

powers and privileges belonging or appertaining thereto." Under the interpretation clause of the Act of 1884 (No. 15), section 2, the words "railway" or "the said railway" in that Act are made to mean the East and West Coast (Middle Island) line of railway, which is the railway in question in these proceedings. It is plain, however, from the provisions of the Act of 1884 that this definition is merely for the purpose of limiting the operation of the statute to the railway in question, and that with respect to that railway the definition given by the Act of 1881 still remains. This is shown by section 17, which refers to the power of the Crown to purchase the railway under the provisions of the Act of 1881, obviously using that word in the meaning given to it by the Act of 1881. Moreover, it is specially provided by the repealing clause of the Act of 1884, section 18, that the provisions of the Act of 1881 "shall have full force and effect with respect to the railway to be constructed under the authority of this Act, and the Company constructing the same, except as herein is specially provided in modification thereof."

The word "railway," where used in section 13 of the Act of 1884, therefore includes the concession or right to construct and work the railway, and the whole operation of that section is, in the events which have happened, to give the debenture-holders a charge over such concession or right. This concession or right is strictly part of the assets of the Company, and the section, so read, is consistent and grammatical. There is a reason for the special reference to the "railway," as that word is interpreted in the Act of 1881, in section 13 of the Act of 1884, for, since the case of *Gardner v. The London, Chatham, and Dover Railway Company* (2 Ch. App. 201), it has been settled law that an undertaking of this character cannot, in the absence of statutory authority to that effect, be sold or transferred, nor can the powers or duties be delegated to or discharged by any other company or person than the Company or person to whom the concession has originally been made. Moreover, the Act of 1881, section 122, impliedly forbids the transfer of the undertaking without the consent of the Governor. Here the intention was that the debenture-holders should have a power of sale extending to the concession granted to the Company, subject to the special provisions for the protection of the public interests which are contained in sections 14–16 of the Act of 1884, and accordingly section 13 properly contains a special reference to the railway.

The concession or right of the Company to construct the railway under the contract may therefore properly be sold, or might have been sold, but for matters which have not been argued, and which perhaps do not fully appear in the proceedings; for on the part of the Crown it is not disputed that an order might, while the contract was subsisting, have been made for sale of the concession, though it is alleged that it is now too late to ask for such an order; while on the part of the debenture-holders it is stated that such an order would be valueless, and that they do not wish that it should be made.

Any sale which might have been made of the concession or right of the Company under the contract must, of course, have been made subject to the provisions of the contract and of the statutes, and therefore subject to the rights of the Crown under sections 123–126 of the Act of 1881.

It is, in my opinion, idle to contend that the use of the words "first charge upon the entire assets of the Company" in section 13 of the Act of 1884 creates a charge upon something which never was an asset of the Company—namely, the constructed part of the railway—as something not subject to the terms of the contract. All that the words "first charge" mean in that section is that the debenture-holders shall have a charge prior to the general body of the creditors of the Company; and it was, perhaps, desired to show in that section, what is specially enacted in the subsequent section 14, subsection (4), that all the debentures of the Company, whenever issued, were to rank alike.

It was contended that the provisions of sections 14, 16, and 17 of the Act of 1884 show that part of the railway may be sold, but I am unable to discern any such intention in the statute. Sections 14 and 16 refer to "such part of the Company's property as is liable under the provisions of this Act for the payment of such money," which may well refer to lands granted under the concession in