and mortgages—as the Municipal Corporations Act requires—the waterworks or tramway as well as, or without, a special rate, has it ever been supposed that the debenture-holders could interfere with, or claim possession of, or sell, or break up the undertaking? Again, A undertakes with a Harbour Board to build a wharf for the use of the public, of which A is to be the lessee, and have the tolls. In the contract it is provided that if A does not complete the wharf the Harbour Board may step in and complete it, and charge A with the cost. A mortgages his rights to B, and builds a part of the wharf, not connected with the land, and fails. B then claims the part constructed, and contends that as mortgagee he is not subject to the powers reserved to the Harbour Board against A, and that if the Harbour Board complete the wharf it will consist of two separate parts, one of which, over which the traffic is first conducted, belongs to the Board, and the second to B, and that the public must pay a second toll on passing the dividing-line. Again, every building contract contains provisions empowering the contractee, if the contractor fails, to enter and complete the work at the contractor's cost. Could any reasonable man lending money to a builder believe that his security would not be imperilled if the builder failed? Mr. Blow suggested a very apt illustration when conducting the Government case before the Committee in 1896. A company contracting for the construction of a public railway holds a statutory concession, and is necessarily subject to statutory obligations, and to the exercise against it of statutory powers. Its ownership of the railway is more that of a lessee than of owner in fee. Could a lender to the lessee on leaseholds complain if the landlord exercised the power of re-entry and forfeiture conferred by the lease if the lessee made default? The lender's remedy is to see that the lessee does not make default, not to complain that the landlord re-enters when neither the lessee nor the lessee's mortgagee will pay the rent or perform the covenants. However, it seems unnecessary to consider further illustrations. The English Act which authorises railway companies to mortgage is far stronger in its terms than is the New Zealand Act of 1884. The English Companies Clauses Consolidation Act of 1845 provides that, "If a company be authorised by its special Act to borrow on mortgage it shall be lawful for the company, for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking." By section 41 of the same Act it is enacted that, "Every mortgage for securing moneys borrowed by the company shall be by deed under the common seal of the company, and every such mortgage may be in the form in the Schedule C of this Act." Schedule C is in the following terms:—

Mortgage No. £ .
By virtue of (*Here name special Act*) we the company, in consideration of the sum of £ paid to us by A.B., do assign unto the said A.B., his executors, administrators, and assignees, the said undertaking, and all the estate, right, title, and interest of the company in the same, to hold unto the said A.B., his executors, administrators, and assignees until the said sum of £ together with interest for the same be satisfied. The principal sum to be repaid at the end of years from the date hereof.
Given under our common seal, this day of .

This is an absolute assignment by way of mortgage, certainly not inferior to a "charge" or "first charge." And just as in our Act of 1884 the mortgage is required to be of the entire assets, including the railway, so by the English Act the mortgage is to be of the "undertaking." The effect of such a mortgage of a public undertaking has been perfectly understood in England since the year 1867, when the principles were laid down and explained by Lord Cairns and Lord Justice Turner in the English Court of Appeal in Chancery, in the case of Gardner *v.* London, Chatham, and Dover Railway Company. In that case the railway company was by statute empowered to borrow money, and issued mortgage debentures in the form provided in Schedule C to the Companies Clauses Consolidation Act. It failed to meet the interest on the debentures, and thereupon the plaintiffs, as holders of the mortgage debentures, claimed to be put in possession of the railway by a manager or receiver appointed by the Court. Lord Cairns said:—

*Extracts from Judgments in Gardner* v. *London, Chatham, and Dover Railway Company (Chancery Appeal Cases, Vol. 2, 1867).*

Sir H. M. CAIRNS, L.J.: . . . But in addition to the general principle that the Court of Chancery will not in any case assume the permanent management of a business or undertaking there is that peculiarity in the undertaking of a railway which would, in my opinion, make it improper for the Court of Chancery to assume the management of it at all. When Parliament, acting for the public interest, authorises the construction and maintenance of a railway both as a highway for the public and as a road on which the company may themselves become carriers of passengers and goods, it confers powers and imposes duties and responsibilities of the largest and most important kind, and it confers and imposes them upon the company which Parliament has before it, and upon no other body of persons. These powers must be executed and these duties discharged by the company. They cannot be delegated or transferred. The company will, of course, act by its servants, for a corporation cannot act otherwise, but the responsibility will be that of the company. The company could not by agreement hand over the management of the railway to the debenture-holders. It is impossible to suppose that the Court of Chancery can make itself, or its officer, without any parliamentary authority, the hand to execute these powers, and all the more impossible when it is obvious that there can be no real and correlative responsiblity for the consequences of any imperfect management. It is said that the railway company did not object to the order for a manager. This may well be so. But in the view I take of the case the order would be improper, even if made on the express agreement and request of the company. . . .

Now, it is beyond question that the great object which Parliament has in view when it grants to a railway company its compulsory and extraordinary powers over private property is to secure in return to the public the making and maintaining of a great and complete means of public communication; and yet, according to the necessary consequence of the plaintiff's argument, the moment the company borrowed money on debentures it would depend on the will or caprice of the debenture-holder whether the railway was made at all. . . .

As regards the effect of the word "undertaking" in these securities, we gain but little information from the definition given in the Acts of Parliament. In the two public Acts—the Companies Clauses Act (2) and the Lands Clauses Act (3)—the "undertaking" is defined to be the "undertaking or works by the special Act authorised to be executed"; and in the private Acts the object appears to be, not so much to describe what is included in the word "undertaking," as to divide by metes and bounds, or otherwise, the various undertakings of the company from each other. The object and intention of Parliament, however, in the case of each of these various undertakings, was clearly to create a railway which was to be made and maintained, by which tolls and profits were to be earned, which was to be worked and managed by a company, according to certain rules of management and under a certain responsibility. The whole of this, when in operation, is the work contemplated by the Legislature, and it is to this that, in my opinion, the name of "undertaking" is given. Moneys are provided for, and various ingredients