

SESS. II.—1887.
NEW ZEALAND.

MIDLAND RAILWAY COMMITTEE

(REPORT OF THE).

Brought up 23rd November, 1887, and ordered to be printed.

REPORT.

THE Midland Railway Committee, to whom was referred the proposals for amending the contract between Messrs. Chrystal and others (assigned to the Midland Railway Company) for the construction of the Midland Railway, have the honour to report that they have come to the following resolution:—

“That, in the opinion of the Committee, a new contract should be prepared, embodying the several provisions of the Acts of 1884 and 1886, the contract of 1885 legalised by the Act of 1886, and the further contract amending the contract of 1885; and that an Act should be passed empowering the Governor to execute such new contract. Such new contract should, so far as practicable, contain provisions in the same words as are used in the said Acts and contracts, and where any deviation is necessary in order to render the new contract consistent throughout, the alterations required should be to the same purport and effect as the draft contract hereunto annexed.”

23rd November, 1887.

W. R. RUSSELL,
Chairman, Midland Railway Committee.

REVISED CONTRACT AS PROPOSED BY THE SELECT COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

THIS DEED made the day of , 188 , between Her Majesty the Queen (who with her heirs and successors is and are hereinafter referred to as "the Queen"), of the one part, the New Zealand Midland Railway Company (Limited), a joint stock company carrying on business in the City of Christchurch, in New Zealand, and elsewhere, and having its head office at No. 79, Gracechurch Street, in the City of London, in England (which, with its successors and assigns, is hereinafter referred to as "the Company"), of the other part.

WHEREAS by a deed bearing date the 17th day of January, 1885, and made between the Queen, of the one part, and William Chrystall, John Tucker Ford, George Hart, John Thomas Matson, Thomas Shailer Weston, John Honeycomb Cock, Charles Yates Fell, Henry Douglas Jackson, Albert Pitt, and James Sclanders, all therein respectively described, and thereafter collectively referred to as "the Contractors," of the other part (which said deed is hereinafter referred to as the "original contract"), the Queen and the said contractors did, in pursuance of the provisions of "The Railways Construction and Land Act, 1881," and of "The East and West Coast (Middle Island) and Nelson Railway and Railways Construction Act, 1884" (hereinafter in these presents referred to as "the said Act"), and of all other powers and authorities them thereunto enabling, mutually contract and agree for the construction, maintenance, and working of a line of railway to connect the east and west coasts of the Middle Island, from Springfield, in the Provincial District of Canterbury, to Brunnerton, in the Provincial District of Westland, so as to connect at Springfield aforesaid with the New Zealand Government railway already constructed, and having its terminus there, and connecting Brunnerton aforesaid with the Town of Greymouth, and also a further line of railway from Brunnerton aforesaid to or near Belgrove, in the Provincial District of Nelson, so as to connect there with the New Zealand Government railway already constructed, and leading thence to the City of Nelson, and connecting the same with the first before-mentioned lines of railway, which two several lines of railway are thereafter (and the same are hereinafter) referred to as "the said railway," with all necessary buildings, railway-works, and other appliances requisite for the same and for working the said railway upon the terms and conditions and with and subject to the covenants, agreements, provisos, or restrictions in the said deed now in recital contained:

AND WHEREAS the original contract was laid before the General Assembly of New Zealand in the session thereof held in the year 1885:

AND WHEREAS by a deed indorsed upon the said hereinbefore in part recited deed of the 17th day of January, 1885, and made between the said contractors of the first part, Sir Francis Dillon Bell therein described of the second part, and the Company of the third part, for the considerations therein mentioned, the said contractors did, as beneficial owners thereby, with the written consent of the Governor of New Zealand on behalf of the Queen, testified by the said Sir Francis Dillon Bell, who, by virtue of an instrument in writing bearing date the 17th day of January, 1885, was appointed by the Governor to give such consent, being a party to and executing the said deed now in recital, assign unto the Company all that the original contract, and the full benefit and advantage to arise therefrom, upon the terms and with and subject to the covenants, provisos, and conditions therein contained:

