

1894.  
NEW ZEALAND.

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# RAILWAYS COMMITTEE.

(REPORT ON THE CLAIM OF JOHN HAMILL AND OTHERS IN CONNECTION WITH THE FERNHILL RAILWAY COMPANY, TOGETHER WITH MINUTES OF EVIDENCE AND APPENDIX.)

*Report brought up 14th September, 1894, and ordered to be printed.*

## ORDERS OF REFERENCE.

*Extracts from the Journals of the House of Representatives.*

TUESDAY, THE 3RD DAY OF JULY, 1894.

*Ordered*, "That a Committee, consisting of twelve members, be appointed to examine into and report upon such questions relating to the construction and working of the railways as they may think desirable, with power to call for persons and papers; five to be a quorum. The Committee to consist of Mr. Crowther, Mr. Duncan, Mr. Earnshaw, Mr. Flatman, Mr. Lawry, Mr. Mackintosh, Mr. Massey, Hon. Mr. Mitchelson, Mr. Morrison, Mr. G. W. Russell, Hon. Sir R. Stout, and the mover."—(Hon. Mr. SEDDON.)

WEDNESDAY, THE 25TH DAY OF JULY, 1894.

*Ordered*, "That the names of Mr. Tanner and Mr. Wilson be added to the Railways Committee."—(Mr. PIRANI.)

WEDNESDAY, THE 29TH DAY OF AUGUST, 1894.

*Ordered*, "That the name of the Hon. Mr. Larnach be added to the Railways Committee."—(Hon. Mr. SEDDON.)

WEDNESDAY, THE 29TH DAY OF AUGUST, 1894.

*Ordered*, "That the claim made by John Hamill and others, in connection with the Fernhill Railway, be referred to the Railways Committee."—(Hon. Mr. SEDDON.)

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## REPORT.

THE claim made by Mr. John Hamill and others in connection with the Fernhill Railway having been referred to the Railways Committee for inquiry,

I am directed to report that evidence having been taken in this matter, the Committee finds that, as the Commissioners would have been compelled to pay for the maintenance, had not Hamill been engaged in the work, the Committee considers that the Commissioners should pay him, leaving the matter of the adjustment of accounts as between the Commissioners and the equitable owners to be arranged subsequently. That a copy of this report be forwarded to the Government for reference to the Railway Commissioners.

14th September, 1894.

G. W. RUSSELL, Chairman.

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## MINUTES OF EVIDENCE.

THURSDAY, 6TH SEPTEMBER, 1894.

Hon. Sir R. STOUT, K.C.M.G., examined. (Mr. G. W. RUSSELL, Chairman.)

*Hon. Sir R. Stout*: Last year there was a petition from Mr. Andrew and others, wishing to get a lien against the line for money said to be due to them by those who owned the line. The Committee, however, reported last year that the only man who ought to be considered by the Railway Commissioners was John Hamill, but the others had no claim. Before the Committee last year, Mr. David Andrew swore that he had never given the land for the making of the line, and that he had never signed an agreement to that effect. The original agreement was found this year in the month of April or May. The original agreement was found, signed by Mr. Andrew and his mort-

gages. It was handed to the Crown Solicitor in Dunedin (Mr. Haggitt), who now has it, and the Crown Solicitor has sent a copy to Wellington, I understand. I understand also that the Crown Solicitor has sent his report on the whole matter, and his report, I believe, is here in Wellington, though I have not seen it. As to the Railway Commissioners' position, it is this: This line was constructed by the Fernhill Railway Company, and was used by the Government and the Railway Commissioners. They have since its construction been running trains over it. After the Fernhill Company ceased working, the mine was ultimately leased to Mr. James Gray, who said he was acting as trustee for Mr. Logan, but he had no right to the line. About two years ago or so the Railway Commissioners took over the line. Prior to that it had been maintained by Gray or Logan, and the Railway Commissioners spent apparently £200 in maintaining the line. As to Mr. Hamill's case, he worked on the maintenance of the line, and he has not been paid. He was employed by Logan and Gray, not by the Railway Commissioners; but the reason why the Committee last year recommended his claim was that ever since this railway was constructed, the Railway Department has got any profit that has been made on it. The mortgagee has not got a cent. Mr. J. Logan was the mortgagee. I have a sub-mortgage from him. The position is this, that since the railway was constructed for carrying coal from Fernhill to Dunedin, the Government and the Railway Commissioners combined have got upwards of £8,000. It is true that this money includes rates for carrying coal over the main line from Abbotsford to Dunedin, but if this railway had not been constructed no coal from this mine would have been carried over the main-line from Abbotsford to Dunedin. This paper gives the return of coal carried [Exhibit "A" handed in]; but not since Mr. Hamill ceased to work there. Therefore, it comes to this, that as the Railway Commissioners have got any profit, made out of the line, it is only fair that they should be liable for its maintenance.

