



1882.

TASMANIA.

HOUSE OF ASSEMBLY.

TASMANIAN MAIN LINE RAILWAY:

CORRESPONDENCE REFERRING TO CLAIMS.

Return to an Order of the House of Assembly. (Mr. Burgess.)

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MAIN LINE RAILWAY COMPANY'S CLAIMS.

(FIRST) SUPPLICATION—MAIN LINE RAILWAY COMPANY *v.* THE QUEEN.

IN THE SUPREME COURT }
OF TASMANIA. }

The seventeenth day of December in the year of Our Lord one thousand eight hundred and seventy-eight.

THE Suppliants The Tasmanian Main Line Railway Company Limited by Henry Dobson their Attorney on the date and year above-written filed their Supplication which sheweth as follows—

That Your Majesty is indebted to your Suppliants for that after the passing and coming into operation of the Act 23 Victoria No. 1 being An Act to give redress to persons having claims against the Crown arising in the Colony of Tasmania and after the passing and coming into operation of the several Acts respectively hereinafter mentioned to wit the Act 21 Victoria No. 11 called the "The Land Clauses Act" the Act 33 Victoria No. 1 called "The Main Line of Railway Act" the Act 33 Victoria No. 21 called "The Launceston and Western Railway Act No. 5" and the Act 34 Victoria No. 13 called "The Main Line of Railway Amendment Act" it was by deed dated the fifteenth day of August in the year of Our Lord one thousand eight hundred and seventy-one agreed by and between the Governor of Tasmania for and on behalf of Your Majesty and your Suppliants and which said deed was thereby declared to be made and executed and entered into in pursuance and exercise of the powers given by the Act of the Parliament of Tasmania 33 Victoria No. 1 The Main Line of Railway Act and 34 Victoria No. 13 The Main Line of Railway Amendment Act thereafter referred to as "The Main Line Railway Act" as follows—

That your Suppliants should construct maintain and work a Main Line of Railway between Hobart Town and Launceston or between Hobart Town and any point on the Launceston and Western Railway with running powers over that Railway to Launceston subject to and in accordance with the conditions set forth in the schedule at the foot thereof and that the said construction maintenance and working should be included in the expression "the said undertaking" therein used that the said conditions as so set forth should be treated and considered as part of the said deed and should be fulfilled by the said Governor and by your Suppliants respectively. That the said Governor did by the said deed confer upon your Suppliants all rights powers privileges and immunities and did by the said deed guarantee to your Suppliants all benefits which by the said Main Line Railway Acts or any Acts incorporated therewith or by the Act 33 Victoria No. 21 or otherwise howsoever the said Governor was authorised to confer create use exercise delegate or guarantee for the purposes or in reference to the said undertaking and the connection thereof with the Launceston and Western Railway with running powers over the said last-mentioned Railway and also power to lay down an additional rail or rails and to execute and do all such works as might be necessary to connect such Main Line of Railway with the said Launceston and Western Railway and including especially the leases of Crown lands which your Suppliants might require for the purposes of the said undertaking. That the said Governor thereby did especially guarantee to your Suppliants interest at the rate of five pounds per centum per annum upon the money actually expended in and for the purposes of the construction of the said Main Line of Railway up to and not exceeding the sum of six hundred and fifty thousand pounds during four years of the period of construction commencing from the date of the said deed and for a period of thirty years from the opening of the entire line for traffic and that the said interest should be payable as follow—The Company (meaning your Suppliants) should pay into the Bank of New South Wales in London or some other bank to be approved of by the said Governor to the credit of the said Company the money raised by them for the construction of the said Railway as the progress of the said works might require and such money if not less than twenty-five thousand pounds in amount should bear interest at the specified rate from the date at which they should be paid in not more than two hundred and fifty thousand pounds should be paid into the said bank in any one year and

no greater sum than one hundred thousand pounds should be kept idle at the said bank for a period exceeding three months and the said Company (meaning your Suppliants) should with each payment forward to the Colonial Secretary to his office in Hobart Town a receipt from the manager of the said bank showing that the money had been duly paid to the credit of the said Company and before the said interest be actually paid by the said Governor should produce to him or whom he might appoint vouchers or documents showing that the money (within the limitation named) had been actually expended for the purposes of the construction of the said Railway the interest to be paid in cash quarterly to the said Company's bankers in Hobart Town. That no sum should be payable for guaranteed interest for any period during which your Suppliants should not continue to maintain and work the said Line of Railway in an efficient manner so as to afford all sufficient station accommodation and due facilities for the passenger and goods traffic of every portion of the Line. That the main object for which the said Company (meaning your Suppliants) was formed being the construction maintenance and working of the said Railway they should be allowed as forming the first instalment of the cost of construction a sum of twenty-five thousand pounds but no more. That after the entire Line should be opened for traffic your Suppliants should furnish to the said Governor at the close of each quarter an abstract of their receipts and expenditure for the preceding quarter so far as the same could be made up in the Colony and the said Governor should be bound to pay to your Suppliants in Hobart Town quarterly within fourteen days next after the delivery of each of such abstracts such amount of money as should with the profit (if any) of the preceding quarter make up interest at the rate of five pounds per centum per annum on six hundred and fifty thousand pounds (or such less sum as the said Railway and works might cost) and so on from quarter to quarter. That if the profits of the undertaking for any quarter should reach an amount equivalent to interest at the rate of five pounds per centum per annum on the outlay (limited as aforesaid) the said Governor should not be bound to make any contribution in the nature of guaranteed interest for that quarter unless in respect of some account which should not have been adjusted in a previous quarter and in respect of which the said Governor should be liable to pay interest. That if in any quarter during the said period of thirty years the profits of the said undertaking should not reach an amount equivalent to five pounds per centum per annum on such limited outlay as aforesaid then the liability of the said Governor to pay or make up the rate of interest to five pounds per centum should again arise or revive and so on from time to time during the whole of the said stipulated period of thirty years the true meaning and intention of the said deed being that the said Company might at all times during the said period receive interest at the rate of at least five pounds per centum per annum upon the money expended by them (limited as aforesaid to the said sum of six hundred and fifty thousand pounds) either from the profits of the said undertaking or from the said Governor. That all profits arising during the period of construction from the working of sections or portions of the Line which might be opened for traffic should until the whole Line should be opened for traffic belong exclusively to your Suppliants. That the said undertaking with all its incidents benefits and privileges both existing and prospective might be purchased by the said Governor at any time after the Line should have been opened for traffic upon giving twelve months' notice in writing to your Suppliants both in London and in Tasmania at a price to be fixed failing agreement by a majority of five valuers two to be named by the Governor two by your Suppliants and one to be chosen by the four valuers first appointed. That the obligations of the said Governor and of your Suppliants under the said deed should be correlative and dependent the fulfilment of the obligations of the said Governor being dependent upon the fulfilment of the obligations of your Suppliants and *vice versa*. That the said deed was made subject to the provisions of the Main Line Railway Acts of the Parliament of Tasmania thereinbefore recited and that each of the said contracting parties should abide by such provisions save so far as they might be by the said deed expressly modified or thereafter be altered added to or varied by mutual consent and that nothing in the said deed contained should be deemed or construed to impose a personal obligation upon the said Governor but that he should be deemed to contract for and on behalf of the Colony of Tasmania and under the authorities aforesaid. And your Suppliants say that after the making of the said deed your Suppliants duly entered upon and proceeded with the said works, and duly constructed, maintained, and worked the said Main Line of Railway between Hobart Town and a point on the Launceston and Western Railway subject to and in accordance with the conditions set forth in the said schedule at the foot of the said deed, and your Suppliants say that the said conditions amongst others were and are as follows—The exact points of the termini of the said Railway should be fixed by the said Company. The said Company should also have the right to run into the Launceston and Western Railway at any point they might consider most advantageous and to lay down a rail or rails upon that line from the point of junction to the terminal station at Launceston so as to allow the said Company's rolling stock to run over that portion of the Launceston and Western Railway. The whole of the said works should be completed and the said Railway opened for traffic throughout within the period of four years from the date of the said deed and that when the said Railway should be completed and opened for traffic at least four trains should run daily upon the said line throughout its entire length to wit two trains daily from Hobart Town to the opposite terminus and two trains daily from the opposite terminus to Hobart Town.

And your Suppliants say that all conditions have been performed and all things have happened and all times have elapsed necessary to entitle your Suppliants to maintain this supplication for the breach of the said covenants contained in the said deed hereinafter alleged and nothing has happened

or was done to disentitle your Suppliants from maintaining this supplication for the same yet Your Majesty hath not paid and hath neglected to pay to your Suppliants a large part of interest due to them at the rate aforesaid in accordance with the terms of the said deed on the money actually expended in and for the purposes of the construction of the said Main Line of Railway not exceeding the said sum of six hundred and fifty thousand pounds payable to your Suppliants quarterly during the time of the construction of the said Main Line Railway and also a large part of the interest payable to your Suppliants quarterly from the date of the opening of the said entire line for traffic and thereby a large sum amounting to twenty thousand three hundred and eighty-two pounds nineteen shillings and ten pence has accrued due and payable to your Suppliants from Your Majesty as and for such interest under the said deed. And your Suppliants have for a long period of time been deprived of the use and enjoyment of the said moneys and of the profits and gains they would have made from the use and possession of the same and also for money payable by Your Majesty to your Suppliants for interest upon money due from Your Majesty to your Suppliants and forborne at interest by your Suppliants to Your Majesty at Your Majesty's request. And your Suppliants claim twenty-eight thousand two hundred and fifty-eight pounds ten shillings and two pence.

PARTICULARS of the Suppliants' demand herein.

