

authorising and regulating the borrowing of money by companies subject to that Act. These provisions were repealed by the Act of 1884, and the provisions authorising borrowing, and regulating the rights of the present debenture-holders, are contained in sections 9 to 17 of the latter Act. By section 18 of the Act of 1884 the borrowing sections of the Act of 1881 and a number of other sections were repealed, but that section goes on to say, "but otherwise the principal Act shall have full force and effect in respect of the railway to be constructed under the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." It was conceded that under the borrowing powers conferred by the Act of 1881 the rights of the Crown under section 123 would take precedence of those of the lenders of money. By section 18 of the Act of 1884 above set out, section 123 has full force and effect, except as in the Act of 1884 is specially provided in modification thereof. We have therefore to ascertain if there is a special provision in the Act of 1884 which deprives the Crown of the rights which it would otherwise have had under the Act of 1881. The Company, by section 9 of the Act of 1884, has power to borrow on debentures such sums of money as may be necessary for completing the construction of the railway. Section 13 is as follows: "All such debentures and the interest payable thereon shall be a first charge on the entire assets of the Company, including the railway and everything pertaining thereto." The petitioners rely on the words "first charge," and insist that as the section contains these words the rights of the Crown are postponed to the rights of the debenture-holders. It seems to us that simply to state the proposition is to show its fallacy. The words "first charge" have the same meaning and the same force and effect whether the first charge is given by statute or, by the charter of the company. A first charge is a charge which takes priority over all other charges. But the rights of the Crown, given by section 123 and the following sections of the Act of 1881, are in no sense a charge. These sections confer rights on the Crown as one of the parties to the contract, for the purpose of ensuring the completion of the contract, and there is certainly nothing in section 13 containing any special modification in favour of the debenture-holders of the rights of the Crown conferred by section 123 of the Act of 1881, prior to the issue of any debentures. If section 13 had been intended to override the rights of the Crown, it would have done so in express terms. The persons who lent money on debentures must be taken to have had notice of the contents of the statutes under which they obtained the security, and to have been aware that by section 18 of the Act of 1884 they took subject to the rights given to the Crown by the Act of 1881, unless by the Act of 1884 there was a special provision in modification of those rights. It seems to us hopeless to pretend that section 13 contains any such special provision. In our opinion, the remarks of the Privy Council in the *Government of Newfoundland v. the Newfoundland Railway Company* (13 A.C. 199) are exactly applicable to the present case. Their Lordships there say: "The assignees, indeed, contend that the Act of 1881 and the Company's charter contain provisions which, in any controversy with the Government, place them in a better position than the Company. The charter contemplated that the Company will borrow money, and says that it may do so, and may issue bonds upon the faith of the corporate property. But their Lordships cannot find any indication throughout the whole of the documents which should lead a lender of money to think that the corporate property is anything more than what they can justly claim, or that he is in any way to stand on higher ground than the borrower."

The facts of the case have been so fully gone into by the learned Judges in the Court below that there is no occasion for us to discuss them. We entirely concur in all the conclusions arrived at by those learned Judges (some of which, from the view taken by us, it has become unnecessary to consider), and in the reasons by which their conclusions were supported.

Appeal dismissed with costs.

*Approximate Cost of Paper.*—Preparation, not given; printing (1,375 copies) 26 4s.