

moneys payable under the foregoing provisions, the Governor may thereafter give to the Company three months' notice that he intends to retain the railway as public property, and that on publication at any time after such three months of an Order in Council to the effect that possession has been taken as aforesaid, and will be permanently retained by the Government, the railway and stations, and all plant, equipments, and appurtenances belonging thereto, shall, unless a satisfactory arrangement be in the meantime come to between the Government and the Company, become and be absolutely vested in the Crown. Provision is also made by sections 114–120 of the Act of 1881 enabling the Crown to purchase the railway, at a price to be fixed by arbitration, as therein provided.

These provisions are such as might be expected in such a scheme for the purpose of safeguarding the public interests with respect to a railway to be constructed to a large extent at the expense of the public estate. They are admittedly binding upon the Company, and it would, in my opinion, require the clearest possible language to show that they are not binding upon the mortgagees of the Company, but that the mortgagees may, as has been contended on their behalf, so deal with the constructed portion of the railway as not only to frustrate the entire object of the scheme contemplated by the Legislature, and by the parties to the contract, and to render entirely useless the large expenditure of the public estate which has already taken place with respect to such constructed portion, but also to render it extremely difficult, if not impossible, for the Crown in the future to construct a railway to serve the purpose of the railway contracted for.

In my opinion the language of the statutes not only does not support the contention of the debenture-holders, but actually negatives it.

Under the section principally relied upon (section 13, Act of 1884, No. 15) it is provided that the debentures shall be “a first charge upon the entire assets of the Company, including the railway and everything pertaining thereto.” Stress is laid upon the words “first charge,” which it is contended indicate that the debenture-holders are to have a charge upon the constructed portion of the railway paramount to the rights of the Crown under sections 123–126 of the Act of 1881.

The debenture-holders are to have a first charge, but a first charge upon what? Upon the entire assets of the Company, including the railway and everything pertaining thereto. Then, what are the entire assets of the Company, and what is the meaning of the words, “including the railway and everything pertaining thereto”? The entire assets of the Company cannot, in my opinion, be held to include anything which would not, if not mortgaged, be assets of the Company for payment of the debts due by the Company to its unsecured creditors, or for distribution among the shareholders in a liquidation, after all the debts of the Company had been paid. Plainly the constructed portion of the railway under this contract does not come within this definition. It is, in fact, admitted that this is so, for it is not contested that the rights of the Crown under sections 123–126 of the Act of 1881 prevail against the Company, and therefore against the general body of creditors, to whom it cannot be suggested that any larger rights are given than are given to the Company.

Then, do the words “including the railway and everything pertaining thereto” extend the meaning of the words “the entire assets of the Company” in the manner contended by counsel for the debenture-holders? It seems to me to be clear that they do not, for, according to the grammatical meaning of the words, the railway and everything pertaining thereto are only included in so far as they are assets of the Company.

There are other reasons which enforce the same conclusion. Under the interpretation clause of the Act of 1881 the word “railway” means “any railway, and the land whereon the same is constructed, or that may be used therewith, and includes all works, buildings, rolling-stock, machinery, and plant of every kind connected therewith which may be proposed to be or may be constructed by or under the provisions of this Act from a given point or place to another given point or place, and includes the right to construct or work the same (as the case may require), and, where not inconsistent with the context, all the