were prosecuted by the Railway Commissioners; were you present in Court?—Yes.

118. *Hon. Sir R. Stout.*] When did you first join the Fernhill Mine?—About the time the railway was constructed.

119. I mean as manager. In February, 1886, was it not?—I cannot say.

120. Were you not manager only from February, 1886? Did you not leave Richardson's mine?—For a short time.

121. You went back in February, 1886?—I cannot say.

122. You would have been about six months when the Mining Act was passed?—I was under Shaw, in the mine.

123. Has this coal-mine and railway paid; do you mind as much as that?—Yes.

124. Did you not tell me in my office, before you took possession, that the mine could not afford to pay anything, nor the railway either? That was when I asked you for £100 a year?—I did not say that the railway could not pay anything.

125. Did I not tell you that if the railway would pay I would take £100 a year?—No. I never said it could afford to pay £100 a year.

126. Were not the miners' wages paid, except your own and Hamill's?—Andrew was not paid.

127. Were not the mine wages paid?—Yes; after I employed my lawyer on behalf of the men and summoned you. Your firm cheated them of a few shillings each because the men could not state the exact amount they had coming, and the doctor's money as well.

128. You declined to pay £100 a year for the use of the railway, did you not?—Yes.

129. When did you cease working in the mine? When did the coal cease to go out of the mine?—At the end of February, 1892.

130. Are you sure?—I think so.

131. Was it not in the end of October, 1891?—I do not think so.

132. Had it ended before you went to Mr. Fraser? Did you not go to Mr. Fraser when you and Mr. Logan quarrelled? Did you go before?—Yes.

133. Were there not negotiations, months before February, about handing over the railway, with Mr. Fraser?—Yes, there were; and I signed a note for the whole concern, if you released me from liabilities.

134. *Sir R. Stout* (passing witness a letter).] Is that the letter?—Yes. [Letter read.]

135. How much was due to you under Mr. Logan's bankruptcy, which you have included in this account?—We never worked for Mr. Logan, it was for the Fernhill Coal Company.

136. How much was due to you at the time of Logan's bankruptcy?—I do not know.

137. Is this a correct account, £101?—I cannot say. I do not know anything about Logan's bankruptcy.

138. Since this agreement, how much money was due to you up to the time that you ceased work as mine-manager?—£141.

139. How much wages are due to you since the 1st November, 1889, to the time you ceased work as mine-manager?—£40.

140. Then the total amount that you can claim under this agreement till the time that you ceased work is £40 3s.?—No; we have nothing to do with your manager.

141. If you believe that I am the owner of the mine, why do you not sue me?—I will tell you: Because you get your law too cheap. I have got to pay for mine.

142. You want the Committee to believe that I am owing you this money, that I am at present indebted to you?—You are.

143. Why do you not sue me?—I will keep you out of your property until you pay us.

144. Now, Mr. Gray, the position is this, is it not : Were you not offered that your wages would be a first charge on anything that came out of the railway if you allowed Mr. Allen, of Port Chalmers, to take over the mine ?—I have got nothing to do with that. You and D. D. Macdonald and Logan boasted that I would get nothing on account of employing a lawyer for the miners ; so I thought loose dealing was of no use among such a party.

145. Did you not stop him from getting the lease, by going to Mr. Andrew and telling him you would not give up possession ?—I do not understand you. I told Mr. Andrew that you intended rolling him in for the expenses of putting me out, and he said that you would have to do that yourself.

146. Did you know that Mr. Allen was prepared to take up the lease of this mine and railway ?—Yes.

147. Did you not object to his getting possession ?—Yes ; certainly.

148. Were you not offered that if you allowed him to get possession your wages would be a first charge on all moneys got out of the railway and mine ?—No.

149. Do you mean to say that you saw me in February, 1892 ?—I saw you very often.

150. If I say I was not in Dunedin during that month, will you still say that you saw me ?—I will not say the date exactly.

151. Will you say that you saw me in January ?—No.

152. Was it in December, 1891 ?—I will not be positive. I might be swearing a lie, and I want to keep as near the truth as possible.

153. You say that you were a “ dummy ” : what do you mean by that ?—That you made a tool of me for the sake of robbing the people connected with the thing. You took the best of the coal and sand out of it, and sold the best of the plant, and you and Macdonald and Logan put the moneys in your pockets.

154. I took the best of the coal and sand out of it ? Who was the manager : his name was James Gray, was it not ?—Yes ; and you pocketed the money.

155. Are you aware that the mine has not paid me a single penny, and that it is thousands of pounds to the bad ?—It paid £500 a year profit while it was in my name, so that if you turn up the books you will find that you took your mortgage out of the concern three times over.

156. Do you wish the veracity of your statements to be decided by that statement ?—Yes.

157. Do you mean to say that, of your own knowledge, I or Mr. Macdonald ever got a single cent out of the mine ?—Yes, I do.

158. How do you know it ?—I got some of the remains of the books.

159. Show me the entry that shows I got anything. [Entry produced, dated August, 1891.]

160. I got a bill that was dishonoured ?—You got cash.

161. How do you know it ?—Your manager told me that you and Mr. Macdonald got money.

162. Why should you stick to the mine and not sue me for wages ?—I pledged my word to the other men—Hamill and Andrew—that I would hold the property until their claims were met.

163. You do not hold the property for Andrew ?—No.

164. Did you not decline to allow Andrew to lease to Allen ?—I did not exactly decline ; but Andrew would not make a party to putting me out.

165. Are you aware that Andrew's solicitor said that he was willing to lease provided that I put you out ?—Yes ; but you wanted to put the responsibility on Andrew of putting me out.

166. *Mr. Valentine.*] Does the railway belong to you, or to Sir Robert Stout, or to the Railway Commissioners ?—The Railway Commissioners have it now. When I started to work the railway they sent a crowd of men out from Dunedin and lifted the rails.

167. I want to know how it became the Railway Commissioners' ?

*Mr. Macgregor :* It becomes vested in them by virtue of the Government Railways Act of 1887.

168. *Mr. Lake.*] Can you tell me whether any money has been spent within the last two years on this railway ?—Yes ; about £500. They never contributed anything towards the railway until I started to work it.

169. When was this money spent ?—Within the last four months and a half.

170. *Mr. Moore.*] You said your wages amounted to nearly £142 in 1892 ?—Yes.

171. Did you make application for your money up to that time ?—Yes.

172. To whom ?—To Sir Robert Stout.

173. How did you make application ?—Verbally.

174. You sent in no account ?—No.

175. Up to 1892, or before 1892 ?—Yes ; before and after.

176. Mr. Logan was acting as manager for Sir Robert Stout ?—Yes.

177. You went to them both ?—Yes. When Mr. Logan was not about I went to Sir Robert Stout, and when Sir Robert Stout was not about I went to Mr. Logan.

178. You looked upon Sir Robert Stout as the owner all through ?—Yes.

179. Did you give the promissory notes for the mine and line ?—Yes, I think so ; but there was nothing ever expected of me.

180. You wish the Committee to believe that the promissory notes were only given as a matter of form ?—Yes.

181. To make it appear to be a *bona fide* transaction ; but never to be paid in reality ?—Just so.

182. Who was present at the time ?—Mr. Logan. Sir Robert Stout was not there.

183. *Mr. Lake.*] Can you tell me anything like the date on which this demand for £100 for the use of the railway was made ?—About 1892. Sir Robert Stout made an offer. He said he would let me have it for £75 or £100 for the first year, on condition that I would put the line to the satisfaction of the Railway Commissioners, which meant spending about £500 on it and the loss of a year's labour.

184. *Mr. Lake.*] Was that part of the condition, that you were to make it up to the satisfaction of the Railway Commissioners ?—Yes.

185. *The Chairman.*] Then you were to do certain work?—Sir Robert Stout offered it to me for either £75 or £100 for the first year, only that I must put the line to the satisfaction of the Railway authorities.

186. *Mr. Lake.*] Was there any sum mentioned?—No.

187. *The Chairman.*] Did you tell Sir Robert Stout that the line was your property?—Yes; until my claims were paid. The railway line and mine were always wrought as one concern. The men were all shifted, with the exception of Mr. Hamill, from the mine to the line.

188. I want to ask you how it was that when you found that money was required for paying the men's wages, you did not send in an account or go to Sir Robert Stout, as principal in the mine, and give him a statement, and ask him for the payment of a certain amount including your own wages?—I did that. He said he would give Mr. Logan money to pay the wages.

189. *Mr. Macgregor.*] You say that, as far as you remember, you did give these promissory notes for £120 and £80 mentioned in this agreement with Sir Robert Stout. Were you ever asked to pay them?—No.

190. Was it ever attempted to set them off against your wages?—No.

191. And you say that since the Railway Commissioners have taken possession of the line they have spent some hundreds of pounds on it?—Yes.

192. They are now running trucks on the line, under the arrangement with you to work the coal-mine, which you are now occupying and working as your own?—Yes.

193. Since you gave the promissory notes of £120 and £80, have you drawn wages from the owners of the mine?—Yes.

194. Notwithstanding the fact that you have given the promissory notes?—Yes.

195. Who did the money come from?—From Sir Robert Stout, through Mr. Logan.

[Sir Robert Stout here said that he admitted Gray was a wages-man. He understood he drew his wages with the rest of the men.]

196. *Mr. Moore* (to Sir Robert Stout).] Who did he draw his wages from?

*Sir Robert Stout:* He took it out of the concern.

197. *Mr. Gray* (to Sir Robert Stout).] Do you remember reducing my wages through Mr. Logan?

*Sir Robert Stout:* I know nothing about your wages.

*Mr. Gray:* Well, they reduced my wages and Hamill's too, and they would not let us away.

198. *Mr. Earnshaw.*] I would like to know, Mr. Gray, how much in wages was due to you when the agreement was signed?—£101 13s. 4d.

199. Why have you not sued Sir Robert Stout for this sum in the Court?—He transferred the place over to me as security for these wages.

200. You surrendered your right for the giving over this mine to you?—No. I was told by Sir Robert Stout that if I did not get this mine transferred to my name I would lose the whole of my wages, and the wages of the other men as well.

201. *Hon. Sir R. Stout.*] Where did the interview take place, and when?—It took place in the coal office, previous to Mr. Logan's bankruptcy.

202. Before February, 1889?—Yes.

203. Would you be surprised to find out that I was not in Dunedin at the time that that agreement was signed?—In town, No. But Mr. Macdonald drew up the agreement; and he advised me to go through the Bankruptcy Court, after you and he had got the place into as much debt as you could. This is what opened my eyes to your plans.

203a. *Mr. Earnshaw.*] Do you still claim wages against Sir Robert Stout even in the face of the agreement?—Yes.

204. Then, why have you not sued him for it?—I hold the mine; I want him to sue me.

205. If you did not surrender your right to wages by this agreement, how is it you gave over the property to Sir Robert Stout?—I gave nothing; I got it as security.

