

*Mr. Hutchison* : That is the point. We had the right to select, but we were prevented from selecting. That is what we allege. We were prevented—that is to say, the Crown, contrary to the provisions of this contract, refused and prevented the exercise by the company of its rights of selection.

*Sir R. Stout* : I would ask, if that is so, that you should put in the applications you made.

*Mr. Hutchison* : We will do that in the course of the proceedings.

*Sir R. Stout* : You cannot tell what applications were made.

*Mr. Hutchison* : We were prevented from selecting any land in the most available areas for selection on the West Coast, because these were intimated as intended to be reserved for mining purposes, or were proclaimed as mining reserves. As I have said, there is an element of law in that. We may be wrong in contending that none of these reserves were properly made. In that event we will be entitled, I apprehend, to go into evidence to show that too much land was reserved. That, again, is a question of law and fact which will be dealt with somewhat exhaustively in the address with which the company will open its case. The second paragraph is in the nature of an alternative: "That if any lands were properly reserved under subclause (c) of clause 16, then the company was hindered and prevented in the exercise of its rights under clause 18 by being refused the right to the timber on such lands." Clause 18 is subject to clause 16, subclause (c). Subclause (d) of clause 16 may be left out of the question altogether, as there were no reservations under it. But under clause 18, if no reservations were properly made under subclause (c) of clause 16, then the company was entitled, subject to certain exceptions indicated in the latter part of the clause, to the timber on those lands. As to the particulars of claim under this head, we will give the fullest information in our opening. The third paragraph of the particulars of claim reads as follows: "That the Queen has, in contravention of the contract, permitted and authorised the destruction and removal of timber on lands available for selection, and thereby depreciated the value of such lands." This is a general claim in respect of lands which were not reserved. The fourth paragraph says, "That the Queen, in contravention of the contract, refused to give effect to the requests of the company under clause 33 to sell or let lands within the authorised area in the Nelson and Westland Land Districts on the western side of the main range of mountains." My learned friend was inclined to be facetious as to the phrase used here—"the western side of the main range."

*Sir R. Stout* : The same phrase is in the contract.

*Mr. Hutchison* : It is the same phrase as used in the contract, and we are simply pursuing the words of the clause in setting them out here. There was no reason why my learned friend should have afflicted himself with the idea that we would call evidence as to applications under clause 33 on the eastern side of the main range. We were restricted to the western side. As to this paragraph of the particulars, no doubt, we can be more particular—that is, with reference to clause 33 of the contract—because the uncertainty as to the gold-mining reserves does not apply to the same extent with reference to the operations under clause 33 as to clause 18. We can be more precise as to transactions in respect of clause 33, and we shall be prepared to give further particulars as to these. But I would suggest that there is no need now to delay the proceedings for the purpose of further particulars, as the company will have to open at some length, and it will have to quote the outline of its evidence, which will take up considerable time, I am afraid, and during that time the Crown will have plenty of opportunity to go into the particulars we will furnish in the opening address. These transactions complained of will then be pretty fully gone into. So much for the paragraphs of the claim which my learned friend says he ought to have further particulars of; and as to the last, he may reasonably expect details, and he shall have them.

*Sir C. LILLEY* : As to paragraph 4?

*Mr. Hutchison* : Yes; the one I last dealt with. My learned friend then referred to No. 5 of the particulars of claim. In the notice served by the Crown on the 23rd November no objection is taken as to this paragraph. But possibly it is not well to seek to restrict the Crown to the notice already given.

*Sir R. Stout* : What notice?

*Mr. Hutchison* : To the notice served on Saturday, and which does not refer to this paragraph.

*Sir B. BURNSIDE* : Which one are you referring to?

*Mr. Hutchison* : No. 5. That is not objected to. But we see that paragraph 6 is objected to; and then from 6 down to the end, both inclusive. I would first deal with paragraph 5, which has been objected to this morning for the first time. It reads: "The remuneration of the company being to the extent of £1,250,000 'B 1 value' in land (as the work of construction should proceed) the Queen (by and through the Parliament of the colony) by greatly increased and graduated taxation on land imposed subsequent to the date of the contract, and without any exception in favour of the lands over which the company had the right of selection, materially reduced the consideration of the contract and destroyed confidence in the undertaking of the company as a commercial enterprise." I have to ask the Court to consider that this contract stands in a peculiar position. It is not a contract between two private parties. It is a contract between a company formed and administered in England, and only required to give an address in the colony, on the one part, and the representative of the Queen, represented by the Governor, in the colony, on the other part; and it is an essential element of that contract that the company should have the right to select 50 per cent. of the estimated value of the cost of the railway in the shape of land, and should have the right to finance throughout the contract for the purpose of raising the money for carrying on the work. That is an essential matter. In the contract there is reference to certain statutes. The most important is, perhaps, the statute of 1884, called "The East and West Coast (Middle Island) and Nelson Railway Construction Act." It is the second of three Acts referred to in the preamble of the contract. The first is more general; it is the Act of 1881, which was called "the principal Act." The Act of 1884 is referred to as "the said Act." This Act deals with the grant of land. At that time the process contemplated was the selection of land in alternate blocks, afterwards altered by the contract into a right of selection generally.