

it would have done if your contractor had carried out his contract and constructed it? That and any other direct damage you have suffered you may get and no more." I ask you, then, to apply that rule here; and this brings me to the important question, What would have been the difference to this colony if it had constructed the line in five years from the date it took possession—finishing in 1900, and the company's finishing in 1900? I have worked this out on the Crown's own figures, and I think you will find the results are rather surprising. What, I ask, would be the difference to the colony between (1) the colony having completed the unconstructed portion of the line from 1895 to 1900; (2) the company having completed in 1900?

Total estimated cost of the whole line	...	...	...	£ 2,830,000
Government says work done up to 1895	...	...	...	605,685
				£2,224,315

Hence, if the Crown had completed it, it would have cost it £2,224,315. But if the company completed it, Mr. Bell says the land-grants would be equal to 60 per cent. of the cost of construction. Hence the Crown would contribute towards the company's construction 60 per cent. of £2,224,315:—

60 per cent. of £2,224,315	...	...	...	£ 1,334,589
Balance (portion of cost—40 per cent.—borne by company)	...	...	...	889,726

But if the Crown constructed the line the line would belong to the Crown. If the company constructed it, the line would belong to the company. Hence, if the company constructed, it would cost the Crown before the line could become Crown property—(1) the cost of the line, including 5 per cent. as provided by statute (saying nothing of interest) on cost of

Construction	...	...	...	...	£ 2,335,530
But to this must be added what the Crown has already given in land-grants	...	...	...	...	1,334,589
Total cost to Crown to acquire (if company constructed)	...	...	...	...	3,670,119
Cost if Crown had itself constructed	2,224,315

Gain to colony by itself constructing since 1895	£ 1,445,804
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But to this gain must be added what is saved to the colony by escaping the locking-up of the lands. If the Crown had determined the contract in 1895, and had broken up the reserved area, it would have had the gain of five years' freedom of about six million acres. What is this worth? Government says: Damage for fifteen years, £500,000; for five years, one-third, £170,000. Thus: £1,445,804; add £170,000: total, £1,615,804. This sum, then, of £1,615,804 is the gain to the colony if it constructed, instead of the company, the portion remaining unconstructed in 1895. Applying, then, the recognised principle that the damage is the difference between what it would have cost you to construct it yourself and what it would have cost you if the company had constructed it, we find on your own figures that you gain £1,615,804 by constructing it yourself.

Mr. Jackson Palmer: Would not that be a grand contract for the company?

Dr. Findlay: Probably so, if these figures are correct. I am taking the Crown's own figures regarding the cost to company and Crown of constructing, and am dealing with their counter-claim to show on these figures what they have lost. I say that is an answer to the contention that the colony has made this enormous loss, and that, if they had recognised the well-known principle that the damage is the difference between cost under the contract and the cost of the Crown's carrying out the contract, and if the colony had used due diligence in proceeding with this work, there could not have been this claim for damage. No doubt the comment of Mr. Palmer is perfectly right; but we meet it by the Crown's own figures. I say, then, that it was never in the contemplation of the parties—and could never have been in the contemplation of any reasonable man—that such a claim for such damages as this could be raised against us.

It was the Conduct of the Government that caused the Damage of which they now complain.

But let us look at the conduct of the Government in this matter. When a man comes into Court with a claim for damages, the Court will look critically at his conduct to see if the damages complained of could have been fairly avoided by prompt and proper conduct on the part of the plaintiff himself. Has he, in effect, been the cause, or one of the causes, of the damage of which he complains? That is the question. I propose to show that it would be most unfair for the Government to now make such a claim as they now raise, since, if damage there has been, they are responsible for it. Note the complaints: Land locked up for settlement for fifteen years; loss of population; loss of Customs; improved value of colonial estate, comfort and convenience of the public, &c. Suppose five-sixths of the line had been completed in 1892, and then the Government was informed that the company could go no further. Suppose such intimation justified the Government entering to finish the remaining one-sixth. Could the Government in such a case wait eight years to finish that one-sixth and then say, "Oh, we have now suffered £3,000,000 loss. The total line you have constructed is worth only £2,000,000. We will keep that to satisfy our claim for damages." It makes no difference that but one-sixth and not five-sixths was completed: the principle is the same. Surely the answer would be, "You had no right to wait eight years to complete the remaining one-sixth while this claim was mounting up. You might have entered and completed promptly." Well, what are the facts of the Government's conduct in this matter? In 1892 the company intimated perfectly plainly that they could not and were not going to complete their contract as it stood. The Government could then have determined the contract and entered and completed the contract. This was really their own view of their position. They