AND WHEREAS upon the treaty for the assignment of the original contract it was agreed that certain constructions or modifications of the terms of the original contract should be made, and for the purpose of carrying out such agreement "The East and West Coast (Middle Island) and Nelson Railway Construction Act Amendment Act, 1886," was passed:

AND WHEREAS the deposit of £5,000 required by the original contract to be paid by the said contractors has been paid by the Company to the Agent-General of New Zealand on behalf of the Queen, and all other acts necessary for the due fulfilment of the original contract up to the date of these presents have been duly performed:

AND WHEREAS it is expedient that the original contract should, in pursuance of "The East and West Coast (Middle Island) and Nelson Railway Construction Act Amendment Act, 1886," be modified in the manner hereinafter appearing, and that a new and further contract should be made and entered into between the said parties hereto, embodying the terms of the original contract, with such modifications thereof as are hereinafter contained:

AND WHEREAS the value of the lands to be granted to the Company in pursuance of the provisions of the said Act and of the original contract has been calculated and determined in the manner prescribed by subsection (3) of section 8 of the said Act, and the persons appointed by and under

the said section have duly made and given their certificate in writing bearing date the day of , 188 , whereby it is shown that the total area to be granted to the company is 2,304,000 acres, and it has been agreed that the particulars of such valuation shall be set forth upon a map for the purposes and to be made available as hereinafter mentioned, without prejudice to the right of the Company (if any) to obtain other Crown lands that may then be available to meet the lawful claims of the Company :

Now this deed witnesseth that, in consideration of the premises and of the mutual covenants hereinafter on the part of the Queen and of the Company contained or implied, it is hereby covenanted and agreed by and between the Queen and the Company as follows :—

1. The valuation of the Crown lands of which grants may be made to the Company under the original contract and these presents shall be shown on a map similar to the map marked "B" attached to the original contract and referred to in the Third Schedule to "The East and West Coast (Middle Island) and Nelson Railway and Railways Construction Act Amendment Act, 1886," and hereinafter throughout these presents such valuation is termed and referred to as "the certified valuation," and the whole of the lands comprised in the first-mentioned map is hereinafter throughout these presents termed and referred to as "the authorised area," outside which the Company shall not be entitled to make a selection or receive a grant of any land on any account or claim under the original contract or this contract, or any Act of the General Assembly relating thereto.

The map to be made under this clause shall be executed by the Queen and the Company, and shall be deposited in the office of the Minister for Public Works at Wellington, and such map and valuation are hereby confirmed, and shall be binding on the Queen and the Company.

2. Subject to the conditions herein contained, all lands within the limits of the authorised area shall be available for selection by the Company, with the following exceptions :—

- (a.) All lands which, at the date hereof, are subject to any rights of private ownership, tenancy, or other occupancy, not being a tenancy or occupancy under leases or licenses granted for pastoral purposes, and all lands which have, prior to the 1st day of January, 1887, been set apart, either permanently or temporarily, by or on behalf of the Queen, under any law, for any public purpose.
- (b.) All lands described in the Schedules to "The Westland and Nelson Coalfields Administration Act, 1877."
- (c.) All lands which from time to time, in the opinion of the Governor, are or may be required for *bona fide* mining for gold or silver, and the several purposes connected therewith or incidental or conducive thereto, and which land shall from time to time be set apart and defined by Proclamations to be issued on that behalf; but no more than 10,000 acres shall be so set apart or proclaimed in one block at any one time; and the land so set apart and proclaimed from time to time shall not in the aggregate exceed 750,000 acres.
- (d.) All lands which shall from time to time hereafter be reserved or set apart for purposes of public recreation or as endowments for charitable or educational purposes under any law for the time being in force: Provided that no such lands shall be so reserved or set apart unless the situation and extent thereof shall have previously been agreed upon between the Queen and the Company.

It shall be optional for the Company at any time to select lands within the authorised area which are held under lease or license for pastoral purposes, but in every such case such selection shall be subject to all existing rights affecting the same.

