

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.