

This being the position of matters, I am quite sure that, whilst I fully respect the line which you have taken, acting upon the legal advice which you have received, you will equally respect my position, and will not for a moment think that anything which I may hereafter do towards asserting the rights which, as an officer of the High Court of Justice, I am obliged to guard, will be done for the mere sake of reviving questions and perpetuating, it may be, feelings with regard to this business which, on the other hand, it would be my earnest desire, and I believe yours as well, to have buried once for all. It is not for me to say what course, if any, you might adopt in order to prevent the revival of the questions to which I am referring, but it would be, of course, very agreeable to me if a basis for a friendly settlement could even yet be devised before it is too late.

So much I think I may safely say without prejudice and without leading you to believe that I have the least misgiving with regard to the strong position which I have taken up in our discussions.

I have communicated these facts to Mr. Justice Kekewich, by whose order I was appointed Receiver to represent the debenture-holders.

With his sanction I now enclose you copy of the opinion on this question received from Mr. C. Swinfen Eady, Q.C., and Mr. A. R. Kirby, from which you will see that they do not share the view held by your Crown Solicitor—that the contract of 1888 was the security for the debenture-holders. Their interpretation of the Acts of Parliament and the contracts, &c., which, in their opinion, would be adopted both by the Courts in New Zealand and the Privy Council here, is that the company having with the authority of the Government, conferred by the contract, exercised the powers of mortgaging the railway expressly given by Parliament in the Act of 1884, it is not now open to the Government to ignore the mortgage so given, and, in short, that as soon as the mortgage in favour of the debenture-holders had been created the seizure powers of the Government were limited to the interest of the company—*i.e.*, the equity of redemption.

I remain, &c.,

A. YOUNG,

The Right Hon. Richard J. Seddon, Premier of New Zealand. Receiver and Manager.

Enclosure in No. 15.

QUESTIONS.

CAN the debenture-holders now make application under the Act of 1884 to the Supreme Court in New Zealand, and successfully contend that (failing purchase of the railway by the Government) they are entitled to an order for sale of the undertaking, and that by virtue of any such order the line would be vested in the Receiver for the debenture-holders?

Whether, for the purpose of such proceedings, it would be necessary for the Receiver to commence proceedings in New Zealand?

Whether, if the debenture-holders are entitled, as suggested, to their security, it is necessary for their protection to continue recouping the Government their outlay for construction made under sections 123 and 125 of the Act of 1881, or whether the demand for any such recoupment is not one which must be addressed by the Government to the company alone, and not to the debenture-holders?

OPINION.

This raises the question as to the effect of the Government taking possession, and depends upon the construction to be placed upon section 123 of the Act of 1881.

Under the Act of 1881, and the sections in the Act of 1884, which, for the purpose of the company have been substituted, debentures are constituted a charge on the railway, and in our opinion the Government, under section 123, can take possession only subject to debentures which under the Acts constitute a charge, and that it is only the estate or interest of the company which, under section 126 of the Act of 1881, is intended to vest in the Crown.

Proceedings must be commenced in New Zealand, but the ultimate appeal would be to the Privy Council here.

In our opinion the non-payment by the company of money expended in completing, equipping, repairing, or maintaining the railway would entitle the Government to retain the railway only as against the company, and would not affect the charge of the debenture-holders. Had it been intended that the Crown should, under section 126, take the railway free from debentures which by the same Act are made a charge upon it we think it would have been so expressed.

C. SWINFEN EADY.

A. R. KIRBY.

Lincoln's Inn, 29th July, 1897.

Approximate Cost of Paper.—Preparation, not given; printing (1,400 copies), £3 10s.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1897.

Price 6d.]