

Mr. Williams, the claimant, called Robert Eunson and Michael Keneally, and the evidence was taken down in shorthand.

The Commission visited the scene of the fire.

RAKAIA.

The Commission sat at the Courthouse, Rakaia, on Monday, the 12th February, 1900.

Claim by Mr. John Gardiner.

Mr. A. L. Beattie, Locomotive Engineer for the Hurunui—Bluff Section, and Mr. H. Macandrew, District Engineer, Christchurch, represented the Railway Department, and Mr. B. L. Lane appeared for the claimant.

Mr Lane: Sir, the facts of this case are shortly to this effect: On the 2nd January, 1897, a fire occurred, starting apparently in the neighbourhood of the railway-line a short distance from the Rakaia Railway-station, going towards Ashburton. The department, I understand, has had plans made of the ground the fire covered, which plans will be put before your Worship by Mr. Macandrew. The fire, as the evidence will show, was discovered a short time after the express-train for Dunedin had left the Rakaia Station. It soon extended, taking the direction the wind was going—from close to the railway-line over the piece of waste ground that was covered with grass between the hedge and the railway-line, and then on to Mr. Gardiner's land. It travelled at a great pace, and did considerable damage, as I shall prove later on, by burning hedges, as well as 200 acres of grass, an out-crop, and a large number of sheep. The department has had a survey of the ground made, which we are quite prepared to take as correct, showing the area that was damaged. The sheep—ewes and lambs—were in a paddock, and could not be removed from the fire before they were injured. There was also an extent of gorse fencing, which Mr. Gardiner estimates at from three to three miles and a half in length. This was also surveyed by the department, and we are quite prepared to take their figures. Officers of the department visited the locality; and Mr. Gardiner afterwards took legal advice as to his position, and his rights, and was advised that he had no claim to take him to a Court of law, not being able to prove legal negligence on the part of the Government. He then instructed us to write the following letter:—

DEAR SIR,—

Christchurch, 12th January, 1897.

We have been instructed by Mr. Gardiner, of Rakaia, to write to you with reference to the damage sustained by him through a fire, which he believes spread on to his land from the railway reserve adjoining shortly after the south express train from Christchurch to Dunedin passed his property near Rakaia, on Saturday, the 2nd day of January instant.

We are informed by Mr. Gardiner that you inspected the scene of the fire, and saw the serious effect of it upon our client's property on Monday, the 4th instant.

Mr. Gardiner, from the information he has gathered, believes that there is no doubt the fire originated from the engine of the express-train, and as he has suffered most serious damage by the fire, he wishes us to ask on his behalf, if your department can see its way to compensate him for the loss he has sustained.

Mr. Gardiner admits that it is very difficult to assess the actual damage and loss sustained by such a fire, but he estimates his actual loss at £600, which is his valuation of the loss by the fire of three miles of fencing, 200 acres of grass, 100 acres of out-crop destroyed and damaged, and 600 cross-bred ewes and lambs actually destroyed or rendered valueless.

Our client submits that the above assessment of his pecuniary loss is a fair and reasonable one, but at the same time admits the difficulty of arriving accurately at the actual loss sustained, and he therefore suggests that, if the department can see its way to help him, and is not satisfied with the fairness of the above assessment, that it be left to yourself and Mr. Fenn, or any two farmers in the district you agree upon, to inspect the scene of the fire, and make an assessment of the amount of damage sustained by our client.

On Mr. Gardiner's behalf, we ask you to be good enough to submit the facts to your department with his request that it can see its way to assist him in his most serious loss, by compensation.

Yours, &c.,

LOUGHREY AND LANE.

J. Burnett, Esq., Resident Engineer of Railways, Christchurch Railway-station.

To that letter we received a reply, dated the 15th January, as follows:—

GENTLEMEN,—

Engineer's Department, Christchurch, 13th January, 1897.

I am referring your letter *re* damage by fire to Mr. Gardiner's land at Rakaia to headquarters at Wellington. I may say that the Railway Department does not admit any liability in the matter, and that, although arrangements are being made for measuring up the area burnt, this is not to be taken as in any way admitting that the department is in any way responsible.

Yours, &c.,

JAMES BURNETT, Resident Engineer.

Messrs. Loughrey and Lane, Solicitors, Christchurch.

A certain amount of verbal communication—personal interviews—then took place; and on the 6th March Mr. Burnett wrote to us as under:—

GENTLEMEN,—

Resident Engineer's Office, Christchurch, 6th March, 1897.

In reply to your letter of 12th January, asking on behalf of Mr. Gardiner for compensation for damage by fire on 2nd January, I have the honour to inform you that the matter has been considered by the Hon. the Minister for Railways, who has decided that he cannot see his way to pay any compensation.

I have, &c.,

Messrs. Loughrey and Lane, Solicitors, Christchurch.

J. BURNETT, Resident Engineer,

Per E.M.C.

Nothing further was done for a little time; but shortly afterwards Mr. Gardiner had information given to him that two passengers on the train had actually seen a good many sparks coming from one of the engines attached to the train just as it was leaving, or shortly after leaving, the Rakaia Station, and that they also noticed a fire burning where it was said it started. Before they got out of sight they also saw the fire burning through the fence, and they had no doubt that was the fire that did the damage. Then, we wrote to Mr. Burnett on the 15th April as follows:—