

I think it right to add that to acquiesce in arbitration proceedings in the face of the above objections would be to waive the right of the colony to complain of the complete and notorious breach by the Company of its obligations. This contract is a statutory one; the Government are answerable to the colony for its due fulfilment, and in their opinion nothing short of legislation would justify them in assenting to its terms being almost entirely abrogated.

I have, &c.,

HUGH GULLY,
Crown Solicitor.

R. Wilson, Esq., Engineer-in-Chief and General Manager,
Midland Railway Company, Christchurch.

(H.)

[This is the copy-letter marked "H," 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).

I am instructed by the Hon. the Premier to reply to your letter dated 13th July, 1895, to the Governor of the colony.

I have already written to the General Manager of the Company in the colony in reference to the notice of appointment of arbitrator, bearing even date with your letter, and enclose herewith a copy of my letter to him.

Your letter to His Excellency the Governor mainly contains controversial matter, which at the present stage it would appear might well have been avoided. In order, however, to prevent the suggestion that there is any acquiescence on the part of the Government in the position asserted by you, I beg to make the following observations:—

1. "The Company emphatically denies that there has been any unreasonable or inexcusable delay in the prosecution of its work."

As to this, it is perfectly futile at this stage to enter into a controversy as to whether or not the performance of a fractional part of the work (perhaps one-fifth, or less) within the full period of ten years can be considered as an adequate performance of the contract. The intention to perform the contract in full has been, as you are aware, for years virtually abandoned.

If your Company really contends that the delay is excused or made reasonable by the conduct of the Government, why do they evade the tribunal appointed by statute for the express purpose of dealing with such objections?—the statute itself being the one to which the contract owes its very existence.

In point of fact, I have no doubt that your directors are fully aware of the fact that the delay has been caused either by concessions sought by the Company in modification of its own contract or by want of funds.

2. You state that "The Company was entitled to reasonable notice of taking possession." Surely your directors were aware of the power to take possession, and were further aware that notice of breach and intention to treat the contract as abandoned was served on the General Manager on the 27th day of March, 1895, two months before possession was taken. May I ask what you suggest the Company would have been prepared to do if further formal notice *had* been given.

3. You state "That the Governor is not made the judge as to what is unreasonable or inexcusable delay." That is precisely what I have more than once insisted upon. No one but yourself ever suggested that the Governor was made the judge, or that he was guilty of "prejudging the question in his own favour." The judge of the question, as you are well aware, is a Judge of the Supreme Court of the colony, the tribunal which your directors are evidently not prepared to face, although it would surely be in every sense more convenient and proper to have the question as to whether there has been unreasonable or inexcusable delay disposed of before proceeding with the arbitration generally upon the merits of any of the other disputes arising under the contract. In this case His Excellency the Governor has no more presumed to judge the case than any mortgagee, lessor, or contractee adjudicates upon the position when he exercises an express power of entry upon breach. In any such case there is a remedy if the entry is unlawful. That remedy has been repeatedly pointed out to you without result.

4. You ask "whether the Governor proposes to complete the railway and conduct the traffic thereon, or to exercise the alternative power—that is, to restore possession to the Company?"

I am at a loss to understand what can be the object of your asking this question at the present stage. If, however, you are serious in making the inquiry, may I ask, in the terms of section 123 of the Act, "what are the terms and conditions which the Company proposes to offer in order to justify the Governor in making this concession?"

For years past the colony has been disposed to grant the Company concessions of a most substantial kind, both as to time and otherwise, provided that the Company could satisfy the Government of its ability to carry out the work; but this the Company has never done.

5. The matter of debentures, also, it is unnecessary to discuss at any length. It appears difficult to concur with your very confident assertion of the position. The debenture-holders are secured by a charge upon the Company's contract. That contract is subject to a statutory right in the Governor of the colony to enter for breach. There has been breach: the Governor has entered. Yet your directors take "a strong view" that the debenture-holders can abrogate the Crown's remedy for breach of the contract over which they hold a security.