*Mr. Earnshaw*: If the Committee will look at the evidence of last year, they will see by question 27, page 23, that Mr. Maxwell admitted the claim. It conveyed to the Public Petitions A to L Committee that, provided Mr. Hamill's work had been done properly, the Commissioners would pay him the money.

1. *Mr. Morrison*.] Sir Robert Stout, did you think from the report that Mr. Hamill's claim is a fair and just one?—I am perfectly satisfied of that, he always had the reputation of attending to his work, and I have no reason to think otherwise. I told him that if I got even half what is due I would pay him out of what I received; and that if the Government should buy the line at the price of the land and rails, I would pay him.

*Hon. Sir R. Stout*: Mr. Hamill, upon being handed a copy of last year's evidence, said that at the time it was tendered he had had an opportunity of correcting it, and that the evidence given by him was correct, and he still adheres to it.

WEDNESDAY, 12TH SEPTEMBER, 1894.

MR. H. J. H. BLOW examined.

*Mr. Blow*: I do not know that I have much information to impart to the Committee on the subject of Hamill's claim. I was summoned to attend the Committee, and produce the report of Mr. Haggitt, of Dunedin, on the question of the title. There is a little that is new in the report, but not much.

2. *The Chairman*.] Do you now produce Mr. Haggitt's report?—Yes, with a copy of the tracing alluded to therein.

3. Can you point out the part of the report which deals with Hamill's report?—Yes; after dealing rather extensively with titles, the report says: "As regards Mr. Hamill, Mr. Toomey, Mr. Beal, and Mr. Denniston, they have apparently legal claims against some one or other, it is difficult to say who, but I should think it would most probably be against Mr. A. H. Logan or Mr. Gray, but certainly they have no equitable ownership in the railway line, or any equitable claim which they can enforce as against the railway itself." Of course, there is a material difference between Hamill's claim and that of Toomey and the others.

4. Then, I understand you have nothing to do with the line, so far as your department is concerned?—We constructed the railway, but from the date it was constructed we have had nothing to do with it.

5. You know nothing of Hamill's connection with the railway?—No. We had to do with the construction, and Hamill was engaged on the maintenance after the line was constructed.

6. *Mr. Morrison*.] Can you give us any information why the recommendation of the Select Committee last year was not given effect to?—It was given effect to by the Government to the extent of forwarding it to the Railway Commissioners. It was for them to say whether they would pay the claim or not.

*Hon. Sir R. Stout*: I see that this report contradicts completely the evidence given last year before the Committee by Mr. Andrew, and the question is whether this ought not to be put on the records of the House. Last year Mr. Andrew absolutely denied my statements, and this report confirms the statements that I made.

JAMES MCKERROW, Chief Railway Commissioner, examined.

7. *The Chairman*.] Will you tell the Committee what you know of the matter under consideration?—The Railway Commissioners are aware that the Committee last year made a recommendation that Mr. Hamill was to be paid, and that they (the Commissioners) were to pay him. The Minister for Public Works forwarded on that intimation to us, and, on considering the matter carefully, we had no doubt at all that Hamill had worked on the line, and we also were decidedly of opinion that Hamill ought to have been paid. But the question was: Who was to pay him? Well, the Commissioners did not employ him, and the Commissioners therefore did not see that they could pay him. In looking over the correspondence relating to the Fernhill Railway I find that, at the very

