

mortgage on the property of the company by which it is issued, or some part of it, or secured by such a mortgage, and the addition of the word "land" appears to me to be indicative of the nature of the property on which the mortgage is represented to exist.

What then is the meaning fairly to be attributed to the words added at the foot of the instrument, "the payment of this debenture and the interest thereon is guaranteed by the capital and assets of the company invested in mortgages upon approved real estate in the Dominion of Canada?"

The position which the provision occupies in the instrument is, I think, immaterial, as it forms an integral part of the debenture. The words "guaranteed by" are, or at least may be, the equivalent of the words "secured upon," and had that form of expression been used, there would be no room for doubt, I think, that the words would amount, if not to a direct charge on the capital and assets of the company, to a representation that the debentures were secured in that manner, and a contract with the payee of the debenture that he should have that security for the payment of the debenture money and interest.

It is unnecessary to refer to all of the authorities which were cited on the argument to support the proposition that such language as I have indicated will create a floating charge on the company's property. It will suffice to refer to three of them.

In *In re Panama, New Zealand, and Australian Royal Mail Co.*, the debenture was headed "mortgage debenture," and by it the company charged its "undertaking, and all sums of money arising therefrom, and all the estate, right, title, and interest of the company therein," with the repayment of the money borrowed and interest thereon, and it was held by the Court of Appeal, affirming the judgment of Vice-Chancellor Malins, that the debenture holders acquired a charge upon all the property of the company, past and future, and that they were entitled to be paid out of the property of the company in priority to the general creditors.

In *In re Florence Land and Public Works Co.—Ex. p. Moor*, the instrument, which was called an "obligation," was expressed to be made under the power of the company's articles, which gave to the directors power to borrow money by mortgage on any part of the company's property, or by bonds, debentures, or mortgage debentures, which should entitle the holders to be paid out of the moneys, property, and effects of the company *pari passu*, and by the obligation the company bound themselves, their successors and assigns, and all their estate, property, and effects, to repay the sums mentioned therein at a future date. It was held that the obligation constituted a charge on the property of the company, subject to the power of the directors to dispose of