

The word is used in the same sense in the Pasten Letters in 1455: "debentur made to the said Falstaff with him remaining." The word was employed to describe an instrument under seal evidencing a debt.

The essence of a debenture was an admission of indebtedness, and this is still its essential characteristic.

*Edmonds v. Bains Company* (1887), 36 Ch.D. 219, gives this definition: "The term itself imports a debt—an acknowledgment of a debt—and speaking of the numerous and various forms of instruments which have been called debentures, without anyone being able to say that the term is incorrectly used, I find that generally—if not always, the instrument imports an obligation or covenant to pay. This obligation or covenant is in most cases at the present day, accompanied by some charge or security."

The authorities appear to agree in the view that any instrument other than a covering deed, which either creates or agrees to create a debt in favour of one person or corporation, or several persons or corporations, or acknowledges such debt, is a debenture.

"Debenture stock," says Lord Lindley, at p. 195, "is merely borrowed capital consolidated into one mass for the sake of convenience. Instead of each lender having a separate bond or mortgage, he has a certificate entitling him to a certain sum, being a portion of a large loan."

The contract to take up debentures or debenture stock is usually made by application followed by allotment. When a subscriber for debentures makes default in paying up any instalments, he cannot be compelled specifically to perform a contract by paying up the instalments, for the Court will not grant specific performance in such a case. (*Palmer's Company Precedents*, 8th ed., part 3, p. 151.) The company's remedy is to sue for damages for breach of contract and such damage has been held to be the difference between the rate of interest payable by the company to the allottee of the debentures, and the rate of interest which the company would have to pay in order to put the company in the same position as if the contract had been performed. *Bahamas Naval Plantation, Ltd. v. Griffin*, 14 T.L.R. 139.

If the sole reason why the company is unable to raise money, or is compelled to raise money on onerous terms, is that it has fallen into disrepute and bad financial odour, the company will not be entitled to recover damages from a defaulting subscriber to debentures or debenture stock. (Simonson, 3rd ed., p. 86.)

The leading case on this question is *South African Territories Limited v. Wallington* (1 Q.B. 692, [1898] A.C. 309). In this case the applicant for debentures sent his cheque for £80, being a deposit of £5 per debenture on 16 debentures of the company, and required it to allot him that number of debentures, and agreed to pay the instalments due in accordance with the terms of the prospectus. The debentures were duly allotted. The defendant never paid any further instalments. The company sued for specific performance of the contract and the balance of price of the debentures. The Court of Appeal dismissed the action holding that no action for specific