This Action is brought to recover £28,258 10s. 2d. being the balance due to the Suppliants as follows:—

		£	s.	d.	£	s.	d.
1876.							
March 15.	Amount of guaranteed Interest at the rate of £5 per centum per annum payable to the Suppliants upon the cost of the construction of the Main Line Railway calculated from the commencement of such construction and due up to this date	88,580	8	2			
	The Suppliants give Our Lady the Queen credit for	87,576	15	4			
	To balance claimed by the Suppliants due this date .....	..			1003	12	10
1878.							
Sept. 30.	Amount of guaranteed Interest at the rate of £5 per centum per annum payable to the Suppliants upon the sum of £650,000 from the 15th day of March 1876 (being the day the Main Line Railway was opened for traffic) due up to this date ..	82,674	13	2			
October 1.	The Suppliants give Our Lady the Queen credit for the following amount paid on this date	62,291	13	4			
Sept. 30.	To balance of guaranteed Interest claimed by the Suppliants due on this date ....	..			20,382	19	10
	This action is also brought to recover such damages as the jury shall by their verdict give the Suppliants for and in respect of Interest upon the sum of £1003 12s. 10d. and for and in respect of Interest upon the Quarterly payments of guaranteed Interest which Our Lady the Queen has from time detained from the Suppliants since the 15th day of March 1876 and which damages the Suppliants estimate at	10,000	0	0			
	The Suppliants give Our Lady the Queen credit for the following sum paid by Her Majesty on account of such damages on this date	3128	2	6			
	To balance of damages in respect of Interest upon Interest claimed by the Suppliants .....	..			6871	17	6

£28,258 10 2

PLEAS TO SUPPLICATION.

The thirteenth day of March in the year of Our Lord
one thousand eight hundred and seventy-nine.

1. John Stokell Dodds Esquire Attorney-General of Our Lady the Queen for Our said Lady the Queen as to the first count of the said supplication says that he denies the breaches of the said alleged covenants in the said count severally assigned and each of the said breaches respectively.

2. And for a second plea, as to so much of the first count of the supplication as alleges that Her Majesty has not paid and has neglected to pay to the Suppliants a large part of the interest payable to the Suppliants quarterly from the date of the opening of the said entire line for traffic and that thereby a large sum amounting to twenty thousand three hundred and eighty-two pounds nineteen shillings and ten pence has accrued due and payable to your Suppliants from Her Majesty as and for such interest under the deed in the said first count mentioned and declared on the Attorney-General further for Our said Lady the Queen says that it was a condition of the said agreement by deed by and between the Governor of Tasmania for and on behalf of Her Majesty and the Suppliants that Her Majesty should not be liable to pay to the Suppliants the said interest or any part thereof before the opening for traffic of the entire line between Hobart Town and the Terminal Station at Launceston subject to and in accordance with the conditions set forth in the schedule at the foot of the said deed and the Attorney-General for Our said Lady the Queen says that the said entire line between Hobart Town and the Terminal Station at Launceston was not open for traffic before or during the time or any portion of the time in respect of which the interest mentioned in that portion of the first count herein pleaded to is claimed and the said entire line between Hobart Town and the Terminal Station at Launceston was not open for traffic until after the whole of the said time had expired. Wherefore Her Majesty has not paid the said interest to the Suppliants but has refused and still refuses so to do.

3. And for a third plea the Attorney-General as to the second count of the supplication for Our said Lady the Queen says that Her Majesty never was indebted to the Suppliants as is in the said count alleged.

4. And for a fourth plea the Attorney-General as to the said second count for Our said Lady the Queen further says that before the commencement of this suit Her Majesty satisfied and discharged the Suppliants' claim by payment.

5. And for a fifth plea the Attorney-General further as to the said second count of the supplication and also as the sum of £1003 12s. 10d. parcel of the moneys claimed by the Suppliants in the first count as interest alleged to be due to them in accordance with the terms of the said Deed on the money actually expended in and for the purposes of the construction of the said Main Line of Railway not exceeding the said sum of £650,000 for Our said Lady the Queen says that the Suppliants were at the commencement of this suit and still are indebted to Her Majesty in an amount larger than the Suppliants' claim hereinbefore above pleaded to for money payable by the Suppliants to Her Majesty for money received by the Suppliants to the use of Her Majesty and for interest upon money due from the Suppliants to Her Majesty and forborne at interest by Her Majesty to the Suppliants at their request and for money found to be due from the Suppliants to Her Majesty on accounts stated between them out of which amount Her Majesty is willing and hereby offers to set off an amount equal to the Suppliants' claim.

The following are the particulars of the set-off of Her Majesty the Queen to the claim of the Suppliants:—

		£	s.	d.
1873.				
July 10.	To interest received by the Suppliants from the Bank of New South Wales London on behalf of Her Majesty and not credited to Her Majesty	4230	8	7
December 31.	Ditto ditto	1470	6	10
1874.				
June 30.	Ditto ditto	225	12	10
December 31.	Ditto ditto	38	17	2
		<u>£5965</u>	<u>5</u>	<u>5</u>

Her Majesty also claims interest at the rate of £6 per centum per annum upon the several amounts above mentioned from the dates set opposite such amounts until verdict say £2200.

And take notice that the Attorney-General on behalf of Her Majesty the Queen claims to recover from the Suppliants the excess of the above set-off over any sum which the Suppliants may

recover in respect of the matters to which the plea of set-off is pleaded and that the Jury on the trial of this Supplication will be asked to find a verdict for Her Majesty for such excess.

REPLICATION.

The twenty-sixth day of April in the year of Our Lord one thousand eight hundred and seventy-nine.

The Suppliants take issue upon the Pleas pleaded herein by Her Majesty's Attorney-General respectively.

Therefore let a Jury come.

NOTICE OF TRIAL.

TAKE Notice of Trial in this Cause for the next Civil Sittings of the Supreme Court to be holden at Hobart Town on the twenty-fourth day of June next.

Dated this third day of May 1879.

DOBSON & MITCHELL

Attorneys for the said Suppliants.

To ROBERT P. ADAMS, *Esq. Crown Solr.*
Hobart Town.

(SECOND) SUPPLICATION.

IN THE SUPREME COURT }
OF TASMANIA. }

The nineteenth day of October in the year of Our Lord one thousand eight hundred and eighty.

To THE QUEEN'S MOST EXCELLENT MAJESTY.

Your Majesty's faithful Subjects the Tasmanian Main Line Railway Company Limited.

HUMBLY SHOW :

THAT Your Majesty is indebted to your Suppliants for that after the passing and coming into operation of the Act 23 Victoria No. 1 being an Act to give redress to persons having claims against the Crown founded on and arising out of any Contracts entered into on behalf of Her Majesty by Her Majesty's Local Government of Tasmania and after the passing and coming into operation of the several Acts respectively hereunder mentioned, to wit—The Act 21 Victoria No. 11 the Act 33 Victoria No. 1 the Act 33 Victoria No. 21 and the Act 34 Victoria No. 13 it was by Deed dated the fifteenth day of August in the year of Our Lord one thousand eight hundred and seventy-one agreed by and between the Governor of Tasmania for and on behalf of Your Majesty and your Suppliants and which said Deed was thereby declared to be made and executed and entered into in pursuance and exercise of the powers given by the Acts of the Parliament of Tasmania 33 Victoria No. 1 and 34 Victoria No. 13 thereafter referred to as The Main Line of Railway Amendment Act as follows—

That your Suppliants should construct maintain and work a Main Line of Railway between Hobart Town and Launceston or between Hobart Town and any point on the Launceston and Western Railway with running powers over that Railway to Launceston subject to and in accordance with the conditions set forth in the schedule at the foot thereof and that the said construction maintenance and working should be included in the expression "the said undertaking" therein used. That the said conditions as set forth should be treated and considered as part of the said deed, and should be fulfilled by the said Governor and by your Suppliants respectively. That the said Governor did by the said deed confer upon your Suppliants all rights powers and privileges and immunities which by the hereinbefore mentioned Acts or any Acts incorporated therewith or otherwise

