

tory paragraph a reference to the contract, "dated 17th January, 1885, entered into by the Governor of New Zealand on behalf of Her Majesty the Queen, under Acts of the New Zealand Parliament." And at the end he would find that "a draft copy of the trust deed securing the debentures and a copy of the contract can be seen at the office of the company." That is all from the prospectus. Then, if he inspected the contract and the trust deed, as he was invited to do, what would he find? In the contract he would find in the preamble, "The Act of 1881 is hereinafter referred to as 'the principal Act,' and the Act of 1884 as 'the said Act.'" In clause 1 he would find "the principal Act" defined, and also the "said Act." In clause 8 he would find an extension of the power conferred by section 48 of "the principal Act." In clause 43 he would find special reference to the power of the Governor under "the principal Act" to take possession of the railway—that is to say, to the very power under section 123 of which complaint is now made. In the debenture trust deed, the document which is for the protection of the debenture-holders, made and signed by their own trustees (the first trustee is Mr. Beaumont William Lubbock, Banker, and the first of the present petitioners is Sir John Lubbock, now Lord Avebury), he would find it expressly stated and recited that the contract was made "pursuant to the Act of 1881, hereinafter called 'the principal Act.'" I submit that the documentary evidence which I have brought forward establishes—first, that the company issued the prospectus and the debentures, and that the colony had nothing to do, directly or indirectly, with them; second, that so far from the subscribers relying on the terms of the Act of 1884, they could never have referred to it, for any such reference must have discovered that the debentures were not, and did not purport to be, issued under its authority, and, in fact, were issued in direct defiance of its provisions and requirements; thirdly, that they had at least the same notice, and, in fact, more notice, of the Act of 1881 than they had of the Act of 1884; fourthly, that their attention was, or should have been, drawn to the fact that the company might incur forfeiture, and that the colony expressly disclaimed liability to the debenture-holders; fifthly, that they had full notice in the prospectus of the contract and of the debenture trust deed, and were invited by the company to peruse them, and that if they had done so they must have discovered every point of which they have since declared themselves to be ignorant; sixthly, that, putting all such considerations aside, they must have known enough of ordinary business to be aware that the mortgagee of a public undertaking is always subject to restrictions on his powers, rather more so in England than in New Zealand; and, quite apart from the statutory provisions of the Act of 1881, they could never have supposed that they could, in consequence of the default of their mortgagor, break into fragments a public undertaking, or that by their intervention the right of the colony to complete the contract work could be defeated.

THURSDAY, 6TH SEPTEMBER, 1900.

(c.) *The Petition of the Debenture-holders to the Stock Exchange, repeating the same Charges.*

*Mr. Bell:* Mr. Chairman and Gentlemen,—At the rising of the Committee on Tuesday, I had endeavoured to define what I understood were the charges against the good faith of the colony, and the claims founded on those charges so far as the claims are stated in the present petitions either directly or by suggestion. I had also asked the Committee to distinguish carefully between that class of claim and the other class, founded on the circumstance that we have come into possession of a railway constructed not wholly with our money. I have still to deal with other allegations which have been made in support of the first class of claims, founded upon want of good faith on the part of the colony. I desire first to refer to the petition presented by the debenture-holders to the Stock Exchange—presented while litigation was still pending, and while the case between the Government and the debenture-holders was on its passage from the Supreme Court through the Court of Appeal of New Zealand to the Privy Council. The Committee will find that in the first paragraph they refer to the "Act of the Colony of New Zealand (hereinafter referred to as the 'colonial Act, 1884'), and which applied exclusively to this railway." I have already shown that that statement is not correct; but, passing from that point, you find that they go on to say,—

By the Act of 1884 it was declared desirable to give further facilities for the construction by private enterprise of this railway, and the company was authorised by section 9 to borrow from time to time, for the purpose of completing the construction of this railway, moneys upon the security of debentures repayable within twenty-five years from the issue thereof, with interest not exceeding 6 per cent. per annum, and being the coupons in respect thereof transferable by delivery; while by section 13 such debentures and the interest thereon were declared to be a first charge on the entire assets of the company, including the railway and everything pertaining thereto.

They then refer to section 14, which gave them authority, in case of default by the company, to apply to the Supreme Court of the colony for the appointment of a receiver. They next refer to the issue by the company of debentures and the calling for subscriptions in London:—

2. That in the year 1889 the company publicly offered for subscription in London £745,000 first mortgage 5-per-cent. debentures, repayable within twenty-five years, and otherwise in accordance with the conditions prescribed by section 9 above.

They carefully avoid informing the Committee of the Stock Exchange that the debentures were not "otherwise in accordance with" the conditions prescribed by sections 11 and 12, and by that careful omission they avoid informing the Stock Exchange of the fact that their debentures are not and do not purport to be authorised in any respect by the Act of 1884, and are issued in direct contravention of its provisions. Next they refer to the Act of 1881, calling special attention to sections 123, 125, and 126. They go on to say,—

That certain questions having arisen between the company and the Government, the matters in dispute were referred to arbitration in the month of November, 1895, but that the debenture-holders took no part in the arbitration proceedings.

That is correct. Then they go on,—