

SESS. II.—1897.
NEW ZEALAND.

MIDLAND RAILWAY

(FURTHER CORRESPONDENCE IN REFERENCE TO).

Part I.—Further proposals for a new contract.

Part II.—As to the position of the company's debenture holders.

Laid on the Table by the Hon. W. Hall-Jones, by Leave of the House.

PART I.—FURTHER PROPOSALS FOR A NEW CONTRACT.

No. 1.

Mr. N. H. M. DALSTON to the Hon. the PREMIER.

DEAR MR. SEDDON,—

Christchurch, 1st January, 1897.

Many thanks for your telegram of yesterday.* I am now the general manager of the Midland Railway Company, and as its sole representative in the colony I hold a full power of attorney under seal from the Board, and have a free hand to negotiate with you, subject, of course, to report to my directors for their final consideration and approval.

I have some further proposals which I should like to lay before you, and shall consider it a favour if you will afford me an opportunity, at your convenience, of so doing; but, should pressure of State affairs prevent your giving me an interview, would you depute Mr. Blow to go into the business with me.

If matters approach a conclusion, it will be the desire of my directors to meet your wishes in the appointments of officers connected with the management of the company, and, subject to your approval, they suggest that Mr. Napier Bell be the engineer-in-chief of the company, and that I retain my position of general manager.

Wishing you a prosperous new year,

I am, &c.,
NORMAN H. M. DALSTON.

Hon. R. J. Seddon.

No. 2.

The UNDER-SECRETARY for PUBLIC WORKS to the GENERAL MANAGER, Midland Railway Company.
Public Works Office, Wellington, 18th January, 1897.

SIR,—

Midland Railway.

In reply to your letter of the 1st instant to the Hon. the Premier, suggesting an interview with the object of discussing further proposals in connection with the Midland Railway, I am directed by the Minister for Public Works, to whom the matter has been referred, to state that it is desirable that any such proposals should be made in writing, and that any written proposals received from you in the matter will be submitted for the careful consideration of the Government.

I have, &c.,

The General Manager,

New Zealand Midland Railway Company (Limited), Christchurch.

H. J. H. Blow, Under-Secretary.

* This telegram, of which no copy was kept, was to the effect that the Premier regretted that a note from Mr. Dalston applying for an interview had not been brought before him at an earlier date, and that he would be glad to hear from him.

No. 3.

The GENERAL MANAGER, Midland Railway Company, to the Hon. the MINISTER for PUBLIC WORKS.

Christchurch, 21st January, 1897.

SIR,—

Midland Railway : Proposals for a New Contract.

I have the honour to acknowledge the receipt of your letter of the 18th instant, stating that it is desirable that my proposals in connection with the Midland Railway should be made in writing.

In reply I have the honour to state that I am advised by my directors that in order to raise further capital for continuing the construction of the New Zealand Midland Railway it is absolutely necessary to obtain a Government guarantee of interest.

The new capital proposed to be raised is £1,200,000, to complete the construction of the line from Patterson's Creek to Jackson's, and also between Belgrove and the junction of Norris Gully with the Motueka Valley; the construction of the portion of the Midland Railway between the terminating point of the section at Norris Gully and Reefton to be left over for future negotiations.

With regard to the section terminating at Norris Gully, it is proposed that the company shall construct, equip, and fully complete this within two years from the date of signing the new contract, but the company shall not be required to furnish any rolling-stock for use upon this section, which, when completed, shall become the absolute property of the Queen, without any payment or other consideration whatsoever, as was proposed in 1894.

The time for completing the railway from Patterson's Creek to Jackson's shall be five years from the date of the new contract, but the Governor to have power to grant an extension of this period from time to time.

No provision shall be made in the new contract for grants of land to the company except such land as the company may be entitled to select on the date of signing the new contract, and the selection of such land shall be made by the company within three months from the signing of the new contract, and on the expiry of the said three months all land within the "authorised area," as defined in the contract of 1888, shall forthwith be released from reservation.

The property of the company taken possession of by Government on 25th May, 1895, to be handed back to the company on the signing of the new contract.

