

Mr. Logan's title consists of a deed of mortgage dated 20th March, 1882, made between the Fernhill Railway and Coal Company, Limited, of the one part, and John Bathgate, George Turnbull, and Robert Hay, of the other part, whereby the company mortgaged all its property (including the railway and the contract with the Government for the construction of the same) to the said John Bathgate, George Turnbull, and Robert Hay, and covenanted with them with all convenient speed to construct and complete the railway, and acquire a title to the same, and convey it to the mortgagees; and a deed of absolute assignment, dated 3rd September, 1889, made in exercise of the power of sale contained in the mortgage deed, by the mortgagees to Mr. Logan, of the whole of the premises bound by or subject to the mortgage deed.

This assignment is dated long after the agreement between Messrs. Stout and Mondy, but, although only executed then, it had, as a matter of fact, been agreed upon before the agreement of 10th May, 1887, and the £500 was actually paid by Mr. Logan to the vendors as part of the purchase-money.

Mr. Mondy was paid by Sir Robert Stout his proportion of the £500, and the whole interest in the agreement and the security thereby given now belongs to Sir Robert Stout alone.

It is no doubt in virtue of this agreement of the 10th May, 1887, that the titles to all the lands comprising the railway-line, except the piece containing 2 acres 2 roods 32 perches formerly belonging to Mr. D. Andrew, and which is now vested in the Railway Commissioners, were put into the name of Sir Robert Stout.

The Fernhill Railway and Coal Company, Limited, and Mr. Logan, have, in writing, agreed that all their estate and interest in this land (2 acres 2 roods 32 perches), under the agreement with Mr. Andrew and otherwise howsoever, shall be transferred to and vested in Sir Robert Stout. I fail to see how, in the face of the fact that the land is absolutely vested in the Railway Commissioners, any one can give him a better equitable title to it.

Although Mr. Andrew, in his letter to the Minister for Public Works, dated 29th June, 1893, says, "The company gave me to understand that they constructed the railway, and were proprietors of it, and would pay me for the land taken for the construction," &c. And although, in the course of his evidence given before the Public Petitions A to L Committee last session of Parliament, in answer to questions 38, 40, and 41, he practically denies that he ever agreed to give the land for nothing, it is clear, in the face of the agreement entered into with the promoters of the Fernhill Coal Company set out above (which I have seen, and have not the slightest doubt is genuine), and of the draft conveyance prepared by the company's solicitors, that Mr. Andrew's memory is at fault; and his letter of the 29th June, 1893, further shows that, had he known the Government were constructing the line, he would have made his claim in the regular way under the Public Works Act, which makes the fact of his making no claim on the company, who he thought were constructing the line, very significant. Moreover, he stood by, and allowed the company to expend their money to a large amount on his land on the faith of his undertaking to give the land for nothing, and made no claim for any payment, for more than twelve years afterwards, and his conduct in this respect alone seems to me sufficient to dispose of any equitable claim he could now set up. I gather from the evidence before the A to L Committee that the original agreement signed by Mr. Andrew, and assented to by or on behalf of his mortgagees, was not produced. Had it been forthcoming, then Mr. Andrew could never have given the evidence he did give.

The fact of ballast material having been taken from Mr. Andrew's land, whether with or without his consent, and used for ballasting the line, could not give him an equitable interest in the line itself. If taken with his knowledge and consent, he would have no claim at all to be paid for it unless he made an agreement with those who took it to pay him. If taken without his consent he might have had an action for damages for trespass against those who took it. The time for enforcing either remedy, however, is long since gone by.

As regards Mr. John Hamill, Mr. Toomey, Mr. Beal, and Mr. Denniston, they have, apparently, legal claims against some one or other. It is difficult to say exactly who, but I should think it would most probably be against Mr. A. H. Logan or Mr. Gray; but certainly they have no equitable ownership in the railway-line, or any equitable claim which they can enforce as against the railway itself.

As to Mr. Gray's claim, he is, I think, in the same position as Mr. Hamill, except for the agreement said to have been made with him by Sir Robert Stout on the 1st February, 1889.

This agreement I have not seen since the cases in the Police Court which I conducted for the Railway Commissioners. I understand, however, that it does not include the railway. Sir Robert Stout in his evidence (at page 26), distinctly states that the railway was not included in the agreement; and, as the agreement was produced and read before the Committee, it would at once have been discovered if that statement was not correct; and the questions put by Mr. McGregor, who appeared as Mr. Gray's solicitor (Nos. 72 to 80, at page 27), seem to show conclusively that the agreement did not include the railway.

Moreover, I understand that it is not even suggested that the effect or the intention of this agreement was to give Mr. Gray any legal or equitable interest in the railway-line or anything else, but that, whatever interest was transferred to him, he was merely a trustee for those who were actually entitled, and had no real *bona fide* beneficial interest in the property himself.

Perhaps I have gone into the question of these outside claims at greater length than there was any occasion for. It might have sufficed to say that, so far as the line of railway was concerned, no persons other than Mr. John Logan and Sir Robert Stout appeared to me to possess any right in or to it, at law or in equity; that there were no liens on it; and that no claims attaching to the railway itself were unsatisfied; and that seems to me to be the exact state of facts. None of the claims set up by the petitioners give them or any one of them a lien or claim upon the railway, although, as regards some of them, at all events, money is undoubtedly due to them by the company, by Mr. John Logan, Mr. A. H. Logan, Sir Robert Stout, or some one.