go to make up the undertaking; but the term "undertaking" is the proper style, not for the ingredients, but for the completed work, and it is from the completed work that any return of moneys or earnings can arise. It is in this sense, in my opinion, that the "undertaking" is made the subject of a mortgage. Whatever may be the liability to which any of the property or effects connected with it may be subjected through the legal operation and consequences of a judgment recovered against it, the undertaking, so far as these contracts of mortgage are concerned, is, in my opinion, made over as a thing complete or to be completed, as a going concern, with internal and parliamentary powers of management not to be interfered with—as a fruit-bearing tree, the produce of which is the fund dedicated by the contract to secure and to pay the debt. The living and going concern thus created by the Legislature must not, under a contract pledging it as security, be destroyed, broken up, or annihilated. The tolls and sums of money *ejusdem generis*—that is to say, the earnings of the undertaking—must be made available to satisfy the mortgage; but, in my opinion, the mortgagees cannot, under their mortgages, or as mortgagees, by seizing, or calling on this Court to seize, the capital, or the lands, or the proceeds of sales of land, or the stock of the undertaking, either prevent its completion or reduce it into its original elements when it has been completed.

It cannot be denied by Dr. Findlay that Gardner's case is as nearly as possible in point, and is a well-known authority, and that its principle is thoroughly established in the English Courts and perfectly understood by English investors. I hope the petitioners will now see that no English statute would give them the right to seize a part of a public railway authorised by Parliament and disintegrate it, and hold a piece in the middle as against the public authority, which is entitled to require its completion. I have never been able to understand how the contention has been supported, or the suggestion made, that English investors were misled by the provisions of our statute. I have not the slightest doubt that the point is clear to every lawyer, and also to every business-man in England. They know what a railway-debenture is, and how far its security goes.

Refutation of Allegations 4 and 5.

No debenture, at all events of the main issue, that of 1889, was ever issued under the authority of "The East and West Coast Railway Act, 1884," or of "The Railways Construction and Land Act, 1881." Neither the prospectus nor the debentures refer to either of those Acts by date or title, and neither the prospectus nor the debentures make any pretence that the debentures are issued in pursuance of, or under, either Act specially. They are issued as first-mortgage debentures of a railway company, a designation in common use for all securities of the class. The reason why the Acts were not specifically referred to is plain to any reader who has knowledge of the circumstances and documents. Section 62 of the Act of 1881 contains the provision I have already referred to, but which it may be as well here to repeat,—

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

The form of debenture prescribed by the Fourth Schedule to the Act of 1881 is as follows:—

On presentation of this coupon at [*State place of payment*], on or after the day of , 18 , the bearer hereof will be entitled to receive £ .

The amount mentioned in this coupon is secured upon [*State whether the whole railway, assets and uncalled capital; or if only a portion, specify it*], as provided by section 58 of the above Act, which is as follows [*Set forth section* 58].

This coupon is subject to all the provisions of the above-mentioned Act.

The Act of 1884 does not prescribe any form of debenture, but section 11 of that Act replaces section 62 of the principal Act, and section 12 provides: "The provisions of the last preceding section shall be stated on the face of every debenture and coupon respectively issued under this Act." Secondly, the Act of 1884 provides that debentures issued under it shall be a first charge on the entire assets of the company, including the railway. It does not authorise a charge upon a portion of the assets or a fragment of the railway. No debenture issued to the petitioners bears a notification on its face or elsewhere that the colony is not liable, and it was, apparently, firstly, to avoid the necessity of putting that clear statement on the face of its debentures, and, secondly, to endeavour to create a mortgage of a part of the railway that the company did not refer to any "first charge" or to section 13 of the Act of 1884 in its prospectus or the debentures. How is it possible for the debenture-holders to contend that they relied on, or were misled by, the terms of an Act which they were not referred to as authorising their debentures, and which, in fact, does not authorise them. They never had, and have not now, any charge at all except such as the company could give them without statutory authority. This is no mere technicality. It is a plain, complete, and sufficient answer to their case. They took the company's, and not statutory, debentures. But it is not the only answer, nor is it the principal answer. I have only taken it first because it is the most apparent. Let me suppose for the purpose of what follows that the debentures were in due form, so as to create a first charge under the Act of 1884. Then the ordinary investor would not see a New Zealand Act, and would know nothing of the New Zealand laws. He would suppose he was buying the ordinary security of an ordinary railway debenture, and would understand the limits of his rights at law as defined in Gardner's case. But if he went further and made inquiries, as would be proper, he would first study the terms of the debenture itself, and the terms of the prospectus. The Committee will find those in Appendix, I.–7, 1896—the debentures at pages 39, 40, and 41; and the debenture prospectus at pages 41, 42. He would find in neither, as I have said, any separate reference to the Act of 1884. Indorsed on the debenture itself he would find a provision that "If the Company commit any breach of or incur any forfeiture or penalty under the contract of the 3rd August, 1888, or under the terms of the Acts of Parliament in the said indenture mentioned, or commit any breach of the covenant therein contained, then the principal moneys hereby secured shall immediately become payable." And that is all—a reference to forfeiture or penalties which might be incurred under the contract and "under the terms of the Acts of Parliament in the said indenture mentioned." The important point is that he is referred to "Acts of Parliament," not to any particular Act; and it must further be noted that only under the Act of 1881 is a penalty or forfeiture incurred. And not only is he referred to the Acts, but he is referred to the fact that under the provisions of some or one of those Acts forfeiture may be incurred by the contractor. Then, if he read his prospectus he would find in its explana-