The Midland Railway Contract Bill of 1894, provided, amongst other matters, that in respect of the uncompleted portion of the railway between Jackson's and Patterson's Creek the company should receive in lieu of land-grants, 3½-per-cent. bonds to the amount of £618,250, to be issued as follows: £200,000 worth within one year from the date of the new contract, a further £200,000 worth within two years from the same date, and £218,250 worth upon the completion of the line from Springfield to Jackson's.

In lieu of this is asked a Government guarantee of interest at 3 per cent. per annum on £1,200,000 new capital, or £36,000 per annum.

This annual payment of £36,000 to be made by Government for seventeen consecutive years, which, together with a balance payment of £6,250 in the eighteenth year from the signing of the new contract, will amount in the aggregate to £618,250.

It is proposed that at the expiration of the aforesaid seventeenth year Government shall have prior lien over the net annual traffic receipts up to £36,000, but should the net annual traffic receipts in any year subsequent to the before-mentioned seventeenth year fall below £36,000, Government shall meet the deficiency to pay the interest on the new capital, and shall be recouped such deficiency out of subsequent net traffic receipts.

It is fair and reasonable to presume that at the end of the seventeenth year the net annual traffic receipts will be more than sufficient to meet the annual interest of £36,000 on the new capital. Therefore it may be safely estimated that the liability of the colony under the proposed guarantee will not exceed £618,250, and I have the honour to submit that the advantages gained by the colony under these proposals are worthy the consideration of Government.

Firstly, they are a solution of the present unhappy and unsatisfactory position existing between the colony and the company.

Secondly, the 5,000,000 acres of land included in the "authorised area" will become Crown property within three months from the date of signing the new contract, and, although it may be said that the company is to receive cash in lieu of land, I may point out that such cash payments will extend over a long period of years.

Further, and what is, I respectfully urge, of great importance to the colony, and is, no doubt, of even greater importance to Canterbury and Westland, the railway connecting the east and west coasts of this Island will be an accomplished fact, and its construction must necessarily increase the value of the assets of the colony.

These are the salient points of my proposals, which are subject to the approval of my directors.

As a matter of course, there will be minor points connected with the proposed new contract. These can be settled later on.

I shall esteem it a favour if you will let this matter have your early consideration.

I have, &c.,

NORMAN H. M. DALSTON,
General Manager.

The Hon. the Minister for Public Works, Wellington.

No. 4.

The GENERAL MANAGER, Midland Railway Company, to the Hon. the MINISTER for PUBLIC WORKS.
Christchurch, 9th February, 1897.

SIR,— *Midland Railway: Proposals for New Contract.*

On the 21st ultimo I had the honour to communicate with you on the above subject. I shall be glad to hear, at your convenience, that you have received my proposals.

I have, &c.,

NORMAN H. M. DALSTON,
General Manager.

The Hon. the Minister for Public Works, Wellington.

No. 5.

The UNDER-SECRETARY for PUBLIC WORKS to the GENERAL MANAGER, Midland Railway Company,
Public Works Department, Wellington, 11th February, 1897.

SIR,— *Midland Railway.*

In reply to your letter of the 9th instant, respecting the proposals made by your company for a new contract, I have the honour, by direction of the Minister for Public Works, to acknowledge receipt of same, and to state that they will be submitted to the first full meeting of the Cabinet.

I have, &c.,

N. H. M. Dalston, Esq., General Manager, H. J. H. Blow, Under-Secretary.
New Zealand Midland Railway Company (Limited), Christchurch.

No. 6.

The GENERAL MANAGER, Midland Railway Company, to the Hon. the MINISTER for PUBLIC WORKS.
Christchurch, 15th February, 1897.

SIR,— *Midland Railway.*

I have the honour to acknowledge the receipt of your letter of the 11th instant, and beg to thank you for the information therein contained.

I have, &c.,

NORMAN H. M. DALSTON,
General Manager.

The Hon. the Minister for Public Works, Wellington.

No. 7.

