

1889.

NEW ZEALAND.

# MIDLAND RAILWAY CONTRACT

(FURTHER CORRESPONDENCE RELATIVE TO THE SIGNING OF).

[In Continuation of Parliamentary Papers D.-6, D.-6A, and D.-6B, of 1888.]

*Laid on the Table by the Hon. E. Mitchelson, with the Leave of the House.*

No. 1.

The AGENT-GENERAL to the Hon. the MINISTER for PUBLIC WORKS.

SIR,—

7, Westminster Chambers, London, S.W., 19th May, 1888.

I received this morning your telegram inquiring whether you were to understand (from my message of the 16th) the Midland Company's meaning to be that if the Abt line (steep grade) were approved they would reduce the land-grant by the amount of saving thereby effected in the cost of the line from beginning to end of that deviation; and I have just replied in the negative. The case is this: The hypothesis on which the company were going was that a new survey of the country would very likely show an alternative line on the Abt system, at the Pass itself, to be capable of being made with much better gradients up to the points where the Abt line would go over the Pass; that if such a line were practicable, and the consequent deviation be allowed, a saving might very likely be made of somewhere between £250,000 and £400,000 in the total cost of construction and equipment over the railway, taken as a whole, from Springfield to Belgrove. Thereupon I laid down the principle that the land-grant must be reduced in proportion to the saving, whatever it might be. The Company refused at first to make any such reduction at all; upon their afterwards consenting to concede the principle, the question was whether the "saving" and consequential "reduction" should be computed only in respect of the actual deviation at the Pass itself, or according to the effect which the deviation would produce in cost of construction and equipment over the railway taken as a whole. After endless discussions, they would not go beyond the latter definition, because everything at this stage, even the finding of a practicable line that should be first adopted by themselves and then be permitted at all, being at this moment entirely hypothetical.

As the mail is going out to-day I have not time to give a more detailed explanation, but will do so very shortly. In the meanwhile I may say that it did not appear to me necessary for computing the saving, and the consequential reduction in the land-grant, to confine either the Government or the Company to the points of deviation at Arthur's Pass, because, before the Government approve the deviation at all, its effect on the whole line in construction and equipment will have to be shown, and they have the control really in their own hands.

Pending a decision on the main point, the Company and myself have endeavoured to agree upon the form in which the proposed amendments should be expressed; and I enclose them herewith. They are divided into two sets, one relating to the three "vital" points, the other to those which are only "recommended by me for favourable consideration."

As regards the first set, the amendments in clauses 4 (Abt line), 36 (consequential on 4 amended), and 39 (rates) are agreed between us. The one in clause 38 (working-powers) has only been brought to me to-day, and I must reserve it for the moment, though at first sight it seems reasonable.

As regards the second set, the amendments are to the effect mentioned in my letter of yesterday (No. 728), with the addition of a trifling one in clause 15 for making the covenant as to the "particulars" a mutual one; and another (also not material) in clause 46, providing that notices given by Government to the Company are not to be affixed anywhere on the line, but at some station having an office.

I should be much obliged if you would cable to me whether you approve the form of these amendments. The Company have told me that they are instructing Mr. Scott by to-day's mail to do nothing himself about them. I have not read your telegram of the 14th as meaning that such messages as those now being exchanged between us are to be at the Company's expense, and, indeed, such a condition would have put an end at once to any on this side.

I have, &amp;c.,

F. D. BELL.

The Hon. the Minister for Public Works, Wellington.

1—D. 2A.

## Enclosure 1 in No. 1.

(Copy of telegram.)

Does Company mean if steep grade approved that they will reduce land-grant by amount saving thus effected in cost line from beginning to end of deviation.

The Agent-General, London.

Wellington, 19th May, 1888.

H. A. ATKINSON.

## Enclosure 2 in No. 1.

(Copy of telegram.)

MIDLAND.—No; their hypothesis was that Abt line, if found practicable and approved, might make saving between quarter of a million and £400,000 in construction and equipment entire railway Springfield Belgrove. Thereupon I insisted land-grant must proportionately reduced.

The Premier, New Zealand.

London, 19th May, 1888.

F. D. BELL.

## Enclosure 3 in No. 1.

## PROPOSED AMENDMENTS IN CLAUSES (MIDLAND CONTRACT).

CLAUSE 4.—Add the following proviso: "Provided also that the Company may survey an alternative line over Arthur's Pass on the Abt system to avoid the tunnel there, and, if the Governor shall approve the same, the Company may so construct their east and west line; and if it shall be shown to the satisfaction of the Governor that the actual cost, including equipment of the entire railway from Springfield to Belgrove, has been less than £2,500,000, then a proportionate reduction shall be made in the amount of land to be granted to the Company under these presents."

Clause 36, page 14, line 9.—After the word "pounds" insert these words: "or such less sum as shall represent one-half of the actual cost, including equipment of the entire railway from Springfield to Belgrove, if the Company shall construct the alternative line mentioned in clause 4 hereof."

