

We have above briefly set out the salient features in the constitution of this company and its promotion scheme as a company having a share capital and issuing to the public a prospectus for debentures. In Part III of this report a comparison will be made between these various statements in the prospectus and the actual facts as disclosed to us by the transactions themselves.

(c) THE NATURE OF THE CONTRACT BETWEEN THE COMPANY AND THE
BONDHOLDER.

The instruments offered to subscribers who act on the offer made in this prospectus are described as debentures. They are not debentures in the ordinary sense of the term; they are, in fact, rather hard to classify. They are not evidence of a debt unconditionally due or necessarily due by the New Zealand Redwood Forests, Ltd. The real nature of the instrument seems to be that it is a memorandum of a contract between the holder and the Redwood Co., the terms of the contract being as follow:—

The holder undertakes to pay the sum of £35 to the company. In consideration of this payment the company (1) warrants (a) that it has bought the land in question, and (b) that it has subscribed sufficient capital to pay the costs of formation and establishment of the company and the expenses of the debenture issue, including brokerage and commission; and (2) undertakes to plant that land with redwood trees; and (3) to maintain the forest thus planted; and (4) eventually to hand over land and forest to the Trustee for the debenture-holders or to the Realization Board. Land and forest are then to be sold or otherwise disposed of to the best advantage, and the net proceeds are to be applied, firstly, in repayment of the amount of the debenture, £35. Of the remainder, 90 per cent. is to go to the debenture-holders, and 10 per cent. to the company. Unless the forest planting and selling venture is sufficiently successful, the debenture-holders will not receive the return of their £35 per debenture. If the Redwood Company carries out its undertaking to acquire, clear, and plant the land, and tend the forest till it comes to maturity, it has done all it has undertaken to do; it is entitled to retain, either as the cost of the foregoing processes, or as profit, the whole of the £35. The question of whether a debenture-holder will get back £5, £35, or £350 for his debenture, therefore, depends entirely on the commercial success of the afforestation scheme. The security by way of floating charge was a security to ensure the due performance of the company's warranties and obligations with regard to the acquisition of the land and the planting, care, and supervision of the forests.

(d) BROKERAGE AND SELLING COSTS.

We have pointed out on page 3 hereof that the debenture prospectus warrants that the Redwood Co. has subscribed sufficient capital to pay (*inter alia*) "the expenses of this debenture issue, including brokerage and commission," and that under the heading "Purposes of this Issue," it sets out the allocation of the £35 of each debenture, with no reference to "brokerage."

Nevertheless, the company has made substantial payments by way of expenses of debenture issue, brokerage, and commission, and has paid these *out of the debenture-money, treating these payments as a first charge upon the debenture-moneys as received*. These payments amount, in the aggregate, to many thousands of pounds, being, according to the evidence submitted to us, over 15 per cent. of the debenture-money received.

This wrong use of the debenture funds is perhaps the most potent single factor in bringing the company to its present position. That position is that the company cannot carry out its existing obligations to its debenture-holders without the assistance of funds procured by the sale of further debentures.