

*The Crown's Present Contention that the Debenture-holders did not Lend on the Security of the Act of 1884.*

Now, the Crown attempt to escape from the overwhelming proofs that we honestly believed the Act of 1884 gave us a real first charge by the novel contention that the debenture-holders did not really lend their money on the faith of the Act of 1884 at all. This new contention may be easily disposed of. The Act of 1884 was passed avowedly to give further facilities for borrowing, and yet Mr. Bell suggests, to begin with, that advantage was not taken of those facilities, and why? "Because," Mr. Bell says first, "the Act was not referred to in the debentures or in the indorsed conditions." This would be a slender ground in any case to support such a startling conclusion, but, as a matter of fact, Mr. Bell is quite wrong. The conditions do contain this express reference: "The holders of debentures are entitled to the benefit of an indenture of charge upon the company's property, dated and made," &c. You will observe, then, that in the debenture there is a reference to the trust deed, and you will find that trust deed at page 33 of I.-7 of the Appendices of 1896. You will find the following provision: "Whereas by a deed of contract (hereinafter called the 'said contract') dated the 3rd day of August, 1887, and made between Her Majesty the Queen of the one part and the company of the other part, under the provisions of 'The Midland Railway Contract, 1887' (hereinafter called 'the said Act'), and pursuant to the provisions of 'The Railways Construction and Lands Act, 1881.'" Now, every lawyer knows that if you have a special Act incorporating and reciting the powers conferred by another Act, or Acts, you do not set out in the debentures the whole of those powers and conditions and all the Acts giving these powers. It is sufficient to refer to the special Act which embodies them all. Mr. Bell says that we concealed—deliberately omitted from the debentures—the Act of 1884. I will read the preamble to the Act of 1887. It says: "Whereas a Select Committee of the House of Representatives was appointed, to whom was referred the proposals for amending the contract for the construction of the Midland Railway, and which had been entered into under the provisions of 'The East and West Coast (Middle Island) and Nelson Railway and Railways Construction Act, 1884': And whereas such Committee has reported, 'That in the opinion of the Committee, a new contract should be prepared, embodying the several provisions of the Acts of 1884 and 1886, the contract of 1885 legalised by the Act of 1886, and the further draft contract amending the contract of 1885, and that an Act should be passed empowering the Governor to execute such a new contract.'" Now, to this Act of 1887, the trust deed in the plainest terms refers, and here is the Act of 1884 cited in the very forefront of the Act of 1887. It is surely plain that Mr. Bell overlooked this. Whoever drew the form of debenture did what every draftsman who knew his business would do. He puts in the debenture an express reference to the trust deed. In the trust deed is specially mentioned the Act of 1887. The Act of 1887 places the Act of 1884 in the first place among the Acts and contracts upon which the Act of 1887 is based. Is it fair, then, to say that we have intentionally concealed the Act of 1884? I submit that effectually disposes of Mr. Bell's suggestion that we were trying to conceal the provisions of the Act of 1884. But still Mr. Bell is not content with urging that we are not entitled to the rights conferred by the Act of 1884, because he thinks it is not mentioned or referred to in our debentures. He thinks we are disentitled on another ground. He has endeavoured to justify his contention by a curious piece of reasoning. He says the debenture does not comply with the provisions of the Act of 1884; and why? In the Act of 1884 there is a provision that the public revenues of the colony are not to be liable for the claim of any debenture-holder or other creditor. I will read this section, because, curiously enough, this is the section on which we have always relied as going to show we have a first charge on the line. 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." Section 12 says: "The provisions of the last preceding section shall be stated on the face of each debenture and coupon respectively issued under this Act." Mr. Bell says that because these provisions do not appear on the form of debenture we have wilfully suppressed them and have disentitled ourselves from taking advantage of the Act of 1884. I want to show you how little there is in this, and how it arose, and I think I shall be able to show you while doing this how far we were entitled to believe our claim came in before that of the Crown. If you turn to "The Harbours Act, 1878," you will find that that Act empowers the Board to raise money by a first charge upon its funds—by the issue of debentures. Now, curiously enough, the provisions for borrowing contained in our Act of 1884 are almost word for word a copy of the borrowing-powers contained in "The Harbours Act, 1878." The man who drew our Act of 1884 seems to have slavishly followed the sections in that Act of 1878, copying the completely irrelevant section 197, which is, word for word, section 11 of our Act of 1884; but surely the meaning of section 11 is obvious. Why is that provision put in there? The same provision appears in the Municipal Corporations Act; and why is it put in there? For this reason: You will remember that a Harbour Board or a Municipal Corporation is in a sense an agent of the Crown. It has delegated to it certain public duties, and is empowered to raise money; but the State wishes to meet the legal principle that, as these public bodies are agents of the Crown, and the principal is responsible for the debts of his agent, the Crown might be held liable for the debts of the public body. So there is a provision inserted in the Act that in no case shall the colony be responsible for the debts of these public bodies. We could contend that the provision in the 11th section of our Act of 1884 raised the strongest reason for believing that the Government were treating the Midland Railway Company in the same light as a Municipal Corporation or Harbour Board, as a public body performing public duties, and entrusted with *quasi*-public borrowing-powers, and, in order to meet a possible claim by the company's creditors that they could come upon the