howsoever the said Governor was authorised to confer create use exercise delegate or guarantee for the purposes or in reference to the said undertaking and the connection thereof with the Launceston and Western Railway with running powers over the said last-mentioned Railway and also power to lay down an additional rail or rails and to execute and do all such works as might be necessary to connect such Main Line of Railway with the said Launceston and Western Railway and including especially the leases of Crown Lands which your Suppliants might require for the purposes of the said undertaking. That the said Governor thereby did specially guarantee to your Suppliants interest at the rate of Five pounds per centum per annum upon the money actually expended in and for the purposes of the construction of the said Main Line of Railway up to and not exceeding the sum of six hundred and fifty thousand pounds during four years of the period of construction commencing from the date of the said deed and for a period of thirty years from the opening of the entire line for traffic and that the said interest should be payable as follows—"The Company (meaning your Suppliants) should pay into the Bank of New South Wales in London or some other Bank to be approved of by the said Governor to the credit of the said Company the money raised by them for the construction of the said Railway as the progress of the said works might require and such sums of not less than twenty-five thousand pounds in amount should bear interest at the specified rate from the date at which they should be paid in not more than two hundred and fifty thousand Pounds should be paid into the said Bank in any one year and no greater sum than one hundred thousand pounds should be kept idle at the said Bank for a period exceeding three months and the said Company (meaning your Suppliants) should with each payment forward to the Colonial Secretary to his Office in Hobart Town a receipt from the Manager of the said Bank showing that the money had been duly paid to the credit of the said Company and before the said interest be actually paid by the said Governor should produce to him or whom he may appoint vouchers or documents showing that the money (within the limitation named) had been actually expended for the purposes of the construction of the said Railway. The interest to be paid in cash quarterly to the said Company's Bankers in Hobart Town. That no sum should be payable for guaranteed interest for any period during which your Suppliants should not continue to maintain and work the said Line of Railway in an efficient manner so as to afford all sufficient Station accommodation and due facilities for the passenger and goods traffic of every portion of the Line. That the main object for which the said Company (meaning your Suppliants) was formed being the construction maintenance and working of the said Railway there should be allowed as forming the first instalment of the cost of construction a sum of twenty-five thousand pounds but no more to cover all preliminary expenses including the expenses of the formation of the said Company. That after the entire Line should be opened for traffic your Suppliants should furnish to the said Governor at the close of each quarter an Abstract of the Receipts and Expenditure for the preceding quarter so far as the same could be made up in the Colony. And the said Governor should be bound to pay to your Suppliants in Hobart Town quarterly within fourteen days next after the delivery of each of such Abstracts such amount of money as should with the profits (if any) of the preceding quarter make up interest at the rate of five pounds per centum per annum on six hundred and fifty thousand pounds (or such less sum as the said Railway and works might cost) and so on from quarter to quarter. That if the profits of the undertaking for any quarter should reach an amount equivalent to interest at the rate of five pounds per centum per annum on the outlay (limited as aforesaid) the said Governor should not be bound to make any contribution in the nature of guaranteed interest for that quarter unless in respect of some accounts which should not have been adjusted in a previous quarter and in respect of which the said Governor should be liable to pay interest. That if in any quarter during the said period of thirty years the profits of the said undertaking should not reach an amount equivalent to five pounds per centum per annum on such limited outlay as aforesaid then the liability of the said Governor to pay or make up the rate of interest to five pounds per centum should again arise or revive and so on from time to time during the whole of the said stipulated period of thirty years the true meaning and intention of the said deed being that the said Company might at all times during the said period receive interest at the rate of at least five pounds per centum per annum upon the money expended by them (limited as aforesaid to the said sum of six hundred and fifty thousand pounds) either from the profits of the undertaking or from the said Governor. That all profits arising during the periods of construction from the working of sections or portions of the line which might be opened for traffic should (until the whole line should be opened for traffic) belong exclusively to your Suppliants. That the said undertaking with all its incidents benefits and privileges both existing and prospective might be purchased by the said Governor at any time after the line should have been opened for traffic upon giving twelve months' notice in writing to your Suppliants both in London and in Tasmania at a price to be fixed failing an agreement by a majority of five valuers two to be named by the Governor two by your Suppliants and one to be chosen by the four valuers first appointed. That the obligations of the said Governor and of your Suppliants under the said Deed should be co-relative and dependent the fulfilment of the obligations of the said Governor being dependent upon the fulfilment of the obligations of your Suppliants and *vice versa*. That the said Deed was made subject to the provisions of The Main Line Railway Acts of the Parliament of Tasmania thereinbefore recited and that each of the said contracting parties should abide by such provisions save so far as they might by the said deed expressly be modified or thereafter be altered added to or varied by mutual consent and that nothing in the said deed contained should be deemed or construed to impose a personal obligation upon the said Governor but that he should be deemed to contract for and on behalf of the Colony of Tasmania

and under the authorities aforesaid. And your Suppliants say that after the making of the said deed your Suppliants duly entered upon and proceeded with the said works and duly constructed maintained and worked the said Main Line of Railway between Hobart Town and a point on the Launceston and Western Railway and thence from and after the First day of November one thousand eight hundred and seventy-six over the said Launceston and Western Railway from the said point upon the said Launceston and Western Railway into Launceston subject to and in accordance with the conditions set forth in the said Schedule at the foot of the said deed. And your Suppliants say that the said conditions amongst others were and are as follows—The exact points of the Termini of the said Railway should be fixed by the said Company (meaning your Suppliants). The said Company (meaning your Suppliants) will also have the right to run into the Launceston and Western Railway at any point they might consider most advantageous and to lay down a rail or rails upon that line from the points of junction to the Terminal Station at Launceston so as to allow the said Company's rolling-stock to run over that portion of the Launceston and Western Railway. The whole of the said works shall be completed and the said Railway opened for traffic throughout within the period of four years from the date of the said Deed and that when the said Railway should be completed and opened for traffic at least four trains should run daily upon the said line throughout its entire length namely two trains daily from Hobart Town to the opposite terminus and two trains daily from the opposite terminus to Hobart Town. And your Suppliants say that all conditions have been performed and all things have happened and all times have elapsed necessary to entitle your Suppliants to maintain this Supplication for the breach of the said covenants contained in the Deed hereinafter alleged and nothing has happened or was done to disentitle your Suppliants from maintaining this Supplication for the same yet Your Majesty has not paid and hath neglected to pay to your Suppliants interest at the rate aforesaid in accordance with the terms of the said Deed on the money actually expended in and for the purposes of the construction of the said Main Line of Railway not exceeding the said sum of six hundred and fifty thousands pounds from the date of the opening of the said entire line for traffic and thereby a large sum amounting to two thousand one hundred and twenty-five pounds has accrued due and payable to your Suppliants from Your Majesty as and for such interest under the said Deed. And your Suppliants have for a long period of time been deprived of the use and enjoyment of the said monies and of the profits and gains they could have made from the use and possession of the same. And also for money payable by Your Majesty to your Suppliants for interest upon money due from Your Majesty to your Suppliants and forborne at interest by your Suppliants to Your Majesty at Your Majesty's request.

And your Suppliants claim two thousand five hundred pounds.

The Tasmanian Main Line Railway Company Limited
by their Attorney—

C. H. GRANT.

IN THE SUPREME COURT }
OF TASMANIA, }

THE TASMANIAN MAIN LINE RAILWAY COMPANY LIMITED

v.

THE QUEEN.

This Action is brought to recover the sum of £2125 upon the following Account:

1880.	£	s.	d.
April 30. To one Quarter's interest payable this day by Her Majesty to the Suppliants at the rate of £5 per centum per annum upon the sum of £650,000 and due under the Contract mentioned in the Supplication annexed hereto ..	8125	0	0
By amount paid by Her Majesty to your Suppliants on account of the above Quarter's interest	6000	0	0
Balance due to the Suppliants	£2125	0	0

The Suppliants claim interest at the rate of £10 per centum on the above sum from the said thirtieth day of April last till Judgment.

The above are the particulars of the Suppliant's demand herein.

Dated this nineteenth day of October 1880.

Yours &c.

DOBSON & MITCHELL Attorneys for the Suppliants.

To the Honorable the Attorney-General.

SUMMONS FOR ORDER FOR COMMISSION.

IN THE SUPREME COURT }
OF TASMANIA. }

THE QUEEN

A^{ts}.

THE TASMANIAN MAIN LINE RAILWAY COMPANY LIMITED.

LET the Suppliant's Attorney or Agent attend me or His Honor the Chief Justice at the Judges' Chambers in the Supreme Court House Macquarie street Hobart Town on Wednesday the twenty-first day of May instant at half-past ten o'clock in the forenoon to show cause why a Commission should not be issued to be directed to Commissioners to be named on the part of Her Majesty the Queen for the examination *vivâ voce* of such of Her Majesty's witnesses as are resident in Great Britain such Commissioners being empowered and required to perform all such matters and things as are required and authorised by the Act of Council of Tasmania 5 William 4 No. 2.

Dated this twentieth day of May one thousand eight hundred and seventy-nine.

W. L. DOBSON J.

Counsel for the Queen will appear
on the hearing of this Summons.

ORDER FOR COMMISSION.

IN THE SUPREME COURT }
OF TASMANIA. }

THE TASMANIAN MAIN LINE RAILWAY COMPANY LIMITED

v.

THE QUEEN.

UPON hearing Mr. William Robert Giblin of Counsel for Her Majesty the Queen and Mr. Hy. Dobson of Counsel for the Suppliants and upon reading the summons issued herein on the 20th day of May instant I do order that a Commission to be settled and approved by the Registrar of this Court be issued to examine *vivâ voce* such person or persons as may be produced as witnesses in this cause by or on behalf of Her Majesty the Queen and also such witnesses as may be produced by the Suppliants in London or elsewhere in Great Britain before Sir Penrose Goodchild Julian K.C.M.G. C.B. of Downing-street London Crown Agent and Thomas Pix Cobb of 41 Finsbury Circus London the Commissioners named by and on behalf of Her said Majesty and Richard Pennington of 6 New Square Lincoln's Inn London Solicitor and Eustace Anderson the younger of 17 Ironmonger Lane London Solicitor Commissioners named by and on behalf of the Suppliants or any one or more of them. AND I FURTHER ORDER that the Counsel or Attorney for Her said Majesty is to have the conduct of the said Commission. AND I FURTHER ORDER that one day previously to the examination or cross-examination of any witness or witnesses on behalf of either party notice in writing under the hand of the Commissioners or Commissioner of the party on whose behalf such witness or witnesses is or are intended to be examined shall be given to the Commissioners or Commissioner named and appointed by or on behalf of the other party containing the name or names of the witness or witnesses intended so to be examined and the place day and hour of such intended examination by leaving such notice at the usual place of residence or business of such Commissioners or Commissioner but if the Commissioners or Commissioner of the party to be so served as aforesaid refuse or decline to attend the examination or cross-examination of such witness or witnesses or to examine or cross-examine such witness or witnesses pursuant to such notice then and in such case the Commissioners or Commissioner named by and on behalf of the party on whose behalf such notice as aforesaid shall be given shall and may proceed *ex parte* with the examination. AND I ORDER that the said Commissioners or Commissioner or the Acting Commissioner who shall attend after such notice as aforesaid given for that purpose shall be at liberty after the commencement of any examination or cross-examination or if the witness or witnesses shall fail to attend at the time and place specified in such notice to adjourn any meeting or meetings or continue the same *de die in diem* until the whole of the witnesses proposed to be examined shall have been examined without giving any further or other notice of such meeting or meetings. AND I FURTHER ORDER that every witness to be examined by virtue of this order be duly sworn on his or her corporal oath or be put upon his solemn affirmation according to the form of his or her religion by and before the said Commissioners or one of them. AND I FURTHER ORDER that the said Commissioners or the Acting Commissioner may appoint a Clerk to take write down

