

and equitably with these petitioners] you will find that they will be in the interests of the colony, you will remove a serious difficulty, you will leave untarnished the honour of the colony, and you will prevent litigation. Otherwise you will have the position of matters brought before the world by our friends at Home who, instead of being our friends and assisting us to maintain our credit in the future, will say that they cannot trust us, for when the opportunity was given us we failed to do what was right in the case of this company. I say that justice should be done, and if justice is done this Bill will be read a second time." [and if justice is done the colony will give fair and reasonable compensation to those who have sunk their money in the New Zealand Midland Railway Company (Limited).]

#### I.—HISTORY OF THE STATUTES AND THE CONTRACTS NOW IN QUESTION.

*Mr. Bell:* Before the Committee decided to first hear Mr. Dalston I had stated that it would be necessary to give a short history of this contract and the differences between the company and the debenture holders and the Government.

##### (a). *The Act of 1881.*

The Railways Construction and Lands Act of 1881 must first be referred to. The Committee will remember that in 1881 the Hall Government decided to encourage the construction of certain lines of railway by private enterprise. The District Railways Acts had not led to satisfactory results, and a new method was sanctioned by Parliament. "The Railways Construction and Lands Act, 1881," may be summarised thus: The Governor was empowered to contract with a company for the construction of a railway which must connect with some other railway constructed by the Government. The company was to receive in addition to its ownership of the railway—(1) a free grant of all Crown land necessary for the railway itself; (2) grants of land in aid; and (3) rating powers, subject to certain conditions. The grants of land in aid were to be provided as follows: (a.) When the company was formed, the Governor was to set aside an area of Crown lands for a distance not exceeding fifteen miles on each side of the railway. (b.) When the contract was made the area so set apart was to be surveyed into rectangular blocks, none having a frontage to the railway exceeding one mile. (c.) The cost of the railway was to be estimated for the purposes of the contract, and the value of the land set aside was to be estimated at the same time, without any regard to any prospective addition, or the construction of the railway. The railway was to be divided into sections with a proportion of the estimated cost set against each, and upon the completion of each section the company might select in alternate but not in consecutive blocks an area of land equivalent to 30 per cent. of the estimated cost of the section completed. (d.) If coal was found in any land so granted the company was to pay a royalty per ton on all coal raised therefrom. Provisions empowering the Governor to purchase the railway on certain terms are contained in sections 114 to 120. Part III. of "The Railways Construction and Lands Act, 1881," comprising sections 52 to 76, relates to borrowing by the company. The provisions of those sections in the Act of 1881 are identical in effect, though not in language, with the sections that replace them in the later Act of 1884. I have to ask the indulgence of the Committee while I refer to three of the borrowing sections of the Act of 1881.

Section 52 provides that "Any company may . . . borrow and take up at interest . . . sums of money; and for the purpose of securing payment thereof, with interest in the meantime, may convey, assign, or otherwise charge the railway and the whole or any portion of the lands granted, or to be granted, to it under Part V. of this Act, or such part thereof as may be agreed upon, with all usual and necessary powers and remedies to the mortgagee, including a power of sale in case of default . . . 'Mortgage' includes mortgage-debentures and coupons . . . 'Mortgagee' includes the holder of any mortgage-debenture." Thus, the Act of 1881 empowered a company to assign its railway, with power of sale in case of default, giving full remedies to its mortgagees and debenture-holders.

Section 53 required that every mortgage-debenture issued should be in the form in the Third Schedule, or to the effect thereof, and in that form any liability of the colony is expressly negatived.

By section 58 it was provided that "The principal and interest secured by any mortgage over a railway shall be a charge not only over the railway, but over everything pertaining thereto, or upon such part or parts thereof as shall be expressed in the mortgage, and, subject to any special provision in that behalf to the contrary, every such mortgage shall be a charge upon the prospective grants of the fee-simple of and in the land upon which the railway is constructed, and to which the company may be entitled under this Act or any contract made thereunder."

Section 62 provides that "No claim of any mortgagee, or of any creditor of any company, shall attach to or be paid out of the public revenues of New Zealand or by the Government thereof."

Sections 67 to 72 conferred on the mortgagees power to apply to a Judge of the Supreme Court for the appointment of a Receiver, and for an order for sale in case the company made default in payment of principal and interest.

Up to that point the Act had given ample powers and great concessions to the contracting company and its mortgagees, subject only to the requirement that the mortgagees must be expressly notified that their debentures gave them no claim upon the colony. Any one would then expect to find the usual provisions for the protection of the contractee in case the company made default. These are contained in sections 123, 125, and 126 of the Act. Section 123 provides,—