

By section 16 of the same Act no debenture-holder is to apply for a sale of "any portion" of the Company's property until notice has been given to the Governor, and the Governor fails to notify his intention "to purchase." This section does not express what property of the Company is in contemplation as being subject to the right of purchase by the Governor; it is not said whether the purchase contemplated is of "the portion" of the Company's property ordered to be sold or the whole property. The following section—section 17—makes provision that, if the Governor exercises the power of purchase conferred by the Act of 1881, and the railway or "any part thereof" purchased is charged with moneys borrowed by the Company, then, the Governor's purchase being subject to the charge, if the purchase-money is less than the charge the Company is to pay the Governor the difference between the purchase-money and the charge.

Section 114 of the Act of 1881 gives the Governor a right to purchase at any time after ten years after the completion of the line. This right, therefore, is a right to purchase the whole line, not a portion or section of it, whether constructed or not. The contract, however, gives an additional right to purchase, for section 43 of the contract provides that, in the events which the Acts of 1881 or 1884 or the contract empower the Governor to take possession of the railway "or any part thereof," the Governor may, in lieu of taking possession, exercise the right of purchase, and that he may exercise this new right of purchase notwithstanding that the whole line has not been completed; but still it is a right to purchase the whole, not parts, whether constructed or not. But this section in the contract inaccurately speaks of a right to take possession of "a part" of the railway, for the right is to take possession of the whole. The right of taking possession here referred to is that given by section 123 of the Act of 1881, and the right is to take possession and complete and work, subject to certain conditions. The events in which that right is exercisable are three: (1) Unreasonable or inexcusable delay in prosecuting the work; (2) not running trains as agreed upon the line or completed parts of the line; (3) any "wilful" breach of the contract.

It is to be observed, therefore, that, though the events in which there is a right to purchase are added to, the right is still a right to purchase the whole, not parts. For the purposes of the present case it may be conceded to the debenture-holders that the effect of section 16 of the Act of 1884 is to add another event in which the Governor has a right to purchase—namely, whenever application is made by debenture-holders for a sale. The intention of the Act probably is, not that the debenture-holders shall not be able to apply for a sale till ten years after the whole is completed, or till the Governor has a right to take possession, but that the Governor shall, in the event of a sale being applied for by debenture-holders whenever that might be, have the same right of purchase as he would have had in the case of any of the other events expressly provided for; the right, however, being to purchase the whole line, whether completed or not, at a price to be fixed by arbitration, in the mode provided by section 114, *et seq.*, of the Act of 1881.

Though section 17 of the Act of 1884 provides as to what is to be done in the event of the Governor purchasing "the railway," or any part thereof, being charged with borrowed moneys, it does not follow that the Legislature contemplated that parts of the line itself could be so charged; the interpretation of the word "railway" includes plant as well as rolling-stock. The explanation of the expression "any part thereof" being found in section 17 probably is that the section is a copy of the repealed section 76 of the Act of 1881, and in the repealed section of that Act a mortgage, with a power of sale, of part of the property of the Company, and perhaps part of which would by virtue of the interpretation come within the term "railway," was permitted. There is no other provision than section 17 in the Act of 1884 which lends colour to the notion that parts of the line itself could be charged and sold; by the Act the debentures are not chargeable on parts of the line, but are all charged on the "entire assets" of the Company. The debenture-holders' Trust Deed does certainly profess to give a security to the first issue of debentures over constructed portions of the line. The Government, however, are not concerned with the arrangements between the Company and the debenture-holders, and