The UNDER-SECRETARY for PUBLIC WORKS to the GENERAL MANAGER, Midland Railway Company,
Public Works Office, Wellington, 20th March, 1897.

SIR,— *Midland Railway: Proposals for a New Contract.*

Referring to my letter of the 11th ultimo hereon, I now have the honour, by direction of the Minister for Public Works, to inform you that your proposals have been considered in Cabinet this week, with the result that the Government is unable to see its way to entertain them.

I have, &c.,

N. H. M. Dalston, Esq., H. J. H. Blow, Under-Secretary.
General Manager, New Zealand Midland Railway, Christchurch.

No. 8.

The GENERAL MANAGER, Midland Railway Company, to the Hon. the MINISTER for PUBLIC WORKS.
Christchurch, 31st March, 1897.

SIR,— *Midland Railway: Proposals for a New Contract.*

I have the honour to acknowledge the receipt of your letter of the 20th instant informing me that Government is unable to see its way to entertain the proposals of the company as contained in my letter to you dated the 21st January, 1897. Will you kindly inform me if Government will be prepared to entertain the proposals above referred to if they are amended to the extent that the guarantee shall be limited to seventeen consecutive annual payments of £36,000, together with a balance payment in the eighteenth year after signing the new contract of £6,250? Under these proposed altered conditions the colony would not, of course, have any charge upon the traffic receipts as suggested in my proposals of the 20th January last.

I have, &c.,

NORMAN H. M. DALSTON,
General Manager.

The Hon. the Minister for Public Works, Wellington.

No. 9.

The UNDER-SECRETARY for PUBLIC WORKS to Mr. N. H. M. DALSTON.

Public Works Office, Wellington, 6th April, 1897.

SIR,— *Midland Railway: Proposals for a New Contract.*

I am directed by the Minister for Public Works to acknowledge receipt of your letter of the 31st ultimo making certain suggestions in modification of your proposals already made for a new contract. Before considering these suggestions the Minister would be glad if you would kindly inform him whether you are still authorised to make proposals on behalf of the company, in view of the fact that Mr. Alexander Young has been appointed by the Court to the position of general manager of the company.

Norman H. M. Dalston, Esq.,

New Zealand Midland Railway Company, Christchurch.

I have, &c.,

H. J. H. BLOW, Under-Secretary.

No. 10.

The GENERAL MANAGER, Midland Railway Company, to the Hon. the MINISTER for PUBLIC WORKS.

Christchurch, 8th April, 1897.

SIR,— *Midland Railway: Proposals for a New Contract.*

I have the honour to acknowledge the receipt of your letter of the 6th instant asking if I am still authorised to make proposals on behalf of the company in view of the appointment of Mr. Alexander Young. In reply, I beg to state that I am still authorised to make proposals for a new contract on behalf of the company.

Mr. Alexander Young is, I understand, the official Receiver and manager. I still retain my position as general manager, and my power of attorney has not been cancelled.

I have, &c.,

NORMAN H. M. DALSTON,

The Hon. the Minister for Public Works, Wellington.

General Manager.

No. 11.

The GENERAL MANAGER, Midland Railway Company, to the Hon. the MINISTER for PUBLIC WORKS.

Christchurch, 23rd April, 1897.

SIR,— *Midland Railway: Proposals for a New Contract.*

I have the honour to remind you that I have received no reply to my letter to you dated the 31st March last.

I have, &c.,

NORMAN H. M. DALSTON,

The Hon. the Minister for Public Works, Wellington.

General Manager.

No. 12.

The GENERAL MANAGER, Midland Railway Company, to the Hon. the MINISTER for PUBLIC WORKS.

Christchurch, 3rd May, 1897.

SIR,— *Midland Railway: Proposals for a New Contract.*

I have again the honour to remind you that I have received no reply to my letter to you dated the 31st March last.

I have, &c.,

NORMAN H. M. DALSTON,

The Hon. the Minister for Public Works, Wellington.

General Manager.

No. 13.

The GENERAL MANAGER, Midland Railway Company, to the Hon. the MINISTER for Public Works.

Christchurch, 10th May, 1897.