start of the working of the railway, the question of maintenance came up. Mr. Howorth, who at that time represented the company, raised the question, but the Government refused to be at the cost of maintenance, it being a private company's line. The question was raised subsequently by Mr. Logan, junior, who was secretary to the company, and again it was refused by the Government. Mr. Maxwell pointed out that, from a departmental point of view, we had nothing to do with the railway, and the working of this private railway was rather against the profits to be derived from the Government railway system than otherwise. Sir Robert Stout, at that time Premier, minuted this memorandum to the effect that all that was urged in the matter was that the Fernhill Company be treated similarly to some other private companies; and Mr. Maxwell, in a subsequent memorandum, said that each company should be taken on its merits, and that, so far as he could advise the Government, he must advise them against taking the responsibility of this line. Well, the maintenance of the line was carried on by the company without further remark or application to the Government to take it over, so far as I am aware, until the company ceased operations early in 1892. The line and works were then suspended for about twelve months. The work was again resumed about April, 1893, and a decision of the Supreme Court by Judge Williams in relation to the Shag Point line, some time before that, made it very clear that the Fernhill line technically, whether equitably or not, belonged to the Railway Commissioners. There was a man named Gray, who had been working in the mine under Logan, who began, under some arrangement of which we know nothing, to turn out coal from Fernhill, and, as he was going, as regards the use of the railway, to do so contrary to the regulations of the department, we required him to desist, but as he persisted, we had to use measures to compel him, which ended in an assault between his men and our men. The assault was only a technical one to bring the affair to trial. It was tried in the Court, and Gray was made aware that he had acted wrongly, and from that time he was quite docile, and acted under the railway rules. From that time, some sixteen months ago, the Commissioners have taken charge of the line and maintained it. The maintenance has been very heavy on account of the line having been in disuse for some time and water having taken charge of it, and it wanted a good deal of clearing out of slips, of drains and water-channels, and so on. The cost has been very great, and all the revenue coming from the traffic has been absorbed. I should say that the cost of maintenance has been extraordinary in amount for the period of sixteen months, but the line was in very bad order. The length of the line, I may say, is 1 mile 60 chains.

8. *Mr. Morrison.*] Hamill has really done the work for which he is claiming payment?—I believe so. We have no actual knowledge, but we believe he has done the work.

9. *Hon. Sir R. Stout.*] You say it was in 1893 Judge Williams gave his decision?—I said some little time before.

10. The Shag Point line was maintained by the Commissioners?—Yes; all along it was maintained by the Government.

11. In fact, not only did the Government maintain the line, but they actually gave rails for nothing to it?—That is so.

12. Was there not another line—Nightcaps—was that not also maintained by the Government?—Yes.

13. This was also a private line, and was maintained by the Government?—Yes.

14. In point of fact, was not this the only coal company's line that was not maintained by the Government?—Oh, no. The Kaitangata line was not maintained by the Government.

15. I mean, that the Government trains run over?—Yes, you are correct with that reservation.

16. That the only private line on which Government trains run, not maintained by the Government, was the Fernhill line?—Yes; that is so.

17. Well, now, can you say what the income from this railway has been since 1884?—About £800 a year, excluding the carriage of sand.

18. Well, including the sand, the income would be a little over a thousand a year?—Yes; a little over it.

19. What do you consider a fair profit for this line? Without this line that coal would not have been carried by the Government?—Not from that mine, but from other mines.

20. What mines?—The Walton Park. It would have been still better for the railway if that line had not been constructed for them; we would have got so much more from Kaitangata.

21. What was the profit on this line? What does it cost you to bring the coal out?—The distance is 1 mile 60 chains, and nearly all the traffic is into Dunedin. The distance from the siding into Dunedin is 5 miles 7 chains. Adding the two together, you get nearly 7 miles. This 1 mile 60 chains is very nearly a fourth of the whole distance. Take the traffic on the Fernhill line as worth £1,000 per annum, which is just about right, that would give £250 as the share of the branch line. But on the branch line we had to run special trains—every train was special.

22. Did not the same train take the Walton Park along with it?—No, it is not the same; it is a special train altogether, so far as each branch is concerned. I should say that every time a locomotive goes up to the Fernhill Mine and brings down a few trucks of coal it costs 15s. One goes up every day, which is at least three hundred times a year, to do this business. Twenty-five or thirty tons a day was the output. Speaking of the years we have before us now, well, one-fourth of the income, as I have already said, is £250 for the receipts of this line. If I am correct in saying it costs from 12s. to 15s. to work this line—and 15s. per day is very near to the mark—mere working expenses, and there are three hundred days that the train runs up, we get about £225 as the expense. That leaves £25 a year to pay for maintenance.

23. That would pay Hamill; the £25 a year since the time the railway has been working would just about meet his claim?—If you bring in the railway responsible for Hamill, I think it should only start from the time the Railways Act came into operation, in 1889. It was then declared that all railways made under the Public Works Act were vested in the Commissioners.