206. What wages were due to you?—£101.

207. For that £101 you have got this mine and railway?—I have got the railway and mine. They put these in my name for the wages, and they never intended to pay my wages. It was intended to swindle me, and all connected with it. Sir Robert Stout pushed the other men to "pull" me for their wages. I have got a letter down in Dunedin from Hamill, stating that he had met Sir Robert Stout in Wellington, and he (Sir R. Stout) advised him to "pull" me for the wages, and he would give him all the assistance in his power.

208. What are these promissory notes for £80 and £100?—They are dummy promissory notes, never intended to be paid.

209. *Mr. E. M. Smith.*] What is the output of the mine?—The Railway Department drove the trade away by lifting the rails. I have got to send my coal away and get a very small price for it, in order to keep up the number of trucks that the traffic-manager says I must send, or pay a fine of about £6 per week.

210. *The Chairman.*] What is the output for the mine?—About 20 to 25 tons a day.

211. *Mr. E. M. Smith.*] Is the mine now paying royalty, your wages, and a profit?—Yes.

212. What is it paying?—About £12 a week for the railway, and about £12 a month to Andrew.

213. No profit over that?—It leaves me about £3 10s. a week wages, more or less. The trade has been driven away.

214. Providing this railway was handed over to the Commissioners, as it is proposed, in what position would that put you in? Would that allow you to work the mine profitably?—Yes; it will allow me to work the mine profitably, and pay the Commissioners as well.

215. What was your main reason for objecting to pay £100 a year?—My objection was this: If I had met Sir Robert Stout in his offer I would be losing any chance I had of demanding what was owing to me. I did not want to have anything to do with it, except to hold it as I got it.



216. *Mr. Valentine.*] Why was the mine conveyed to you at all ; was it made over to you ?—It was made over to me for two purposes.

217. When you made that agreement for the purchase of the mine you were a party to whatever took place. If Sir Robert Stout did something wrong, as you allege, you did something wrong too?—No ; my wages were at stake, and a considerable amount of other wages ; and Sir Robert Stout told me that if I did not have it done I would be the means of losing my own wages and those of the other men.

218. This agreement of transfer and sale, according to your statement, was for the purpose of evading payment of creditors?—No ; it was not that, on my part. Sir Robert Stout wanted Mr. J. Toomey to take it.

219. You became a party to an improper action?—No ; I did not know.

220. You signed the agreement?—Yes ; I made no secret of it.

221. You signed the agreement to become owner of the property to defraud someone of their own?—There was no fraud on my part. I took it to save the wages. If the Corporation then put in a claim we would all share alike.

222. When Mr. Toomey would not take it, Sir Robert Stout came to you and asked you if you would take it, and you agreed to become the purchaser?—Yes ; on condition that I was to hold it on trust for these wages from Sir Robert Stout. He understood that.

223. That was the reason why you became nominal owner?—Yes.

WEDNESDAY, 13TH SEPTEMBER, 1893.

JOHN HAMILL examined.

1. *Mr. Macgregor.*] Your name is John Hamill?—Yes.

2. You are a platelayer?—Yes.

3. For some years you were in charge of the Fernhill Branch Railway?—Yes, keeping it in repair and so forth.

4. You worked on the railway since its construction in 1881 or 1882?—Yes.

5. There was an interval of a few months in which you were away?—Yes.

6. I understand you to say that you always worked for the Fernhill Company?—Yes.

7. The management has changed several times?—Yes.

8. Did you get your wages paid up when you left?—No.

9. Have you got an account of the amount owing to you?—Yes.

10. Will you produce it?—Yes, here it is. [Account produced and put in.]

11. The total amount is £181 13s. 10d., made up of old account £85 1s. 7d. and new account £96 12s. 3d. What is the meaning of "old account"?—That is the amount that was standing before Mr. A. H. Logan failed.

12. And the "new account" is for the balance of the wages accruing to you since that time?—Yes.

13. This amount of £181 13s. 10d. is still due to you?—Yes.

14. How did you allow this company to owe you so much money. How did you allow your wages to get so far behind?—The company was struggling, and I have been letting it run on. I am a single man, and did not want to be nasty with them if it could be possibly avoided, and that was simply how it came about.

15. You got occasional payments when you wanted money?—Yes.

16. You remember the time when Mr. Logan went bankrupt in 1889?—Yes.

17. Do you remember him going out to the mine and having a talk to you about your wages before his bankruptcy?—Yes. Gray was there also.

18. Just tell me as nearly as you can the substance of what he told you?—I understood him to say that Mr. Gray was to take over the property, and that there was £65 or £66 to be put into a Mr. Hodge's hands preferentially for me. As things were not going well at that time I thought that if I could get £65 I would be satisfied, so I allowed it to go on.

19. Did he tell you he would have to go bankrupt?—Yes, I understood that.

20. Did he say anything about getting his discharge from bankruptcy?—Yes ; he mentioned that it was better to do it in that way, because it would interfere with his discharge if there was an item of wages standing.

21. Who is this Mr. Hodge?—I understood him to be a brother-in-law of Mr. Logan.

22. He was then a solicitor in Dunedin?—I cannot say.

23. Did you ever get this £65?—No.

24. You did not prove in Mr. Logan's estate?—No.

25. Mr. Logan became bankrupt, and, as you have heard, the property was transferred to Gray?—Yes.

26. Well, after that, was there any change made in the management of the mine?—Not that I was aware of.

27. Who managed the coal-mine part of the affair?—Mr. Gray.

28. Just as before?—Yes.

29. You continued to look after the railway just as before?—Yes.

30. Who looked after the books in town?—Mr. Logan.

31. In the same way as before the transfer?—Yes.

32. Before the transfer to Gray, who did you stick up for your wages?—A. H. Logan.

33. Did you get the payments on account from him from time to time?—Yes.

34. To whom did you apply after the transfer?—To Mr. Logan.

35. Did you get payments on account after the transfer?—Yes, in the same way as before.

36. Gray has told us that he was in a similar position to you : his wages were in arrear?—Yes.

37. Gray was in the habit of hunting up Mr. Logan for money. Are you aware of that from your own knowledge?—Yes; before and after the transfer to him.

38. What did your duties mainly consist of, Mr. Hamill?—Well, principally, of course, I was employed on the railway looking after the repairs, and generally keeping the line in order.

39. Had you any Inspector over you?—Yes; the Government Inspector.

40. You continued to keep the line in repair until you left in 1892?—Yes.

41. I suppose you occasionally needed money for these repairs. Where did you get that money from?—I had nothing to do with the money; when we wanted any material I always applied to Mr. Logan to have it sent out.

42. Both before and after the transfer?—Yes, both before and after.

43. You were in the habit of getting money from Mr. Logan for wages. In what form did you get that money?—It was in the form of cheques or cash, just as he could give it us.

44. Have you any acknowledgments in reference to your wages?—Yes. [Acknowledgment produced.]

45. That is in Mr. Logan's handwriting?—Yes.

46. Have you any more?—No, not of Mr. Logan's. I have another of Mr. Gray's with alterations in it by Mr. Logan. [Witness here put in this paper; the handwriting of which is Gray's, and the alterations in red ink, Logan's.]

47. You worked on this line for about ten years?—Yes, I must have been about that time on it. I was there from the commencement. I helped to plate-lay it.

48. And all that time you were working for the Fernhill Company, you understood?—Yes.

49. You left the mine in the year 1892, about the month of March?—Yes.

50. Were your wages falling further into arrears at that time? Were matters becoming worse financially?—Yes, that was when the mine stopped.

51. You were not in good health; you were anxious to leave, were you not?—Yes, and for two years before it.

52. When did you first see Sir Robert Stout in connection with this matter?—I happened to be with Mr. Gray one day, and he met Sir Robert Stout and Mr. A. H. Logan.

53. Where was it, in the first place?—In Vogel Street, in Dunedin.

54. Near the company's office?—Yes.

55. This was after you stopped work?—No, it was some considerable time before.

56. Before March, 1892? You could not fix the month, could you?—No.

57. Can you say whether it was in 1891 or 1892?—I cannot say. It was before work stopped at the mine.

58. You did not speak at all?—No.

59. What did Mr. Gray want?—I understood him to say that he wanted the mine taken over by whoever was the right owner.

60. What else; did he want to get the wages paid?—Yes.

61. What did Sir Robert Stout say?—He did not say anything. He would not give any satisfaction.

62. The mine stopped in March, 1892. What did you do about your wages?—Well, I waited until the other men were all paid.

63. Did you press Mr. Logan for your money?—Yes. I asked him from time to time; he always promised to pay me.

64. What did he tell you about the mine?—I always understood, from what he said, that he intended to start the mine again.

65. That he would make some fresh arrangements?—Yes.

66. The other men's claims were for comparatively small amounts, were they not?—Yes.

67. They would not exceed £40 or £50?—I cannot say as to the exact amount, but it would not be much.

68. When Mr. Logan was sued for these amounts he confessed judgment, did he not?—Yes.

69. And the money was eventually paid them?—Yes; I believe so.

70. This was some three years after the mine was transferred to Gray?—Yes.

71. I think you instructed Mr. J. F. Fraser to act for you, Mr. Hamill?—Yes.

72. He was acting on behalf of yourself and Mr. Gray?—Yes.

73. He tried to recover your wages?—Yes.

74. And get an indemnity from Sir Robert Stout on behalf of Gray?—Yes.

75. While the negotiations were going on, did you see Sir Robert Stout yourself?—Yes.

76. The mines closed about March: can you tell me how long it was after that that you called on Sir Robert Stout?—I would not be sure of the dates, but I think it was immediately.

*Hon. Sir R. Stout.*] I was in the North Island in March, and in Invercargill in April?—I kept no dates.

77. *Mr. Macgregor.*] At all events, it was after the closing of the mine that you saw Sir Robert Stout. What did you say to him?—I said I wanted to see him about my wages. He asked me how it was that I did not come to see him sooner about the matter. My answer was that, Mr. Logan and he being friends, I did not wish to be the first to come about this matter; and I also told him that I had heard it rumoured that I was not to be paid anything. He told me to take no notice of these rumours—that he would see that I would be paid. These are his exact words.

78. Were you satisfied with that assurance?—Yes; I left the office quite pleased, of course. At this interview he told me that the railway was his, but that he had nothing to do with the mine.

79. *Mr. Valentine.*] Who told you that?—Sir Robert Stout. I think that finished that conversation as far as I am aware. I was to call back again.

80. *Mr. Macgregor.*] Did you call back again?—Yes.

81. After how long an interval?—I cannot say. There was a decent lapse of time. He told me on this second occasion that he could not do anything in the meantime: that he had been trying to arrange terms with a Mr. D. Andrew, and it would be, he thought, all right. I might have told you that on the occasion of the first interview, I offered to take bills indorsed by Sir Robert Stout for my wages, and I offered terms—I did not wish to push for my money—from six months to eighteen months. I did not mention any interest; I did not intend to charge interest in any way then.

82. That was at the first interview?—Yes.

83. Was the matter mentioned at the second interview?—I would not be certain; I do not think so. If I had got Sir Robert Stout's bills I would have felt quite content in the matter.

84. What did he say about the bills?—I left him after the second interview. The third time I met him was, I think, at the foot of his office stairs, under the balcony. We chatted over the matter, and Mr. Allen, of Port Chalmers, was mentioned about going into the concern.

