

it has been placed in exactly the same position as other bodies or individuals, and I submit that it is mere nonsense to take up the arbitration to suggest such a cause of complaint.

Sir C. LILLEY : There is nothing in the contract binding the Crown ?

Sir R. Stout : Nor could the Crown bind itself by contract. Suppose Parliament passed an Act—suppose it has been put in the statute of 1887, which authorised the execution of this contract—and suppose Parliament decided that they would limit future Parliaments in the case of future taxation—

Sir C. LILLEY : And suppose the present Parliament said, “ We propose to repeal that decision.”

Sir R. Stout : No objection could be made to it. I submit, then, that it is only wasting the time of the arbitrators to suggest such a ground as that to them. The sixth claim is as follows: “ That the Queen, by withholding for an unreasonable time consent to the deviation of the railway-line from the western to the eastern side of Lake Brunner, and to the substitution of the incline for the tunnel line at Arthur’s Pass, delayed and prevented the company from proceeding with the works under the contract.” Here, again, what is the contract to us? It was only a question of permit; and I do not know that there are any English authorities to show that it can be suggested that any damages can be claimed for not giving permission. In the well-known case *Julius v Bishop of Oxford*, quoted in the Law Reports, the question turned upon how the word “ may ” should be interpreted. It cannot be contended surely—it is not even suggested—that the Queen was bound to give consent to anything the company asked. Suppose the Queen refused to give consent to the incline line, and refused to give consent to the change from the eastern to the western side of Lake Brunner—the complaint is here that the Queen gave consent only after delay. I submit that we were not bound to give consent at all. The seventh ground of claim is, “ That the Queen, by further withholding for an unreasonable time consideration of the application of the company for an extension of time under clause 42 of the contract, prevented the company from raising the capital necessary to complete the railway and to perform its other obligations, and to realise the benefits and rights conferred on it by the contract.” This is not in the nature of a demurrer that I am raising, but I say that in the face of these particulars and details there can be no right whatever to put in a pleading.

Sir B. BURNSIDE : You cannot raise an objection to particulars by demurrer.

Sir R. Stout : No, but I could raise it by plea. Suppose there had been a breach of contract with so-and-so, they could come and plead to it.

Sir C. LILLEY : Only to the extent of stating their case.

Sir R. Stout : Section 42 of the contract says, “ If the company shall not be able to construct and finish the said railway within the period hereinbefore limited in that behalf, or if it shall not before the said thirty-first day of December, one thousand eight hundred and eighty-eight, have expended one hundred and fifty thousand pounds, as hereinbefore provided, the Governor in Council may, by writing indorsed on these presents, if satisfied that the delay has not been caused by the wilful default or neglect of the company, extend the said periods,” and so on. How can you claim damages for the Governor in Council not extending the time? He has only got to plead that the delay was caused by the wilful neglect of the company, and he is the sole judge of it.

Sir B. BURNSIDE : Is it urged that consent was given afterwards?

Sir R. Stout : No. It is not suggested that the time was exceptional. That is certainly a most extraordinary thing, that a statement made by a Minister for Public Works before a Select Committee of the House is to give a company a right to sue for damages.

Sir C. LILLEY : Is there any authority?

Sir R. Stout : I am not aware of any. It would be a most damaging thing for the colony if the Crown were to be responsible for the statements made either by the leaders of the Government or the leaders of the Opposition. I am afraid that to this colony it would mean a very large Appropriation Bill. By our law, statements made before a Select Committee are privileged, and I submit that the company could not sue; and, that being so, how can it be suggested that though the company might sue the person who made the statement—that the company might sue the Queen—or that the Queen and the Government of the colony are responsible for those statements? I submit that paragraph 8 is akin to paragraphs 5, 6, 7, and ought to be struck out.

Sir B. BURNSIDE : Your observations with regard to that contract I have been listening to with very great care, but you will observe that it is stated here “ a false and defamatory statement.” Supposing a party to a contract made a false and defamatory public statement with regard to the terms of that contract to the prejudice of the other party, would not that be a subject for damages?

Sir R. Stout : I submit not. Of course, I do not admit the analogy, because the false and defamatory statement is not made by a party to the contract, but by the Minister for Public Works, who is not any party to the contract. The contract is between the Queen and the company, and I submit that the Queen cannot be responsible for the utterances of her Ministers. Supposing a person slanders another, an action might lie, but that would not be a breach of contract.

Sir B. BURNSIDE : I do not ask whether it would be a breach of contract, but whether it would be a question for the jury to consider in assessing damages upon a breach of that contract?

Sir R. Stout : I submit not. That would be a suit for defamation without bringing in the question of the contract at all. The point I put is this: that it is not a party to the contract who has made this statement. That is my first distinction.

Sir B. BURNSIDE : Who is really a party to the contract?

Sir R. Stout : The Queen.

Mr. Hutchison : The Government of the colony.

Sir B. BURNSIDE : Is the Queen herself in any way subject to the jurisdiction of this Court?

Sir R. Stout : Yes; because the right to arbitrate on the claim has been granted by the Legislature by the Act of 1887, and this is the arbitration, I presume.