

worthless security, this colony cannot take advantage of such mistake of law and confiscate without compensation the very security a reasonable interpretation of the Act seemed to give us. From the legal point of view, if two men enter into a contract in the common belief that the law confers certain rights upon one of them, and it turns out afterwards that that belief was erroneous, and that the law really places one completely at the mercy of the other, that is a mistake of law. Still, in equity and good conscience, to take advantage of such a mistake would be highly reprehensible—would be condemned by every fair-minded man. I put it, then, that that is the test here. Mr. Bell himself felt the force of this ground, and devoted great time and ingenuity in attempting to prove that the debenture-holders did not really believe, or, if they had addressed their minds to it, could not have believed that in lending their money they were getting an absolute first charge upon this railway. In other words, they knew or must have known that it was not an indefeasible first mortgage at all. I confess this part of his address surprised me. First let me state the security which, according to Mr. Bell, the debenture-holders must have known they were getting. Something like £3,000,000 was required. The subscribed share capital of the company was one-twelfth of that, or £250,000. The debenture-holders were then, as Mr. Bell pointed out, to rely not upon the shareholders, but solely upon their security. Now what must they, we are told, have known was their security? (1.) Merely a charge upon the venture—a lien up to the point of the final construction of the whole line—not on the railway constructed, but on the right to construct. (2.) Let the debenture-holders, we are in effect told, advance £2,500,000, still if there was a mile of the line yet to complete they had no charge or security over it. They had their remedy against the company, forsooth; but the company's capital was only £250,000 and had been all spent. So that at the time they lent their money they must have known says Mr. Bell, they had absolutely no remedy except against this shadowy security, a security which was not tangible in any way until the last length of rail of this great undertaking was completed. Shortly put by Mr. Bell, the debenture-holders must have known they were merely getting a charge upon the final results, a contract which the Crown witnesses in 1892 said was an inevitably ruinous one. Is this conceivable? You must remember that the debenture-holders had no control over the construction of the line. They were not the contractors. They could do no more than demand and compel payment of their interest. The company was the contractor, and the whole security of the debenture-holders, they knew, depended upon how the company behaved itself. They had no control over the contract, and yet the contract was their only security. Let us see the result of this. Supposing £2,500,000 has been spent on the line, and the company then became guilty of unreasonable delay in prosecuting the work. The Crown can then seize the line, and the Crown can either finish it or keep it at it is, unfinished; and although it has to account for any ultimate profits, the line can never be got back from the Crown. There is no legal means in our hands of compelling the restoration of the line. It has gone for ever, although three-fourths or five-sixths of the whole railway has been completed, and £2,500,000 of our money sunk in it. And that is the kind of security we must have known this statute of 1884 gave us. But that is not all. Suppose there was a quarrel between the debenture-holders and the company, or even without a quarrel, suppose the company has, out of the debenture-holders' money, constructed one million or two million pounds' worth of the line, and then failed or neglected, without reasonable excuse, to run trains for twenty-one days, at the times and in the manner fixed and determined by or in any regulation to be made by the Governor under the Act of 1881, what happens? The Crown can seize the railway: can run it as it pleases—as its own, in fact. It is true it must account for profits, if any; but the possession, control, and right to the railway has, if the Crown likes, gone for ever. You can see then how perfectly plain it is we knew we had under this Act no security until the line was completed to the last rail, and that we lent our money knowing that if for twenty-one days the company do not run a particular train a day, the whole of the debenture-holders' security would be swept away? I ask you, who would lend their money on a security like that? The debenture-holders would be powerless to prevent such a default. Their security, upon which, it might be, £2,000,000 or £3,000,000 had been spent, might be taken from them for a neglect for twenty-one days to run trains, while they knew nothing of it. But that is not all. Trains must be run at times and in a manner determined by the Governor. Suppose the company considered these regulations unreasonable, and refused to run trains at the time stated for twenty-one days, again the Crown can step in and seize the railway, and there is no way of getting possession back. Still, further, if the company, in the opinion of the Governor, suffers any other wilful breach of the contract, the Government can step in and seize the line and everything belonging to it. This might all take place behind the backs of the debenture-holders, and necessarily so, because they had no one in the colony to give them information on the matter. They were merely in the position of mortgagees, and were helpless to defend themselves. Suppose, then, a security were offered which could be destroyed in this way, by failing to run a train for twenty-one days according to regulation, would any sane man lend money on it? Can it be assumed that capitalists in England would lend three millions of money in reliance merely upon a contract of that kind? I submit it raises the strongest presumption of the fact that these men lent their money honestly, and really believing they were getting a first mortgage upon the railway. These considerations surely show that either the debenture-holders were lunatics or they were misled by the reading of the Act of 1884. I now propose to meet the contentions of Mr. Bell and show—(1.) That the debenture-holders' view that they were getting an absolute first charge was reasonable and fair; (2.) that not only the debenture-holders and the company, but responsible Ministers of the Government of this colony, thought that first charge an indefeasible one, and that it was in the nature of a first mortgage. Nay, I shall go further and show, from the Journals of the House, that even Mr. Bell himself once thought so, when he appeared before the Committee in 1892.