

colony's revenues, that provision in section 11 was put in. If, then, section 11 is to be relied on, it really raises the strongest reason for the belief that the Government of the day were treating this Midland Railway Company as a public body, doing public work. If you will look at the Harbours Act you will find that section after section of that Act has been followed. I need not point to all the sections. You can, if you wish, compare them for yourselves. The whole of the machinery by which a public body can raise money is to be found in the Act of 1884. I have a tabulated statement here showing that the scheme is the same in different Acts. Now, what does that lead to? What light does it throw upon the position of these debenture-holders? Do they come under the same provisions as in the Harbours Act or of the Municipal Corporations Act? One would think so. Harbour Board debenture-holders have an indefeasible first charge upon the funds of that public body—not a first charge in name only to be suddenly cut away by some omission of the Board to comply with some of the conditions of a contract. Surely we had a reasonable conviction that we had the same security as was given under these other Acts to public bodies, who were in the same terms empowered to raise loans. We had, I repeat, a *bona fide* belief that we were getting a first mortgage on this line. But it is said that the non-inclusion of this 11th section in our debenture was done so as to mislead the public. Mislead the public in what way? Into believing that we could charge the public revenues of this colony? If this contention is not nonsense, it must mean that, in the absence of section 11 from the debenture, the lenders would assume our public revenues were liable to them. But who ever dreamt these debenture-holders had any claim on the colony's revenue. It has never been suggested throughout the whole of the proceedings that the debenture-holders have such a claim. I submit it is impossible to say that the omission of section 11 of the Act of 1884 was a fraudulent attempt to deceive the public. Mr. Bell said that we deliberately omitted that section from our debentures. What was the inference? That we were deliberately and *mala fide* acting against the provisions of the statute in failing to call the attention of the lender to this provision.

Mr. Bell: I gave two reasons. The Act did not require that its provisions should be on the face of the debenture, but it did require that there should be a statement that the whole of the assets of the company should be the security. The debenture omits this. But the Act also requires that the debentures should be a first charge on the entire assets of the company, and the debentures issued purport to create a charge on distinct portions of the railway. I said they desired to create a first mortgage on portions of the line, and therefore that they understood they could not issue debentures for that purpose under the Act.

191. Mr. Palmer (to Dr. Findlay).] You say that whatever the company borrowed was a first charge upon the line?—Yes.

192. I wish to clear that up. If they borrowed ten millions of money, and by your contention all they borrowed was to be a first charge on the line, or any portion constructed, were we to be unable to get back the line, or a portion of the line, on which they had expended £10,000,000, until we had paid them £10,000,000 for it? In that case, what then?—The Act gives power to the Crown to take the whole of the line, or any part of it, upon paying the cost of that portion of the line.

#### TUESDAY, 25TH SEPTEMBER, 1900.

Dr. Findlay: Mr. Chairman and gentlemen, before I proceed with my address I have been requested by Mr. Dalston to express his regret for some observations he made in replying to a question by Mr. Bell on last Thursday. Mr. Dalston desires me to say that he did not intend to cast any reflection whatever upon Mr. Blow or upon any member of the Government, or to convey the impression that the Government had in any way blocked his inquiry as general manager of the company; and if anything he said carries that idea he wishes to withdraw it.

Mr. Bell: I have not a word to say, except that I accept the statement most fully. I would, however, request the Committee to grant me permission to insert, after Mr. Blow's evidence, the following letter, written by Mr. Dalston to Mr. Blow on the 21st September, 1896: "I shall therefore be glad if you will, as suggested by you, render the account with fuller details of expenditure; and I may add that, under the circumstances, I agree with your suggestion that for present purposes any particular vouchers which I may require to inspect shall be produced; but payment of the account will be made without prejudice to the company's right to see later on, if necessary, all the vouchers relating to the account rendered." I ask permission to add that letter to Mr. Blow's evidence, so that it may show that the statement made by Mr. Blow is exactly in accord with the correspondence.

[Permission granted.]

#### Résumé of Grounds proving Debenture-holders and Crown made *bonâ fide* mistake of Law, and Crown's answer.

Dr. Findlay: In the half-hour which the limits of your time permitted me to address you last Thursday, I was striving to show that the Crown felt and recognised the force of the rule, "That where both parties to a contract enter into it in a *bonâ fide* and mutual misapprehension as to its legal effects, it is unconscionable for one of the parties to avail himself of that mistake in law so as to deprive the other of the very rights both parties thought the contract conferred." We say, and I am here to show, that all parties—company, Crown, and debenture-holders—believed and intended, when this money was lent by the debenture-holders, that they were, under the Act of 1884, getting a real first mortgage over this railway. The Crown, as I understand, meet this by two objections: (1.) The debenture-holders could not have believed they were getting such a security. (2.) Even supposing the Act of 1884 did confer such a security, we are not entitled to it—(a) Because the Act is not referred to in our debentures; (b) the Act provides only for a