SIR,— *Midland Railway: Proposals for a New Contract.*

I have the honour to call your attention to the fact that six weeks ago—viz., on the 31st March last, I wrote to you in reference to the above subject, to which letter I have not had a reply. May I again ask you to be so good as to favour me with an answer to my letter above referred to.

I have, &c.,

NORMAN H. M. DALSTON,

The Hon. the Minister for Public Works, Wellington.

General Manager.

No. 14.

The UNDER-SECRETARY for PUBLIC WORKS to Mr. N. H. M. DALSTON.

Public Works Office, Wellington, 10th May, 1897.

SIR,—

Midland Railway.

Referring to your letter of the 3rd instant, and previous correspondence, regarding the proposals submitted by you for a new contract, I am now directed by the Minister for Public Works to state that the Government would not be prepared to entertain the proposals even if they were amended, as suggested in your letter of the 31st March last.

I have, &c.,

N. H. M. Dalston, Esq.,

New Zealand Midland Railway Company, Christchurch.

H. J. H. BLOW, Under-Secretary.

PART II.—AS TO THE POSITION OF THE COMPANY'S DEBENTURE-HOLDERS.

No. 15.

Mr. A. YOUNG to the Right Hon. the PREMIER.

Turquand, Youngs, and Co., 41, Coleman Street, London, E.C.,

DEAR SIR,—

29th July, 1897.

I cannot help again saying farewell as you are now quitting the shores of old England, where I am sure your countrymen endeavoured to give you the warmest possible reception as the worthy representative of New Zealand, and where, I am equally certain, the ring will long remain of your powerful speeches, so sympathetic towards the Mother-country and so strongly appreciative of the enormous advantages which must always accrue to both sides from your declared policy of cementing and strengthening in every possible way, politically and commercially, the bonds of union between the Mother-country and the colonies, amongst which New Zealand occupies a position which is already strong and must become stronger as time goes on. On such grounds I feel I can heartily wish you *bon voyage* and a safe return to the colony, although, unfortunately, our efforts to bring about a settlement of an old standing matter, which it seems to me it is high time to have disposed of, proved abortive—viz., the New Zealand Midland Railway. Indeed, in the circumstances, it could scarcely have been otherwise.

You came from New Zealand with views regarding the situation, and especially the rights of the debenture-holders, with which, from the beginning, as you are aware, it was not possible for me to agree.

The views on which you were proceeding were doubtless founded upon advice which had been given to you by the legal officers of the Government. These views, as enunciated by yourself, really amounted to this: that the shareholders had already forfeited all rights, whilst you could not admit that even the debenture-holders had any legal rights; the only way whereby, in your opinion, they could obtain any compensation in respect of the money which they had advanced upon debentures being the presentation by them, or by myself on their behalf, of a petition to Parliament, praying Parliament to take into consideration the hardship of their position, and to grant them such compensation as in the circumstances might be considered fair. To this suggested course I had, as you know, only one answer—that so far as my personal researches had extended I felt convinced that, having regard for the Acts of Parliament of New Zealand, particularly the special Act passed in 1884, the railway and all the assets of the company remained legally charged to the debenture-holders, and that such being the case their security could not be taken away, even by the Government of New Zealand.

Not being myself a lawyer, I cannot complain that this view, although strongly held by myself, was not one which unsupported could produce any serious effect upon your mind.

Finding, therefore, by our latest interview that you still retained your views, there appeared, as I said to you, to be very great difficulties in your way, as there were also in mine, and immediately after that last interview I took steps to have the case thoroughly examined by one of the most practical solicitors in the City of London, who immediately prepared a most exhaustive case and submitted same to the judgment of the ablest barristers in this city, together with copies of the Acts of Parliament, contracts with the Government, and all other documents bearing on the question. The men who have been consulted are men of the highest standing, and who are accustomed to conduct cases of the most important character in all our Courts of Appeal, and whose opinion would be certain to have weight in case of need.