transcribe or engross the depositions of every such witness to be examined before them or him by virtue hereof and that the person so to be appointed before he be permitted to act as such Clerk shall take an oath or solemn affirmation to be administered by the said Commissioners or Acting Commissioner truly faithfully and without any partiality to any or either of the parties in this cause or any other person to take write down transcribe and engross in the English language the depositions of every witness so to be produced and examined before the said Commissioners or Acting Commissioner as he may be directed by the said Commissioners or Acting Commissioner which oath or affirmation the said Commissioners or Acting Commissioner shall be empowered to administer to such clerk according to his religion AND I FURTHER ORDER that each Commissioner shall before entering on his duties as such Commissioner take and subscribe the oath or affirmation annexed to or under the said Commission according to the form of his religion and such Commissioner shall have full power and authority to administer such oath to the other of them or himself to take such oath in the absence of the other Commissioners or Commissioner AND I FURTHER ORDER that the depositions of every such witness be signed by him and by the Commissioners or Commissioner who shall have exhibited or taken the same respectively and that all books (save as hereinafter mentioned) letters papers and documents produced in evidence shall be marked as exhibited by the Commissioners or Acting Commissioner AND I FURTHER ORDER that it shall not be necessary to send and return with the said examinations cross-examinations depositions and affirmations the original of any books which may have been given or offered in evidence but that copies of or extracts from such books to be verified by one of the said Acting Commissioners as correct shall or may be exhibited in lieu of such original books AND I FURTHER ORDER that it shall not be necessary to annex to the said Commission examinations cross-examinations depositions and affirmations or to return with the same to the Registrar's Office hereinafter mentioned the books documents letters papers and copies produced before and received in evidence by the Acting Commissioners or Commissioner or referred to in the evidence of any witness or witnesses examined or cross-examined under and by virtue of the Commission to be issued in pursuance of this order but that the same respectively shall be certified under the hands or hand of the said Acting Commissioners or Commissioner as being the document or documents mentioned in such evidence and referred to as being marked with the letter A or with any other letter or letters respectively or in any other manner as to the said Acting Commissioners or Commissioner may seem fit the party giving the same in evidence hereby undertaking to produce the same to the Attorney for the other party and allow him to take copies thereof or of such parts thereof respectively as he may think fit at any time after the return of the Commission on receiving one day's notice requiring the same and that all books documents letters and papers purporting to be so certified and subsequently produced as aforesaid if required may be given and received in evidence on the trial of this cause on the part of either party without proof of the certificates written or signed by the Commissioners or Acting Commissioner and without further proof of the books documents letters copies thereof as aforesaid and papers so purporting to be certified or any of them being the books documents letters and papers respectively referred to in the return examinations cross-examinations depositions and affirmations or any of them saving all just exceptions which might have been taken to the same if produced and proved in the ordinary manner and saving the right of the other party to prove that in fact the books documents letters and papers so purporting to be certified or any of them were not nor was not so certified AND I FURTHER ORDER that the said Commission questions examinations and cross-examinations depositions and affirmations which shall be exhibited and taken by virtue of this Order shall be returned to and filed in the office of the Registrar of this Court under the seals or seal of the Commissioners or Acting Commissioner on or before the fifteenth day of December next and that office copies thereof and that all books letters papers and documents so marked as exhibited and all copies of or extracts from books so verified shall or may be given or received in evidence on the trial of this cause by or on behalf of either of the said parties on whose behalf the same respectively shall have been taken and exhibited (saving all just exceptions to the admissibility of the evidence) without any other proof of the absence out of this Colony of the witness or witnesses therein mentioned than an affidavit of the Attorney of the party on whose behalf the same shall be proposed to be read of his belief of the absence of such witness or witnesses AND I ORDER that the trial of this cause be stayed until the return of this Commission AND I FURTHER ORDER that the costs of this Order and of the Commission to be issued hereunder and of the execution of the said Commission shall be costs in the cause AND I FURTHER ORDER that all further proceedings in this cause be stayed until the return of the said Commission but in the meantime either party shall be at liberty to apply to examine any witness or witnesses going abroad or otherwise as they may respectively be advised AND I CERTIFY that this is a proper case to be attended by Counsel.

Dated this 4th day of June 1879.

Approved—DOBSON & MITCHELL.
30 May.

COMMISSION TO EXAMINE WITNESSES.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith.

To SIR P. GOODCHILD JULYAN, K.C.M.G. C.B. of Downing-street London Crown Agent and THOMAS PIX COBB of 41 Finsbury Circus London the Commissioners nominated and appointed on behalf of Her Majesty the Queen and RICHARD PENNINGTON of 6 New Square Lincoln's Inn London Solicitor and EUSTACE ANDERSON the younger of 17 Ironmonger Lane London Solicitor the Commissioners nominated and appointed on behalf of the Suppliants hereinafter mentioned—
Greeting—

KNOW YE We in confidence of your prudence and fidelity have appointed you and by these presents do give unto you or any one or more of you full power and authority diligently to examine cross-examine and re-examine *vivá voce* on their oath or affirmation being first taken before you or any one or more of you according to the form hereon endorsed witnesses at London aforesaid or elsewhere in Great Britain to be produced sworn and examined as well as on the part of Her Majesty the Queen as on the part of the Tasmanian Main Line Railway Company Limited the Suppliants in a cause now pending in our Supreme Court of Tasmania upon such *vivá voce* questions as may be considered necessary by or on behalf of either of the said parties to the said cause to be put to them the said several witnesses as well on the part of Her said Majesty as on the part of the said Suppliants as also to examine the said several witnesses respectively as well on the part of Her said Majesty as of the said Suppliants and to re-examine the said several witnesses respectively upon *vivá voce* questions if necessary AND we command you or anyone or more of you that without delay on a certain day or days and at a certain place or places in London aforesaid or elsewhere in Great Britain to be appointed by you or any one or more of you for that purpose you cause the said witnesses for Her said Majesty and the said Suppliants respectively to come before you in London aforesaid or elsewhere in Great Britain and then and there examine cross-examine and re-examine each of them apart from the other of them upon *vivá voce* questions and also to re-examine them respectively apart as aforesaid on *vivá voce* questions if necessary as aforesaid these respective corporal oaths being first taken before you or any one of you according to the form of the oath first endorsed hereon upon the Holy Evangelists or in such other manner as shall be sanctioned by the form of the several religions of the persons to be examined and such as shall be considered by them respectively to be binding on their respective consciences which oath you or any one of you are and is hereby empowered to administer to such witnesses respectively AND that you or any such one or more of you as shall act in the execution hereof do take such examinations cross-examinations and re-examinations if any and reduce them into writing in the English language on paper or parchment and when you shall have so taken the same that you do on or before the Eleventh day of December next ensuing send and return the same closed up under your seals or the seal of any such one or more of you as shall act in the execution hereof distinctly and plainly set together with this writ to the Office of the Registrar of our Supreme Court of Tasmania to be there filed of record in our said Court AND we further command you and each of you that before you in any manner act in the execution hereof you severally take the oath hereupon secondly endorsed upon the Holy Evangelists or otherwise in such other manner as shall be sanctioned by the form of your several religions and shall be considered by you respectively to be binding on your respective consciences and we give you or any one or more of you full power and authority to administer such oath to the others or other of you AND we further command that the Clerk or Clerks (if any) employed in taking writing transcribing or engrossing the deposition or depositions of witnesses to be examined by virtue hereof shall before he or they be permitted to act therein take the oath hereupon thirdly endorsed which oath any one or more of you acting in the execution hereof are and is hereby empowered to administer to such Clerk or Clerks upon the Holy Evangelists or otherwise in such other manner as shall be sanctioned by his or their several religions and shall be considered by him or them respectively to be binding on his or their respective consciences AND we further command that previous to the execution of this Commission which is granted by us at the instance of Her said Majesty and by Her prosecuted you the said Commissioners nominated and appointed on behalf of Her said Majesty and you the said Commissioners nominated and appointed on behalf of the said Suppliants do give or cause to be given unto the others or other of the said parties Commissioners one day's notice in writing under the respective hands or hand of you or any one of you of your intention to examine the said several witnesses to be examined on behalf of Her said Majesty and the said Suppliants respectively and of the time and place or times and places of your so intending to examine the same by leaving the same notice or causing the same to be left at the respective residences and places of business of the said several Commissioners of Her said Majesty and the said Suppliants AND WE give you or any three or two or one of you full power and authority to do all such other acts and things as may be necessary and lawfully done for the due execution thereof.

WITNESS the Honorable Sir Francis Smith Knight Our Chief Justice of Our said Supreme Court at Hobart Town aforesaid the day of
in the year of our Lord 1879.

FIRST.

WITNESS'S OATH.

You are true answer to make to all such questions as shall be asked you without favour or affection to either party and then you shall speak the truth the whole truth and nothing but the truth.

So HELP YOU GOD.

SECOND.

COMMISSIONER'S OATH.

You shall according to the best of your skill and knowledge truly and faithfully and without partiality to any or either of the parties in this cause take the examinations and depositions of every witness produced and examined by virtue of the Commission within written.

So HELP YOU GOD.

THIRD.

CLERK'S OATH.

You shall truly faithfully and without partiality to any or either of the parties in this cause take write down transcribe and engross the depositions of all and every witness and witnesses produced before and examined by the Commissioners or Commissioner named in the Commission within written as far forth as you are directed and employed by the said Commissioners or Commissioner to take write down transcribe or engross the said Depositions.

So HELP YOU GOD.

ORDER.

IN THE SUPREME COURT }
OF TASMANIA.

THE TASMANIAN MAIN LINE RAILWAY COMPANY LIMITED

v.

THE QUEEN.

UPON hearing the Crown Solicitor on behalf of Her Majesty the Queen and upon reading the consent of the Suppliants' Attorneys thereon endorsed I DO ORDER that the time for the return of the Commission issued herein by virtue of the Order made herein on the fourth day of June last be extended to the eighth day of February one thousand eight hundred and eighty.

Dated this twelfth day of December one thousand eight hundred and seventy-nine.

W. L. DOBSON J.

ROBERT PATTEN ADAMS *Crown Solicitor.*

ORDER.

IN THE SUPREME COURT }
OF TASMANIA.

THE TASMANIAN MAIN LINE RAILWAY COMPANY LIMITED

v.

THE QUEEN.

