

1886.

NEW ZEALAND.

EAST AND WEST COAST AND NELSON (MIDLAND) RAILWAY

(CORRESPONDENCE RELATING TO).

[In continuation of D.—2, 1886.]

Presented to both Houses of the General Assembly by Command of His Excellency.

SIR,—

7, Westminster Chambers, London, S.W., 9th April, 1886.

I have to report what has taken place since writing you on the 23rd March, No. 356, on the subject of the East and West Coast Railway. On the 27th I telegraphed to you that it seemed likely that a company would be formed immediately to take over the contract, but that it would be advisable to continue keeping my messages confidential, in case of accidents. You replied on the 29th that it was important the matter should be settled soon, and inquired whether I approved of the concessions asked for; and you instructed me at the same time to inform you what course the affair was taking, and when it was likely to be definitely settled and the deposit paid. I replied at once that I was pressing for a definite reply, and that I approved of the concessions subject to certain safeguards about selection, and also to a condition that the rate of interest on capital during construction should not exceed 4 per cent., with a maximum of total amount and limit of time; also, that the deposit of £5,000 would be paid immediately the contract was taken over, but that there were some legal points still pending. On the 6th instant I telegraphed to you that I had heard a good proportion of the capital would be subscribed, but that the legal difficulties were still in the way, Messrs. Mackrell having advised me that there was no power to make any variation in the contract. To this you replied yesterday that, if the syndicate was willing to accept an assent by me on behalf of the Government, I was not to raise legal objections if it could be helped.

I have now felt obliged to send you a telegram to-day that nothing further has been definitely settled yet, and that the prospect now seems to me discouraging. At the last meeting of the gentlemen who are forming the company, a draft prospectus was submitted for approval. It was proposed to fix the share capital at £1,000,000, in 100,000 shares of £10 each, of which half was to be now offered for subscription, and to take up a further sum on debentures. The proposed directors were to be as follows:—

Mr. Thomas Salt, Chairman (Chairman of the North Staffordshire Railway Company, and Chairman of Lloyd's, Barnett's and Bosanquet's Bank).

Sir Charles Clifford (Chairman, New Zealand Trust and Loan Company).

Mr. Hart Davis.

Mr. Sheriff Hilton (Messrs. Miles Bros. and Co.), and

Mr. Brodie Hoare (Director of Lloyd's, Barnett's and Bosanquet's Bank).

Applications were to be invited at once for 50,000 shares, £1 being paid on application, £1 on allotment, and the balance in calls not exceeding £2 at intervals of not less than three months. Interest at 4 per cent. per annum was to be allowed to subscribers during six years, or for any shorter period required for the completion of the railway. Further proceedings were then adjourned, to ascertain whether the arrangements for underwriting the half million of present capital would succeed, but up to the present time I cannot learn that more than £150,000 has been taken up.

In the meantime a draft letter had been prepared for Mr. Salt to send me on behalf of the company, formally asking for the concessions they desired; but on the 30th March I wrote a letter to Mr. Scott,* copy of which is annexed, together with his reply, and I also had a long conference with Mr. Burchell, jun., of the firm of Burchell and Co., who were to be the solicitors for the company.

I need not say that the directors wished, as soon as their arrangements should reach a stage satisfactory to me, for their solicitors to be placed in communication with ours; and it was, of course, necessary for me to consult with Messrs. Mackrell in anticipation. The nature of the legal difficulty in the way is doubtless familiar to you, but, for purposes of record, I desired Messrs. Mackrell to explain it in a concise manner, which they have done in the letter, copy of which is transmitted herewith. I may summarize the points as follows:—

* This evidently means Mr. Salt, a copy of a letter from whom is annexed, but none from Mr. Scott.

- (1.) The power to the Government to enter into a contract having only extended to the first day of the then next session, any fresh contract or modification of the existing contract can only be made after legislation :
- (2.) The concession as to selection of land being a variation, not of the contract but of the Act, cannot be made without the authority of Parliament :
- (3.) The Government being entitled to purchase the line at a price to be fixed by arbitration, any stipulation affecting the basis of price (such as interest during construction) can only be made effectual by a new Act :
- (4.) Any agreement as to running powers being now determinable on either side by one year's notice, no permanent arrangement can be made without legislation :
- (5.) Although the time for expending the £150,000 may be extended, this can only be done by the Governor himself, who cannot delegate his power.

In addition to these points, you will see that Messrs. Mackrell cannot advise the Government to consent to any assignment without the assignees coming under direct liability to the Government; and they recommend a supplementary contract being made in the colony, after the company has been registered and domiciled there, so as to make it a "New Zealand contract." These points all involve a great deal of consideration, and may perhaps put an end to the negotiations; but so far I have been given to understand that the company would be satisfied with the promise of the Government to introduce the necessary amending Bill, as they feel confidence in its ratification by the Legislature.

