

(F.)

[This is the copy-letter marked "F," referred to in the annexed affidavit of Hugh Gully, sworn this 23rd day of November, 1895, before me—T. F. MARTIN, a Solicitor of the Supreme Court of New Zealand.]

MY LORD,—

London, 13th July, 1895.

I am instructed by the directors of the New Zealand Midland Railway Company to inform you that the Company views the action of the Governor of New Zealand in seizing the railway as entirely unwarranted, and is without information as to the grounds upon which the course taken by the Governor has been adopted. Assuming, however, that the Governor is purporting to act under section 123 of "The Railways Construction and Land Act, 1881," the Company emphatically denies that there has been any unreasonable or inexcusable delay in the prosecution of the works connected with the railway, or that anything has happened to bring into operation the powers given by that section.

Further, that the Company is advised that even if any such event had happened, the Company was entitled, in accordance with the universal rule as to the exercise of such powers, to reasonable notice of the Governor's intention; that the Company desires to point out that under the 123rd section the Governor is not made the judge as to what is unreasonable or inexcusable delay, which is a question which should be determined under the arbitration clause, and that in taking the matter into his own hands, and prejudging the question in his own favour, he has acted entirely contrary to the contract. That the Company now desires to have the question of the legality of the Governor's action determined, and has accordingly served the accompanying notice. The Company further considers that the convenient course would be to refer this difference to the arbitrators who are now sitting, to be dealt with as a matter comprised in the existing reference.

I am further instructed to ask, without prejudice, as to the further intentions of the Governor, that is to say: whether, having taken possession of the railway, he proposes to complete the same and conduct the traffic thereon, or to exercise the alternative power—*i.e.*, to restore possession to the Company. I am also to point out that whichever course is taken the damage to the Company and its credit will be very large.

At this moment my directors abstain from any discussion as to the rights of the debenture-holders, although taking a strong view that, even if as against the Company the action of the Governor has been authorised, it could not be maintained as against the debenture-holders, but that the Company thinks that is a matter for the debenture-holders to raise independently, they not being parties to the contract.

I am, &c.,

The Right Hon. the Earl of Glasgow.

ÆNEAS R. McDONNELL, Secretary.

(G.)

[This is the copy-letter marked "G," referred to in the annexed affidavit of Hugh Gully, sworn this 23rd day of November, 1895, before me—T. F. MARTIN, a Solicitor of the Supreme Court of New Zealand.]

Crown Solicitor's Office, Wellington, 21st September, 1895.

SIR,—

Re Midland Railway Company (Limited).

By direction of the Hon. the Premier, I beg to acknowledge the receipt by His Excellency the Governor of the notice, dated the 13th July, 1895, of the appointment of Sir Bruce Burnside, Q.C., as arbitrator for the purposes therein mentioned.

To the matters contained in that notice I am instructed by the Premier to reply as follows:—

I. I deny that your notice discloses any valid ground for invoking the arbitration clause in the Midland Railway contract, for the reasons already indicated to you, namely:—

- (1.) That the Company has entirely failed in its obligation to the colony in carrying-out even a substantial portion of its contract work within the contract time:
- (2.) That the taking possession by the Governor under the statutory authority of "The Railways Construction and Land Act, 1881," excludes any right to proceed to arbitration under the contract.

II. I further have to notify that, apart from the above grounds, the Company's notice, in the opinion of the advisers to the Government, discloses no right on the part of the Company to proceed to arbitration, for the following reasons:—

- (1.) That no dispute has arisen touching the meaning and effect of the contract or otherwise coming within the scope of clause 47:
- (2.) That the legality of taking possession depends upon the exercise by the Governor of a statutory power; and further, that in case the right to take possession is disputed, there is an express statutory remedy which the Company is attempting to evade:
- (3.) That no dispute has arisen upon the footing upon which accounts are to be kept after taking possession:
- (4.) That no dispute has arisen touching the question of restoration of possession under section 123 of the said Act.

Upon the grounds above indicated I have to protest against the attempt by the Company to force on arbitration proceedings upon the subject-matter of your notice. As, however, the Company threatens to proceed with the reference to arbitration *ex parte* (following the course adopted upon your previous notice of appointment), I have to state that the Governor has appointed Sir Charles Lilley, Knight, to act as arbitrator herein.

This appointment is, of course, made without prejudice to the objections above formulated, and the Government will, at the proper stage, object to the validity of the Company's action.