

It is, I think, more probable that if it was intended to create a charge, the charge was one which would embrace all the assets of the company rather than so much of them as might from time to time be invested in mortgages, and so to leave it in the power of the borrower to reduce the security of the lender as he might see fit by changing the investments from mortgages to debentures of municipal corporations or of public school corporations, or Dominion or provincial stock or securities—R.S.O. 1877, c. 164, sec. 21—or to loans on unadvanced shares—sec. 43. I can hardly imagine that a lender, having this Act referred to on the face of his debenture, would have taken the risk of his security being lessened or probably entirely destroyed by the borrower exercising his right to change the character of the investments so as to produce that result.

I have difficulty, too, if the security is to be so limited, in holding the charge to be a floating security. There are, upon such a construction, no words referring to future investments in mortgages, and I do not see how they can be implied. Where the security is upon the undertaking or upon the capital and assets, the almost necessary inference is that the assets as they may exist when the security is to be enforced are that which is to be the security. If the language does not imply that the security is to be a floating one, I have difficulty in conceiving that the company would give a security which would prevent their dealing with their securities as the necessities of their business might require, or that a lender would run the risk of his security being destroyed, or that lenders would be found when the debentures must have priority according to their respective dates of issue, and a complicated and difficult enquiry would be necessary, in case the securities were changed, or there were successive issues of debentures, to determine the security to which each debenture holder was entitled.

The words "invested . . . upon approved real estate" are also to my mind indicative rather of an intention to describe the kind of securities in which the company made the investment of its capital and assets—mortgages . . . upon approved real estate—than as descriptive of the subject matter of the security.

Being of this opinion, my choice must be between the first and second of the suggested constructions, and I have come to the conclusion that the second is the one which should be adopted.

The instrument, as has been seen, is described as a "land mortgage debenture." Had the word "land" been omitted, this description would point plainly to a well known form of security, a debenture which is both an obligation for the payment of the money which is payable by the terms of it, and a