As the matter will be so soon settled finally one way or the other, I had perhaps better say no more at the present moment.

* Copies of the telegrams which have passed between us are annexed.

I have, &c.,
F. D. BELL.

Enclosures.

The AGENT-GENERAL to Mr. SALT.

7, Westminster Chambers, London, S.W., 30th March, 1886.

New Zealand East and West Coast Railway.

DEAR MR. SALT,—

In accordance with what was arranged between us at our last conversation on the 20th, Mr. Scott has shown me the draft prospectus of the proposed company, and has prepared the letter which it was agreed should be sent to me, to which I will give due consideration.

I may, however, say at once that there are some points in regard to which I think alteration in the prospectus is necessary, and I shall be ready to talk these over with you at any moment. But in the meantime I must ask you to let me impress upon you the necessity of your deciding as to the first step being taken, and whether you propose taking over the contract.

Please therefore let me express the hope that this decision will be come to one way or the other at your Board meeting on Friday. If it is once finally settled in the affirmative I will, as I promised you, do my best to meet you on any point. But what I want to know for certain is that the assignment of the contract will be taken by you if all questions are satisfactorily arranged.

I am, &c.,
F. D. BELL.

[NOTE.—Mr. Salt's reply is marked private. Its substance is, that he thinks the matter will proceed, and that he is quite as anxious as the Agent-General to have it settled one way or another.]

Messrs. MACKRELL and Co. to the AGENT-GENERAL.

21, Cannon Street, London, E.C., 5th April, 1886.

East and West Coast Railway.

DEAR SIR FRANCIS,—

We have perused the East and West Coast Railway Act of 1884, the print of the contract made in pursuance of it, dated 17th January, 1885, and the copy of the telegram sent to the colony by Mr. Scott, and have considered the points discussed with you.

The fourth section of this Act gives special powers to the Government to enter into a contract only prior to the first day of the then next session of the General Assembly, and as this date has now passed we consider that it is not now competent for them to enter into any fresh contract, or make any modification of the existing contract, without further parliamentary powers.

The variation desired by the contractors as to the selection of the land, so that it should be made forthwith, would not be a variation of the contract but of the Act itself, and of the provisions of the general Act, which are very precise. Such a variation, therefore, clearly cannot be made without the authority of Parliament.

The general Act specifies the terms on which the Government are entitled to purchase, viz., at a price to be settled by arbitration, and we think that the importing into the provisions of the Act any stipulation as to the basis on which the price is to be arrived at, such as including interest on cost during construction, could only be made effectual by an Act of Parliament.

The Governor is authorized under the provisions of the fifth section of the East and West Coast Act to make from time to time agreements with the company as to running powers, but any such agreement is determinable by either side on one year's notice. If a permanent arrangement is now desired this would have to be authorized by Parliament.

* Already printed and laid on the table.

An extension of time for the expenditure of the £150,000 is expressly authorized by the contract, but it must be done by endorsement on the contract by the Governor, and he cannot delegate his power to you.

The benefit of the contract can only be assigned with the consent of the Governor, who may, however, appoint any person either in the colony or elsewhere for the purpose of giving such consent, and on the consent being given the personal liability of the contractors is to cease, and such liability is to be deemed to be transferred to the assignees of the original contractors in the same way as if they had been named parties to the contract itself.

We cannot, however, advise the Government to give any consent to an assignment without the assignees coming under a direct liability to the Government, for many difficulties might otherwise be raised by the assignees if it should be necessary to enforce the original contract against them.

The proper course to be taken will be for a supplementary contract to be entered into between the Government, the contractors, and the company, whereby, with the consent of the Government thereby expressed, the contractors will assign over the contract to the company, and the company will become bound directly to the Government to carry out and observe its provisions, subject to the desired modifications which the Governor will undertake to ask Parliament to sanction so far as may be necessary, if the necessary authority has not then been obtained.

Of course, before assenting to any such supplementary contract, you will require to be fully satisfied as to the financial position of the company, and their ability to carry out the work. This supplementary contract should be made and entered into by the company in the colony after the company has been registered and domiciled in the colony, so as to make it a New Zealand contract, and bring it under the laws of the colony, and so that the contract may be governed thereby.

When the company decide to take over the contract we shall, we presume, be placed in communication with their solicitors, and the necessary supplementary agreement can be settled here with them and sent to the colony for execution. In the meantime, we presume, you will ask your Government to pass the necessary Act enabling the Governor to enter into the proposed supplementary contract.

The Agent-General for New Zealand.

We have, &c.,
MACKRELL, MATON, AND GODLEE.

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