

debentures is to be affected by the stipulations of the contract between the Company and the Government. In the case of ordinary debentures being floating charges, such charges are subject to charges newly created while the Company is carrying on business, but they are also subject to charges existing at the time when the debentures were issued, and of which the debenture-holders had notice. Therefore, even if the stipulation, giving the Governor power to take and hold possession, stands no higher than or could be properly spoken of as a charge, as the debenture-holders had undoubtedly notice of the statutory provision giving this power, the debenture-holders' rights are subject to this right of the Government to take possession and complete the railway, and to hold possession as security for outlay, and, if such outlay be not recouped, to permanently retain possession.

There is much to support the view that in the present case no more than a "floating charge" was intended by the Act to be created. But even if the contention made by the debenture-holders in this case were well founded, and a charge on the line itself was created, and that the constructed portion of the railway could be treated as a severable section of the line, and could be ordered to be sold, there is no provision in the Acts or contract which would enable that severed portion to be sold discharged from the claims of the Government against the Company which created the charge. In the *Government of Newfoundland v. The Newfoundland Railway Company and Others* (57 L.J. P.C. 35; L.R. 13 App. Cas. 199), though it was held that by the terms of the charter the contractors and the trustees for the bondholders were entitled to receive portions of the stipulated subsidy and land-grants in proportion to the completed section, notwithstanding that the contractors had failed to complete the whole line and had abandoned further performance of the contract, having, as in the present case, completed only the part most advantageous to the contractors, yet that, in an action in which the trustees of the bondholders were parties to enforce payment of the proportions of subsidy and land-grants, the Government could, on general principles, set off, as against the bondholders' claim for the said portions of the subsidy and land-grants, in respect of the sections of the line assigned to such trustees, damages for injuries sustained by the Government by reason of the non-completion by the contractors of other portions of the line not assigned to the trustees. This case is an authority, if such be needed, that the bondholders cannot claim to be in a better position than their assignors, the contractors.

On behalf of the trustees for the bondholders it was contended, in the case just referred to, that the assignees of parts of the railway were not bound as were their assignors the Company, and could claim their proportion of the subsidy without being liable to the Government for damage in respect of the breach of the contract as to the other parts of the line. With reference to the contention, their Lordships say, in their judgment, "The two claims (the claim of the Government and the claim of the trustees for the bondholders) have their origin in the same portion of the same contract, where the obligations which gave rise to them are intertwined in the closest manner. The claim of the Government does not arise from any fresh transaction freely entered into by it after notice of assignment by the Company. It was utterly powerless to prevent the Company from inflicting injury upon it by breaking the contract. It would be a lamentable thing if it were found to be the law that a party to a contract may assign a portion of it, perhaps a beneficial portion, so that the assignee shall take the benefit, wholly discharged of any counterclaim by the other party in respect of the rest of the contract, which may be burdensome. There is no universal rule that claims arising out of the same contract may be set against one another in all circumstances, but their Lordships have no hesitation in saying that in this contract the claim for subsidy and for non-construction ought to be set against one another." These observations are applicable to the present case. The judgment is an authority for this: that, even if the contract and Acts had not conferred on the Governor power to take possession and complete or work, as the case may be, and charge the company with the outlay, and hold possession till the outlay be repaid, still the Governor would be so far secured that he would have a right to set off both as against the Company and even as against an