UPON hearing the Crown Solicitor on behalf of Her Majesty the Queen and Mr. Henry Dobson on behalf of the Suppliants I DO ORDER that the time for the return of the Commission issued herein by virtue of the Order made herein on the fourth day of June last be further extended to the twenty-sixth day of March one thousand eight hundred and eighty.

Dated this eleventh day of February one thousand eight hundred and eighty.

W. L. DOBSON J.

ROBERT PATTEN ADAMS *Crown Solicitor.*

SUMMONS.

IN THE SUPREME COURT }
OF TASMANIA. }

THE TASMANIAN MAIN LINE RAILWAY COMPANY LIMITED

v.

THE QUEEN.

LET the Suppliants' Attorneys or Agents attend me or His Honor the Chief Justice at the Judges' Chambers Macquarie street Hobart Town on Tuesday the sixth day of April instant at eleven o'clock in the forenoon to show cause why the time for the return of the Commission issued herein by virtue of the Order made herein on the fourth day of June last should not be further extended to the nineteenth day of June next.

Dated this 5th day of April 1880.

W. L. DOBSON J.

ROBERT PATTEN ADAMS *Crown Solicitor.*

ORDER.

IN THE SUPREME COURT }
OF TASMANIA. }

THE TASMANIAN MAIN LINE RAILWAY COMPANY LIMITED

v.

THE QUEEN.

UPON hearing the Crown Solicitor on behalf of Her Majesty the Queen and Mr. Alfred Dobson of Counsel for the Suppliants I DO ORDER that the time for the return of the Commission issued herein by virtue of the Order made herein on the fourth day of June last be further extended to the first day of September one thousand eight hundred and eighty AND I certify that this is a proper case to be attended by Counsel.

Dated this eighth day of May one thousand eight hundred and eighty.

F. SMITH C.J.

ROBERT PATTEN ADAMS *Crown Solicitor.*

*Tasmanian Main Line Railway Company, Limited,
113, Cannon-street, London, E.C., 11th March, 1881.*

SIR

I HAVE been requested by my Board to address you on the points in discussion between the Government and the Company, especially with regard to the guaranteed interest and the views which we take on the subject; and having carefully studied all the papers bearing on the case, I would beg respectfully to call your attention to the following expression of our ideas thereon:—

The contention of the Government is, that inasmuch as the 12th clause of the contract provides for a quarterly settlement, they are justified in interpreting the word "settlement" as meaning a final settlement, and the word "profits" as the balance of receipts and expenditure, limiting such expenditure to the ordinary services of the Company in each particular quarter; and in accordance with such interpretation a sum of £2000 was in March last deducted from the quarterly payment.

The Company contend that these interpretations are incorrect; that the very clause upon which the Government relies by allusion to "some account which has not been adjusted in a previous quarter" does away with the idea of a final settlement; that "profits can only accrue when a balance remains after providing for all liabilities, and that the 12th clause must be taken in connection with the Act governing the contract, which specifies—

"such guarantee to be payable in such manner as to secure to the said person or Company interest at the rate aforesaid (Five Pounds per centum per annum) upon the actual expenditure within such limit as is hereinbefore expressed;"

and with the 14th clause of the contract itself, which interprets the "meaning and intention" of the contracting parties to be—

"That the Company may at all times during the said period (30 years), receive interest at the rate of at least 5 per cent. per annum either from the profits of the undertaking or from the Governor."

From these it would appear that the substitution of a quarterly settlement for an annual one was made not to prejudice the Company, but to aid it by insuring a regular payment of interest to the bondholders; at any rate this is the Company's understanding, and since the lawyers are not agreed upon the literal interpretation of the text I submit that such should prevail. But even were all the lawyers at one with the Government, the equity of the case would seem to demand a decision in favour of the Company.

I cannot do better than submit at this point a quotation from Mr. Miller's opinion; viz.:—

"To cavil about the words in subversion of the plain intent of the parties is a malice against justice, and the nurse of injustice, so that whilst I express my opinion and that the language plainly bears out the Company's claim, those who deem it ambiguous or obscure upon the true principle of 'constructing' a commercial contract such as that in question, ought still to admit a claim based upon the real intentions of the contracting parties, rather than to seek to find a meaning subversive of such intention and manifestly carrying with it a result unjust to the capitalists who have advanced their capital upon the supposed security of an instrument professing to entitle them to at least 5 per cent. for 30 years, and not 5 per cent. for a portion of each of such years."

Literally, then, the Government contention is doubtful. Equitably they have no case, and do not pretend, so far as I gather from the official correspondence and the opinion of the Law Officers of the Government, to have one.

Will they, then, take their stand on the letter of the contract as interpreted by their own officers, without regard either to the opinions of others on the point or to the equities of the case I represent?

In vexed questions of this sort, Governments, as a rule, lean to a liberal reading of the contract. To act otherwise in this instance would be exceptionally illiberal, because the Government has nothing to lose by accepting the Company's reading of the contract. The 13th clause establishes their claim to the ultimate repayment of every penny advanced on this account. Indeed this very provision, as pointed out by Counsel, would seem fatal to the Government's narrow interpretation of the 12th clause.

But not only will the Government be acting illiberally if they hold to their contention, but they will be running counter to the best interests of the Colony.

The Government fostered the Railway, and English capitalists were induced to lend their money for its construction (practically a loan to the Government) that the Colony might derive a benefit from its establishment. If the Company be obliged to break faith with their bondholders—as they must if the Government pay but a portion of the sum necessary to meet the "interest at the rate of at least £5 per cent. per annum upon the money expended by them"—they will again lose credit, to the great injury both to the Colony and the Company.

I would remind the Government of the injury they inflicted upon the Company by withholding during a period of thirty-one months the whole of the guaranteed interest, then, as now, being justified, as they imagined, by the opinion of their legal officers. The Government were convinced at length of their error, and consequently of the injustice with which they had treated the Company; but, in the meantime, both bondholders and Colony had suffered grievously. The former, who had regarded their investments as safe as if directly guaranteed by the Government, had to relinquish 20 per cent. of their income; and the Colony had not only to pay heavy law expenses, but to see the day in which they might fairly have looked to for repayment of the moneys now being paid by them to supplement the Railway deficiencies, indefinitely postponed.

In writing this, it is not my desire to speak reproachfully, although I feel very strongly the great injustice that has been done to the Company. My only object is to urge, in the interests of all parties, a liberal, just, and final settlement of all disputes and differences between the Government and the Company.

The Company have always desired this. And they had hoped that, when the Government recommended and induced the Parliament to pass the Bill re-acknowledging their indebtedness in the matter of the guaranteed interest, and agreed to put no further obstacle in the way of a settlement in the Courts of the Evandale question, everything would have gone smoothly henceforth. In this the Company have been disappointed. The Action in the Courts has been suspended by the appointment of a Government Commission, which has been engaged in England seeking evidence not only irrelevant to the case, but which was to their hand in Tasmania. The guaranteed interest has been paid under a certificate that is no real receipt; and now even that payment, as it were, is further reduced by a strained interpretation of the Contract.

These unsettled points and vexed questions can only lead to a continuation of the grave expense to which the Colony and the Company have alike been so long subjected; and I therefore hope

that, in the interests of both, you will join with me in a sincere attempt to arrive at an amicable and permanent settlement.

I would suggest a general arbitration, or, what perhaps would be better, as conducing to a more speedy settlement, an all-round compromise.

I write to Mr. Grant to-day on the subject, so that there shall be no delay on our part in coming to a just and friendly arrangement forthwith.

I shall be very pleased to hear from you that you reciprocate the feeling I have endeavoured to express; and, still better, if your letter informs me that you have commenced, with Mr. Grant, to focus and destroy our differences.

I have, &c.

GEORGE SHEWARD, *Chairman of the Company.*

The Hon. the Colonial Treasurer, Tasmania.

Treasury, Hobart, 23rd April, 1881.

SIR,

I HAVE the honor to acknowledge the receipt on the 20th instant of your letter of the 11th ultimo, which is now under the consideration of Ministers, and I trust by next mail to be able to write you definitely thereon.

Your Board may be assured that the subject will be dealt with in a spirit of fairness, and with the desire to remove difficulties rather than to intensify them.

I have, &c.

W. R. GIBLIN.

G. SHEWARD, *Esq., Chairman T.M.L.R. Co.*

Hobart, 2nd May, 1881.

SIR,

AT the recent interview between yourself, Mr. Grant, and our Mr. Dobson, upon the subject of the letter addressed to you by the Chairman of the Main Line Railway Company, you quoted an extract from Mr. Miller's opinion, which the Chairman had incorporated in his letter, and said that you would be glad to see this or any other opinions we had bearing on the questions now in dispute between the Government and the Company. We have some Opinions of Counsel, but as legal proceedings are pending, we did not, as on former occasions, send you copies of them. As you are now going to join with the Chairman in trying to arrange "an all-round compromise" of every dispute now pending between the Government and the Company, we think that a perusal of the Opinions which the Company have obtained from various Counsel may assist in bringing the negotiations to a definite issue; and now have the honor to forward you—

Copy Opinion of Mr. Fooks, Q.C., of London.

Ditto of Mr. R. B. Miller, of Launceston.

Ditto of Mr. W. W. Mackeson, of London.

Copy of Second Opinion of Mr. W. W. Mackeson.

Yours faithfully,

DOBSON & MITCHELL.

The Hon the Premier.

OPINION of MR. W. W. MACKESON.

TASMANIAN RAILWAY.

MEMO. as to the meaning of "Profits" in Articles 8, 10, and 14 of Contract, 15th March, 1872.

In ascertaining whether the Government—8 and 10 of the Contract—to pay interest at the rate of 5 per cent on the £650,000 or any less sum according to the profits for any quarter, the terms "the profits" means the profits from the commencement, and not the difference between the receipts and expenditure of that quarter?

This is the problem to solve.

Now Article 14 declares that the Company are during the 30 years to receive interest on the £650,000 either from the profits or from the Government. If the Company is successful, *i.e.*, earns sufficient profits, the Government will have to pay nothing.