85. Sir Robert Stout mentioned that Mr. Allen was going into the concern to take over the business?—Yes, and I got restless at the way I had been kept from my money. Sir Robert Stout mentioned to me that the only way to get over the difficulty was to go back and work the money out in the way of bills; and I said that except I got his own bills I would never take a bill from any person connected with the business.

86. *Mr. Moore.*] What reply did Sir Robert Stout give you about the bills?—I am coming to that. He said that Mr. Allen would give me bills.

87. That was subsequent to the occasion I refer to. It was when you met Sir Robert Stout at the foot of the stairs that he mentioned about Mr. Allen. It was at the previous interview that you first mentioned about the bills?—Sir Robert Stout told me to take no notice, that I would be paid. He declined to give me an answer about the bills.

88. Did he refuse, or say he would give you the bills?—I understood him to say that he would not give me the bills.

89. Are we to understand that Sir Robert Stout did not definitely decline to give you bills?—At the time of the second interview he did not say whether he would or would not.

90. He did not state definitely?—I really depended on Sir Robert Stout.

91. At this time did he decline to give you bills?—Yes.

92. *Mr. Macgregor.*] When he spoke about Mr. Allen taking over the mine, what was said about bills then?—He mentioned to me that the only way to get out of the difficulty would be that I should go back to work and take Mr. Allen's bills. I told him at this time that I would take no person's bill connected with the business but his own. His answer to that was, that he would give "cross bills." I did not understand the meaning of "cross bills."

93. What did you understand about the cross bills: that he would give his own bills, and Allen give bills to him?—I am not up in business.

94. Are you a scholar: can you write?—I can sign my name. I am not a good writer.

95. You declined to adopt the suggestion about going to work and taking Allen's bills?—Yes.

96. What was the outcome of that business?—That was all at that time. We parted, and I think Sir Robert Stout laughed; but whether it was at my simplicity or not I do not know.

97. When did you see him next, Mr. Hamill?—I did not again see him to speak to until I saw him in Wellington.

98. A month or two ago?—I cannot give the exact time.

99. It was since the trouble with Gray arose?—Yes.

100. What passed between you then?—We spoke on the street for a minute or two. We came back to that business again with reference to the concern below. Sir Robert told me that Mr. Gray would not do anything at all in the matter of settling—he would not come to a settlement. I asked him what he was going to do for me in the matter; and his answer was, "Nothing." He told me that Gray was responsible to me.

101. That Gray was responsible to you for your wages?—Yes. He also said that if I sued Gray he would assist me. I told him that that was nonsense: that Gray was only a "dummy." My authority for saying that was a paper called the *Otago Workman*. I pulled it out of my pocket and showed it to him. I had been away from the place when the work was re-started at the mine, and the only information that I had obtained had been from the papers. I was in the North Island when the trouble between Sir Robert Stout and Gray arose.

102. What did Sir Robert Stout say to it?—That was the end of the matter.

103. You say you have been working about ten years in this mine, Mr. Hamill?—Yes, if it was that time at work.

104. During that time, have the mine and the railway always been worked as one property?—Yes.

105. And always managed by the same management?—Yes.

106. And the wages for the men working on the line were paid along with those working in the mine—on the same pay-sheet?—Yes. [A telegram, dated 20th February, 1892, from Sir Robert Stout at Hastings, was here put in evidence.]

*Witness:* One thing I forgot to mention with reference to Sir Robert Stout: He asked me to take the matter out of Mr. Fraser's hands. That was after the first interview with Sir Robert Stout, when he said that he would see that I was paid.

107. *Mr. Macgregor.*] He knew that Mr. Fraser was acting for you?—I told him so.

108. You went to take it out of Mr. Fraser's hands?—Yes.

109. And paid his charges?—Yes.

110. Did you pay Mr. Fraser immediately after you saw Sir Robert Stout?—I told Mr. Fraser that a friend had advised me to settle up.

111. Did you settle up immediately after you saw Mr. Fraser?—Yes. [Mr. Fraser's receipt, dated April 28th, 1892, produced.]

112. *Hon. Sir R. Stout.*] At this second interview, when you mention about Fraser, did I not tell you that if the mine was transferred to anybody I would see that your wages were paid—that they would be a first charge on the transfer of the mine?—No.

113. When I told you that Allen was going to take the mine over, did I not tell you that it would be made a condition in his taking the mine that he would pay you?—I have told you what took place.

114. *The Chairman :* You can either answer Yes or No.

115. *Hon. Sir R. Stout.*] Did I not say that Mr. Allen was willing to take over the mine, and that I was willing to give him the first year of the railway for almost nothing—only a small sum for royalty?—In reference to Mr. Allen or Mr. Andrews?

116. Mr. Allen?—That was on the balcony at your office.

117. Did I not tell you that there were negotiations with Allen going on, for taking the mine over?—Yes.

118. And that Allen would give you bills?—Yes.

119. And in order to enable Allen to do that I was willing to forego part of the rent for the railway?—Yes.

120. The reason that I gave was that I did not want to see you and the others lose their wages?—Yes, it may have been.

121. Do you not remember at that second interview that I said I would see you paid before any other individual?—Of course, I understood that you were arranging with Andrew to get that done.

122. When I met you in Wellington, did I not tell you that Gray had seized the mine, and would not allow the transfer to Allen?—Yes, I believe you did.

123. And that I had thereby been prevented from getting a tenant for the railway, and could not get anything out of it?—Yes.

124. And that you had better sue Gray, as he had kept possession of the property?—No; not in those words.

125. Well, to that effect?—You may have had that meaning, but it did not convey itself to my mind.

126. That that was the reason why you should sue Gray?—You may have looked at it in that way.

127. About that dummy. Did I not tell you that as Gray has kept possession of the property, and thinks he is the owner, you had better sue him?—No; not that way.

128. Well, to that effect?—No.

129. Have you helped Gray to carry on the mine?—No.

130. You have not put any money into it?—No; not one shilling.

131. You have come to no arrangement with him?—No.

132. When Mr. Gray apparently took over this mine, did he make no arrangement with you about wages?—No.

133. *The Chairman.*] Was there any alteration in your position at all?—No. I was all along an ordinary workman on the railway-line. While Mr. J. Logan had the business everything went on well.

134. If this mine had turned out a success, should you then have looked to Gray for your wages?—I do not know really whom I had to look to.

135. *Mr. Moore* (to *Hon. Sir R. Stout*)] In reference to the statement made by Hamill that you offered to give cross bills in connection with the transaction with Allen?—I may have said that if Allen chose to give him bills I would have discounted them for him. I did not mention cross bills.

136. You did not intend to take the responsibility of paying the wages?

*Hon. Sir R. Stout :* Not at all. I very likely may have said that I would discount his bills. Allen was a man of fair means, and if he had given Hammill bills I would have met them and discounted them. Hamill wanted to go to San Francisco. Is that not so, Mr. Hamill?

*Witness :* Yes. I did intend to go there.

137. *Hon. Sir R. Stout.*] And if you had got Allen's bills I would have discounted them?—Yes.

138. *Mr. Valentine* (to *Hon. Sir R. Stout*)] You have stated in one part of your evidence that the railway was yours?—Only as mortgagee.

139. You were not responsible for the wages of any of the workmen?—No; I am only mortgagee, with my partner.

140. Hamill has said that he always looked to you for payment?—No. He came to me when the thing was closed.

HENRY HOWORTH, Solicitor, examined.

141. *The Chairman.*] Will you make a statement? I understand that your testimony was required with reference to the land itself?—I was solicitor for the railway company, and also a director in the company.

142. *Hon. Sir R. Stout.*] I think you had the main share in the negotiations?—It was almost entirely in my own hands.

143. Who were the owners in the freehold?—John and David Andrew.

144. Did the land belong to David Andrew, senior, or David Andrew, junior?—David Andrew, senior. It stood in David Andrew, junior's, name.

145. David Andrew, junior, says the land was given to him about Lonney's time?—Yes; the old man was guarantor for Lonney, and he passed this land to David for security. The father was always in possession of it, and his sheep ran on it. He had everything to do with it.

146. Is David Andrew, junior, correct if he says that his father had no sheep on it?—He is not correct.
147. You know a bit about this place?—Yes.
148. You lived there in former years?—Yes, for many years.
149. The first mode of haulage from the mine was by means of an aerial tramway?—Yes.
150. That connected with the railway, did it not?—Yes, at the Chain Hills Tunnel.
151. It cost a good deal of money?—Yes, a large sum. It was a very costly work.
152. Then you started to make a railway. Who provided the money?—The company. The Andrews were asked to contribute, but they did not, they gave their land.
153. Would you have made the railway if you had not got the land for nothing?—I think not. It required £5,000 more outlay for the railway. I think if there had been any proposition to buy the land it would have turned the scale against the construction of the railway altogether.
154. When did you leave Dunedin, Mr. Howorth?—About seven years ago.
155. Up to that time had you heard of any claim for the land by the Andrews?—No. I am quite surprised to hear that there has been a claim set up. I made the arrangements for the land. We had to satisfy the mortgagees that the land was our own. I believe there were letters or something of the kind from the Andrews, stating that there was no claim.
156. Did you see old Mr. Andrew on the subject?—Yes, often.
157. Who was his solicitor?—I can hardly tell you at this time.
158. The land was mortgaged, was it not?—Yes.
160. So far as you know, was there ever a claim made by the Andrews for the land on which the railway was constructed?—Never.
161. The water-race was taken through that land?—Yes.
162. Do you remember the Compensation Court sitting to determine David Andrew's claim? How much money was awarded to him?—I remember the Court sitting, but I cannot say at this moment how much the award was.
163. About £1,200?—I cannot say. It might have been.
164. The whole of the land of David Andrew was leased to Alves?—Yes.
165. Would the coal have been of any value without the railway?—No. But for the railway it would have been abandoned.
166. The railway worked the coal-mine?—Yes.
167. There was a dead-rent to Andrew?—Yes. I do not know of how much. Andrew, senior, always received it.
168. He treated it as his own land?—Yes; he often told me it was his when conversing about Lonney's trouble.
169. The promoters got nothing out of it?—No.
170. It was a great loss?—Yes.
171. How many thousands were lost?—About £10,000, besides the railway.
- 171A. *Mr. Macgregor.*] You were one of the promoters?—Yes.
172. The two Andrews and the other proprietors gave their land for nothing?—No; with the exception of the Andrews, the proprietors of the land were paid.
173. Who was acting for Andrew at this time; had he a solicitor?—I do not remember.
174. You do not remember that Sir Robert Stout acted for him?—No.
175. Andrew says that Sir Robert Stout acted for him, and, acting on his advice, he declined to complete the agreement?—It is a long time to remember; I could not say.
176. You cannot remember; then, if Andrew swears distinctly that the agreement was prepared by you, and that Sir Robert Stout advised him not to complete it, you could not contradict him?—It would confirm my opinion that the land was to be given for nothing, and, speaking from recollection, whatever document was required was completed.
177. Will you contradict Andrew's statement?—I do not think it is true.
178. He is a respectable settler?—Yes.
179. If his opinion and yours conflicted on that point, do you not think that he is right and not you?—No; I had to satisfy the mortgagees that the land was clear from cost.
180. Do you mean to say that the land was your property?—There is a Proclamation by the Governor.
181. Will you be surprised to find that the land still stands in the register in the name of David Andrew?—I cannot say whether the Proclamation has ever been registered.
182. You know that a petition was presented to the House in 1891, by James Gray, in connection with this railway?—Yes, I have heard of it slightly.
183. Would you be surprised to find that this is one of the clauses in this petition: "That the said company, to enable them to construct said branch railway, entered into an agreement with Messrs. Brown, Freeman, Sampson, D. Andrew, and J. Andrew, the owners of the freehold, for the purchase of the land required, and paid them about the sum of £850 for the same"?—I think he is wrong.
184. It paid you to get the railway made?—No.
185. You had a big bill of costs?—That is quite another matter.
186. Is it correct, as Mr. Andrew has stated, that he applied to you on several occasions for payment of his claim, and that you always put him off?—That is not correct.
187. Your memory may be at fault?—No.
188. Is Mr. Andrew telling an untruth when he says that he called on you and you put him off?—I think so. He never had a claim.
189. He says that you put him off?—I never put him off. He gave the land for nothing.
190. You say that the land was not his at all, that it was his father's land?—Yes, I say that.
191. You were his father's solicitor at the time of Lonney's trouble?—Mr. Barton, my partner, acted in Lonney's matter, in which he was interested.