It shall be optional for the Company, with the consent of the Queen in every case, at any time to select the timber on any lands reserved or set apart as aforesaid under subsections (c) and (d), in lieu of land at the same value per acre as such lands shall be set down in the certified valuation, and such area of timber so selected shall be reckoned as if it were an equal area of land selected by the Company: Provided that such option shall not be exercisable so as to in any way interfere with *bona fide* mining purposes: Provided also that such option shall not be exercisable over lands the timber on which shall, in the opinion of the Governor, be or be likely to be required for saw-mills then in existence, or for holders of timber licenses or miners' rights.

Nothing herein contained shall affect the right of the Queen to resume any lands selected by the Company pursuant to "The Mines Act, 1886."

3. Within three months after the expiration of one year from the completion of the said railway an account shall be taken of all moneys theretofore received by and then owing to the Company as proceeds of the land granted to and sold by them, and as proceeds of their timber and coal, whether by way of purchase-money or royalty, and a valuation shall be made, either by agreement between the parties hereto, or by arbitration as hereinafter provided, of all the land, timber, and coal of the Company then unsold; and if the aggregate of the moneys so received and owing, together with the sum of such valuation, shall not amount to £1,250,000, the Company may, within six months thereafter, select further land out of the land then remaining unselected and described as available for selection under section 2 hereof to the extent of such land then remaining so available; but all such further land shall be valued either by agreement or arbitration as aforesaid, and the Company shall not select any such further land to a value greater than the difference (if any) between the aggregate of the moneys so received and owing, together with the sum of such valuation as aforesaid, and the said sum of £1,250,000.

4. That, subject to the provisions of clause 9 hereof, the Company shall be at liberty from time to time, and when and as it in its discretion shall think fit, to select and take from any part of the authorised area available for selection under section 2 hereof so much of the lands as it shall have earned or become entitled to in respect of any completed section or sections of the said railway,

in accordance with the original contract and these presents, and the Company, in exercising such selection, shall not be compelled to take any lands upon the alternate-block system unless they shall so think fit; and thereupon, as soon as the land selected shall have been surveyed as provided by the said Act, the Company shall be entitled to receive a warrant from the Governor, on behalf of the Queen, directing the District Land Registrar of the district in which the land dealt with is situated to issue a certificate to the Company, or to such person or persons as the Company shall direct, in such manner and form as is authorised by law: Provided that the Queen or the Government of the colony shall not be liable to the Company for any delay in making any such survey, or in the issue of any warrant or certificate as aforesaid; but the Company shall be entitled, after making any such selection under the original contract and these presents, to enter upon the land selected. And the Governor, on behalf of the Queen, or such person as he may from time to time authorise in that behalf, shall, as soon as conveniently may be, issue and give to the Company, or to such person or persons as the Company shall direct, such instrument or authority as may be necessary to define generally the situation and area of the land so selected and the title of the Company thereto.

5. That, until the particular lands to be respectively retained or acquired by the Queen and the Company shall be actually ascertained, the Queen will not, without the written consent of the Company for that purpose first had and obtained, grant any leases or licenses of or otherwise alienate or deal with any of the lands within the lands described as available for selection by the Company under section 2 hereof, except for the purposes of mining under the Acts relating to mining, and for cutting and removing timber for sawmills and mining purposes as hereinbefore mentioned in the proviso to section 2, or for pastoral purposes under any Act authorising licenses for such purposes, and except as provided in these presents.

6. That, with all convenient speed after the date hereof, the parties hereto shall ascertain and agree upon the proportion which the estimated cost of construction of the several sections of the said railway as defined in or delineated upon the map marked "A" annexed to the original contract, or such other sections as shall be agreed upon between the parties hereto bears towards the sum of £2,500,000, being the estimated cost of construction of the said railway so far as the same relates to the lands to be granted by the Crown to the company; and the amount of such estimated cost of construction of each respective section, when so ascertained, shall be entered against such section in the account hereinafter mentioned, so that the value of the land to be selected and taken as hereinbefore described in respect of each such respective section of the said railway shall be ascertained. Such value shall be equal to 50 per cent. of the estimated cost of each section of the said railway in relation to the lands to be granted by the Crown to the Company as hereinbefore mentioned.

