

expressly claimed in the arbitration proceedings in 1895 that the company had given such an intimation of its inability to carry out the contract—such a declaration that it would not carry it out—that the contract was at an end. This is what the Crown expressly claimed in its reply to the company's claim in 1895. Counsel for the Crown says (see report of Midland Railway arbitration proceedings, page 4): "My second point is that the contract is at an end because the company have abandoned it, and expressly declared that they abandon the performance of a large portion of the contract—namely, the construction of the railway from Belgrove to Reefton." But this is more fully and explicitly stated in the Crown's formal reply (see appendix to the same proceedings, page 4):—

The respondent further avers that the claimant company not only failed to perform its contract, but has notified an intention to abandon a substantial part of the said works—to wit, that portion of the said railway-line which extends from Reefton to Motueka, a distance of over ninety-four miles; and, further, that, in pursuance of such intention, the claimant company in the year 1892 petitioned Parliament, alleging certain grievances against the colony, and, upon inquiry before a parliamentary Committee in that behalf appointed, counsel for the claimant company made the following explicit statement: "The company is at the end of its finance. To say that the contract is in existence for two years and a half is, in the sense Mr. Seddon says it, correct. But it is not so in the sense that I should use the words. The company is without funds to complete its contract: the company cannot raise the funds to complete its contract without some modification of the contract. It is true that the company has said that it could not raise the funds without the determination of the question of the incline, and of the question of extension of time; but the company has not said that the settlement of those two questions alone would enable it to raise the necessary funds. The real question which we have brought and desire to bring before Parliament through this Committee is this: Will you make a modification in the contract? because if not it is impossible for us to carry it out. We have not the funds, and without some modification we cannot procure the funds. Therefore, if the railway is to be carried out by this company, give us some modification. The claimant company by its attorney and general manager in New Zealand has repeatedly, both before and after the hearing of the said petition, unequivocally stated the intention of the plaintiff company not to proceed with the said works specified in paragraph 14 of this statement, except upon terms and conditions not included in the said contract.

What does that mean? That in 1892 the Crown was entitled to treat this contract as rescinded, and proceed with the construction itself. On their own representations they might in five years—the Premier says three years—from that date have completed the line, and hence avoid eight or ten years for which they now complain they will suffer enormous loss. But how did the Crown act in 1892? The company came in 1892 and said, "We have spent nearly a million on this line. Our finance is at an end; we cannot go on even if you give us further time. We cannot carry out that contract as it stands." Mr. Bell gave this Committee the plainest statement to that effect. What did the Government do? (1.) They would not agree to modify the contract. (2.) They would not agree to assist the company's finance as proposed. (3.) They would extend the time on certain conditions—a concession they might safely make, since the company had plainly said that would be of no use. They brought the most authoritative evidence they could get in New Zealand—their own Railway Commissioners—to prove that the company's contract was a disastrous one—one that could not pay, that would result in a loss, taking the mean of the Crown's estimates, of over £11,000 a year. "Help you?" they said in effect. "Help you? Oh, no. Your contract with us is too hopelessly ruinous." Surely if they could not help the company they should not have damned its finance in that way. What the Government did was to maim the company's finance, and then leave it to crawl on broken limb until delay could justify seizure, confiscation, and then finally such a counter-claim as this. Why, if the colony was suffering this huge loss, was the contract not then determined, and the rights of all parties ascertained? That would have been the proper, fairest, and kindest course to the company. The one adopted was the cruelest that could be devised. It meant the company's sinking more money in this enterprise, doomed as it was to confiscation. It meant delay, irritation, and loss. And, again, what can justify the Crown's change of front from 1887 to 1892? In 1885, 1886, and 1887, up to the very time when the contract was signed, up to the time this money was lent, Ministers in the House, in their Public Works Statements, and on public platforms, were announcing in a most unqualified way that the line would pay from the very commencement as well as any line yet constructed in the colony. Did not one Public Works Minister (the Hon. Mr. Richardson) declare that it would pay 2 per cent. from the outset? He made that statement in a most elaborate speech, and giving data which had been furnished by his own department. Then, what a change there is in four years! When faith in the colony's prosperity was not so strong in London as it is to-day, when this company was struggling against financial difficulties—then, when it came to the Government for consideration, it got nothing in return but a blow in its weakest part. Up to the time the contract was signed public men told English investors that this was a fine, promising, profitable venture. But in four years the tune had changed! The contract had been signed, this money lent, and nearly a million had been spent by the company. Then the tune was that the company had a hopelessly disastrous contract. The best experts were brought to prove that it was hopeless to attempt to assist a company which had a veritable *damnosa hereditas* as this contract. Surely, Mr. Bell's indignation was justified, when, in addressing this Committee in 1892, he said (after quoting from the speeches of the Ministers of the Crown up to 1888 to show how magnificent a future was before this venture):—

It must be borne in mind that this is a speech of the Minister for Public Works, and that this, with the other statements I have read, was sent to England. These declarations of public men, and statements made by the Public Works Department, were sent to England to the delegates there, and used by them in the London market. They are not the statements of the delegates, but official statements of the Government of that day. And now I hear Mr. Gordon called by the Minister for Public Works to demonstrate that this railway can never pay; and Mr. Maxwell and Mr. McKerrow called with the intention of proving the same point, though their evidence has really shown that Mr. Gordon is utterly wrong. I am no expert, but I know that I am only prevented by the exigency of time from calling a mass of expert evidence to completely overwhelm and extinguish this evidence. But suppose Mr. Seddon is right in calling this evidence, what does he prove by it? Surely this, that the railway ought never to have been promoted, and ought not now to be made by the Government or by the company—that it is, and always will be, a white elephant. That is what Mr. Seddon is now proving—that the line cannot pay working-expenses in any hands, and therefore that it ought not to be constructed at all. But he is doing something more even than that: He is proving that the public men of the colony in 1886-87, with whom his district was practically associated, were utterly reckless in making the statements which induced this company to purchase a concession