The result has been the most complete vindication of the views which I, as a mere layman, have ventured to express to you. As I said to you, I have been accustomed to railways in all their aspects for many years past, and I could not bring myself to believe, from the circumstances of this case, that it would be possible for the Government of New Zealand, on any grounds, to deprive the debenture-holders of the securities which had, with the authority of Parliament, been pledged to them.

I was careful to impress upon the solicitors and counsel I consulted the importance of weighing very carefully the advice which the Crown solicitors had given to your Government; and, when I tell you that I myself attended the consultations, you will understand that I can speak with confidence when I inform you that this and all the other facts and points involved were most carefully weighed and most exhaustively considered.

This being the position of matters, I am quite sure that, whilst I fully respect the line which you have taken, acting upon the legal advice which you have received, you will equally respect my position, and will not for a moment think that anything which I may hereafter do towards asserting the rights which, as an officer of the High Court of Justice, I am obliged to guard, will be done for the mere sake of reviving questions and perpetuating, it may be, feelings with regard to this business which, on the other hand, it would be my earnest desire, and I believe yours as well, to have buried once for all. It is not for me to say what course, if any, you might adopt in order to prevent the revival of the questions to which I am referring, but it would be, of course, very agreeable to me if a basis for a friendly settlement could even yet be devised before it is too late.

So much I think I may safely say without prejudice and without leading you to believe that I have the least misgiving with regard to the strong position which I have taken up in our discussions.

I have communicated these facts to Mr. Justice Kekewich, by whose order I was appointed Receiver to represent the debenture-holders.

With his sanction I now enclose you copy of the opinion on this question received from Mr. C. Swinfen Eady, Q.C., and Mr. A. R. Kirby, from which you will see that they do not share the view held by your Crown Solicitor—that the contract of 1888 was the security for the debenture-holders. Their interpretation of the Acts of Parliament and the contracts, &c., which, in their opinion, would be adopted both by the Courts in New Zealand and the Privy Council here, is that the company having with the authority of the Government, conferred by the contract, exercised the powers of mortgaging the railway expressly given by Parliament in the Act of 1884, it is not now open to the Government to ignore the mortgage so given, and, in short, that as soon as the mortgage in favour of the debenture-holders had been created the seizure powers of the Government were limited to the interest of the company—*i.e.*, the equity of redemption.

I remain, &c.,

A. YOUNG,

The Right Hon. Richard J. Seddon, Premier of New Zealand. Receiver and Manager.

Enclosure in No. 15.

QUESTIONS.

CAN the debenture-holders now make application under the Act of 1884 to the Supreme Court in New Zealand, and successfully contend that (failing purchase of the railway by the Government) they are entitled to an order for sale of the undertaking, and that by virtue of any such order the line would be vested in the Receiver for the debenture-holders?

Whether, for the purpose of such proceedings, it would be necessary for the Receiver to commence proceedings in New Zealand?

Whether, if the debenture-holders are entitled, as suggested, to their security, it is necessary for their protection to continue recouping the Government their outlay for construction made under sections 123 and 125 of the Act of 1881, or whether the demand for any such recoupment is not one which must be addressed by the Government to the company alone, and not to the debenture-holders?

OPINION.

This raises the question as to the effect of the Government taking possession, and depends upon the construction to be placed upon section 123 of the Act of 1881.

Under the Act of 1881, and the sections in the Act of 1884, which, for the purpose of the company have been substituted, debentures are constituted a charge on the railway, and in our opinion the Government, under section 123, can take possession only subject to debentures which under the Acts constitute a charge, and that it is only the estate or interest of the company which, under section 126 of the Act of 1881, is intended to vest in the Crown.

Proceedings must be commenced in New Zealand, but the ultimate appeal would be to the Privy Council here.

In our opinion the non-payment by the company of money expended in completing, equipping, repairing, or maintaining the railway would entitle the Government to retain the railway only as against the company, and would not affect the charge of the debenture-holders. Had it been intended that the Crown should, under section 126, take the railway free from debentures which by the same Act are made a charge upon it we think it would have been so expressed.

C. SWINFEN EADY.

A. R. KIRBY.

Lincoln's Inn, 29th July, 1897.

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