the borrower. The security is unlimited, and yet Mr. Bell contends that the words "first charge" here, although they include the railway and everything pertaining thereto, do not include a part thereof. And yet we are told that no intelligent person perusing all this could believe there was power to charge a part.

Proof of Debenture-holders' and Company's bonâ fide *Belief that a Valid Security over Part of the Railway could be given.*

Now, I want to ask you, as touching on the question of the *bona fides* of the company, what did the company really give by its form of debenture? It expressly says,—(1) The portion of the said railway constructed out of the first issue of share capital, and (2) the further portions of the railway intended to be constructed out of the proceeds of the present issue of debentures, and (3) the grants of land. There, you will see there was no shuffling about it; the debentures expressly say the debenture-holders were to get a charge upon a portion of the line. Hence, in August, 1889, certain portions of the line were actually mortgaged to them. That is what their security said they were getting. Did they or did they not believe what was there said was true? Can it be said that this company was taking money from the lenders on something that was so absurd as a security that no intelligent person could be misled—taking money, knowing that a delusive and fraudulent charge was being given? And yet the *bona fides* of the belief of the company and debenture-holders is now questioned. Mr. Bell attempts to question a *bona fides* by the question, "Can it be supposed for a moment that the company or the debenture-holders could have believed that the company could construct the cheapest and best-paying portion of the line—a long line—and give an indefeasible mortgage over it, and then proceed no further, leaving the portion constructed in the hands of the mortgagees?" Mr. Bell made the very most of this. It has been raised against us at every point, as if it were a complete answer to my case. I say that both the statute and the contract give the plainest answer to such a question. They both specially provide for such a contingency. Section 17 of the Act of 1884 gives power to the Governor to come in and buy any portion of the line at bare cost. But this is more explicitly set out in the contract itself. I call your attention to clause 43 of the contract, which provides that if, under the provisions of the principal Act or of the contract, the Government takes possession of the railway or "any part thereof," then in lieu of taking possession he may purchase, although the ten years are not up, and although the railway is not wholly constructed, and pay only bare cost. I ask you to look specially at this second paragraph of that clause of the contract which provides for paying the bare cost. Is not that in precise terms what has happened here? First of all, the contract plainly contemplates the Crown taking possession of part of (not the fully constructed) line, and paying for it. I say the contract plainly contemplated what we have contended for all along, that we were getting a security which the Crown could only take from us by giving us a *quid pro quo*. Why should the Government pay for part of the line when they could get possession of it by forfeiture? The clause only applies where the Crown is entitled to take possession. Surely this clause 43 of the contract is intended to meet a case like this: it enables the Government to get rid of the debenture-holders who hold a part of the railway. The danger, as suggested by Mr. Bell, of the company constructing only the most profitable part and then stopping, is entirely met, for the Crown steps in, pays all the debenture-holders, and, having cleared-off mortgages, can deal with the company, taking the line constructed absolutely. There, then, is complete protection to the Crown, and there is the answer to Mr. Bell's criticism that we could not have believed we had security over a part. Suppose the Government had proceeded under clause 43 of the contract, what would the Crown have had to pay the debenture-holders? The bare cost of construction. There is 5 per cent. additional provided for under section 118 of the Act of 1881, but that would not then be added. Surely the debenture-holders, looking at all these things, were entitled to fancy the security safe, and that they could not be sacrificed for sins committed by the company; that they would at least be paid what their security cost them if it were actually taken from them.

Proof that the Crown shared the View that the Debenture-holders had an Absolute First Mortgage over Part of the Railway.

Now, let me turn to a further proof of their *bonâ fide* belief that they could take a valid mortgage of a part of the railway. You know that a draft of the trust deed and also the form of debenture were submitted by the company to the Agent-General, and by the Agent-General to his solicitors for perusal in 1889, before the debenture-holders lent their money. The correspondence on this subject was placed before the Committee in 1896, and is to be found in the Appendix to the Journals, 1896, I.-7, page 16. I wish to draw attention to the following letters:—

This letter is from the Agent-General to the Minister for Public Works, dated London, 26th July, 1899, and worded thus:—

SIR,—

. . . . . [First part of letter on different subject.] The draft trust deed, of which I sent you a copy by last mail, having now been carefully considered in conference between Messrs. Mackrell and myself, the result is that they cannot advise me to accept the trusteeship under the conditions there expressed; in which view I quite concur. I enclose a copy of their letter to me, and I have accordingly requested them to inform the company's solicitors that my name must be withdrawn as a trustee.

I have, &c.,
F. D. BELL.

The enclosure was addressed to the Agent-General, and dated 26th July, 1889, from 21, Cannon Street, London, E.C. It ran:—

DEAR SIR FRANCIS,—

New Zealand Midland Railway.—We have perused the draft of the proposed trust deed and form of debenture, and send herewith a copy of the letter dated the 22nd instant, which we received from Messrs. Paine, Son, and Pollock, and which we read to you at our last interview. It is not possible to foresee what questions may arise