

appointment provided that the Receiver should not proceed to any sale without the further order of the Court. The case now comes before the Court on an application on behalf of the debenture-holders to proceed with the sale. The application, though not so expressed in the motion, was at the argument admitted to be for the absolute sale of the constructed part of the line, it being also admitted that an order for the sale of the whole concession and contract was not asked for—it was, in fact, contended that the debenture-holders had a right to so limit their application. At the same time a cross-motion was made on behalf of the Government for the rescission of the order appointing the Receiver so far as it authorised him to interfere with the railway, including rolling-stock.

The contention on behalf of the debenture-holders is based on the provision in the Act of 1884 that the debentures are a “first charge,” and that, as contended by the terms of some of the provisions of this Act, the intention of the Legislature is manifested that the debenture-holders should have the security contended for—namely, a right to the absolute sale of any part or parts of the constructed line, discharged from the security given to the Government—which is the right to take possession of the line in the case of non-performance by the contracting party. For the Crown it was urged that the debenture-holders had, of course, notice by the Act and the contract between the Company and the Government of this power of the Government to take possession; that it would require the very clear expression of the Legislature’s intention to enable the Court to authorise the sale of portions of the line and so to disintegrate it, and render the whole either impossible to work, or possible only to work so disadvantageously to the public interest as to be practically useless. It was also urged on behalf of the Government that the right to take possession was not a charge in the sense in which the word is used in the expression “first charge,” but a stipulation necessary to secure the due completion of the line, and was part of the consideration given by the contractors for the contract, and the land-grants given and to be given.

It was, as I understand, admitted on behalf of the Government that the concession and contract as a whole might perhaps have been ordered to be sold if the debenture-holders had applied before the Company had practically abandoned their contract, but that, even if that were what the debenture-holders were asking for, it was now too late to ask for that. However, as the debenture-holders are not making that application, it is unnecessary to consider whether such an application would, in the circumstances, be successful: the liberty to sell the concession and contract, subject to the rights of the Government to take possession, would, in the present condition of things, be indisputably of no value to the debenture-holders.

By section 9 of the Act of 1884 the Company may borrow, on debenture, such sums as may be sufficient to complete the construction of the railway. The Government have no control over the amount to be borrowed: it might even be borrowed in one sum, and, if not in one sum, still the borrowing may be irrespective of the extent to which the works had progressed. By the 13th section of the same Act it is provided that the debentures and interest thereon shall be a “first charge on the entire assets of the Company, including the railway and everything pertaining thereto.” By the interpretation clause in the Act of 1881, “railway” where used in the Act of 1881, and, as I infer, where used in the Act of 1884, and in the contract, means the railway constructed or proposed to be constructed under the contract, and includes the land on which it is constructed, and the buildings and rolling-stock and plant of every kind connected with it, and the contract or right to construct and work it.

By the 14th section of the same Act of 1884 it is provided that, where there has been a failure to pay principal or interest on debentures, then, at the instance of debenture-holders, a Judge of the Supreme Court may order that “such part of the Company’s property as is liable under the provisions of that Act for the payment of the moneys shall be absolutely sold,” and that the Judge may in the meantime appoint a Receiver of “the rents, income, and profits of such property,” and the Receiver is to have all the powers of the Company for recovery “of tolls, rents, and other moneys.”