192. You did not tell Andrew, senior, that he was guarantor for Lonney; and you let Mr. Andrew in for the responsibility?—I did not conduct all the affairs of the firm of Howorth, Barton, and Howorth. Mr. Barton attended to Lonney's business.

193. Mr. Andrew also swore on oath that his father's sheep were not running on this land—that he was in occupation?—I say it is not true; his father's sheep were there, and his father sheared them.

194. How do you know that?—His father told me.

195. When did Andrew, senior, die?—I cannot tell. I think it happened since I came up here, but I cannot be sure.

196. You left Dunedin in 1885?—Yes. I have had no occasion to think of these circumstances, since the time of their occurrence, to the present time.

197. Do you know where this came from? [Producing a type-written copy of an agreement.]—That reminds me of the memorandum that I drew up myself.

198. Where is that memorandum?—I do not know.

199. *Hon. Sir R. Stout.*] Were you in the colony when Lonney entered into a contract with the Provincial Government?—I was in England in 1886.

200. If Mr. Barton had anything to do with Lonney you had nothing to do with it?—No.

201. Then you had nothing to do with advising Lonney about Andrew's transactions?—Nothing.

202. You say, positively, that the railway would not have been completed if Andrew had demurred to give the land?—It would not have been gone on with.

203. Was the railway of any value but for improving Andrew's land?—Only that and, of course, the profits the company could make out of it.

204. Except for the coal, what was the land worth per acre?—About £5 per acre. It was very rough.

205. It was fern-hills, really?—Yes. It was very steep. There being no other grazing land in the district—and being near the town—a value was given to it it otherwise would not have had.

206. *Mr. Macgregor.*] And yet you gave Mr. Freeman £50 per acre for adjoining land for the same purpose?—That was for severance as well. There were two values—severance and land value, including coal under it.

207. There is nothing said about severance in the agreement?—Of course not, the law provides for it.

208. *Hon. Sir R. Stout.*] Was not Freeman's land flat?—Yes. It was a different class of land altogether. It was cultivated land, lying quite close to the Green Island Railway-station. Besides, there was coal in Mr. Freeman's land where he was working.

209. *Mr. Macgregor.*] Was that not also the case with Andrew's land?—Yes.

210. *The Chairman.*] Was this deed under draft agreement in evidence ever made out for these part sections?—I do not think so.

211. Did this clause 2, in reference to mining, include taking out any ballast from Andrew's land?—We had the right to mine for gravel.

212. *Mr. Macgregor* here quoted from *Hansard* page 117.

213. *Mr. Lake.*] During the time you were connected with the line, was there a mortgage with a mortgage association?—Yes, for £5,000.

214. Would it be likely that the company would have advanced the money but for the assurance that the land was the company's?—We had to satisfy the mortgagee that the Andrews gave the land for the railway, and I presume they were satisfied.

215. Does the mortgage still exist?—I do not know.

*Hon. Sir R. Stout:* It was bought by Logan. It is still registered.

216. *Mr. Moore.*] If there was any agreement between the company and Andrew I presume it would have to be registered?—The railway was made under the statute, and by virtue of the provisions of the Public Works Act; whatever was necessary the Government did. I believe there was a Proclamation about taking the land. I am not aware whether it was registered or not.

217. The Government made the line?—The money was paid into the Treasury by the company, and the Government made the line.

218. *The Chairman.*] Were the Andrews amongst the promoters?—Yes.

219. *Mr. Macgregor.*] The Andrews surely were not promoters?—Yes; they were. They signed that agreement.

*Mr. Macgregor* pointed out that the agreement was one between the Andrews and the promoters.

220. *The Chairman.*] Was David Andrew one of the promoters of the company?—I am not sure.

221. *Mr. Lake.*] Can you give me any idea of the date about which that mortgage was registered?—I cannot give you the exact date; I think it was in 1882.

222. And, whatever date it is registered at, it mortgaged the line as well as the mine?—Yes.

223. *Mr. Moore.*] You say Andrew got a certain amount of money in the shape of compensation for a water-race taken through his land leased to the company?—Yes, certainly.

224. I want to know whether the company also got compensation?—Yes; they got about £2,700. It was mainly for the coal taken; David Andrew for the land, and loss of royalty.

225. The water damaged the mine as well as the surface?—Yes; a large area being required for lateral support.

FRIDAY, 15TH SEPTEMBER, 1893.

Mr. J. P. MAXWELL, Railway Commissioner, examined.

1. *The Chairman.*] The report that we have had from your department, Mr. Maxwell, is, so far, conclusive; but the Committee wish to know if you can give any further information relative to taking over the land in the first instance?—About taking over the land? No; I do not know. I think the report contains all I can say about it. The line was constructed by the Public Works Department, and I have only hearsay evidence about it. This is the evidence, which I will read:—

“The Fernhill coal-line was constructed under the powers of the Public Works Act, which were improperly exercised in this respect for a private railway. The Fernhill Company paid the Government for making the line. The Government Railways Department has always worked the line from the first opening. By reason of “The Government Railways Act, 1887,” the line became vested in the Railway Commissioners in common with other railways constructed under the Public Works Act. For some time the coal-mines were closed, and the line was then no longer worked by the Government railway authorities. In February last, the Commissioners received intimation from their local officer that the mines were to re-open, and asked instructions as to working, which were duly given. It was subsequently found that a Mr. Gray, who had started working the mine, was interfering with the line by running trollies upon it, and in other ways. As the line was vested in the Commissioners, they could not allow this interference, and, after considerable trouble with Mr. Gray, they prosecuted him in the Resident Magistrate’s Court, and he was fined £3 and costs. It was proved at this prosecution that the railway vested in the Commissioners, and they are, therefore, responsible for its proper control and working.

“The account given in the petition—clause 26—that the Railway Commissioners’ action arose from communications from Sir Robert Stout, is incorrect. The incident arose from Mr. Gray’s having started to run trollies on the railway, and to operate upon it in other ways, which, as it is vested in the Commissioners, could not be permitted.

“The Commissioners consider the situation eminently unsatisfactory. They think that they should be divested of the line outside the limits proper of the main line of the Government railway, and that it ought to vest absolutely in the persons who are equitably entitled to it, and they have advised the Government to that effect; but who the parties are who are entitled to it the Commissioners do not know. It is most undesirable that the colony should purchase the line, or be in any way responsible for its control or working. The General Manager of railways protested against the objectionable legal status of this line so far back as 1883.

“The Commissioners hope that the proper legislation may be passed removing this line from the category of Government Railways.”

All this information has been obtained from documents from time to time. I do not know it absolutely from my own knowledge. The Railway Commissioners have always worked the line from the time of their appointment. The Fernhill Company expected the Government to work the line. I gathered at the time that the railway was constructed in order that the Government might work it, and one of the reasons for the Public Works Act was that the Government should have the necessary powers for working it. It was not a reasonable thing for the Government to do, for it merely had the effect of causing expense to the Government to get traffic from this line, which they had before without this expense. The company previously brought their traffic to the Government railway-line and put it on the trucks there at its own cost. After the line was constructed, the Government had to go to the mine and get the coal, which was an extra expense, and which was unsatisfactory. The Government continued to work the line in this way for several years, running their trucks and locomotives up to the mine; and the line was not a useful possession. I do not profess to be able to give an opinion as to how the property was vested at first; but when the Government Railways Act came into operation, then there was no doubt as to how the line then became vested. The Commissioners had to take it, and were responsible for everything that took place upon it. They have worked it since they took office. It is merely a coal siding. There is no other traffic upon it. As is stated in the report, early in the year, the coal-mine having been shut up, some one communicated to the local traffic manager that they wanted to work the mine again. The traffic manager applied for instructions, and we gave them. We put the line in order at a cost of £200, or a little more. We had some difficulty with Mr. Gray, whom we found working upon the line. He was not authorised to work upon it, and we had to turn him off and prosecute him. That is the whole account that I have to give of it.

2. *The Chairman.*] Could you inform the Committee who issued the instructions to construct the line in the first instance?—No. It would be between the late Mr. Blair and the Minister for Public Works of the day. Who that Minister happened to be I do not remember now. Mr. Blair was the officer engaged in dealing with this business at the time.

3. When the Act came into force, did any one make a claim to the Commissioners for compensation or right in this line?—No; we have had no questions raised about the working of the line until February last.

4. Can you tell the Committee what amount has been spent on the line for the recent repairs?—A little over £200. That has been spent since January last.

5. Can you tell the Committee about what amount the line realises per month in rates?—No; we can assign no fair amount of revenue to the line. The market for the coal is Dunedin, and within a certain range we charge 1s. 9d. per ton—namely, ten miles. The Government did not get any more for working this line, and that is what I mean by saying we were put to additional expense; for, formerly, the railways got this traffic put on the railway, and charged the same rate.

6. This mine, then, is within ten miles of Dunedin?—Yes; it is only about five or six miles distant from the town.

7. *Mr. Moore.*] The land having been taken, you mean, under the Public Works Act?—Yes.



8. You know nothing about the company's purchasing the land, or the title?—No. By the Railways Act the line has become vested in the Commissioners. Before that came into force no land had been taken, and there was great doubt as to how matters stood.

9. But the Commissioners taking the land over under the Act clears matters up?—The Government Railways Act definitely settled the point.

10. *The Chairman.*] That gave you power to prosecute Gray for using the line without authority?—Yes.

11. *Mr. Valentine.*] That gave you the title to the land?—Yes.

12. *Mr. Lake.*] Have any claims for ballast taken for this line ever been made to the Commissioners?—Not to my knowledge.