7. That the value of the land so selected and taken as aforesaid, when ascertained by reference to the certified valuation, shall be charged against the Company in an account of the value of the land to which for the time being they shall be entitled, and which shall be kept with them for that purpose, at the same rate per acre as that named in the certified valuation for the block within which such piece of land is contained.

8. The boundaries of the lands earned by the Company, or to which the Company shall have become entitled, shall be surveyed, and the costs of such survey, and of the survey of boundaries common to such lands, and to the lands to be hereafter reserved or set apart as aforesaid, shall be borne one half by the Queen and the other half by the Company; and all such surveys shall be made by or under the direction of the Surveyor-General, whose certificate of the cost thereof shall be binding and conclusive on the parties hereto, and the amount of such costs shall be ascertained and settled as each block is surveyed; and the amount shown to be due by the Company shall, on demand, be paid by them to the Queen, or any of her officers entitled to receive the same.

9. Notwithstanding anything contained in this contract as to the right of the Company to select any land to which it may be or become entitled, no selection shall be valid until a period of two calendar months shall have elapsed after such selection has been made and notified to the Minister for Public Works by the Company; and within such period the Minister for Public Works may object to any such selection, in whole or in part, on the ground that the land, or part of the land, comprised therein is required for any of the purposes set forth in subsections (a), (b), (c), and (d) of clause 2 hereof, in which case the selection shall be deemed not to have been made, or at the option of the Company the selection may be varied so as to exclude the land objected to, as the case may be.

10. After the completion of the said railway the whole or any part of the lands which the Company shall have earned or become entitled to in respect thereof, and not already selected and taken and granted to or otherwise vested in them, shall be granted to them, the legal estate being antevested to the date of selection when they shall so require or direct, but so that each separate selection shall be granted to the Company in one grant only, and the whole of such lands earned by the Company, or to which they shall have become entitled, shall be granted to the Company within ten years from the 1st day of January, 1888.

11. That, in the event of the purchase of the said railway by the Queen or on her behalf, in accordance with the Acts relating thereto, such a sum shall be included in the price to be paid for such purchase as is equal to the amount which may have been actually paid to the shareholders or debenture-holders of the Company as interest during construction for the period ending 31st July, 1897, the rate not to exceed an average of 4 per cent. per annum, except in the case of shares or debentures representing £500,000 in amount of capital first raised, in regard to which the rate shall be 5 per cent. The total amount of such interest to be added to the price of the said railway not to exceed the sum of £400,000.

12. That the Queen shall give to the Company and the Company shall give to the Queen mutual running powers and terminal facilities over the respective lines of railway of the Queen and the Company, and the Queen hereby agrees in particular to give the Company access to the ports of Lyttelton, Nelson, and Greymouth, and to the Government termini at such ports, and at Christchurch.

13. That the period for expenditure of the sum of £150,000 as provided in clause 5 of the original contract shall be and the same is hereby extended until the 31st day of December, 1888.

And this deed further witnesseth that, in consideration of the premises, the said Company doth hereby covenant with the Queen in manner following, that is to say,—

- (a.) The Company shall enter into and enforce the due performance of a *bona fide* contract or contracts for the construction of a section of the said railway, to commence at Springfield and extend towards Brunnerton, at a cost of not less than £60,000; and of another section of the said railway, to commence at some point to be agreed upon on the present Government line from Nelson to Belgrove, and extend towards Reefton, at a cost also of not less than £60,000, in addition to the contract already entered into for the section of the said railway from Brunnerton to a point on the Teremakau River, such contract or contracts to be entered into as soon as the necessary surveys can be made and tenders obtained, and each to contain a provision which shall be of the essence thereof, for the continuous prosecution of the same until the due completion thereof. Provided, further, that, as respects all the said sections of the said railway hereinbefore mentioned, or any of them, or any other sections from time to time completed fit for opening, the Queen will, at the request of the Company, and for such time and in such manner as may be agreed upon between the Queen and the Company, work and carry on the traffic on any parts or part thereof which are or is completed and fit for traffic upon terms as favorable to the company as shall be given by or on behalf of the Queen to any other Company, authority, or person owning railways in New Zealand.
- (b.) The Company shall not deviate from the line of railway as surveyed, or alter any gradients upon the said line of railway, as the same are shown upon the plans of that portion of the said railway from Springfield to Brunnerton, deposited in the office of the Minister for Public Works, No. , and copies whereof have been handed to the Company before the execution of these presents, without the consent of the Governor first had and obtained.
- (c.) The Company shall not at any time assign, change, or dispose of this contract, or any benefit or advantage thereof or thereunder, either at law or in equity, without the written consent of the Governor on behalf of the Queen first had and obtained; but this clause shall not be deemed to affect or interfere with or in anywise abridge the powers of borrowing given by the said Act. Provided that the Governor may at any time appoint any person in the colony or elsewhere for the purpose of consenting to any such assignment, and no such consent shall be arbitrarily withheld either by the Governor or by any person so appointed as aforesaid.