Clause 38.—Omit proviso, and add: "Provided always that the mileage proportion of all through rates, fares, or tolls (after deducting the terminals properly attributable to the respective railways, which terminals shall be paid monthly to the party owning the station in respect of which such terminals have been received) taken and received by the Queen or the Company in respect of traffic passing to or from the railways of the Company from or to the railways of the Queen shall be paid monthly to a joint account in the name of \_\_\_\_\_, on behalf of the Queen, and in the name of the Company, and such amounts shall be divided between the party owning the line run over and the party exercising such running-powers, in each case as may from year to year be agreed between the parties, or, failing agreement, as may be decided by arbitration in the manner prescribed in clause 47 hereof."

Clause 39.—Omit all the words after "exceed," line 9, and re-insert the same words as in clause 12 of the original contract.

Clause 15.—Insert these words: "which said particulars are hereby declared to be binding upon the Queen and the Company."

Clause 21.—After the word "time," at the end of line 1, insert these words: "to require the Company;" and after the word "construct," in line 2, insert these words: "at his expense."

Clause 30.—Subsection (2): Omit all the words after "case," in line 1, and insert these words instead: "of any lands dealt with under clause 33 hereof, the whole cost of the survey of such lands shall be borne by the Company."

Clause 37.—Add these words at end: "but such request shall only be made by the Governor if the Company shall make any claim under clause 36 hereof."

Clause 46.—In last line but one omit the words "by being affixed in some part of," and insert instead these words: "at the office of any station on."

## No. 2.

The Hon. the PREMIER to the AGENT-GENERAL.

(Telegram.)

Wellington, 14th June, 1888.

MIDLAND.—Your message 16th May. Government agree to further proviso to clause four as follows: "Provided also that the Company may construct the incline-line instead of the tunnel-line if the Governor, after having obtained the opinion of two eminent engineers to be nominated by him, is satisfied that the incline-line when made will be suitable for mineral and other heavy traffic, and, in his opinion, work at a satisfactory cost; and, if the cost of the construction of the entire line from Springfield to Belgrove shall be less than £2,500,000, a reduction shall be made in the grant of land to the Company proportionate to the amount saved by the substitution of the incline-line for the tunnel-line."

The Agent-General, London.

H. A. ATKINSON.

## No. 3.

The AGENT-GENERAL to the Hon. the PREMIER.

(Telegram.)

London, 19th June, 1888.

MIDLAND.—Burchell perfectly satisfied provisos.

The Premier, New Zealand.

F. D. BELL.

## No. 4.

The AGENT-GENERAL to the Hon. the PREMIER.

(Telegram.)

London, 5th July, 1888.

MIDLAND.—Has it yet been decided Government approve of proposal to clause 38. Company desirous sealing contract immediately.

The Premier, New Zealand.

F. D. BELL.

## No. 5.

The Hon. the PREMIER to the AGENT-GENERAL.

(Telegram.)

Wellington, 20th July, 1888.

MIDLAND.—Clause 4, adopt message 14th June. Clauses 36 and 15 agree. Clause 38, cannot agree; present clause with proviso must be retained, but agree add, "and if the said parties cannot agree as to terms of such an agreement the same shall be settled by arbitration as herein provided." Clause 39, agree alter as suggested, but excise heading to Schedule after words "schedule of rates." Clauses 21, 30, 37, and 46 cannot agree.

The Agent-General, London.

H. A. ATKINSON.

## No. 6.

MEMORANDUM by the UNDER-SECRETARY for PUBLIC WORKS for the AGENT-GENERAL, London,  
re Midland Railway (adoption of Abt system at Arthur's Pass).

Wellington, 21st July, 1888.

In reply to that portion of your letter of the 19th May last which refers to the principle upon which the reduction of the land-grant to the Company should be made, I have the honour, by direction of the Minister for Public Works, to explain that the reason why the Government wished the reduction of the land-grant to be proportionate to the reduction in the cost of the line from the beginning to the end of the deviation (rather than on the basis of the saving, if any, in the total cost of the whole railway below £2,500,000) was because it is pretty well evident that if the latter basis were adopted there would be very little, if any, reduction in the land-grant at all.

Thus, for instance, by reference to Mr. Blair's report on the East and West Coast Railway, D.-1A, 1886, copy herewith, in table at foot of page 2, it will be seen that the East to West Coast (Springfield to Brunnerton) portion of the railway will probably cost £1,505,000, and the West Coast to Nelson (Brunnerton to Belgrove) portion £1,330,000, making a total for the whole railway of £2,835,000; so that, even if a saving of £400,000 is effected by the deviation at Arthur's Pass, it is evident that if the basis of reduction of land-grant in proportion to saving in the whole cost below £2,500,000 were adopted, the Government would get no commensurate benefit out of this deviation.