If the profits in articles 8 and 10 mean the difference between the receipts and expenditure during that quarter without taking into consideration the debit of previous loss at the beginning of every quarter, and so the Government be relieved from the payment of interest equivalent to such difference, the consequence would be that the interest for that quarter to the extent of such difference would not be paid at all. For the Company could not pay the interest out of the difference, for such difference must go first to reduce the debit of previous loss at the beginning of the quarter. The difference is not profit.

Profits mean monies which can be placed to the credit of the Company after payment of loss generally. Until such payment there can be no profits in the proper sense of the term.

Profits mean monies divisible among shareholders. That is clearly the meaning of the word in Article 14 and Article 13.

By Article 13 profits above 5 per cent. and below 6 per cent. are to belong to the Company, *i.e.*, if the Company has paid all its debts and losses and has in that quarter over and above sufficient to pay the quarter's interest at the rate of 5 per cent.; but less than 6 per cent. the surplus will go to the shareholders.

Similarly by the same Article, the surplus upon the same construction of the word "profits" above 6 per cent. is to be divided, half to the Government the other half to the Company; that must mean something tangible after all interest at 5 per cent. has been paid.

The accounts have been rendered on this footing from the commencement quarterly without exception; the first item on the debit side being, in each quarter, balance of profit and loss from the previous quarterly account.

W. W. M.

SECOND Opinion of MR. W. W. MACKESON.

TASMANIAN RAILWAY.

Memo. No. 2 as to "Profits" in Contract, 15th March, 1872.

THE opinion of Mr. Dobson, late Attorney-General of Tasmania, 15th November, 1878, is adverse to the former Memo. of the 18th February, 1879.

1. He says that the accounts for each quarter should be made up and taken quite separately and distinctly. This no doubt is correct, but it does not solve the difficulty.

2. He quotes Clause 14 as the key of the position:—"The Company shall at all times during the 30 years receive interest at 5 per cent. per annum upon £650,000, either from profits or the Government." This seems to put the Attorney-General out of Court. The receipt of 5 per cent. was intended to be an actual receipt of money—hard money—either from the Government, or profits. The plain object was to furnish cash to pay the bondholders of the £650,000. The fallacy is in supposing that the excess of receipts over expenditure of a quarter is the same as profits. Clause 8 does not say "such amount as will with the *excess*" of the preceding quarter make up 5 per cent., but such amount as will with the *profits* (if any) &c. Excess in one quarter, say the only quarter in which the Line pays, surely cannot mean "profit" when the Line has never paid from the commencement.

3. The Attorney-General says "a balance of profit and loss account should not be carried on for 30 years." Why not? Where is the difficulty? The Government Auditor is as competent as the Railway Auditor, and if the word "profits" really means profit, the account *must* be carried on.

4. The case put by the Auditor may well be clear, and yet not decide the point. If there is a "profit," a real profit, in one quarter, the sum will be done once for all; the interest for that quarter will be paid strictly, partly by the profits and partly by the Government. No loss in any subsequent quarter can alter that. This does not hit the difficulty when there is an accidental "excess" of receipts over expenditure in one quarter, and the accounts audited by the Government Auditor show that up to that quarter there never has been any profit from the working of the Line.

The whole argument is summed up in this,—does "excess" of receipts over expenditure mean "profit"?

W. W. M.

17th April, 1879.

*OPINION of Wm. CRACROFT FOOKS, Q.C.***TASMANIAN MAIN LINE RAILWAY COMPANY, LIMITED.**

1. WHETHER under the Tasmanian Act, No. 13 of 1870, Sect. 3, Sub-sect. 3, 4, and 5, the profits are to be calculated separately for each year.

1. The 3rd, 4th, and 5th Sub-sections to Section 3 of "The Main Line Railway Amendment Act" clearly contemplate that an account of the profits arising from the traffic should be made up yearly, year by year, consecutively, for the limited period of Thirty Years from the date of the Line being opened for traffic; but, in my opinion, it is not inconsistent with these clauses that if no profit, but a loss, arose on the traffic in any year, such loss should be carried on in account as a balance to be adjusted in the account for the next year, and for every successive year, till the traffic in some year within the period of 30 years upon a balance or balances of loss so brought forward with the excess of receipts over expenditure for the current year produced profit. In my opinion, the first and second Sections of the Act contemplate that the Guarantee to be given by the Governor should be not only for 30 years continuously, but cover each portion of time during that period of 30 years, so as to secure the payment of interest at the rate of 5 per cent. per annum upon the expenditure to the amount of £650,000 for and during every day of that period. The word "interest" as used in the Act is not, in my opinion, used in the sense in which the word interest is used as between borrower and lender upon a Contract for the loan of £650,000, but as profit to be derived from the use of capital up to that amount used in the construction and equipment of the line. The concluding part of the 14th Clause of the Contract shows that the parties to the Contract understood and applied the word interest in that sense.

2. Do "profits" mean—(a) The mere difference between receipts and expenditure in each quarter? (b) Or profits calculated from the commencement of the undertaking? (c) Or profits divisible among members during each year? (d) Or during each quarter? (e) Or what?

2. I am of opinion that the word "profits" as used in the Act means "net profits," and that it is confined to profits "arising from the traffic" as distinguished from profits that might accrue from any other source to the person or Company who might undertake the proposed works during the 30 years' period, although for the purpose of ascertaining profit or loss on the traffic the accounts were to be made up yearly. The Tasmanian Legislature does not appear to have contemplated that a loss would have occurred on the traffic in any year, although that contingency seems to have occurred to the Governor of Tasmania and the Company when the Contract was framed, for the words "if any" are there found,—see the 8th Clause in addition to the word "profit," though not found in the Act. The language of the Act is clearly in no wise affected by the language in the Contract, but the language used in the Contract is, in my opinion, affected by the language used in the Act. The Contract is made upon the basis of and in pursuance of the Act. Profits mentioned in the Contract must, in my opinion, mean "profits" arising from the traffic mentioned in the Act. The answers I have already given dispose of all the sub-questions *a*, *b*, *c*, *d*, and *e*, ranged under question No. 2.

3. If Article 14 in the Contract of 15th March, 1872, appears to be at variance with Act No. 13 of 1870,—is the Contract to prevail, or is the quarterly settlement in Article 14 of the Contract a mere provisional matter of account with regard to the yearly settlement?

3. The answers already given to some extent anticipate the answer I have to give to No. 3. I am of opinion that the term "profits" as used in the Contract means net profits arising "from the traffic" as distinguished from net profits which might be derived from any other branch of the Company's operations. I am quite unable to see any variance between Clause 14 of the Contract and the Act on which the Contract is founded, further than that quarterly periods of account are substituted for yearly periods of account.

The concluding portion of Clause 14, declaring its "true meaning and intention," carries out that which in my opinion was the intention of the Legislature as shown in the Act.

The word "interest" is here used in the sense I have already indicated, as meaning profit upon money (within the prescribed limit) used and employed in the undertaking, and in the sense that the Company are guaranteed profit from the traffic or from the interest at the rate of 5 per cent. for every day of the 30 years, though a profit and loss account may be taken for every quarter instead of for every year in order to ascertain whether profit or loss has resulted from the undertaking. I am of opinion that, if on the balance of the profit and loss account (confined of course to the profit and loss arising from traffic only), whether upon a yearly balancing under the Act or quarterly balancing under the Contract, a loss has resulted, the loss should, as it appears to have been, be brought forward into the accounts of the next quarter. I do not consider that the stipulations in the Contract for rendering accounts of receipts and disbursements quarter by quarter are sufficient to include the bringing forward in account, for the purpose of ascertaining the amount to be paid by

the government under the guarantee, the loss on the traffic on the balance of receipts and disbursements during the preceding quarterly periods. The 9th Clause of the Contract provides that accounts not adjusted by the Company in any one quarter shall be brought into account in the succeeding quarter. The expression "accounts not adjusted" does not appear to me to be confined merely to open and unadjusted accounts on which the Company may be indebted to other parties, but the expression appears to me to comprise all accounts on which a debit or credit balance appears at the end of the quarter, which the Company ought to keep in proper mercantile usage for ascertaining whether profit (and necessarily also whether loss) has accrued from the undertaking up to the end of every quarter. The 13th Clause of the Contract strikes me as fortifying the position that the Company are entitled to retain profits of one quarter as against loss on a preceding quarter. This Clause, in my opinion, means that if the profits shown at the end of any quarter do not reach 6 per cent. per annum for the whole period which has elapsed of the 30 years after the opening of the line for traffic, they are to be retained by the Company. It is a rule of construction that effect must be given to every part of a Contract if possible, and that the 13th Clause must necessarily be construed as I have indicated if the concluding portion of the 14th Clause is treated, as I consider it should be, as being an over-riding clause applying to and governing the whole of the Contract wherever such application is not necessarily excluded.

4. If "profits" mean profits from the commencement of the undertaking, are the Government justified in making any deduction in respect of profits whilst the undertaking (taking one year with another) has been worked at a loss; or, in other words, are the profits or losses (as the case may be) of each year to be carried into the next year?

5. Are the Government justified in making any deduction in respect of profits in any quarter if the entire working for the year show a loss, or is the settlement of the earlier quarters merely provisional?

6. In calculating profits, must not provision be made not only for payments actually made but for liabilities incurred during the same period?

4, 5, 6. These questions appear to me to be already disposed of by the answers in reply to the other questions, and therefore I abstain from further observation upon them.

WM. CRACROFT FOOKS,
49, Chancery Lane, 11th August, 1880.

OPINION of Mr. R. B. MILLER re Main Line Railway Company's Claim for Interest.