24. Did you know that the decision of Judge Williams in that matter was that the Act gave no new right to the Commissioners, but that the railway belonged to the Queen, and hence it belonged to the Commissioners. If it had not belonged to the Queen it would not have been given to the Railway Commissioners?—It simply belonged to the Queen technically, and not equitably, and it is in that position now. It belongs to some one—to the Commissioners technically, but not equitably.

25. If the railway had not given this traffic to the line, you say you might have got it from other lines. Might the coal not have come from Newcastle?—No, not that kind of coal.

26. But the brown coal is used in the towns and for machinery purposes, and it could have been substituted by Newcastle coal, could it not?—Yes, that is so.

27. *The Chairman.*] The statement of Sir Robert Stout is correct that you did not employ Hamill, that he was employed by Logan and Gray?—I presume so.

28. *Hon. Sir R. Stout.*] It is also true that you got the profit?—Yes.

29. After paying working-expenses you get a profit of £25 a year?—Yes.

30. *The Chairman.*] Have you spent any money in maintenance?—Yes; since we took the line over we have spent about £470 in maintenance.

31. Does this piece of line stand in the Commissioners' books to credit or to debit?—To debit.

32. By how much?—I cannot say in figures, but I have stated to the Committee that since we have had it we have spent more in working-expenses, wear-and-tear, and so forth, than we have received in revenue, not only from the branch-line, but from the running into Dunedin. Practically we have run the coal into Dunedin for nothing.

33. When this man was doing the work for which he charges, were you running the railway, or was it being run by private people?—We always ran the railway.

34. And you got the revenue?—Yes.

35. And if this man Hamill had not been doing this maintenance at the time for which he has not been paid, would the Commissioners have had to put a man on in his place?—Yes.

36. Then this money would have been paid by the Commissioners, if this man Hamill had not been there to do the work?—Yes; that is so.

37. *Hon. Sir R. Stout.*] You have not opened a debit and credit account in connection with this line?—No; we have not done so.

38. I wrote protesting against any money being spent on the line without my consent?—You protested against our taking any notice of this man Gray.

*Mr. Morrison:* Sir Robert Stout asked if the train that ran up the Walton Park Branch did not also run to Fernhill. They are quite separate and distinct trains are they not?—Yes; that is so.

## APPENDIX.

### EXHIBIT "A."

(Referred to in the evidence of the Hon. Sir R. Stout, K.C.M.G.)

RETURN of COAL forwarded from FERNHILL each Year from 1st April, 1883, to 31st March, 1892.

|                              |     |     |     |     |             |
|------------------------------|-----|-----|-----|-----|-------------|
| Year ending 31st March, 1884 | ... | ... | ... | ... | 9,047 tons. |
| " " 1885                     | ... | ... | ... | ... | 11,405 "    |
| " " 1886                     | ... | ... | ... | ... | 7,500 "     |
| " " 1887                     | ... | ... | ... | ... | 5,459 "     |
| " " 1888                     | ... | ... | ... | ... | 7,944 "     |
| " " 1889                     | ... | ... | ... | ... | 8,352 "     |
| " " 1890                     | ... | ... | ... | ... | 8,767 "     |
| " " 1891                     | ... | ... | ... | ... | 7,930 "     |
| " " 1892                     | ... | ... | ... | ... | 6,254 "     |

RETURN of PAYMENTS made by FERNHILL COAL COMPANY, through Ledger and Deposit Accounts.

|   |     |     |     | £      | s. | d. |
|---|-----|-----|-----|--------|----|----|
| From 1st April, 1884, to 31st March, 1885*    | ... | ... | ... | 1,436  | 1  | 1  |
| " " 1885, " 1886                              | ... | ... | ... | 970    | 19 | 9  |
| " " 1886, " 1887                              | ... | ... | ... | 978    | 12 | 3  |
| " " 1887, " 1888                              | ... | ... | ... | 926    | 16 | 6  |
| " " 1888, " 1889                              | ... | ... | ... | 948    | 10 | 8  |
| " " 1889, " 1890                              | ... | ... | ... | 1,167  | 12 | 6  |
| " " 1890, to 21st May, 1890                   | ... | ... | ... | 153    | 2  | 8  |
| " 22nd May, 1890, to 25th October, 1890       | ... | ... | ... | 526    | 8  | 1  |
| One week in February, 1891†                   | ... | ... | ... | 21     | 10 | 4  |
| From 2nd March, 1891, to 31st December, 1891† | ... | ... | ... | 574    | 0  | 10 |
| Total   | ..  | ... | ... | £7,703 | 14 | 8  |

\* No record of payments made prior to 1st April, 1884.