That is to say, in fact, that the adoption of the Arthur's Pass deviation would possibly have the effect of reducing the cost of the railway from £2,835,000 to £2,435,000, thus attaining a saving to the Company of £400,000; while the saving to the Government in the shape of land-grant, if the basis of saving on total cost is adopted, would be, not on the basis of £400,000, but only on the basis of £65,000.

Why the House should have fixed the statute cost of the railway at £2,500,000, when it was well known that the cost would be at least £2,800,000, is not very clear; but it was, it is believed, something in the nature of a compromise between the promoters and opponents of the Bill in 1884, inasmuch as some of the opponents of the measure at that time thought that the portion from Nelson to Brunnerton ought not to be provided for at all, whereas others thought that it should be provided for on same basis as the other portion—namely, up to its probable full cost—and the result was that, although it was provided for in the Bill, the cost of it, for the purpose of the land-endowment, was there fixed at only £1,000,000.

The effect, therefore, of the Company obtaining permission to materially reduce the cost of the railway by making a deviation at Arthur's Pass, while reduction in land-grant would only be to such extent as the cost of the whole railway would fall short of £2,500,000, would be to improve their position as regards the whole project to the extent of whatever the saving by deviation at Arthur's Pass would be—say, £400,000—and would not attain any commensurate saving to the Government in the shape of land-grant.

The only basis, therefore, upon which the Government could attain a saving in land-grant, commensurate with the saving attained by adoption of Abt system, seemed to be to confine the question of reduction of land-grant to the portion of line between beginning and end of deviation, as it is probably throughout that portion only that there can be any material saving attained in cost of line as compared with original estimate.

This basis is, of course, somewhat upset by the proviso that the reduction should only take effect if cost of whole line is less than £2,500,000; but the Company seemed to consider that to be a vital point, and it was ultimately conceded accordingly, after careful consideration. The effect of the cablegrams up to date, therefore, comes to this: that if line costs less than £2,500,000 the land-grant will be reduced, not on the basis of the slight saving that may be made below the £2,500,000, but on the basis of the saving effected between beginning and end of deviation.

The question as between the Government and the Company will, it is presumed, be already set at rest by the cablegram which was sent from here last night; but it has been thought desirable to send this explanation of the position which the Government has taken up in the matter, from time to time, for your information.

The Agent-General, London.

C. Y. O'CONNOR,  
Under-Secretary for Public Works.

## No. 7.

The AGENT-GENERAL to the Hon. the PREMIER.

(Telegram.)

London, 21st July, 1888.

MIDLAND.—Message received. Money impossible, unless clause 38 operative. On the other hand nothing else prevents seal affixed, capital issued, works proceeded. All now depends upon your decision insertion, providing that, if powers exercised before terms agreed or arbitrated, then terms, whenever settled, shall relate back.

The Premier, New Zealand.

F. D. BELL.

## No. 8.

The CHAIRMAN, Midland Railway Company, to the Hon. the PREMIER.

(Telegram.)

Folkestone, 21st July, 1888.

RUNNING-POWERS essential; promised from first.

The Premier, New Zealand.

T. SALT.

## No. 9.

The Hon. the PREMIER to the AGENT-GENERAL.

(Telegram.)

Wellington, 24th July, 1888.

GOVERNMENT absolutely declines permit running till agreement made, but willing make agreement immediately. Question as much one of public safety as pecuniary. Clause as last amended practically same as Salt's letter fifteenth April, eighty-six. Parliament irritated at delay, and Government has had to promise withdraw contract unless signed soon.

The Agent-General, London.

H. A. ATKINSON.

## No. 10.

The CHAIRMAN, Midland Railway Company, to the Hon. the PREMIER.

(Telegram.)

London, 24th July, 1888.

CONTRACT will be sealed immediately if Agent-General's clause accepted. Company will execute unaltered agreement as to running-powers when received from Government.

The Premier, New Zealand.

T. SALT.

## No. 11.

The AGENT-GENERAL to the Hon. the PREMIER.

(Telegram.)

London, 24th July, 1888.

MIDLAND.—Upon my advice Company agrees that running shall be regulated absolutely by Government until terms agreed or arbitrated. Therefore, supposing you agree, clause 38 would read thus: firstly, omit first thirteen words proviso; secondly, insert these words instead, "the terms on which such powers may be exercised shall be settled by agreement;" thirdly, after word "Act" insert your addition of the 21st July; then continue as follows, "and until such agreement or arbitration as the case may be the said terms shall be fixed by regulation to be made in that behalf by the Governor."

The Premier, New Zealand.

F. D. BELL.

## No. 12.

The Hon. the PREMIER to the AGENT-GENERAL.

(Telegram.)

Wellington, 27th July, 1888.