14. Upon the company entering into either of the contracts specified in the preceding clause to the satisfaction of the Agent-General for New Zealand for the time being, the Queen shall forthwith place, in the names of a trustee or trustees to be agreed upon between the parties, such lands as the Company may select, of a value of not less than £30,000, as shown in the certified valuation, in respect of each such contract; and such trustee or trustees shall have power, if so requested by the Company, to sell, dispose of, or charge or mortgage such lands, and to apply the proceeds thereof in or towards the construction of the section of railway in respect of which they shall have been so placed in the names of such trustee or trustees, and for no other purpose. Provided that upon the completion of any such section any lands not already sold by the trustee or trustees may be vested in the Company, subject only to such charges or mortgages thereupon as shall have been made by the trustee or trustees at the request of the Company as aforesaid, and such lands shall form part of the lands to which the Company is entitled. Provided also that all land so selected shall, until any sale, disposition, charge, or mortgage thereof, be subject to clauses 2 and 9 of this contract.

15. It is hereby declared that the said original contract of the 17th day of January, 1885, and all the covenants, agreements, provisions, terms, and conditions thereof, is hereby confirmed, save so far as the same is modified by any of the provisions of this contract.

16. And it is hereby declared and agreed that if at any time hereafter any dispute, difference, or question shall arise touching the construction, meaning, or effect of these presents, or any clause or thing herein contained, or the rights or liabilities of either of the said parties under these presents, or if the Queen and the Company shall be unable to come to an agreement within the meaning of clause 6 of these presents as to the cost of any section of the said railway, to be ascertained as aforesaid, or otherwise howsoever in relation to the premises, then every such dispute, difference, or question shall be referred to the arbitration of two indifferent persons, one to be appointed by each party to the reference, or an umpire to be appointed by the arbitrators in writing before entering on the business of the reference. And if either party shall refuse or neglect to appoint an arbitrator within three calendar months after the other party shall have appointed an arbitrator and shall have served a written notice upon the first-mentioned party requiring such party to make an appointment, then the arbitrator appointed as aforesaid shall, at the request of the party appointing him, proceed to hear and determine the matters in difference as if he were an arbitrator appointed by both parties for that purpose, and the award or determination which shall be made by the said arbitrators or arbitrator, or of such umpire, if the arbitrators shall disagree, shall be final and binding upon the said parties hereto respectively, so as such arbitrators or arbitrator shall make their or his award in writing within three calendar months after the reference to them or him, or on or before any later day to which the said arbitrators or arbitrator, by any writing signed by them or him, shall enlarge the time for making their or his award, and so as such