† For periods not accounted for payments were probably made in cash, and of such there is no record.

E. G. PILCHER, Secretary.

REPORT of Mr. B. C. HAGGITT, C.S., DUNEDIN, *re* FERNHILL BRANCH RAILWAY.

THE plan hereunto attached (comprising plans marked A, and plans numbered 1, 2, and 3 respectively) shows the whole of the land on which the Fernhill Branch Railway-line is constructed. The small piece of land marked on plan A, containing 3 roods and 16 poles, comes in at the foot of plan numbered 1, and connects the branch-line with the Government railway-line.

The land in plan marked A was held by the Fernhill Railway and Coal Company, Limited, under a certificate of title under the Land Transfer Act (register-book, vol. 66, folio 155), and was transferred to Sir Robert Stout by an unregistered memorandum of transfer, duly executed under the common seal of the company, on the 14th June, 1889. Being unregistered, the transfer passed no estate in the land, and the land being now vested in the Railway Commissioners, the transfer cannot be registered; but I apprehend that the transferee, Sir Robert Stout, has, by the effect of the transfer, a perfectly good equitable title to the land.

The land shown on plan No. 1, comprising 8 acres 1 rood 33 poles, was the property of Mr. James Freeman. It was purchased from him by the Fernhill Railway and Coal Company, Limited, for the sum of £420, under an agreement in writing, dated 18th August, 1881. The purchase-money was duly paid to him by the company, and a draft deed of conveyance from Mr. Freeman to Sir Robert Stout of the said land (reserving the coal and lignite thereunder) was prepared at the end of the year 1889, with the consent in writing of the company, and Mr. John Logan, (the company's mortgagee), and was approved by Messrs. Macassey, Kettle, and Woodhouse (Mr. Freeman's solicitors), on his behalf, on the 9th January, 1890. This conveyance would no doubt have been completed and executed in due course had not the railway-line become vested in the Railway Commissioners. Enough, however, has been stated to show a good equitable title in Sir Robert Stout.

The land shown on plan No. 2 was the property of one John Andrew, and was mortgaged by him to the late James Glassford Gordon Glassford. By a conveyance dated 14th July, 1884, the executors of Mr. Glassford and Mr. John Andrew conveyed this piece of land to the Fernhill Railway and Coal Company, Limited, in fee-simple, and by a deed dated 14th June, 1889 (unregistered), the company conveyed the same piece of land to Sir Robert Stout in fee-simple. This conveyance would also have been registered in due course but for the fact of the land being vested in the Railway Commissioners; and there can be no doubt that Sir Robert Stout has a good equitable title to this land.

The land shown on plan No. 3 was, in August, 1881, the property of Mr. David Andrew, but was, with other lands, subject to a mortgage to William Isaac, John Cargill, Arthur William Morris, and James Miller. It comprises 2 acres 2 roods 32 poles, more or less. On the 23rd August, 1881, Mr. Andrew entered into an agreement in writing with the promoters of the Fernhill Coal Company, which is in the terms following:—

*“ Memorandum.*

“ The promoters of the Fernhill Coal Company: In consideration of your constructing a railway from Abbotsford to Fernhill, I agree: 1. To convey to you the land required for the same, with sidings, through Sections 3, 4, and 5, Block VI., Dunedin and East Taieri District, and also the small portions of said Sections 3 and 4 abutting on the District Road between pegs 40 and 50, free of charge.

“ 2. I consent to your occupying any portions of the said sections which you may fence in for works in connection with the railway, and any mining or manufacturing operations which may be carried on at Fernhill aforesaid, as if the same had been expressly included in the demise of 7th October, 1878. [This is a lease from David Andrew to John Alves of a coal-mine and seams of coal, for working which the line of railway was required.]

“ 3. This memorandum is subject to approval of my mortgagees, and is to apply to any joint-stock company which may be formed by you.

“ Dated this 23rd day of August, 1891.

DAVID ANDREW.

On behalf of the Promoters, JOHN ALVES.