MIDLAND.—38: cannot agree; but will agree as follows: First, strike out proviso. Second, after word "Company," third line, strike out eight words, and insert "for carrying traffic on the line of the one party through or on to the line of the other party, and in particular shall." Third, add after "Christchurch" following words: "but neither party shall have the right to compete with the other party by carrying on the line of the other party traffic originating and terminating on such line. The terms and conditions under which such running-powers and terminal facilities shall operate shall be set out in an agreement to be made under section 5 of the said Act; or, if the parties cannot agree, the form and contents of such agreement shall be determined by arbitration; and while no agreement is in existence binding the parties, then on terms to be prescribed by regulation to be made by the Governor."

The Agent-General, London.

H. A. ATKINSON.

## No. 13.

The AGENT-GENERAL to the Hon. the PREMIER.

(Telegram.)

London, 30th July, 1888.

MIDLAND.—Your clause accepted.

The Premier, New Zealand.

F. D. BELL.

## No. 14.

The AGENT-GENERAL to the Hon. the PREMIER.

(Telegram.)  
 MIDLAND.—Contract sealed to-day.  
 The Premier, New Zealand.

London, 3rd August, 1888.

F. D. BELL.

## No. 15.

The AGENT-GENERAL to the Hon. the MINISTER for PUBLIC WORKS.

SIR,—

7, Westminster Chambers, London, S.W., 10th August, 1888.

I am glad to be able to report that all questions with the Midland Railway Company have been settled at last by its seal being affixed to the contract in the shape agreed to by the Government.

When I last wrote to you, on the 27th ultimo, No. 1089, the only point remaining was the form in which the running-powers (clause 38) should be defined, and I had sent you a message proposing a form providing that those powers should be regulated by the Governor until terms for their exercise could be agreed or settled by arbitration. On the 28th I received your message in reply, stating that the Government could not agree to that form, but proposing another one instead, which, I am glad to say, the Company very willingly accepted.

The contract, as reprinted by the Company, was then finally revised, to carry out all the amendments as agreed to by the Government; and, in accordance with your instructions, I directed Messrs. Mackrell to settle the necessary formalities to be adopted in affixing the Company's seal. Thereupon the following procedure was settled: (1.) The Company's seal to be affixed to four prints of the contract, two on parchment and two on paper, the sealing of one of the parchment prints being notarially attested and verified by the Lord Mayor's seal. (2.) The two parchment prints, upon being sealed, to be handed to me for transmission to the colony, the notarially-attested one to be retained by the Government, and the other one to be returned to me when signed by His Excellency the Governor, in order that it should be handed to the Company. (3.) One of the prints on paper to be retained in this office, the other to be handed to the Company with a certificate thereon by me of its being a true copy of the contract as approved by the Government.

The Company's seal was duly affixed on the 3rd instant, in the presence of Mr. Salt and Mr. Brodie Hoare; and I now beg to enclose the two sealed parchment copies, together with twelve spare prints. In due time, and after due verification, you will, no doubt, be pleased to return to me, when signed by his Excellency, the counterpart which is to be handed to the Company.

Great care has been taken to examine the contract as now sealed with the Government draft sent to me in your memorandum of the 24th March last, No. 16, as well as to make sure that it embodies the amendments which have been subsequently agreed to by the Government; and for convenience of reference I append a memorandum showing exactly where the sealed contract is identical with the Government draft and where it varies from the same.

The unavoidable absence of Mr. Maton (the member of Messrs. Mackrell's firm who has been specially charged with this business) delays for a few days the form of the certificate to be placed by me on one of the paper copies, but it will go to you by next mail.

The plans which you will find annexed to the sealed contract are those originally sent by you with the Government draft.

In conclusion, I beg to be permitted to offer my congratulations to the Government on the final settlement of these complicated questions. It could only have been obtained by mutual concession; and the Company have expressed themselves to me as being entirely satisfied with the reasonable consideration that has been shown to them, enabling them now to go on with their work in good heart, and with a confident hope of making it a success.

I have, &amp;c.,

The Hon. the Minister for Public Works, Wellington.

F. D. BELL.

## Enclosure 1 in No. 15.

MIDLAND RAILWAY CONTRACT.—Memorandum showing in which Particulars the Sealed Contract is identical with the Draft as sent to the Agent-General in Public Works Memorandum No. 16/88, of the 24th March, 1888, and in which it varies from the same.

Preamble.—Identical in the Government draft and sealed contract.

Clauses 1 to 3.—Ditto.

Clause 4.—Government draft: "4. The Company shall not, without the consent of the Governor first had and obtained, deviate from the line of railway as surveyed, or alter any gradients upon the said 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, marked P.W.D. 11554, 11555, 12007, and 12009, and copies whereof have been handed to the Company before the execution of these presents: Provided that so much of sheets 45a, 46a, 47a, and 48a of the said plan 11555 as apply to the 'incline-line' at Arthur's Pass shall not be deemed to be part of the said plan."