13. Have any claims been made on the Government, since the Proclamation was issued under section 10 of the Act of 1889?—I have a general recollection of the clause you refer to; no claim has been made on account of this line.

14. In this case part of the claim is for compensation for making the line. In section 10 of "The Public Works Act, 1889," it says that any claims for compensation must be made within two years after the coming in of that Act; and any claims now put in would be of no avail, as the Act came into operation?—That is so.

15. *Mr. Moore.*] This land has now really been taken by the Commissioners, but the owner of the property claimed against them for compensation?—I do not think the owners had anything to do with it. The Queen undertook to make the line, and any one with a claim about the land should have made it against the Queen. That is my impression.

16. *Mr. Lake.*] You came into power in 1887?—I am not at all sure that claims might not have been made about the line during 1881 to the Public Works Department. I will inquire about it and inform the Committee if there is anything on that point.

17. *The Chairman.*] Have you been taking the ballast to repair the line from the same place that the company took it from?—I cannot say.

18. We have a claim for taking ballast from part of this land, from Mr. Andrew?—I do not know anything about where the ballast for this line has been obtained.

19. *Mr. Valentine.*] During the evidence it has been stated; in fact, there is a certain portion of the claim for maintenance of the railway by Hamill, who had been a surfaceman. He lays a claim against some one or other. Surely if the railway came into your possession under the Act of 1887 you ought to have been responsible for the maintenance of the railway since that time?—I think we had a claim for wages from some one.

20. Could any one go and maintain that line without authority, as Hamill did?—No one had any right to.

21. You never engaged Hamill?—No.

22. If he has maintained the line all this time, you are not responsible?—He has done it without our authority, or the Commissioners' knowledge. Whether he has done it without the knowledge or instructions of any of our men I cannot say.

23. You have said that all along the line has been the property of the Crown, that it was constructed under the Public Works Act?—It is my impression that it has been the property of the Crown all along; but I said the question was a doubtful one. It is a legal question that I do not understand.

24. If it had been the property of the Crown, the Fernhill Company need not have maintained it all these years?—No; but they did do so.

25. Therefore, even that Fernhill Colliery Company would have a considerable claim against the Crown for the maintenance of the railway?—I am not sure about that.

26. If they maintained it with the cognisance of the Government, the inference that I would draw would be that the railway did not belong to the Government, but to the Fernhill Railway Company?—I do not know. I was merely an officer of the Government at the time, and the whole thing to me was in a fog. I was told that the line had to be worked by the Government.

27. *Mr. Earnshaw.*] This Mr. Hamill, who has been platelaying and surfacing on the line in question, while he was employed by the mine company yet he was really working on Government works; and, as the mine-owners practically refused to pay his wages, do you not think he has got a good claim in equity for really maintaining the works of the Railway Commissioners, although not primarily employed by them? He has been working all the time for you, although not employed by you?—Yes; I individually am inclined to believe that he has a claim, provided, of course, that he has done good work. It would, however, have to be investigated by my colleagues before we could give a final decision upon it.

28. *The Chairman.*] It could only be a claim in equity?—Yes.

29. *Mr. Valentine.*] Could any one, in your opinion, hold a mortgage over this property?—I cannot give an opinion. It is a legal question, and I do not know enough about the law to give an answer to that question.

30. This railway, you have stated on your oath, belongs to you and the Crown?—To the Commissioners.

31. You have not given a mortgage over it?—No.

32. Then, if you have not given a mortgage over it, no one else could have done so?—I should not think so.

33. *Mr. Macgregor.*] If you are told, Mr Maxwell, that Hamill has kept the line in repair, would that satisfy you that he has done *bonâ fide* work on the line? I should say that this would be part of the evidence necessary. The Commissioners will have this matter investigated. I think some of our local officers were not aware of the change that took place when the Railways Act came into operation; and the Commissioners, until their attention was more especially drawn to

this railway, did not realise that the Fernhill Railway became absolutely their property. There was a time when it is doubtful what was going on; so long as we saw the line in good order we were satisfied.

34. You say there was no Proclamation taking this line in the first instance, Mr. Maxwell?—So I have been told.

35. This line was always used exclusively for the purpose of working the coal-mine?—Yes.

36. The result of the Shag Point decision that was spoken of was that the legal ownership was vested in the Railway Commissioners. As a result of the legislation on the subject the Act of 1881 was brought in?—The dealings with the Shag Point line drew the Commissioners' attention to the position of the Fernhill line.

37. Have you read the decision in the Shag Point case?—Yes. The Shag Point Railway is in a different position to the Fernhill. The clause in the Act for the Shag Point Railway provides that the line was to be worked subject to an agreement between the Minister and the Shag Point Company. That materially alters things. With the Fernhill Company that is not so.

38. Then, as to Andrew's claim: you say there has been no claim made. Is it not a fact that Andrew has been in direct communication on the matter?—About the line?

39. Yes?—I do not know. I am not aware that he has done so.

40. *Mr. Lake.*] Of course, Mr. Maxwell, you are aware that the Shag Point line is constructed under a different Act—that of 1878—so that the decision on the Shag Point line does not necessarily apply to the Fernhill?—They are on "all-fours." The Commissioners could only work the Shag Point with the agreement of the Shag Point Company. There is no restriction in the Fernhill.

41. You cannot work it without arranging with them?—That is so. In some other cases, where the Government has used this Public Works Act to carry out private works of this nature, there has been put into the Act a provision that the work when completed should revert to the people who paid the money for it. A case in the Auckland District occurred, and when the line was finished it went over to the people to whom it should rightly belong, and that should have been done in this instance.

42. Was this Act of 1881 the same as that under which the Manawatu Railway was constructed?—No. The Manawatu Railway was constructed under the Railways Construction Act.

43. We have it stated in evidence that £500 was spent recently on this line; you say it was £200?—I think that a little over £200 has been spent since January last in ordinary maintenance of the line, in keeping it in order.

44. *The Chairman.*] Are the Committee to understand, Mr. Maxwell, that you had no legal or equitable right in this line until the Railways Act was passed in 1887?—That I am not clear about. I have never been able to get a satisfactory understanding about the case as to who the line vested in.

45. From your report, evidently the Commissioners consider they are not the rightful owners?—We consider we are legally the owners, but not equitably. We think that the line ought to go to the representatives of the people who paid for its construction, subject to legal claims.

46. *Mr. Moore:* Mr. Earnshaw stated that the Fernhill Company declined to pay the claim of Hamill?

*Mr. Earnshaw:* I do not think the company declined it. They were in financial difficulties, and were unable to pay.

*Mr. Macgregor:* They have never declined to pay; they have always recognised the claim.

47. *The Chairman.*] How long is it since the Commissioners made the last arrangement with Gray?—I am not aware that we have made any arrangements with Gray. You mean as for bringing coal from the mine: that would be in the month of February last—some time in the beginning of the year, any way.

48. *Mr. Earnshaw.*] I suppose that if Mr. Andrew really laid any claim to that land you would resist him in point of law. You claim the land as yours?—Yes; the land is undoubtedly the Commissioners—some of the land, I do not know how much it is.

49. All the land the line is on is yours?—Yes; all the land that the line occupies. A small portion of the line has been constructed on Government land.

50. *Mr. Lake.*] Is there in the department any application by the mortgagee as to this Proclamation? We have it brought out that this line was under mortgage at the time that the Proclamation was made?—There would not be in the Railway Department; if there was anything of the kind it would be in the Public Works Department.

51. *Mr. E. M. Smith.*] They could not work the mine at all until the Government Commissioners stepped in?—I do not think that is so. The people who had the mine could bring their coal down to the Government Railway-station the same as other coal companies do.

52. *Mr. Lake.*] In fact, it is a line of the Government's—the land with the line?—It is an unnecessary expense to the Government.

53. *Mr. Valentine.*] Have you looked at the new Bill for the purpose of vesting these lines?—I have read it over, it is not a satisfactory Bill. The proper persons to vest the line in would be the legal representatives of the people who constructed it, and not those whom the Act describes as owners, as the Commissioners are the owners.

54. *The Chairman.*] Does it not say that the title of the equitable owners shall be ascertained by application to the Supreme Court?—That is like going in a circle. The owners are the Railway Commissioners.

55. *Mr. Valentine.*] All you want is to get rid of it, and put it on the equitable owners, whoever they may be?—Yes; on the persons who are equitably entitled to it.

*Supplementary Information furnished at the request of the Committee.*

The line was proclaimed in *Gazette* No. 50, of the 25th May, 1882, page 762, "to construct and maintain."

A Mr. Hamill called at the Commissioner's office, in April, about a claim for wages, but nothing was known of such claim.

The Commissioners authorised the Traffic Manager to arrange to bring down coal from the mine on the 3rd February last, and arrangements were completed in April.

It is known to one of the local officers that Hamill worked on the line prior to April last, and maintained it in order.

Ten trucks of sand were bought from Mr. Gray, but I cannot ascertain that any ballast has been taken from Mr. Andrew's land.

On consulting my colleagues with regard to Hamill's claim, they are inclined to think that they could not recognise it.

*Documentary Evidence of Mr. W. C. McGregor.*

Extracts from examination, on oath, of Mr. A. H. Logan, before the Official Assignee, at Dunedin, in the matter of his bankruptcy, at meetings dated the 28th February and the 6th March, 1889:—

"The bankrupt, examined on oath, stated as follows: 'I have been in business as a collier for about three years. I have no assets, except a property at Herne Bay. . . . In May, 1887, I purchased everything connected with the Fernhill Company, including the office, furniture, plant, leases, &c., from my father for £500. There is an agreement in writing to that effect. Everything that I bought has been sold by Sir Robert Stout, on the 1st February last, to Mr. Gray. . . . I had been financing with Mr. Toomey and Mr. D. D. Macdonald for some time since about last August or September—about £60 a month—and on every occasion I gave them security. The orders on different customers I gave to Mr. Macdonald. . . . I also received £65 from Mr. Hodge in September of last year—not a cheque. I have no household furniture or any other property. . . . I paid no cash when I purchased from my father. I had, however, money of my own—namely, a few pounds. I could always get money to carry on (borrowing it). I had been getting £4 a week, for a year or so, in the office connected with the mine. I did not know exactly what I had. I was then living with my parents. I am a married man with a family. I was latterly paying Mr. Gray £3 10s. per week as mine-manager. I am at present keeping the books in the office, temporarily, under no particular agreement.'"

"*The Deputy Official Assignee.*] Has the moneys borrowed from Messrs. Toomey and D. D. Macdonald gone to pay wages, railage, and other expenses in connection with the working of the mine?—Yes."

Hon. Sir ROBERT STOUT examined.

*Hon. Sir R. Stout:* Some of the remarks I will make, Mr. Chairman, must necessarily be of documents that have not come under my personal observation. I wish it to be understood that I will have to refer to documents that I did not see signed, &c. The following are shortly the facts of the case, so far as I know about it. The leases of two separate pieces of land were taken at Fernhill. One piece, I understand, belonged to D. Andrew, senior, who transferred it to his son of the same name, in consequence of his having become guarantor for his son-in-law.