“ We consent to the above—JAMES MILLS, for self and co-mortgagees.”

In the end of 1883, or beginning of 1884, the company's then solicitors (Messrs. Howorth and Hodgkins) prepared a draft conveyance from Mr. Andrew and his mortgagees to the Fernhill Railway and Coal Company, Limited, and forwarded same to Messrs. Stout and Mondy, Mr. Andrew's then solicitors, for approval on his behalf. The consideration stated in the draft is the nominal consideration of 10s. paid by the company to Mr. Andrew. This conveyance was never completed, why, I have not been able to ascertain, but in the face of the agreement signed by Mr. Andrew, and assented to by his mortgagees, it is quite immaterial.

On the 10th May, 1887, Mr. John Logan entered into an agreement with Messrs. Stout and Mondy, by which, after reciting that Mr. Logan was entitled in equity to an estate in fee-simple free from incumbrances in the several parcels of land particularly described in the schedule thereunder written (which is the whole of the railway-line), together with the railway lines, tramways, and sleepers, constructed or laid thereon, and together also with all the appurtenances thereunto belonging. The mortgagor, in consideration of the sum of £500 that day lent to him by the mortgagees, charged all the said parcels of land described in the said schedule with the payment by the mortgagor to the mortgagees of the said sum of £500, together with interest thereon at the rate of £8 per cent. per annum, computed from the date thereof, payable half-yearly on the 10th November and the 10th May in every year. And further agreed that, whenever he (the mortgagor) should have obtained a legal title to the said parcels of land described in the said schedule, he would execute to the mortgagees a legal mortgage of the said parcels of land in such form, and with such powers of sale and other provisions, as the mortgagees might require, for further and more effectually securing the payment as aforesaid of the said principal sum and interest.

Mr. Logan's title consists of a deed of mortgage dated 20th March, 1882, made between the Fernhill Railway and Coal Company, Limited, of the one part, and John Bathgate, George Turnbull, and Robert Hay, of the other part, whereby the company mortgaged all its property (including the railway and the contract with the Government for the construction of the same) to the said John Bathgate, George Turnbull, and Robert Hay, and covenanted with them with all convenient speed to construct and complete the railway, and acquire a title to the same, and convey it to the mortgagees; and a deed of absolute assignment, dated 3rd September, 1889, made in exercise of the power of sale contained in the mortgage deed, by the mortgagees to Mr. Logan, of the whole of the premises bound by or subject to the mortgage deed.

This assignment is dated long after the agreement between Messrs. Stout and Mondy, but, although only executed then, it had, as a matter of fact, been agreed upon before the agreement of 10th May, 1887, and the £500 was actually paid by Mr. Logan to the vendors as part of the purchase-money.

Mr. Mondy was paid by Sir Robert Stout his proportion of the £500, and the whole interest in the agreement and the security thereby given now belongs to Sir Robert Stout alone.

It is no doubt in virtue of this agreement of the 10th May, 1887, that the titles to all the lands comprising the railway-line, except the piece containing 2 acres 2 roods 32 perches formerly belonging to Mr. D. Andrew, and which is now vested in the Railway Commissioners, were put into the name of Sir Robert Stout.

The Fernhill Railway and Coal Company, Limited, and Mr. Logan, have, in writing, agreed that all their estate and interest in this land (2 acres 2 roods 32 perches), under the agreement with Mr. Andrew and otherwise howsoever, shall be transferred to and vested in Sir Robert Stout. I fail to see how, in the face of the fact that the land is absolutely vested in the Railway Commissioners, any one can give him a better equitable title to it.

Although Mr. Andrew, in his letter to the Minister for Public Works, dated 29th June, 1893, says, "The company gave me to understand that they constructed the railway, and were proprietors of it, and would pay me for the land taken for the construction," &c. And although, in the course of his evidence given before the Public Petitions A to L Committee last session of Parliament, in answer to questions 38, 40, and 41, he practically denies that he ever agreed to give the land for nothing, it is clear, in the face of the agreement entered into with the promoters of the Fernhill Coal Company set out above (which I have seen, and have not the slightest doubt is genuine), and of the draft conveyance prepared by the company's solicitors, that Mr. Andrew's memory is at fault; and his letter of the 29th June, 1893, further shows that, had he known the Government were constructing the line, he would have made his claim in the regular way under the Public Works Act, which makes the fact of his making no claim on the company, who he thought were constructing the line, very significant. Moreover, he stood by, and allowed the company to expend their money to a large amount on his land on the faith of his undertaking to give the land for nothing, and made no claim for any payment, for more than twelve years afterwards, and his conduct in this respect alone seems to me sufficient to dispose of any equitable claim he could now set up. I gather from the evidence before the A to L Committee that the original agreement signed by Mr. Andrew, and assented to by or on behalf of his mortgagees, was not produced. Had it been forthcoming, then Mr. Andrew could never have given the evidence he did give.

