

*Mr. Hutchison* : That would be the legal position, but I apprehend there is a difference in arbitration proceedings.

*Sir C. LILLEY* : What makes the difference?

*Sir B. BURNSIDE* : What I wanted to put was this : that, though the party appears, he can always plead jurisdiction, and he will leave the other party to contend when the plea is put in. The mere fact of appearance without protest would not debar a man from pleading jurisdiction and taking objection to jurisdiction.

*Sir C. LILLEY* : As a matter of caution, one side can always reserve its right as to jurisdiction, and, possibly, if they did so without any reservation, it might be said that they had submitted to the jurisdiction.

*Sir B. BURNSIDE* : Do you know any such process in law as appearance under protest?

*Mr. Hutchison* : No, not at law.

*Sir B. BURNSIDE* : A man appears and puts in his plea : he subjects himself to jurisdiction. We have the right to decide as to jurisdiction or we have not ; and, if we have that right, then clearly the matter must appear before us in some way.

*Mr. Hutchison* : On facts, no doubt. Here, however, the points contended for are advanced upon highly contentious grounds.

*Sir C. LILLEY* : My impression is that when a man appears he reserves his right of appeal to the jurisdiction of the Court.

*Mr. Hutchison* : I accept that as a legal proposition.

*Sir B. BURNSIDE* : The only process I know is that in the Admiralty Court, where special provision is made. A man may bar himself by some act from raising the question of jurisdiction.

*Sir C. LILLEY* : The danger is this : If a man appears after objecting to the jurisdiction, he generally is held to have submitted to the jurisdiction of the Court. If he appears, and comes into Court, he must object to the right of the Court to deal with him in any way at the first possible moment.

*Sir B. BURNSIDE* : Before he comes into Court?

*Sir C. LILLEY* : Until he appears at the Court he is not before the Court. His appearance is his coming into the Court.

*Mr. Hutchison* : I take this opportunity of saying that the grounds upon which my friend says he is going to move are not admitted in any sense but are controverted. For instance, under the first head it is said that the Crown contends that the contract has come to an end. Now, we do not admit that the contract has come to an end.

*Sir C. LILLEY* : That is a mixed question of law, I take it, as it has been presented to us by *Sir Robert*.

*Mr. Hutchison* : We say that the company has not abandoned the construction of the railway.

*Sir B. BURNSIDE* : That would be raised equally well, I presume, whether there had been a protest or not.

*Mr. Hutchison* : I presume so. The third point raised by the learned counsel is that the seizure of the line on the 25th May last suspends the contract : but that is a matter which I submit can only be dealt with later on. At present I desire to point out that the present arbitration is as to the facts prior to the 14th January last.

*Sir C. LILLEY* : I understand the other matter is deferred.

*Mr. Hutchison* : Yes.

*Sir B. BURNSIDE* : We have not really appointed an umpire, and that matter cannot come before us.

*Sir R. Stout* : I would say one word in reference to this last point. My learned friend apparently misapprehends my contention. It is as to whether the seizure does not take away the jurisdiction of the arbitrators—

*Sir C. LILLEY* : Suspends the agreement—suspends everything, in fact?

*Sir R. Stout* : Yes.

*Sir B. BURNSIDE* : In fact, that the suspension of the contract has the effect of depriving one party of the legal rights which accrued before the suspension of the contract?

*Sir R. Stout* : I do not object to putting it as strong as that. If there were legal rights, everything is suspended by the seizure. I do not intend to cite cases at length, but I might say that in the case *Ringland v. Lowndes*, the summing-up of the Judge of the Court of Executive, in 15 C.B., N.S., p. 528, was as follows : “ We are of opinion such an appearance under protest does not give any authority, and that there is no waiver, no estoppel ; and, consequently, that the award was unauthorised and void. We come to this conclusion upon the authority of the case alone referred to.” The reason of that is obvious. No consent can give jurisdiction : it can only waive. That cannot confer jurisdiction. We protest in order that there may be no question of acquiescence raised, as in the Scotch case which was referred to in *Queen’s case*. The question was raised whether there had been acquiescence. We protest now, so that that question cannot be raised against us, even in argument.

*Sir C. LILLEY* : The submission to a Court of Arbitration is only a personal act ; but if it were one of absolute jurisdiction, as in the case of divorce, for instance, then, of course, no appearance will give the Court jurisdiction.

*Sir R. Stout* : Then, I suppose the arbitrators will not express any opinion on the matter?

*Sir C. LILLEY* : We are in this position : Suppose we differ upon this, then we must go to *Mr. Blake*.

*Sir R. Stout* : Then, the next point is as to particulars. The particulars have not been sent to us. I submit there are really no particulars nor details. As to some of them, I will go over them one by one. The first is that the undertaking of the company—

*Sir B. BURNSIDE* : May I ask, for the purpose of saving time, if what you are about to urge upon us now is with the ultimate intention of asking for further particulars?