I CONCUR in the construction placed by the Company upon the expression "profits" in the Contract, namely, that is, that it is not a mere equivalent for or synonymous with "excess of receipts over expenditure," and I am of opinion that before any deduction in the payment of the stipulated interest for any portion of the stipulated for period can be claimed by or allowed to the Government, the adjusted account upon which the claim is made must show that after including as its first item "balance of profit or loss" upon the whole of the bygone quarterly period or time be arrived when there are monies which can be placed to the credit of the Company after payment of loss generally. Nor do I find any repugnancy to such construction in the Contract itself, whilst the meaning attached by the Government to Clause 8 of the Contract would defeat the primary intention of the contracting parties, which is, that the Company for 34 years should receive at least 5 per cent. upon their outlay of £650,000, and moreover, so far as quarterly deductions go, it would be expressly repugnant to Sections 3, 4, and 5 of 33 Vict. No. 1, which, upon the Government's construction of term "profits," refer to a deduction upon yearly and not upon quarterly periods. Looking at the language of the whole of the Contract upon the subject matter of the Guarantee of Interest as found in the Act 33 Vict. No. 1, and the written instrument framed and executed under its provisions, can there be any doubt of the intention of the contracting parties that the Company should receive remuneration for its outlay of £650,000 for the whole of the period of construction, and for 30 years after the opening of the line for traffic? Section 1 authorises a guarantee of 5 per cent. per annum, limited by Section 2 to the period of construction and efficient working, but neither sections contain qualifications beyond such limitations which would lessen the amount of interest actually recoverable by the Company for the whole of each year of the term of guarantee. Section 3, Sub-sections 3, 4, 5, as I have before said, contain no reference to any other than deductions upon the profits of the whole year, and such profits are to arise from profits to the Company from the traffic,—that is, where the whole of past losses from the traffic have been paid by the Company and there remains after such payment a balance to the good.

In the instrument termed the Contract, the material clauses are Clause 4, expressly conferring upon the Company the whole of the benefit which was authorised by the above quoted Act, *i.e.*, 5 per cent. for the whole, and not for a portion only of any of the years of the guaranteed period.

Clause 5, so far as the rate of interest and period, echoes the language of Sections 1 and 2. 33 Vict. No. 1, have Clauses 8, 9, 12, and 13, it is said circumscribe the rights of the Company and the obligation of the Government to the area of the actual receipts and expenditure from traffic up the line during *each quarter*. I fail to find in the language of the clauses any justification for a limitation so repugnant to the previously expressed intention of the parties, and look upon them, in conjunction with Clauses 10 and 11, as in the first place providing for the time and places of payment, and afterwards simply furnishing machinery for ascertaining and adjusting quarterly the sum payable to the Company, and I look upon the use of Clause 8 of both the expressions "receipt" and "expenditure" and "profits," instead of in the latter case "excess of receipts over expenditure," as strong evidence that the two terms were not supposed to be equivalent. Moreover Clause 14, in the most emphatic manner, as if to prevent the possibility of any confusion as to the rights of the Company from the use of imperfect language, when dealing with the machinery for ascertaining those rights, reasserts the *true meaning* and intention of the *agreement* and of the contracting *parties* to be, that the Company should at *all times* (*i.e.* for the whole time) during the said period receive interest at the rate of at least £5 *per cent.* upon £650,000, either from the profits of the undertaking or from the Government.

Now assuming, as the facts justify, that there is an excess of expenditure over receipts for two quarters in the year, and the excess of receipts over expenditure for the remaining two does not reach an amount, with the payments by the Government, which would yield upon the whole year a profit of at least £5 *per cent.*,—how would the true meaning and intention of the agreement be attained by a payment of interest of the two latter quarters? Nay, out of the excess of the profitable quarters, the Government might claim to share that excess as profits, though upon the whole year the Company might be heavy losers from working and maintaining the line.

In conclusion, I will add that, even if there be any obscurity in the language of the Contract not amounting to repugnancy, that the dictum of Maule J., in *Gether v. Cappen*, is peculiarly applicable. The learned Judge there says:—

"That mercantile contracts are frequently framed so as to require considerable force of construction to apply them, and in such cases the Courts have considered that they ought to be dealt with so as to give effect to the general intent that is to be gathered from the whole of the instrument. In cases of necessity where it is pretty clear that the parties had some intention which cannot take effect at all if a rigid rule of construction be applied to the instrument."

This doctrine is in strict accordance with the following known rules of construction of instruments:—

Shep.
Touch-
stone, 18.

1. That the construction be such that the whole and every part of it may take effect, and as much effect as may for that purpose for which it was made.

2. That a man ought not to rest on the letter only, *nam qui hæres in litera hæres in cortice*, but he ought to rely upon the sense, which is the kernel in the fruit, whereas the letter is but the shell.

3. Construction must be made in suppression of the mischief and in advancement of the remedy.

4. To cavil about the words in subversion of the plain intent of the parties is a malice against justice, and the nurse of injustice. So that, whilst I express my opinion, and that the *language plainly* bears out the Company's claim, those who deem it ambiguous or obscure upon the true principle of construing a commercial contract such as that in question, ought still to admit a claim based upon the real intention of the contracting parties, rather than to seek to give a meaning subverting such intention and manifestly carrying with it a result unjust to the capitalists who have advanced their capital upon the supposed security of an investment professing to entitle them to at least £5 *per cent.* for 34 years, and not 5 *per cent.* for a portion of each of such years.

(Signed) ROBERT BYRON MILLER.
June 21st, 1880.

5th May, 1881.

GENTLEMEN,

I HAVE the honor to acknowledge the receipt of your letter of the 2nd instant, conveying copies of certain legal Opinions obtained by the Main Line Railway Company as to one of the questions now in litigation between the Company and the Government. I have perused these Opinions, and forwarded them to the Hon. the Attorney-General for his consideration, and will take an early opportunity for obtaining the decision of the Cabinet as to the suggestions for arbitrating or compromising all matters in difference between the Government and the Company. In the meantime I desire to thank you for the courtesy shown in forwarding the copies of the Opinions for the purpose of assisting the deliberations of the Government on the proposals of the Company.

I have, &c.

Messrs. DOBSON & MITCHELL, Solicitors.

W. R. GIBLIN.

MEMORANDUM for the Honorable the Attorney-General.

5th May, 1881.

THE Letter of the Chairman of the Tasmanian Main Line Railway Company, Limited, of 11th March last, perused by the Hon. Attorney-General on 22nd April, is now again forwarded to him, together with copies of certain legal Opinions upon the question of the construction of the Contract as to quarterly rent; viz. :—

Two Opinions of Mr. W. W. Mackeson, Q.C.
Opinion of W. Cracroft Fookes, Q.C.
Opinion of Mr. R. B. Miller.

Also letter from Messrs. Dobson and Mitchell, of 2nd instant, covering those copies, and my reply thereto.

Mr. Giblin had an interview on the 27th April with Messrs. C. H. Grant and H. Dobson, at their request, as to the Chairman's letter. It was then urged by Messrs. Grant and Dobson that the present litigation between the Company and the Government was undesirable, and in their opinion was beneficial to neither party. That the Company were prepared to make "a fair all-round compromise" of their claims against the Government, or to submit all questions to Arbitration, as we had already done the question of Tolls and Compensation on the Launceston and Western Railway, and the Mail Service.

It was further urged that Arbitration was the mode of settling disputes provided by the Contract, and that the results of previous Arbitrations were an assurance to the Government that from such a tribunal they would get substantial justice, and that a Government dealing with capitalists who had advanced their money on the faith of a fair and liberal construction of a business contract ought not to stand upon mere technicalities.

Mr. Giblin then stated that he was sure the Government only desired what was fair and just in the matter, and promised to submit to his colleagues the views of the representatives of the Company, but suggested that as the Chairman had stated in his letter (of 11th March) that the Government were acting "without regard to the legal Opinions obtained by the Company," it should be borne in mind that the Government had never seen those Opinions. Mr. Grant thereupon expressed his willingness to forward copies for the perusal of the Government, and instructed Mr. Dobson accordingly.

Will the Attorney-General kindly peruse these papers, and the Opinions of Mr. Attorney-General Dobson and the Solicitor-General therein referred to, and also the printed correspondence as to the two questions now at issue between the Government and the Company, so as to be in a position to aid the Cabinet by his considered Opinion as to the propriety of either compromising or arbitrating all matters in difference between the Company and the Government?

W. R. GIBLIN.

69, Macquarie-street, Hobart, 11th June, 1881.

SIR,

REFERRING to the negotiations now pending between the Government and the Main Line Railway Company, we have the honor to forward you copy letter received from Mr. Grant which bears upon the Evandale question, and also the plans to which his letters referred. We shall be glad to receive an early appointment to continue the negotiations.

We have, &c.

DOBSON & MITCHELL.

The Hon. the Premier.

Tasmanian Main Line Railway Company, Limited,
General Manager's Office, Hobart Town, 9th June, 1881.

DEAR SIRS,

THE long delay of the Government in considering the matter of a compromise induces me to send for your inspection *some only* of the plans prepared for the alteration of the Launceston Station of the Launceston and Western Railway, as alluded to in my letters to the Government of the 16th November, 1875, and the 19th November and 4th March, 1876, in the latter of which I especially point out that the delay of the Company in running their trains into Launceston was *wholly and entirely due* to the indecision of the Government as to the station facilities that should be there given to the Company.

You are aware that from the first initiation of the undertaking it was understood that the Launceston station of the Western Line should be at the disposal of the Main Line Railway

Company, which Company accordingly, at the earliest possible period after the commencement of their works, laid down a third line of railway from Evandale Junction into and through the Launceston Station-yard, and wished to send their traffic over the same, but were prevented from doing so by the Officers of the Government.

When it became absolutely necessary to finally determine as to the accommodation for traffic, I wrote the Hon. the Colonial Secretary on the 6th July, 1875, stating what had hitherto been the accepted conditions as between the Government and the Company, using these words—"That in accordance with my promise I had visited Launceston in order to examine the recent alterations of the Railway Station-yard, and while there had the advantage of discussing the new arrangements with the Manager and Officers of the Launceston and Western Railway and of obtaining their suggestions. The plan has accordingly been remade, and is this day sent to Mr. Lord in order to ascertain whether it correctly represents the result of our deliberations, and if not, that it might be made to do so before you are troubled with it."