Amended as follows in sealed contract: "4. The Company shall not, without the consent of the Governor first had and obtained, deviate from the line of railway as surveyed, or alter any gradients upon the said 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, marked P.W.D. 11554, 11555, 12007, and 12009, copies whereof have been handed to the Company

before the execution of these presents: Provided that so much of sheets 45a, 46a, 47a, and 48a of the said plan 11555 as apply to the 'incline-line' at Arthur's Pass shall not be deemed to be part of the said plan: Provided also that the Company may construct the incline-line instead of the tunnel-line, if the Governor, after having obtained the opinion of two eminent engineers to be nominated by him, is satisfied that the incline-line when made will be suitable for mineral and other heavy traffic, and in his opinion worked at a satisfactory cost, and if the cost of the construction of the entire line from Springfield to Belgrove shall be less than two million five hundred thousand pounds a reduction shall be made in the grant of land to the Company proportionate to the amount saved by the substitution of the incline-line for the tunnel-line."

Clauses 5 to 14.—Identical in the Government draft and sealed contract.

Clause 15.—Government draft: "15. The particulars of the certified valuation within the authorised area and the blocks of land which the Company shall from time to time be entitled to select in accordance with these presents are shown on the map hereunto annexed, marked 'B1' (which said map, with the additions herein mentioned, is 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'). The Company shall not be entitled to make a selection or receive a grant of any land outside the authorised area on any account or claim under these presents or any Act relating thereto."

Amended as follows in sealed contract: "15. The particulars of the certified valuation within the authorised area and the blocks of land which the Company shall from time to time be entitled to select in accordance with these presents are shown on the map hereunto annexed, marked 'B1' (which said map, with the additions herein mentioned, is 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'), which said particulars are hereby declared to be binding on the Queen and the Company. The Company shall not be entitled to make a selection or receive a grant of any land outside the authorised area on any account or claim under these presents or any Act relating thereto."

Clauses 16 to 35.—Identical in the Government draft and sealed contract.

Clause 36.—Government draft: "36. 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 the Company, or otherwise sold, leased, or disposed of under these presents on its behalf, and as proceeds of its timber and coal, whether by way of purchase-money, rent, 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 one million two hundred and fifty thousand pounds, the only claim of the Company in respect of such difference (if any) shall be a right on the part of the Company, within six months thereafter, to select further land out of the land then remaining unselected, and described as available for selection under clause 16 hereof, to the extent of such land then remaining so available. 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 one million two hundred and fifty thousand pounds."

Amended as follows in sealed contract: "36. 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 the Company, or otherwise sold, leased, or disposed of under these presents on its behalf, and as proceeds of its timber and coal, whether by way of purchase-money, rent, 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 one million two hundred and fifty thousand pounds, or such less sum as shall represent one-half of the actual cost, including equipment of the entire railway from Springfield to Belgrove, if the Company shall construct the alternative line mentioned in clause 4 hereof, the only claim of the Company in respect of such difference (if any) shall be a right on the part of the Company, within six months thereafter, to select further land out of the land then remaining unselected, and described as available for selection under clause 16 hereof, to the extent of such land then remaining so available. 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 one million two hundred and fifty thousand pounds, or such less sum as shall represent one-half of the actual cost including equipment of the entire railway from Springfield to Belgrove, if the Company shall construct the alternative line mentioned in clause 4 hereof."

Clause 37.—Identical in the Government draft and sealed contract.

Clause 38.—Government draft: "38. 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. But this provision shall not be operative until an agreement has been made between the Queen and the Company, in accordance with the provisions of section 5 of the said Act."

Amended as follows in sealed contract: "38. 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 for carrying traffic on the line of the one party through or on to the line of the other party, and in particular shall give the Company access to the ports of Lyttelton, Nelson, and Greymouth, and to the Government termini at such ports and at Christchurch; but neither party shall have the right to compete with the other party by carrying on the line of the other party traffic originating and terminating on such line. The terms and conditions under which such running-powers and terminal facilities shall operate shall be set out in an agreement to be made under section 5 of the said Act, or, if the parties cannot agree, the form and contents of such agreement shall be determined by arbitration, and while no agreement is in existence binding the parties, then on terms to be prescribed by regulations to be made by the Governor."

Clause 39.—Government draft: "39. All by-laws and regulations made under the principal Act or any other Act for the conduct of traffic on the said railway, and for the working and management thereof, shall from time to time be subject to the approval of the Governor; and, subject thereto, the maximum tolls, fares, rates, and rents to be charged by the Company for the carriage upon the said railway of passengers, produce, animals, goods, merchandise, articles, matters, and things, and for the storage of goods in any of the Company's sheds or warehouses, shall not exceed the general fares, rates, and charges (as distinct from local and special rates) in force from time to time on the New Zealand Government railways, with twenty-five per centum added thereto; and until such last-mentioned fares, rates, and charges shall have been altered by the Minister, pursuant to the power vested in him in that behalf, shall not exceed the general fares, rates, and charges (as distinct from local and special rates) at present in force on the New Zealand Government railways, as set forth in the New Zealand Government *Gazette* of the 30th day of January, 1888, with twenty-five per centum added thereto. The general fares and rates at present in force, as hereinbefore mentioned, are set forth in the said *Gazette* as follow: For passengers, in Part I., pages 125 to 130; for luggage, parcels, and horses, in Part II., pages 134 to 136; for goods, in Part III., pages 137 to 150, and in Part V., pages 163 to 173; all the said pages above mentioned being reckoned inclusively.

