

being or forming part of the railway as defined by the Act of 1881, and any property forming part of or attached to the railway or used in connection therewith as appurtenant to the same. The order of the Supreme Court was affirmed on appeal.

Their Lordships are of opinion that the view of the learned Judges of the Supreme Court and the Court of Appeal was perfectly correct, and they will therefore humbly advise Her Majesty that this appeal ought to be dismissed.

The appellant will pay the costs of this appeal.

ORDER IN COUNCIL.

At the Court at Windsor Castle, the 3rd day of March, 1900.

Present :

[Seal.]

THE QUEEN'S MOST EXCELLENT MAJESTY ;
LORD CHANCELLOR ; LORD PRESIDENT ; LORD JAMES OF HEREFORD.

WHEREAS there was this day read at the Board a report from the Judicial Committee of the Privy Council, dated the 17th February, 1900, in the words following, viz. :—

“ Your Majesty having been pleased by your general Order in Council of the 29th November, 1898, to refer unto this Committee the matter of an appeal from the Court of Appeal of New Zealand (Wellington District), between James Hugh Buchanan Coates, the Receiver for the debenture-holders of the New Zealand Midland Railway Company (Limited), appellant, and your Majesty the Queen, respondent, and likewise a humble petition of the appellant, setting forth that by a deed dated the 17th January, 1885, and made between your Majesty of the one part and William Chrystall and others (therein collectively referred to as ‘the contractors’) of the other part, in pursuance of the provisions of ‘The Railways Construction and Land Act, 1881’ (hereinafter called ‘the general Act’), and of ‘The East and West Coast (Middle Island) and Nelson Railway and Railways Construction Act, 1884’ (hereinafter called ‘the special Act’), the contractors were authorised and undertook to construct and work a line of railway to connect the east and west coasts of the Middle Island from Springfield to Brunnerton, and also a further line of railway from Brunnerton to near Belgrove (which two several lines of railway are hereinafter referred to as ‘the said railway’) : that during the year 1889 the New Zealand Midland Railway Company (Limited), in exercise of its borrowing-powers, issued £745,000 first-mortgage debentures, and expended the money so borrowed on the construction of the said railway : that delay in the prosecution of the works having been committed by the company, the Governor of New Zealand, purporting to act under section 123 of the general Act, on or about the 25th May, 1895, in the name of the Crown, took possession of the said railway so far as constructed by the company, and has proceeded with the construction thereof : that on or about the 30th May, 1898, Clement Horace Thomas Peter Moir and Henry Cowie (who are holders of certain of the said debentures so issued as aforesaid), in their own names but acting on behalf of all the said debenture-holders, applied by petition to the Supreme Court of New Zealand (Wellington District), under section 14 of the special Act, that the property liable under the provisions of the special Act for the payment of the money intended to be secured by the said debentures should be sold, and that in the meantime a Receiver of the rents, income, and profits of such property should be appointed : that by an order of the said Supreme Court, made upon the said petition on the 4th July, 1898, the property of the company in New Zealand mentioned in the said order, including the said railway, was directed to be sold, but the order contained a provision that the sale should not be proceeded with without further order in that behalf of a Judge of the said Court, of which due notice should be given to the Crown Solicitor at Wellington, and the appellant was appointed Receiver of the rents, income, and profits of the company : that on the 28th July, 1898, the solicitor of the Crown gave notice that a motion would be made to the said Supreme Court sitting in Banco on behalf of the Crown to rescind the said order of the 4th July, 1898 : that on the 5th October, 1898, the appellant, as Receiver, issued a summons asking that the Crown should show cause why the said order of the 4th July, 1898, for the sale of the property of the company in New Zealand, should not be carried out, and the Crown Solicitor duly appeared upon the hearing of the said summons : that the said motion and summons were heard by the said Supreme Court sitting in Banco at Wellington, and the said Court, on the 4th February, 1899, made an order varying the order of the 4th July, 1898, by limiting the appointment of the Receiver and the order for sale to the property of the company other than the railway as defined by section 2 of ‘The Railways Construction and Land Act, 1881,’ and subject to such variation the said order of the 4th July, 1898, was confirmed, and the Receiver was ordered to pay to the Crown £105 for the costs of the motion, and the said summons was dismissed with costs : that the appellant, being dissatisfied with the said order of the Supreme Court of the 4th February, 1899, appealed therefrom to the Court of Appeal of New Zealand : that the hearing of the appeal took place on or about the 24th April, 1899, when it was adjudged that the appeal should be dismissed with costs on the highest scale : that the appellant, feeling himself aggrieved by the said judgment of the Court of Appeal, moved the said Court for leave to appeal to your Majesty in Council, which leave was granted on the 25th May, 1899, upon conditions which have since been duly complied with : And humbly praying that your Majesty in Council will be pleased to take this appeal into consideration, and that the said judgment of the Court of Appeal of New Zealand of the 24th April, 1899, may be reversed, altered, or varied, or for other relief in the premises :

“ The Lords of the Committee, in obedience to your Majesty’s said general Order in Council, have taken the said humble petition and appeal into consideration, and, having heard counsel on behalf of the parties on both sides, their Lordships do this day agree humbly to report to your