*Mr. Macgregor:* I object to this evidence. Sir Robert does not know that of his own personal knowledge.

*The Chairman:* I must rule, Sir Robert, that that evidence is not admissible.

*Hon. Sir R. Stout:* David Andrew, senior, treated the land as his own, and I know of my own knowledge also that D. Andrew, senior, was the person who negotiated for the lease with Alves. I was well acquainted with the late David Andrew, senior. A piece of land was leased to John Alves. There was also another piece of land leased by John Andrew, brother to David Andrew the petitioner; and these two pieces of land were ultimately transferred to the Fernhill Railway and Coal Company (Limited). A large sum of money had been spent in making an aerial tramway to connect the coal-measures with the Southern Railway between Dunedin and the Taieri. It was found afterwards that that tramway did not pay. I think that the aerial tramway was made before the company was formed. It was made by a private company. A company was then formed called the Fernhill Railway and Coal Company (Limited). That company was registered, Mr. John Andrew taking 250 shares. The railway was constructed under the authority of Parliament. The money for the railway was found by the company—none of it was found by the Crown. There were some owners of land between the Fernhill and the railway-station who were not interested in the coal-measures at all. There was Mr. Freeman, Mr. Brown, and, I think, Mr. Sampson. I am not certain of him, but I think so; and the land was purchased from them in order that the line might be made across their land. There was a part of the railway which went across John Andrew's land, and that land was given by him to the Railway Company for nothing. The railway was constructed by the Government, and worked by the company—not by the Government. That is, the Government engines ran over it, but the maintenance was done entirely by the company—not by the department. So far as I know, the Government Department and Railway Commissioners never spent a shilling on the railway until this year, when they took possession of the line at Fernhill, in order to allow Mr. Gray to work his coal, and they spent about £200 in making the line fit for traffic. Now, I want to show the Committee my connection with the matter. The company borrowed money from a mortgage company in Dunedin, £5,000, on debentures of the company. [Mortgage produced.] This was borrowed in 1882. In order to help the company to get the money, Mr. Logan, Mr. Howorth, and Mr. Alves, became security for that £5,000. [Bond produced.] To

pay this bond, Mr. Howorth had nothing, and Mr. Alves had nothing either, after a while, because they both lost their money in this railway. The Railway Company lost a great deal of money—they must not have lost less than £30,000—and Mr. Logan gave security over his private property to this mortgage association to secure this £5,000. The company practically came to grief, and the line was lying without anything being done to it; and, seeing that Mr. John Logan had £5,000 liability on it, the question was, "What was to be done with the railway and mine?" The company was not going to work it further, and it was agreed that I should buy out the interest of the mortgage association in the concern. That took a lot of negotiation, and when it was ultimately settled I was not in Dunedin. The company wanted to give up its right over the property for £500, and my firm advanced that sum, and got the mortgage from Mr. Logan. The company assigned, ultimately, to Mr. Logan the whole affair for £483 16s. 6d., and that was practically the money I had advanced to Mr. Logan, which went in that direction. [Assignment produced.] I may say that Mr. J. Logan entered into an agreement in 1886 with Mr. Eaton and Mr. A. H. Logan to work the mine. Mr. Eaton afterwards retired from it, and did not longer work the mine. The fact was the mine never has paid, and never will pay. It has only lost money to everyone who has touched it. As far as I was concerned, after my money was secured, I was willing to sell my interest to Mr. A. H. Logan. Mr. Logan began to work it, and he had, I think, a Mr. Shaw as manager, and, latterly, Mr. Gray. He worked it down to the time of its being flooded by the breaking-away of the Dunedin Water-race, which utterly ruined the mine. It filled the mine with water, and ruined the whole concern. He consulted us as solicitors, and we also saw expert witnesses, and they were all clearly of opinion that there was a good case against the Corporation; and that it had been their fault that the occurrence had happened. A lawsuit was instituted in the Supreme Court at Dunedin, and Judge Williams held that there was not sufficient evidence to show that the cracks which caused the water to flood the mine were caused by the race, and they might have been made by the mining. On this account, Mr. Logan accordingly lost his suit. Mr. David Andrew, jun., through a little bit of whose land the race went, came upon the Corporation for damages for the race passing through it. He was awarded £900 as damages for the race passing through his land. I appeared in the case in the Court; and it was perfectly clear that he would never have got a cent but for the existence of the railway, for otherwise the coal was valueless, and he got the damages for injury to the coal. I may also say, of my own knowledge, that land similar to this was sold at from £4 to £5 per acre, and that this land was practically valueless for any purpose except for grazing. It was no use whatever for agriculture or residence. So far as the coal was concerned, it was of no value unless there was some railway to carry it away. The position was this: so far as the railway and coal-mine was concerned, I had no objection to any one getting it so long as my money was paid. I saw now that this coal-mine and railway were not worth, after Mr. Logan's suit was lost, more than the money lent on them. There was other money due in addition to that due to me. An arrangement was suggested to me that Mr. Toomey should take over the mine and railway and be responsible to me, and that the mine was to be worked by Mr. Toomey and Mr. Logan. When I came back from somewhere—Invercargill, I think—I had a document presented to me to sign with Gray's name in instead of Toomey's, and at first I objected to sign it. So far as I recollect, I never saw Mr. Gray on the matter. I do not mean to say that I did not see him; but he said that I told him he was to take this as security for his wages. I never said any such thing to him. The terms on which I was willing to give up the thing are in the agreement. [Agreement here read.] It was understood that when Mr. A. H. Logan got through the Bankruptcy Court he was to have the management of the mine; and he was, if he could, to pay me something for or towards the money I had advanced. He obtained work in this way for the men who were otherwise thrown out of employment. It was never understood that Mr. Gray was to pay me in money. I was not aware until lately—of course I never had the agreement in my possession—that the railway was not included in this agreement. At the time I would have included the railway in the agreement had I been asked; but I was not asked, and I did not peruse the agreement. It was handed to me for my signature, and prepared by Mr. D. D. Macdonald. Well, they went on working the railway, and, instead of the concern paying, it went to the bad yearly. I advanced considerable sums of money to help it. Altogether, besides the money given on mortgage, I had advanced to help them more than £1,000. Instead of my getting money out of it, it is that much to the bad with me. This thing went on for a little over two years—till 1891—when they required more money, and I declined to give any. I wished the thing to be put on a different footing. I declined to make any more advances. Then Mr. Gray said he would give it over if his wages were paid. I said I would not undertake to pay his wages. A lot of negotiations took place, through Mr. Fraser. I wished Mr. D. Andrew to take it over; and, ultimately, I found a Mr. Allen, of Port Chalmers, who was prepared to take up the lease, and he agreed to do this. He agreed to keep Mr. Gray and Mr. Hamill on as employes, and he also agreed, if the thing could pay—and he could work it in with his brick-making and other businesses—he was to repay Mr. Gray and Mr. Hamill the wages that were overdue to them, on condition that I would only charge £75 a year for the use of the railway. He agreed to that, and an agreement was all but come to. Mr. Haggitt acted in the matter for the owner, and he advised Mr. Andrew to sign. Mr. Andrew then made a condition, that I should get Mr. Gray to surrender the coal-lease. I declined, and then the thing stuck. I was not aware until lately that Mr. Gray and Mr. Andrew had some understanding. Mr. Gray kept possession of the mine, and since then has worked it. He now claims that he is entitled to keep possession, and has kept possession of some £400 or £500 worth of plant, and which he now has possession of. I never was interested in the mine, in carrying it on at all; I never undertook to pay Mr. Gray and Mr. Hamill their wages, nor was I ever indebted to them. If Mr. Allen took over the mine, I would endeavour to get his wages paid for him, I told Mr. Hamill that. I would have been glad to help him as much as I could, but he has no right to claim them from me. I never agreed to pay Mr. Toomey the sum he

has paid of the overdraft. I never saw him on the subject until after the bank took the matter up. £250 was the amount of the overdraft. Logan asked me if I would secure the bank, and I said I would not unless he got some of his friends to take a share. He got Mr. D. D. Macdonald and Mr. Toomey to assist him. I agreed to become liable for £150, if they became liable for £100. I paid my money, and I understand Mr. Macdonald has paid his £50. Mr. Toomey declined to pay his £50, saying I promised to indemnify him. I had never done any such thing, nor told any one that I would do it. As to his cheque, I know nothing about it. That is all about that. There are a lot of statements made by them that I would have liked to deal with, but I do not remember all the statements that were made. So far as I know there has been no conveyance to Mr. David Andrew of the land of the coal company. That is not necessary. Under section 10 of the Public Works Act of 1887, the land becomes vested in the Queen. If he had any claim for compensation he could have made it within two years. He made no such claim. I never heard of a claim by Mr. Andrew for compensation for the land until I heard him make it before this Committee. He never asked me for compensation for the land, and never suggested that he had any claim over the land. He knew very well that the railway was made for their interests more than for anybody else's.

56. *Mr. Macgregor.* You know that both Andrew and Hamill are honest men?—Yes, as far as I know.

57. Andrew is a highly-respected man?—He is just an ordinary settler.

58. Do you think he would come here and make a deliberate misstatement?—In what way?

59. He says he went to Howorth?—I do not believe it.

60. That he also applied to A. H. Logan?—Mr. Logan will tell you about that. I do not believe that he applied to Howorth, or I would have heard about it. I was solicitor for him in that transaction in getting compensation. Our firm perused the lease of Alves. I never heard of any suggestion that he had a claim over the railway.

61. You heard him say that you advised him not to sign the document, agreeing to give the land for nothing?—I never had any agreement to that effect.

62. If Mr. Andrew swears distinctly that you did advise him, will you contradict him?—I have no recollection of it.

63. Mr. Andrew has distinctly said that you advised him not to sign the document?—I may have done it, but I have no recollection of it. I know when the railway was constructed, and that it would never have been constructed if the Andrews had not assisted.

64. Hamill, you say, is an honest man?—Yes.

65. You have heard the account of the conversation he had with you, and said you would see his wages paid?—If he adds, "If Allen took the mine," he is quite correct. I can say this, that I never promised Hamill to pay him his wages. I said that if the mine was leased to anybody I would see that his wages were paid; and I was willing to postpone my royalty for a year from the line until his wages were paid. I deny that I promised unconditionally to pay his wages. He has mixed the matter up.

66. Is it true that you told him in Wellington to sue Gray for his wages?—Not in that form. I will explain what occurred. He met me in the street, and asked me about his wages. I told him that Gray had kept possession of the mine, was working it, and treating it as his own; and that he had taken all the plant, worth several hundreds of pounds. As he had treated the whole mine as his own, he was the proper person to sue, and he ought to sue him, and I would give him every assistance I could.

67. You were anxious to get Gray out of the mine?—No; I offer now that if Gray will pay me a moderate royalty I will give him the railway for as long as he likes.

68. You agreed to sell him the railway?—Yes; and to Andrew too.

69. It should have been connected in this agreement?—No. I would have signed it if it had been there.

70. Was it not part of the arrangement that you spoke of that the mine and the line should be connected in the one bargain?—No. Mr. Logan came to me, and he said that Mr. Toomey was willing to take the whole thing over. Mr. Toomey was a man of means, and I was glad, and I said I would include the whole thing in it.