Amended as follows in sealed contract: "39. All by-laws and regulations made under the principal Act or any other Act for the conduct of traffic on the said railway, and for the working and management thereof, shall from time to time be subject to approval by the Governor; and, subject thereto, the maximum tolls, fares, rates, and rents to be charged by the Company for the carriage upon the said railway of passengers, produce, animals, goods, merchandise, articles, matters, and things, and for the storage of goods in any of the Company's sheds or warehouses, shall not exceed the scale for the time being in force upon the Wellington to Masterton Railway with twenty-five per centum added thereto; and until such last-mentioned scale shall have been altered by the Minister, pursuant to the power vested in him in that behalf, shall not exceed the scale set forth in the Schedule hereto attached, with twenty-five per centum added thereto."

Clauses 40 to 50.—Identical in the Government draft and sealed contract.

Schedule of rates referred to in clause 39 of sealed contract, said Schedule not being attached to Government draft:—

						For any Distance not exceeding 10 Miles.	Per Mile after first 10 Miles.
						s. d.	s. d.
<i>Animals.</i>							
Horses, one only	...	...	...	...	10 0	0 3	
Horses, each additional one belonging to same owner	...	...	...	...	7 6	0 2½	
Cattle, one only	...	...	...	...	7 6	0 2½	
Cattle, each additional one belonging to same owner	...	...	...	...	5 0	0 2	
Calves (one year old and under), one only	...	...	...	...	4 0	0 1½	
Calves, each additional one belonging to same owner	...	...	...	...	2 0	0 0¾	
Sheep, goats, pigs, one only	...	...	...	...	4 0	0 1½	
Sheep, goats, pigs, each additional one belonging to same owner	...	...	...	...	2 0	0 0¾	
Sheep, goats, pigs, and calves, in large lots, per truck, loaded and unloaded by owner, who takes all responsibility and risk	...	...	...	...	15 0	1 0	
<i>Carriages, &amp;c.</i>							
Carriages, two-wheeled	...	...	...	...	10 0	0 4	
Carriages, four-wheeled	...	...	...	...	12 6	0 5	
Drays	...	...	...	...	12 6	0 5	
<i>Goods and Merchandise.</i>							
Per ton per mile (minimum weight, 2cwt.)	...	...	...	...	...	0 7	
Minimum charge	...	...	...	...	...	1 0	
In addition to above charges a terminal charge will be made not exceeding, per ton	...	...	...	...	...	3 0	
<i>Grain.</i>							
Grain of all kinds, flour, green horse-feed, per ton per mile (minimum weight, 2 tons)	...	...	...	...	...	0 3	
In smaller quantities as merchandise, a terminal charge will be made not exceeding, per ton	...	...	...	...	...	3 0	
<i>Mineral and Animal Manures.</i>							
Per ton per mile (minimum quantity, 4 tons)	...	...	...	...	...	0 2½	
Minimum charges, coal, for 3 miles and under	...	...	...	...	...	1 6	
Minimum charges, coal, over 3 miles and not exceeding 15 miles	...	...	...	...	...	2 6	
Minimum charges, other minerals (small lots in packages or bags as merchandise)	...	...	...	...	...	1 3	
Every loading or unloading done by the Company, per ton	...	...	...	...	...	1 6	

*Wool.*

Undumped, per bale per mile (bale not to exceed 4cwt.)...	...	...	...	0	1½
Undumped, for each bale exceeding 4cwt., extra per mile	...	...	...	0	0½
Undumped, minimum charge per bale...	...	...	...	1	0
Double-dumped, per bale per mile (bale not to exceed 8cwt.)	...	...	...	0	2½
Double-dumped, for each bale exceeding 8cwt., extra per mile	...	...	...	0	0½
Double-dumped, minimum charge per bale	...	...	...	1	6
Each loading or unloading done by the Company, per bale, undumped	...	...	...	0	4
Each loading or unloading done by the Company, per bale, dumped	...	...	...	0	8

*Timber.*

Sawn timber, per 100ft. superficial, per mile	...	...	...	0	0¾
Sawn timber, minimum charge, per 100ft. superficial	...	...	...	0	7
Heavy timber, per 100ft. superficial, per mile	...	...	...	0	1
Heavy timber, minimum charge, per 100ft. superficial	...	...	...	1	0
Australian timber, rate and a half for each loading or unloading done by the Company, per 100ft. superficial	...	...	...	0	4
A truckload is computed at 5 tons.					
A fraction of a mile is counted as a mile.					
A truck of firewood must not exceed 3 tons.					

