

The principle of this decision is, I think, clearly applicable to the present case, if I am right in the view that the debenture contains a contract with the debenture holder that he shall have, as security for the payment of his debenture and interest, the capital and assets of the company.

The same principle was applied in *Town of Dundas v. Desjardins Canal Company*, to the case of a canal company which had executed a bond which did not contain direct words of charge, but stated that the receiver was "entitled to such security therefor (*i.e.*, money lent) as is mentioned in the said recited Act." The Act which authorized the borrowing provided that "all such bonds or mortgages * * shall take precedence and have priority of lien on the said canal and the tolls thereon, and other property of the company over all claims," etc., and it was held that, beyond doubt, the holders of the bonds were entitled to a charge on the canal and tolls and to the appointment of a receiver therefor.

So also in *Ross v. Army and Navy Hotel Co.*, where the debentures were issued with a condition annexed that the holders of the debenture bonds of that issue were entitled *pari passu* to the benefit of a "covering deed" to secure the payment of all moneys payable on the debenture bonds, it was held that, assuming the covering deed to be void for want of registration under the Bills of Sale Act, the intention to give the debenture holders a valid charge on the property comprised in the deed was manifest on the face of the debentures, read in conjunction with the annexed condition, and amounted to an equitable contract which would be carried into effect to give a charge upon all the property of the company; and, accordingly, that the chattels intended to be charged with the money due on the debentures were subject to an equitable charge in favour of the holders of those debentures.

I refer also upon this point to *In re New Durham Salt Co.*, *Brice on Ultra Vires*.

If the language of the instrument were more ambiguous than I think it is, the case is, in my opinion, one for a liberal application of the principle of taking words "*fortius contra proferentem*."

The ruling of the Master in Ordinary should, therefore, in my opinion, be reversed, and there be substituted for it a declaration that the debenture holders are entitled to be paid out of the assets of the company in priority to the depositors and other creditors. The costs of the appeal should, I think, be paid out of the moneys in the hands of the liquidator.