71. The whole thing was to include the mine and the line?—Yes; I am willing to do it now.

72. You were surprised to find out that the mine and the line had not been included?—Yes. I thought it was included until 1891 or 1892, when I discovered it.

73. After you found that out you did what you could to get Mr. Gray out of the mine?—Certainly. I found that Gray was keeping me and everyone else out of the thing.

74. Did you agree to sell it to him?—No. No; there could be no moral or equitable agreement with a man whom I never spoke to on the subject.

75. And you did not see that the railway was not included in it?—I paid no attention to it.

76. You were under the impression that Gray had agreed to buy both the mine and the railway-line?—Yes.

77. You remained under that impression until 1891 or 1892?—Yes, that is so.

78. And, of course, you were under that impression when you perused that petition to the House which Gray has spoken of in 1891?—I was.

79. In which the mine is referred to as Gray's private property?—Yes.

80. And in which you inserted Gray's name, with your own hand, as having the right to purchase?—Yes. It was not until the disputes began that I found out the true state of affairs.

81. Then, you made several efforts to get Gray evicted?—No; I never made the slightest effort. I said that Andrew should evict him. I told Andrew we had got a tenant for the mine, who was a responsible man. We had got a tenant for the railway. Hamill was provided for, but Gray would not come out.

82. You tried to get Andrew to put him out?—Certainly; it was his duty. And if you ask Mr. Haggitt about it, he will tell you that he advised Mr. Andrew to put Gray out.

83. Then you presented the petition? It was presented with your concurrence—in 1891?—Yes.

84. You knew what its contents were?—Yes. I was quite willing that Gray should get what was sought for in the petition. All I wanted was my money.

85. At the time you transferred this to Gray what was the object in transferring?—In order that the mine might be worked.

86. Was the mine not being worked at the time?—It was being worked, but Mr. A. H. Logan was bankrupt.

87. What was the object in transferring it: was it not to keep it from Logan's creditors?—No. The only creditors in Logan's case were the costs of the lawsuit. I knew of no other. They were all connected with the mine.

88. And yet a fortnight before you assigned it over to Gray?—No. I tell you now that if the Official Assignee had wanted it he could have got it.

89. What was the object of putting it into Gray's name a fortnight before the bankruptcy?—I understood that Mr. Toomey was going to take the mine.

90. We were told that the management of the mine continued exactly the same after Logan's bankruptcy as it was before?—It was carried on, but no money came in. The creditors were deprived of nothing. If it had been put up for auction it would not have brought sixpence. The creditors were all aware of what was done. It was told at the creditors' meetings at the time. They knew of the agreement with Gray, and they passed a resolution that Logan should be discharged, and that he had been badly treated by the Corporation. The whole thing had been wrong. Mr. Denniston was of opinion that he was bound to win the case, and it was brought almost entirely on Mr. Denniston's advice.

91. About this £500 that you paid to Mr. John Logan on the security of the mine and railway line: you say that that money?—Went to the New Zealand Mortgage Association.

92. To pay this £483 16s. 6d.?—Yes, that is so.

93. The money was paid in 1887 and the conveyance not made until 1889?—I was away from home when the money was advanced. It was advanced by my partner, Mr. Mondy.

94. The mortgage is to the firm of Stout and Mondy: how did you come to sell the mine to James Gray in your own name?—When the money was first advanced the money was to come out of the funds belonging to us in the office. Afterwards, as the security seemed to me risky, I was in great doubt and I took the whole responsibility myself, and relieved my partner of any amount.

95. Was that how, at the time you sold, you were sole mortgagee?—I am that now. I took the responsibility.

96. You told us about Andrew's matter. You were acting for Andrew as his solicitor originally. I mean the matter about selling the land for the railway?—I never was consulted by Andrew at the time the railway was constructed. I will not say that he did not speak to me about some agreement and not signing it, but I have no recollection. But if he makes a statement to this effect: that he ever said to me that he claimed from me, or from any person for whom I was acting, compensation for the land on which the railway runs, he is wrong. I do not know what was in the agreement. I cannot remember the nature of the agreements that came before me.

97. You made a statement that John Andrew took shares. You do not know that David Andrew did?—Not to my knowledge.

98. You have heard it stated that Mr. Gray was acting as your "dummy" in the matter?—It is absolutely untrue. I never carried it on, and never had any interest in carrying it on.

99. Why did you advance the money?—I was always hoping against hope to get my money back.

100. You indorsed a great many bills too, did you not?—I indorsed bills to help them in carrying on the mine, and paid bills, too. I only say this: that I consider I have been very badly treated; that I have been the person who lost the money. I am willing to come to any settlement now, to help any one to take this railway. The workmen have been kept on.

101. What about Gray?—I consider Gray is very much to blame for the whole thing collapsing. If Gray had managed the thing better, I think it might have been made to pay the wages and a small royalty.

102. You have heard what Gray said about your telling him that he was surely getting frightened for his wages: he had the mine and railway to look to?—I never said any such thing, or that I advised him to take the mine for security.

103. Why was the agreement made?—Simply to allow the thing to be carried on. Every one knew that there was nothing in it.

104. Had Mr. A. H. Logan ever possession of this mine?—Under the original agreement I think he had.

105. I find in *Hansard* that you said, "Never to my knowledge had Logan possession of it"?—That is so. He had the same right with Gray. It did not belong to A. H. Logan. He had nothing to do with it. He only had a right with Gray.

106. Has this mine ever belonged to you?—No; except as mortgagee.

107. Are you owner of the line?—The word "owner" is used in two or three senses. The Queen held it in trust for those persons equitably entitled to it, and I am entitled to it until I get my money paid.

108. Who is the equitable owner?—I say I am the equitable owner until my mortgage is paid.

109. Who is the equitable owner?—Mr. J. Logan is the mortgagee.

110. Have you made a search for the bills?—No.

111. Did you ever intend them to be paid?—Certainly. If the Government had chosen to pay the actual price for the land and rails, the whole cost of the construction was to be given up.

112. The question is whether you expected Gray to pay those bills?—I knew that Gray could never pay those bills unless he got some one else to go in with him.

113. Supposing Toomey had taken this affair?—Then I would have expected him to pay.

114. Did you not get the bills?—If I did, they never were paid.

115. Did you not set them off against Gray's wages?—No.

116. Now you say you are the owner of the mine?—Logan bought the rights from the Mortgage Company—I lent him the money.

117. At the time you sold, or proposed to sell, to Mr. Gray, did you sell under power of sale in your mortgage?—I agreed, and Mrs. Logan also consented.

118. Were you selling as mortgagee?—I was selling as acting for the mortgagee, and Mrs. Logan as second mortgagee.

119. Had you taken possession under your mortgage powers, then?—I was never in possession of either the line or the mine.

120. Then who is the equitable owner of the line now?—Well, the equitable owner in the first place is Mr. J. Logan, then I come as holding the mortgage, and then comes Mrs. Logan.

121. You have cut these out by selling their mortgage?—Oh, no!

122. *Mr. Lake.*] As I understood, your claim as mortgagee is simply through having purchased the interest from the Mortgage Association?—No; Mr. Logan bought it.

123. The rights that have come from that purchase, then: how was it that neither you nor Mr. Logan made any claim under the 167th section of this Act for non-payment of the mortgage? The money you stated was borrowed on debentures of the company?—The Fernhill Railway was not constructed under this Act at all; it was constructed under the Public Works Act. The only railways constructed under that Act are the Kaihu-Dargaville, Wellington-Manawatu, and West Coast.

124. You stated that this line was sold to Mr. Logan. You cannot produce the deed, can you?—I can. [The deed was produced.]

125. We have it in evidence that the books were never in Gray's possession at all, and cheques were always signed for Gray. How could Gray be presumed possibly to have any equitable right of ownership if the books were in Logan's hands?—Gray agreed, I presume, with Mr. A. H. Logan that he should do the clerical work in order that the mine might be carried on. I insist that Gray was only acting; if the mine had been sold he would have been kept on. The coal-mines in the Green Island district have been gradually falling away, and it was a great thing to him to be kept in constant employment.

126. How did Mr. Logan's position remain apparently the same after the nominal sale to Gray?—Because he was understood to have taken the thing, too.

127. *Mr. Macgregor.*] Who?—Mr. A. H. Logan.

128. *Mr. Lake.*] In what position was Mr. Logan, not having kept the accounts apart?—I never interfered with him. Mr. Gray was practically the nominal owner.

129. *Mr. Moore.*] What position were you in with reference to the money you lost?—I became security to the bank. I paid the bank £177. Then Logan came and got occasional advances of from £30 to £50 to help keep the concern going. I paid that money. He gave bills, and I indorsed them and met them. I am sure that I am more than £1,000 out of pocket by it. Mr. Gray said that I drew money, and that Macdonald drew money—he is entirely wrong. I understood from Gray that there was a fault in the mine which caused him a great deal of trouble.

130. You said at one time you intended that Mr. Toomey and Mr. Logan were to take over the mine. Who was to be responsible to you, and in what way?—To pay my claims? Mr. Toomey was to get the whole occupation of the thing if he paid the mortgage amounts.

131. You said that you never signed a bill or cheque in shape of indemnity of Toomey. Did he get a cheque for £60 from you?—That cheque for £69 was given to lift bills of Penman's that were in the Bank. Logan came to me and said that the Bank would not give up the bills unless I signed a cheque. I indorsed the cheque in order that they might get out Penman's bills, that Macdonald might sue on them. It was never meant by me to be given to Toomey.

132. You said that you did not believe that Andrew had ever applied to Howorth for any rent, or you would have heard of it?—Yes; Mr. J. Logan was one of the directors of the company, and he often consulted me when they got into trouble. They wanted me to join the company, but I declined to do so. Mr. J. Logan has lost over £30,000 in the concern.

133. *Mr. Earnshaw.*] Do you not think that, seeing that the Commissioners have been owners of the land, and as the work has been done upon their property, they should be responsible for the payment of Hamill's wages?—There is one thing that should be considered, and that is that any profit made out of the line since 1882 to the present has gone to the Commissioners. They ran and maintained at their own expense the Walton Park line, and it was constructed at Government cost; this line has been constructed at the cost of the company. They got a large increase to their traffic through it.

134. *The Chairman.*] Mr. Maxwell's contention was that the owners of the mine would have brought the coal to the main line?—It was simply impossible for them to do so; the road was a very bad one indeed.

ALEXANDER HUGH LOGAN examined.

135. *Hon. Sir R. Stout.*] You remember when first you had to do with this coal-mine?—In February, 1886.

136. About Toomey's cheque: Mr. Toomey has a cheque for £69 15s.; for what was that cheque originally issued?—For Penman's bills. To lift the bills in order that I might sue on them. The bank to hold the cheque in place of the bills which were indorsed by Sir Robert Stout.



137. How did it get into Toomey's possession?—Penman made arrangements to pay me. The cheque was never used for the purpose for which it was drawn by me, and it lay about in my safe, and nothing was done with it.