*Passengers.*

First class, per mile	...	...	...	...	...	0	3½
Second class, per mile	...	...	...	...	...	0	2½
Minimum charge—							
First class	...	...	...	...	...	0	6
Second class	...	...	...	...	...	0	4

Return fares equal one and one-half single fares.

A fraction of a mile is counted as a mile.

Notice is also hereby given that a maximum rent or charge to be made for the storage of goods, produce, or merchandise shall be as follows:—

*Storage.*

On all goods not removed within twelve working hours of their arrival, per ton per day	2	0
--	---	---

*Demurrage.*

On all trucks not unloaded by the consignees within four working hours of their arrival, per truck per day	...	...	...	...	...	20	0
--	-----	-----	-----	-----	-----	----	---

## No. 16.

MEMORANDUM by the UNDER-SECRETARY for PUBLIC WORKS for the AGENT-GENERAL, London.

Wellington, 5th October, 1888.

I HAVE the honour, by direction of the Minister for Public Works, to acknowledge the receipt of your letter, No. 1089, of the 27th July last, enclosing copies of cablegrams which have passed between the Government and yourself relative to the exercise of running-powers over the Government railways by the Midland Railway Company, &c., and, in reply, to forward herewith, for your perusal, copy of a memorandum on the subject, setting forth the various objections to which clause 38 of the contract, as proposed by the Company, was open.

The Agent-General, London.

C. Y. O'CONNOR,  
Under-Secretary for Public Works.

## Enclosure in No. 16.

MEMORANDUM for the Hon. the MINISTER for PUBLIC WORKS, *re* Midland Railway (question as to running-powers).

Public Works Office, Wellington, 26th July, 1888.

THE clue to the position into which this matter has now got seems to me to be as follows:—

In "The Railways Construction and Land Act, 1881," there is a clause (112) to effect that the Governor may grant running-powers over any of Her Majesty's railways to any company inaugurated under the said Act; and there is no apparent objection to this provision as it stands in that Act.

When the Act for East to West Coast Railway was under consideration in 1884 the Government of the day therefore probably imagined that there could be no harm in incorporating this same clause into the East to West Coast Railway Act. The scope of the clause, however, when incorporated in a special Act applying to a particular railway, could, I think, be construed as being very much wider than would be possible under a general Act.

In the case of the general Act, where private railways in all parts of the colony are contemplated, it would, I think, clearly be held that intention was to grant running-powers to each several company over that portion only of the Government railways in its immediate vicinity, and which was necessary to be run over in order to bring traffic arising out of the company's line to or from some port or natural terminus.



When the same clause, however, occurs in the Midland Railway Act, and provides, as in the general Act, that the Governor may grant running-powers over all the Government railways, it could, I think, be held to mean that the Governor was authorised to grant running-powers to the Midland Railway Company over all or any portion of the Government railways, if not in both Islands, at any rate in the Middle Island, and quite irrespective of whether or not the Company had developed any traffic of its own warranting these running-powers.

There is also this important difference as compared with the clause in Railways Construction and Land Act—namely, that under the Railways Construction and Land Act the running-powers can only be granted on the completion of the *whole railway*, whereas by East to West Coast Railway Act the running-powers can be granted on completion of *any portion of the railway*—and there is also another slight difference—namely, that in the East to West Coast Railway Act it is provided that the trains or rolling-stock running over the respective railways may be either “with or without passengers or goods,” whereas there is no such stipulation in the case of the Railways Construction and Land Act. I do not think, however, that that is an item of any importance.

There is also a further difference—namely, as regards period of agreement. In the Railways Construction and Land Act it is stipulated that no agreement shall be for a period exceeding one year, whereas in “The East to West Coast Railway Act, 1884,” it is only provided that such agreement shall be terminable by a year’s notice on either side.

Up to that stage of the business, however, there was no harm done, as the provision was that the Governor “may,” &c. By Mr. Salt’s provision of 15th April, 1886, however, in conjunction with the East to West Coast Act of 1886, authorising same, this “may” was authorised to be converted into “shall,” and the draft contract of December, 1886, agreed to between the Government of New Zealand and Mr. Brodie Hoare, was no doubt intended to give effect to this provision accordingly.

The process having thus been a gradual one, it is very probable that the Government of the day never realised the extent to which such a provision might be stretched by the Company—namely, I think, to the extent of competing with the Government on the Government’s own lines for traffic in no way developed by the Company’s operations at all.

It could, I think, if present proposals were agreed to, in point of fact, be claimed by the Company that they had the right to establish train-services in any portion of the Government railways if it would pay them to do so, and there is no doubt that there are short sections of the Government railways in places where it might pay them to do so, to the great detriment of the Government.

The only argument that I can see that can be advanced against this contention is that Mr. Salt’s provision, and also section 38 of draft contract following upon it, provides for mutual running-powers and terminal facilities over the respective lines; and it is possible that on that basis a contention might be maintained that the running-powers should only apply where there was a possibility, at any rate, of their being mutual, and could therefore not apply anywhere until the Company had some railway of its own, and should only then apply to the portion of the Government railways in connection with Company’s railway to nearest seaport.

