

favour of the debenture-holders over other creditors of the company. The right of the Government is the right, in case of default on the part of the company, to take possession of the railway or retain it as Government property."

There are one or two variations from the provisions of the Act of 1881, as to debentures and the rights of debenture-holders, which should be noted. Firstly, section 9 of the Act of 1884 authorises only the borrowing of money *necessary for completing the construction of the railway*, and only for that purpose authorizes the issue of debentures. Secondly, section 12 of the Act of 1884 allows the debenture to be in any form, but expressly requires that on its face it should state the provisions of section 11—that is, that no debenture-holder should have any claim upon the colony. I think I had better read section 11 and the provisions with regard to it in section 12. Section 11 provides—

No claim of any debenture-holder, or of any creditor of the company, shall attach to or be paid out of the public revenues of New Zealand or by the Government thereof.

Then, section 12 provides,—

Every debenture issued under this Act shall be in such form as the company or the agents aforesaid may from time to time approve, and shall be numbered consecutively so that no two debentures shall at any time bear the same number, and shall be for a sum of not less than one hundred pounds each.

The provisions of the last-preceding section shall be stated on the face of each debenture and coupon respectively issued under this Act.

The Committee will find later that the debentures which this company have issued, at all events of its first and only important issue, do not comply with the provisions of the Act of 1884, and this fact enforces the argument I have used, that either the holders did not read the Act upon the provisions of which they now contend they relied, or they did read it, and in that case they accepted debentures in a form prohibited by the provisions of the Act. The company also either never read the Act, or deliberately issued securities in defiance of its provisions. In either aspect the debenture-holders have been offered and have accepted such security as the company had to offer them, and no more.

Dr. Findlay: That point has never been raised by the Crown either in the Supreme Court or in the Privy Council.

Mr. Bell: It was referred to in the Supreme Court by *Dr. Findlay* himself, but it was a matter of no importance to the legal argument. The question I am now dealing with is whether the company or its assignees have any ground for founding arguments upon phrases in a statute whose provisions they deliberately—and I think I can show that their action in this was deliberate—refused to comply with. I have been led into comments upon this matter in anticipation of the more detailed argument I shall have to present later on; but I wish the Committee to understand, whenever a charge of want of good faith on the part of the colony appears, the nature of the proposed reply to it. I have dealt with two of the variations in the Act of 1884 from the Act of 1881. The third is that while section 52 of the Act of 1881 might be understood as authorising a mortgage of a portion of the line, section 13 of the Act of 1884 expressly provides that all debentures shall be a first charge upon the entire assets of the company, including the railway and everything pertaining thereto. The security of the debentures is to be on the whole assets of the company, and no issue of debentures is authorised by this Act which profess to give security on a part or parts of the railway, or other property of the company; yet the debentures which they issued purported to give a security over specific parts of the railway. The Committee will find that this further defiance of the statute is one circumstance upon which the petitioners have relied in support of their claim to hold a part of the railway without performing the contract.

(c.) *The Contracts and the Formation of the Company.*

Under the Act of 1881, as modified by the Act of 1884, gentlemen resident in Christchurch and Nelson entered into a contract with the Government. This contract was dated the 17th January, 1885, and will be found set out at length in the First Schedule to the amendment Act of 1886. It had attached to it maps marked A and B. Plan B is identical with the subsequent plan B 1. I have had a copy of map B 1 prepared, as the B 1 values are so often referred to, and I should like to explain what is meant by it, so that members of the Committee can understand it. The land tinted blue is the land which was reserved for the contract of 1885, and remained reserved under the contract of 1888, and has been reserved ever since. The area marked red is the land which the company has selected. I think *Dr. Findlay*, in the course of his speech, said the land selected was increased in value by the construction of the railway; but the Committee will notice that the company have carefully avoided choosing land alongside the railway, and have taken it along the slopes of the Canterbury hills. The B 1 plan is thus explained: The Committee will recollect that the Act of 1881 required that when a company is formed a reservation shall be made of large areas of land within which the company may select alternate blocks with the Government. The provision that the Government should have an alternate right of selection is contained in the first contract, and remained until 1887, when the present contract was being negotiated for. That particular right of the colony was eventually given up. It was a concession which this company asked for and obtained, that it might take its land in blocks, not alternate but consecutive. The land was estimated, as the Act required, at its bare prairie value, and the contract authorised the syndicate to select at that price 50 per cent. of the estimated cost of each section completed, as provided by the Act of 1884, in lieu of 30 per cent. as had been previously provided by the Act of 1881. Further, the company was to be entitled to any coal found on its land without paying any royalty. The estimate of cost made for the contract of 1888 was as follows:—