138. You say it lay in your safe for some months?—Yes.

139. How did you come to give it to Toomey?—I got a bill from a customer for £40. Sir Robert was away and I went to Toomey, and said, "Can you discount this bill for me?" He said he would if his bank would discount it, or if I got it indorsed. He told me his bank would not discount the bill. I then handed him the cheque (indorsed by Sir Robert Stout) and got a loan of £20 on it. I afterwards got the £40-bill discounted at, I think, Mr. Herdman's or the Commercial Investment Company, and repaid Toomey the £20 advance in a few days after. I afterwards got other loans from Toomey by cheques—£35 and £20—and left the cheque as security.

140. Were those moneys repaid?—Yes; the money was all repaid. The cheques that Toomey gave me for these advances bore my name in the body of the cheques, and his bank-book will show the above amounts, less interest.

141. So far as that transaction with the cheque was concerned, were you, Gray, or myself, or any one else owing Toomey anything?—It was all settled up; the cheques were met.

142. Toomey says that cheque was given by you to him for the purpose of going against his guarantee for part of the overdraft?—No; it is not the same amount either.

143. Can you say when the mine business came to an end; in 1892 was it?—It was just a few days before the end of March, 1892.

144. At that time was there any plant or other loose stuff at the mine?—There were boxes, drums, rails, and the necessary plant for carrying on the mine.

145. What would be the cost?—They were worth between £400 and £500.

146. Since that date have you ever had possession of the mine or railway?—No.

147. Gray has kept possession?—Yes.

148. There were wages due to Gray and Hamill?—Yes.

149. They were due at the time of your bankruptcy?—Yes; and some since.

150. These have not been paid?—No.

151. Had I any interest in working the mine?—No; nor were you consulted about it.

152. Before the time of your bankruptcy—before this agreement was made—had you seen any person about taking over the mine?—I had. I spoke to Toomey, and I arranged with him that he was going into it. He said he was willing, and, but for private reasons on my part, he would have done so.

153. Do you remember if I was in town when the agreement was made with Toomey?—I do not know exactly. You may have been out of town. I fancy you had been away. You went away the day after that agreement was signed. You went North. You were not at the meeting of the bankruptcy.

154. *Mr. Macgregor.*] Are you sure that this is a correct account of the transaction with Toomey?—Yes.

155. Have you a good memory?—Yes.

156. Have you ever given an account of that transaction before?—Yes, to Mr. Fish. It was in writing, and gives a true history of the affair. Let Mr. Fish produce it, and it will show the correct version.

157. Is that in existence?—I have his reply to it. I also sent down a letter to Mr. Macdonald, telling him what Toomey had been up to in regard to the cheque.

158. *Hon. Sir R. Stout.*] That letter was written before Mr. Fish's statement in the House?—Yes; several days.

159. *Mr. Macgregor.*] Then, Toomey has given an absolutely false account of the transaction?—Yes.

160. He is Mayor of Green Island and a Justice of the Peace, is he not?—Yes. He is a Justice of the Peace by virtue of his office as Mayor of Green Island.

161. You say that the account Toomey has given is absolutely incorrect?—Yes.

162. Did you ever say anything to him about Sir Robert Stout indemnifying him on account of his guarantee?—If you go back into it there was an indemnity, and he got it; but he denies it. It was a very different thing from indemnifying in the way Toomey says.

163. Who prepared that indemnity?—I did.

164. Who signed it?—Sir Robert Stout.

*Hon. Sir R. Stout:* The guarantee given to the Bank was for £250. I agreed when I signed that I was to be liable for £150, Macdonald for £50, and Toomey for £50. I told Macdonald that I would keep my word and would pay £150.

165. *Mr. Macgregor.*] You know that Toomey said that you promised him on more than one occasion to give him an indemnity from Sir Robert Stout?—Yes; but not the indemnity Toomey wishes to make out.

166. Toomey says you came to him and brought the cheque to secure him against the overdraft. Is that correct?—It is not.

167. You got the cheque indorsed by Sir Robert Stout for a totally different purpose?—Yes.

168. Did Sir Robert never ask how the cheque was expended, or ask for it?—No. It should have been destroyed at the time Penman's matter was settled.

169. Toomey financed for the Fernhill Colliery Company, did he not?—There were only three transactions—the loan of £20 on account of the bill for £40, one for £35, and one for £20—I think, between the date of overdraft bond and stoppage of the business.

170. Toomey has told us that you came to him shortly before your bankruptcy and told him you would have to file?—I never said so; the Corporation made me bankrupt.

171. If both Hamill and Toomey say that you told them that you would have to go through

the Court, and you would have to transfer the property to Gray, will you contradict them?—After it was decided that property was not to be transferred to Toomey, I told them I had arranged to transfer it to Gray.

172. Did you tell Mr. Hamill a few days before your bankruptcy that the property was to be transferred to Gray?—Yes.

173. How long was it before the actual transfer?—I cannot tell you exactly. It was all done within a very short time. It was all done, perhaps, in a fortnight.

174. Sir Robert Stout has stated that Mr. Macdonald did not take any money out of the concern?—He did not take a penny out of it, but instead has had to pay his share of overdraft.

175. Had you been financing with him?—Yes. There were £275 in Macdonald's account in the National Bank—five bills of £55 each.

176. Would it be correct to say that you had been financing with Toomey and Macdonald from the time of your bankruptcy?—There were various transactions with coal vouchers which the Bank would not be bothered with, and I cashed them with Toomey.

177. Did you give Macdonald orders to repay advances by him, on different customers?—I do not remember having done so. I may have done so on one or two occasions with one firm.

178. Would this be a correct statement of fact: that you had been financing with Macdonald and Toomey at the rate of about £50 per month?—With Macdonald that was the case, in a way, for a year or eighteen months. I do not know how long, as each bill was renewed as it became due.

179. After the sale to Gray was there any change in your position?—No.

180. You simply went on as before in the office in town, and Gray acting as mine-manager?—Yes.

181. And Hamill working on the line as before?—Yes.

182. And before the bankruptcy, and before the sale to Gray, were you drawing a salary?—Yes.

183. Were you drawing a salary afterwards?—Yes. I did not draw it regularly in any way. Sometimes I did not want any money, and sometimes I wanted more.

184. Had you no fixed salary?—No.

185. You just helped yourself?—Yes. I considered it my own, and did what I liked with it.

186. Had you any capital to work this business?—I put in £200 of Mrs. Logan's money in 1891 and 1892.

187. Did you pay in cash when you bought this mine from your father? How much cash was paid?—Nothing was given in cash. There were bills.

188. And you say that after you never had any fixed salary from the concern at all?—That is so.

189. You say, in evidence before the Assignee, that you had been drawing £4 a week?—I was paying away more one month than another, perhaps, but I had drawn on an average £4 a week.

190. Then, you say that you were not a servant of the company at all?—There was no company. I was the company, and I was made bankrupt.

191. Up to that time you were the owner of the mine?—I was.

192. And the railway-line, too?—Yes; I had paid for it. I had an agreement to purchase.

193. *Hon. Sir R. Stout.*] Was there ever a suggestion that I was to indemnify for the payment of the £50. The guarantee was for £250?—The guarantee was for £250. There was no suggestion that you were to indemnify Toomey for the £50. The agreement made at the time the overdraft bond was completed was that Toomey was to be indemnified against paying more than £50; so was Mr. Macdonald.

194. You say you have paid in £200 of your wife's money; when was that money paid in?—The first payment of £100 went into the bank on the 2nd February, 1891. The account was overdrawn before against it. It was on fixed deposit. The last payment, some little time after, was raised by loan on her property.

195. £100 of this money was money your wife got out of her father's estate?—Yes.

196. In 1891?—Yes.

197. *Mr. Lake.*] Tell us what was the reason why, when this business had been nominally transferred to Gray, you continued still apparently to keep the books without any appointment as secretary or anything of the kind?—I looked upon it as my own business.

198. Who did the managing then?—I did, of course. I treated it as my business.

199. After this transfer to Gray you looked upon it as your business?—Yes, certainly.

200. Then Gray was your servant?—Yes. It was against Macdonald's advice giving it to Gray at all, and he would not have agreed to it unless the railway-line had been kept out of the agreement for sale.

201. How came you to be owner after the bankruptcy?—There was nothing in it barring the money that was owing on it.

202. Who put you in it? Sir Robert Stout, as mortgagee, was one of the claimants against you?—No; Sir Robert's firm claimed for law costs. The transfer to Gray was subject to payment of Sir Robert's mortgage.

203. And he practically put you in?—No; there was no alteration in the business. I made all the arrangements with Gray.

204. You contend that you were owner both before and after your bankruptcy?—Most certainly.

205. You were put in as manager to keep the effects out of the bankruptcy?—There was nothing to go in.

206. You said that you were manager, and not Gray?—Certainly; Gray was my servant. He was out at the mine: the solicitor's letter claiming wages shows this.

207. Any debts incurred after the bankruptcy were incurred by you?—Yes.

208. Were you not there practically representing the mortgagees?—No; I have never consulted them. Neither Sir Robert Stout nor my mother knew any about the business whatever.

209. After the bankruptcy, how did you come into possession?—I never went out of possession; I continued the same as before.

210. *The Chairman.*] If the mine had been paying would you have paid the wages that were due?—Yes; I would have paid the wages due if Gray would have made any reasonable arrangement; but he wanted to get the wages, and then to get the mine from Andrew for himself.

211. When you first took over the mine, did you then engage Gray and Hamill?—Yes. At that time, February, 1886, Gray was not working at the mine at all. He has said that he was underground manager with Shaw. He was not; he was working at another mine for several months before I took over the mine.

212. Did you engage him directly?—No; he was put there by my father, who gave him a letter to transplant Shaw two days or so before I entered the business.

213. Did you engage Hamill?—Hamill was there before I went, and went on with the work as before.

214. You paid them wages, but only at times?—Yes.

215. *Mr. Moore.*] With reference to that cheque that you placed in the hands of Mr. Toomey, and which you got advances against: it was not meant to indemnify him for the £50?—No.

216. When you had paid everything on the cheque, why did you not get it from Toomey?—After the last loan was paid I was laid up for a few weeks with a broken leg, and I suppose I forgot about the cheque. I never heard anything about its being used. It was through Mr. Macdonald that I eventually heard about it, when he spoke to me about Toomey having refused to pay the £50.

217. Did you feel that you were justified in using a cheque that you got indorsed for another purpose?—It was Sir Robert Stout's indorsement, and he would have indorsed what I wanted if he had been at home, in Dunedin. In one way, of course, I was not justified in using it.

218. *Mr. Macgregor* here put in three letters in Logan's handwriting.

219. *Hon. Sir R. Stout:* I have not seen these letters before. I wish to say this now: If Gray or Hamill or Andrew has any claim against this line let it be settled by the Supreme Court.

*Approximate Cost of Paper.*—Preparation, not given; printing (1,550 copies), £21 5s.

By Authority: SAMUEL COSTALL, Government Printer, Wellington, New Zealand.—1893.

*Price, 9d.]*