The later contentions of the Company, however, lead one to suppose that they are leading up to a demand for immediate running-powers over any portion of the Government railways, irrespective of whether they have any railway of their own at all, or whether they have developed any traffic thereon at all, and, as it seems to me that the concession of what they are now asking for might possibly be held to weaken our contention that mutuality is of the essence of the contract, I think it is desirable that the whole subject should be very carefully thought out before any single step is taken in the matter.

Up to the present it has not gone beyond recall; it is in no worse position, in fact, than the auriferous-lands question was in under the original contract, and it is, I believe, quite as important a question as that was; and on that question the Government has taken a distinct stand, quite irrespective of anything that went before.

I should therefore strongly recommend that the Government should take a distinct stand in this case also, and should maintain that if any implication of a right to the Company to run over the Government railways (other than to such extent as may be required by the traffic developed by the Company itself) has arisen, that no such right could ever have been intended to arise, and never ought to have arisen, and that, as the later negotiations have brought this aspect of the matter to light, it has been determined that it must now be put upon a proper basis.

I should therefore recommend reply to the Company’s telegram of yesterday something about to effect as follows:—

That Government can only agree to clause as last proposed if following proviso is added, that is to say: Provided, however, that the Company shall only be allowed running-powers over the Government railways in connection with the Company’s own railway, and then only to such extent as the traffic arising on the Company’s railway requires; and that the Company shall not compete with the Government for traffic which commences and terminates on the Government line, and shall only carry over the Government line (except by special arrangement with the Government railway authorities) such traffic as may arise on the Company’s own line requiring to be carried to the ports of Nelson, Greymouth, and Lyttelton, or to Christchurch, or such traffic as may require to be carried on to the Company’s own line from the said ports, or from Christchurch.

There is, unfortunately, no distinct provision in the contracts or Acts anywhere that the Company shall not compete for the traffic on the Government lines; and there is therefore the more necessity to take great care now to avoid weakening a position which is not at present over strong.

C. Y. O’CONNOR,

The Hon. the Minister for Public Works.

Under-Secretary for Public Works.

## No. 17.

The AGENT-GENERAL to the Hon. the MINISTER for PUBLIC WORKS.

SIR,—

7, Westminster Chambers, London, S.W., 20th November, 1888.

I was very glad to receive your memorandum of the 5th October, No. 40, covering one by Mr. O'Connor, of the 26th July, explaining the objections of the department to the grant of running-powers for the Midland Railway Company, and the reasons for requiring a modification of the same in the new contract. This explanation gave me, for the first time, the clue to what had been the real difficulty. But the question having been set at rest by the execution of the new contract I only now refer for a moment to the apprehension which apparently existed as to some unavowed design on the part of the Company to compete for traffic over the Government lines, for the purpose of assuring you that there never was the slightest idea of the kind.

I may perhaps take this opportunity of adding a word on another subject, which has equally been set at rest by the contract. I was much obliged by being allowed to see Mr. O'Connor's further memorandum of 21st July, explaining why the Government had wanted the reduction in the land-grant to be proportionate to the saving at the deviation at Arthur's Pass, instead of to the saving computed over the whole line; but, as I had long been familiar with Mr. Blair's admirable report, it was quite certain that if his estimates turned out right the line would cost a great deal more than the parliamentary estimate, in which case the reduction in the land-grant must obviously result in comparatively little benefit to the colony; and I should not like you to think that this had been overlooked, for, on the contrary, it was often urged to me by the Company, but the argument was exactly the one which the colony had debarred itself from using. Mr. O'Connor says it is not clear why Parliament should have fixed the statutory cost of the line at £2,500,000 when it was well known that it would cost at least £2,800,000; but, for my own part, I think the reason was never far to seek. It was only so long as Parliament chose to stereotype the estimate of £2,500,000, that they could also stereotype the land-grant of £1,250,000; and it was always impossible for Parliament to tell the contractors, "We will give you land worth 50 per cent. of the £2,500,000 which your railway is to cost," and, in the same breath, to tell them, "All the same, we know it will cost you £300,000 more, which is not to count at all." The astute managers of the Company's business knew this, just as well as I did, all along. Nevertheless, I fought, as you know, for the reduction to be measured by the saving at Arthur's Pass, and it was a narrow chance that the measure was not so settled.

But, after all, what the colony wanted was that the railway should be made, while what the colony never could want was that the people who made it should lose a heap of money. The amount of any reduction in the land-grant always seemed to me as nothing compared with coming to some arrangement to bring the making of the line at all within the range of possibility.

I have, &c.,

The Hon. the Minister for Public Works, Wellington.

F. D. BELL.

[Approximate Cost of Paper.—Preparation, nil; printing (1,400 copies), £6 3s.]

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1889.