

security over the whole completed line, and our debentures purport to give security over a part; (c) the debentures do not contain the provision contained in section 11 of the Act of 1884, that the public revenues of the colony are not to be liable for their payment. I partly answered these objections as follows: The first, by showing that if the debenture-holders did not believe they were getting a first mortgage they then were deliberately lending on a security so intangible, hazardous, and worthless that no man in his senses would look at it. The second I answered by showing—(1) That through the debenture, trust deed, and Act of 1887 there is the plainest reference to the Act of 1884, and that any draftsman who knew his business would draw the debenture just as it is drawn here; (2) that section 11 of the Act of 1884 has merely been copied without point or purpose, probably from "The Harbours Act, 1878," and that, as no one ever dreamed the debenture-holders or other creditors of the company could have any claim to be paid out of the public revenues of the colony, the inclusion of section 11 in the debentures was not only unnecessary, but would have been absurd; (3) that the objection which has been urged by Mr. Bell at considerable length—that the debentures expressly give security over part of the railway, and have therefore no effect under the Act of 1884—is involved, and met by the broad answer that at the time the debentures were issued all parties, including the Crown, thought the Act conferred and warranted such security. I now proceed to establish these answers more fully. Mr. Bell, you will remember, discussed at length the terms of the Act of 1884, cited cases and read judgments to show how ridiculous would be the alleged assumption by the debenture-holders that they were getting a real effective first mortgage over the constructed portion of this line. Well, I am not going to follow Mr. Bell in rearguing here the Midland Railway case, as if it were before the Privy Council. I only desire to show you how our reading of this Act of 1884 misled us and others, and this I can do briefly.

*How were the Debenture-holders misled by the Act of 1884?*

What was the essential question for the debenture-holders? Did the borrowing power in the Act of 1884 appear to give the company a right to effectively and absolutely charge anything less than the entire and fully finished line? That was the essential question for the debenture-holders to consider when they lent their money—did the borrowing powers of the Act of 1884 give the company power to charge anything less than the whole line as completed? I submit, and Mr. Bell will admit, that we could borrow under our general powers as a company, give a security over our undertaking—give the security we now find we have got. Such a security could be given without any Act, and the Act of 1884 is absolutely useless as a means to help the company to raise money. A limited company has power under the Companies Acts to raise money on its property, and, if only its undertaking could be mortgaged, that could easily have been done under articles of association, and there was no need for a statute. Hence the first inference is that these borrowing powers given by the Crown were intended to have some special force—namely, to give the lender an independent statutory security over so much of the railway as was mortgaged to him. That was the natural assumption with which we began. Next, take the Act of 1881, and remember that the crucial question is, "Do the Acts give any power to charge a part of the railway?" I wish to show why we believed they did. Take section 52 of the Act of 1881. There it is provided that a company raising money can "charge the railway (and the whole or any portion of the lands granted or to be granted to it), or such part thereof as may be agreed upon, by way of mortgage, with all usual and necessary remedies, including a power of sale." Now, what is the meaning of the words "part thereof"? My friend says—and he is supported in his contention by the Privy Council—that they mean part of the lands; but we say it was reasonable that we should interpret them as meaning part of the railway as well as of the lands. Then, section 58 of the Act of 1881 provides, "The principal and interest secured by any mortgage over a railway shall be a charge not only on the railway, but over everything pertaining thereto, or upon such part or parts thereof as shall be expressed in the mortgage." This can have only one meaning, and that is where it refers to a part of the line without any reference to the question of whether the whole line has been constructed or not. Section 67 provides that, "if the principal or interest is not paid," the mortgagee may apply to the Court for an order that "such part of the company's property as is liable under the Act for payment shall be absolutely sold." Section 68 provides that "on such order such part ceases to vest in the company, and vests in the Receiver." As we say, we expected that the part of the line charged would vest in the Receiver on this order being obtained from the Court. All this, even under the Act of 1881 seemed wide enough to allow of an absolute mortgage of a part of the line. But now let us turn to the Act of 1884. Section 9 of that Act provides "that the company may from time to time under the authority of this Act take up at interest such sum of money as may be necessary for completing the construction of the railway, and for such purpose may issue debentures under this Act." I would ask your attention specially to the words "from time to time," and also to the words "be necessary for completing." I say the reasonable inference was that the company might raise money "from time to time" on the line as it was being constructed until it was completed, and give a valid security over such parts as were made. I pass on now to the question of on what were these debentures to be a charge. Section 13 of the Act of 1884 says: "All such debentures and the interest thereon shall be a 'first' charge on the entire assets of the company, including railway and everything pertaining thereto." Could anything be wider in terms. Note the words "first charge." The Act of 1881 says there shall be a "charge." I say this Act was drawn up by a lawyer, and, in using these words, "a first charge," he wished to intensify the provision that an absolute security was permitted over a part of the work. Surely it was intended to emphasize the absolute priority and unassailability of the security conferred by the Act. But the Crown now says this was never meant to give a charge on anything short of the whole railway. You gentlemen are familiar with the general way in which, when a company or individual lends money on chattels, there are words introduced into the security saying that it is over the entire assets of