umpire shall make his award or determination in writing within one calendar month next after the original or extended time appointed for making the award of the said arbitrators shall have expired, or on or before any later day to which the umpire shall, by any writing signed by him, enlarge the time for making his award. And also that no action or legal proceedings shall be commenced or prosecuted by either of the said parties hereto against the other of them touching any of the said matters in difference unless the party to be made defendant to such action or proceedings shall have refused or neglected to refer such matters to arbitration pursuant to the provisions hereinbefore contained, or unless the time limited for making such award as aforesaid shall have expired without any such award being made. And also that all necessary witnesses on behalf of either of the parties to such reference, and all persons claiming through them respectively, shall submit to be examined by the said arbitrators, arbitrator, or umpire upon oath or affirmation in relation to the matters in dispute, and shall produce before the arbitrators, arbitrator, or umpire all books, deeds, maps, papers, accounts, writings, and documents within the possession or power of the said respective parties which may be required or called for, and do all other things which, during the proceedings on the said reference, the said arbitrators, arbitrator, or umpire may require, and that the witnesses on the reference shall, if the arbitrators, arbitrator, or umpire shall think fit, be examined on oath or affirmation. And that the costs of the reference and award shall be in the discretion of the arbitrators, arbitrator, or umpire, who may direct to and by whom and in what manner the same or any part thereof shall be paid. And that the submission to reference, and any award made in pursuance thereof, may, at the instance of either of the parties to the reference, and without any notice to the other of them, be made a rule or order of the Supreme Court of New Zealand. Provided that, if, by the terms of any award made under any such reference as aforesaid, any money shall in any manner be payable by the Queen or the Government to the Company, no attachment or execution, or process in the nature thereof, shall be issued by or on behalf of the Company upon any rule or order of the Supreme Court as aforesaid, unless and until the Governor shall, on behalf of the Queen, at as early a date as practicable, have taken all such steps as may be necessary to have such money specially appropriated by the General Assembly to satisfy the said award, and the payment of such money shall have been refused by the General Assembly. Provided also that nothing herein contained, excepting the provision of clause 11, shall be deemed to control or interfere with any provision for arbitration contained in the said Act or the principal Act therein mentioned.

And, lastly, it is declared and agreed that these presents and everything herein contained shall be read and construed subject to the provisions of the said Act and the principal Act, except where the same are expressly authorised to be modified and are modified pursuant to any Act amending the said Acts or either of them.

And also that, wherever in these presents it is provided that any appointment, instrument, or notice, or any other act or thing, power or authority whatsoever, may be made, executed, given, done, performed, or exercised by the Queen, or by or on behalf of the Queen, then, unless special provision to the contrary is made herein, it shall be sufficient if such appointment, instrument, or notice, or other act or thing, power or authority is made, executed, given, done, performed, or exercised by the Governor on behalf of the Queen, or by such person or persons as he may from time to time appoint for all or any of the purposes herein mentioned.

17. The company shall always be represented in New Zealand by a person or persons duly appointed under Part V. of "The Companies Act, 1882," empowered to sue and be sued on behalf of the Company in the Courts of the colony, and to execute deeds and instruments, and generally to act for and on behalf of the Company within the colony, and it shall not be competent for the Company to sue the Queen or any person on her behalf in any Court elsewhere than in the Courts of the colony, nor shall any arbitration proceedings be commenced, carried on, or concluded elsewhere than in the said colony. If at any time the Company shall not be so represented they shall not, so long as not so represented, be entitled to any rights, powers, or privileges conferred by this or any other Act or contract relating to the said railway, and may be compelled on application to the Supreme Court of New Zealand to appoint forthwith such a representative person or persons as aforesaid. But nothing herein contained shall be deemed to take away or affect any right of appeal now allowed by law.

18. The Queen may from time to time, with the consent of the Company, sell or otherwise dispose of any lands within the authorised area not previously selected by the Company, and being available for selection under section 2 hereof, upon such terms as may be agreed on by the Queen and the Company; and the Company shall be entitled, if they think fit, to take the net proceeds of any such sale, and in such case the Company shall be deemed to have selected the land so sold or disposed of, except that they shall not be entitled to interfere with the persons to whom the same shall have been sold or disposed of. Nor shall the Queen be prevented from giving to such persons all such options, discretions, and indulgences as she may be legally able to extend to other persons who have obtained land from the Crown in like manner.

19. No land which shall be granted to the Company or set apart under clause 14 hereof shall be sold at a less price than shall be shown on the certified valuation thereof, except with the consent of the Queen.

In witness whereof these presents have been signed by
 , the Governor of the Colony of New Zealand, and the seal of the colony hath been hereunto affixed, and the common seal of the company hath been hereunto affixed, the day and year first within mentioned.