What should be considered the final plans, and which we had every reason to believe the Government would accept, was therefore delivered to them on the 6th July, 1875, but not taken into consideration by them until after the 14th of August of the same year,—from which time, until the 16th November following, myself and staff were kept employed almost night and day the whole time in making alternative surveys, calculations, and plans, either to meet the views of the Government or to fit them to the necessities of the case. The year had therefore necessarily expired before it was possible to complete such working plans as could be acted upon. These working plans were then carried into execution with *all possible speed*; and I am sure the Government must be aware of the extreme exertion used in completing the station, involving as it did such a large amount of preliminary earth-work, since the press at the time frequently alluded to the great efforts we were making.

In the face of many difficulties the whole station was satisfactorily completed and open for traffic within 10 months, although the buildings and other works were erected upon a considerable embankment made on a soft swamp, and the trains have run regularly into Launceston from that period to the present time.

Please remember that what I send you are simply *tracings* of original working drawings made properly to scale, with all the dimensions worked out, and not simply *sketches*, and requiring therefore much time, thought, and care in their design, as well as surveys and other measurements on the ground, also preliminary arrangement with the landowners. The plan for the station on the west side of the George Town Road is alone a month's hard work. This plan is, I believe, in the office of the Colonial Secretary, and is worth referring to as an exemplification of the care bestowed upon the work.

I cannot think that any unprejudiced person in considering these facts could hold that the Company had wilfully committed a breach of contract with the Government, even if their contract obligation to run into Launceston were proved beyond a doubt.

My Directors, who are aware of the circumstances, strongly urge the equity of their claim; and you will remember that Mr. Holroyd distinctly stated that he could not conceive a stronger case for the consideration of the Government irrespective of legal technicalities. I trust therefore that you will make such representations as will induce a reasonable consideration of the dispute between the Government and the Company irrespective of technical considerations.

I am, &c.

C. H. GRANT.

Messrs. DOBSON & MITCHELL, *Hobart*.

11th June, 1881.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of this day's date, covering copy of a letter from Mr. C. H. Grant, as to negotiations now pending between the Tasmanian M.L. Railway Company and the Government. I regret that the great pressure upon the time of Ministers has delayed a decision upon this question, and shall be happy on my return from Launceston three or four days hence to endeavour to obtain a definite answer for you. The Hon. Attorney-General, for whom I have been waiting, will also be in Launceston next week, and until his return I shall be unable to get a full meeting of the Cabinet. He expects to be back on Saturday next.

I have, &c.

W. R. GIBLIN.

Messrs. DOBSON & MITCHELL, *Solicitors, &c.*

*Tasmanian Main Line Railway Company, Limited,
113, Cannon-street, London, E.C., 20th September, 1881.*

SIR,

I AM requested by the Directors of the Tasmanian Main Line Company to express their regret that my letter to you of 11th March remains unanswered, and they hope that you will ere long seek an occasion to put an end to the differences existing between the Government and the Company,—differences which they cannot but feel tend to impair their efforts to benefit the undertaking; at the same time allow me to say that we are much gratified by the improved feeling towards us manifested in the discussion in the House of Assembly on the 29th July.

I have, &c.

GEORGE SHEWARD, *Chairman of the Company.*
The Honorable the Colonial Treasurer, Tasmania.

Treasury, Hobart, 14th November, 1881.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 20th September, as to the differences existing between the Government and your Company.

The Members of the Government have been so fully engaged during the last five months in Parliamentary business that there has been no sufficient opportunity for full consideration of and decision on the points involved in your suggestions as to compromising or arbitrating the claims of the Company against the Government. The Session having now concluded, I shall take the earliest opportunity of bringing the subject again before the Cabinet and obtaining their decision thereon. Two out of the four Ministers composing the Administration are at the time of writing away from Town, but are expected back about the 25th. I hope to be in a position to write you definitely on the subject early next month.

I have, &c.

W. R. GIBLIN.

GEO. SHEWARD, *Esq., Chairman T.M.L.R. Co., London.*

*Tasmanian Main Line Railway Company, Limited,
General Manager's Office, Hobart, 8th March, 1882.*

SIR,

I HAVE the honor to state that the inwards mail of the 25th ultimo brought me a copy of your letter addressed to the Chairman of the Tasmanian Main Line Railway Company, Limited, London, dated the 14th November last, in which, after stating that the many engagements of the Government in Parliamentary business during the then preceding five months had not allowed sufficient opportunity for a full consideration of and decision on the proposition for compromising or arbitrating the claims of the Company against the Government, you remarked that on the return of the Ministers then absent you hoped to be able to write definitely early in December. With this copy was a very urgent request that, in the event of the differences not having been adjusted, I should call your attention to the above-mentioned letter, and earnestly beg that the decision of the Cabinet should be at once given.

The mail arriving this day has brought me still more forcible remonstrances against the enormous delay that has occurred in the settlement of the questions at issue, and which has for years past been attributed to the supineness of the Company's Solicitors and myself in not pressing these matters to a conclusion.

While acknowledging that appearances are against us, I do not feel that I should receive blame, since for years past I have on every possible occasion urged forward this settlement; and that I have not troubled you so much lately about it is attributable to the hope that the remonstrances of the Chairman and Directors would have left more impression than I had been able to make.

I would bring to your recollection that the proceedings of the London Commission were, by mutual consent, suspended on the 21st July, 1880, for the purpose of allowing an amicable settlement to be arrived at, and to obviate as far as possible the enormous legal expenses then being incurred. Since that time it is certainly no fault of the Company that the settlement then mutually desired has not been arrived at, since the Company have been prepared either to immediately arbitrate or to compromise.

Each point in the dispute has been fully set forth in the suits which are still pending; therefore I cannot understand the delay in this very simple matter, which was all but finally settled during the visit of Colonel Grey to this Colony in October, 1878.

I have most earnestly to request that you will kindly favour me with a reply stating when it is probable that this question will receive the consideration of the Government, and sincerely regret that the necessities of the case compel me to address you in such an importunate manner.

I have, &c.

C. H. GRANT, *General Manager.*

The Hon. W. R. GIBLIN, Premier and Attorney-General.

Attorney-General's Office, 13th March, 1882.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 8th instant, and, in reply thereto, beg to state that the matter of an adjustment of differences between the Railway Company and the Government has been brought repeatedly by me before Ministers, but no final decision has been yet arrived at. It would facilitate our deliberations if you would be good enough to inform me what is the nature of the tribunal to which the Company would be prepared to refer all matters in difference? What number of Arbitrators would be insisted on? Would the Company require on its part that some of the Arbitrators should necessarily be lawyers or engineers, or would they be content with non-professional gentlemen? Would the Company accept the decision of this tribunal as final, both as to questions of law and fact?

I am leaving town for a few days, but on my return shall be happy to consider your reply to the present letter, and to endeavour, as soon as my Colleagues can be brought together, to come to a determination upon the proposals for amicable settlement, which have been so long under consideration.

I have, &c.

W. R. GIBLIN.

C. H. GRANT, *Esq.*

*Tasmanian Main Line Railway Company, Limited,
General Manager's Office, Hobart, 24th March, 1882.*

SIR,

I HAVE the honor to acknowledge the receipt, during your absence from town, of a letter dated the 13th instant, and have to thank you for the information that the question of adjusting all differences between the Government of Tasmania and the Main Line Railway Company has been brought repeatedly before Ministers, without any positive decision being arrived at.

You further state that it would facilitate the deliberations of the Cabinet were the Company to specify (1) the nature of the tribunal to which they would be prepared to refer all matters in difference; (2) what number of Arbitrators would be insisted upon; (3) would the Company require on its part that some of the Arbitrators should necessarily be lawyers or engineers, or would they be content with non-professional gentlemen? and (4) would the Company accept the decision of this tribunal as final, both as to questions of law and fact?

As to the matters Nos. 1 and 2, I have the honor to state positively that the Company are prepared to submit all disputes to the decision of three Arbitrators, one to be chosen by each party, and the third Arbitrator by the other two; such being, they believe, the most satisfactory tribunal for both sides.

On the 3rd question, the Company have no desire whatever to fetter the Government or the Arbitrators in their choice, but suggest it might be advisable to refer to gentlemen who have at least some slight knowledge of railway matters.

On the 4th point, the Company will undoubtedly accept the award of the Arbitrators as final, both as to questions of law and fact.

I have delayed replying to your letter until your return to town, and now beg to thank you for the assurance that it shall have your consideration, and that you will endeavour forthwith to come to a determination upon the proposals for the amicable settlement which the Company so ardently desire to see effected.

I have, &c.

C. H. GRANT.

The Hon. W. R. GIBLIN, Premier and Attorney-General.

Attorney-General's Office, 2nd June, 1882.

SIR,

WITH reference to your proposals for settlement of all matters in dispute between the Government and the Tasmanian Main Line Railway Company, I have now the honor to inform you that the Government will concur in submitting all such disputes to the decision of a Board of three Arbitrators, one to be chosen by each party, and the third to be chosen by the two Arbitrators.

If you will instruct your Solicitors to prepare a draft Agreement of Reference and forward it to the Solicitor-General for perusal on behalf of the Government, the matter can be proceeded with without delay.

I have, &c.

W. R. GIBLIN.

C. H. GRANT, *Esq., Manager T.M.L.R. Company.*

*Tasmanian Main Line Railway Company, Limited,
General Manager's Office, Hobart, 3rd June, 1882.*

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 2nd instant, and to express my very great satisfaction that the Government are willing to concur in submitting all matters in dispute between them and the Tasmanian Main Line Railway Company, Limited, to the decision of a Board of three Arbitrators, one to be chosen by each party, and the third to be chosen by the other two Arbitrators.

In accordance with your suggestion, the Company's Solicitors have already been instructed to prepare the draft Agreement of Reference with the utmost possible despatch, and to settle it with the Solicitor-General, acting on behalf of the Government, without any delay. I trust, therefore, that these long vexed questions will shortly receive a solution satisfactory to both parties, and this in the most equitable manner it is possible to arrange.

I have, &c.

C. H. GRANT.

The Hon. W. R. GIBLIN, Premier and Attorney-General.