The fact of ballast material having been taken from Mr. Andrew's land, whether with or without his consent, and used for ballasting the line, could not give him an equitable interest in the line itself. If taken with his knowledge and consent, he would have no claim at all to be paid for it unless he made an agreement with those who took it to pay him. If taken without his consent he might have had an action for damages for trespass against those who took it. The time for enforcing either remedy, however, is long since gone by.

As regards Mr. John Hamill, Mr. Toomey, Mr. Beal, and Mr. Denniston, they have, apparently, legal claims against some one or other. It is difficult to say exactly who, but I should think it would most probably be against Mr. A. H. Logan or Mr. Gray; but certainly they have no equitable ownership in the railway-line, or any equitable claim which they can enforce as against the railway itself.

As to Mr. Gray's claim, he is, I think, in the same position as Mr. Hamill, except for the agreement said to have been made with him by Sir Robert Stout on the 1st February, 1889.

This agreement I have not seen since the cases in the Police Court which I conducted for the Railway Commissioners. I understand, however, that it does not include the railway. Sir Robert Stout in his evidence (at page 26), distinctly states that the railway was not included in the agreement; and, as the agreement was produced and read before the Committee, it would at once have been discovered if that statement was not correct; and the questions put by Mr. McGregor, who appeared as Mr. Gray's solicitor (Nos. 72 to 80, at page 27), seem to show conclusively that the agreement did not include the railway.

Moreover, I understand that it is not even suggested that the effect or the intention of this agreement was to give Mr. Gray any legal or equitable interest in the railway-line or anything else, but that, whatever interest was transferred to him, he was merely a trustee for those who were actually entitled, and had no real *bona fide* beneficial interest in the property himself.

Perhaps I have gone into the question of these outside claims at greater length than there was any occasion for. It might have sufficed to say that, so far as the line of railway was concerned, no persons other than Mr. John Logan and Sir Robert Stout appeared to me to possess any right in or to it, at law or in equity; that there were no liens on it; and that no claims attaching to the railway itself were unsatisfied; and that seems to me to be the exact state of facts. None of the claims set up by the petitioners give them or any one of them a lien or claim upon the railway, although, as regards some of them, at all events, money is undoubtedly due to them by the company, by Mr. John Logan, Mr. A. H. Logan, Sir Robert Stout, or some one.

But, it is only where there is "any doubt or dispute about the ownership of a railway" that a Commissioner is to be appointed (section 5 "The Colliery Railways Vesting Act, 1893"). The ownership of the railway means "the company who constructed or paid for the construction of that railway or its assigns," and the line of railway cannot be vested in any one else (see section 2 of the Act). Now, there can be no question that the "assigns" of the company in the present case must be either Mr. John Logan or Sir Robert Stout, or both; and if Sir Robert Stout requests in writing that the line may be vested in Mr. John Logan, and he consents in writing to have it so vested, I see no reason why it should not be done.

I have only to add, in conclusion, that I do not see how I could state a special case in conjunction with Messrs. Stout, Mondy, and Sim in terms of section 5 of the Act. It is only "if and when the parties to the dispute of ownership of the railway can agree upon the facts to be stated" that that course can be adopted. Who in the present case can be said to be "the parties to the dispute of ownership"? and who could I claim to represent in the matter? Clearly not the Crown, or the Public Works Department, or the Railway Commissioners, as they are not parties to the dispute. If it is thought advisable to give Mr. Andrew, Mr. Gray, or any other of the petitioners, a chance of disputing the ownership of the line, the best course will, I think, be for the Governor to appoint Mr. Justice Williams to be a Commissioner, and leave him to inquire into the matter "by such ways and means as he may think fit."

It will be abundantly clear from what I have said above that, in my opinion, there is no reason whatever to appoint a Commissioner.

B. C. HAGGITT, C.S.

29th May, 1894.

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