

of immense importance to us. So as to the fourth clause of the statement of claim, there is no date given us as to when we refused to give effect to the requests of the company to let or sell lands in the authorised area. I am not aware that the company has asked, or that the Government has refused. Surely we have a right to get the details of it if they have. Therefore I submit that it is unusual to pick out these things and not give the dates or the particulars. Then, as to paragraphs 6, 7, and 8, I would say first, as to the taxation, I cannot understand the contention. I can conceive of this ground being raised if the Parliament of the colony had put special taxation on this company which it had not put on other subjects of the Queen and the colony. That would be a ground for saying that the Queen had acted improperly. But that is not suggested, and it is not suggested that this company held any land particularly. When the Land Act of 1891 was passed, it is true that the tax was varied. But it is not here suggested that this company was specially taxed. The question really turns on this: Will the colony be liable for damages because it altered the incidence of taxation applicable to this company and the rest of the colony? And the arbitrators have to consider this question in dealing with the contract for this railway: Under what section of the contract can this be raised? How can it be suggested that this can be raised under the contract? How can it be suggested or contended? I submit that it cannot be suggested or contended. It cannot be suggested for a moment that it was ever contemplated under the provisions of the contract by either of the parties that there was a question of arbitration as to the power of the New Zealand Government to pass laws, and that that was to be left to arbitration. I submit that to suggest such a thing would be an absurdity. Then, as to reasonable time for the deviation at Lake Brunner, that was done by Parliament by the Act of 1890. Clause 3 of "The Midland Railway Contract Act, 1890," says, "The deviation in the line of railway sanctioned by this Act, when authorised as hereinbefore provided, shall be deemed to form part of the said contract in the same manner as if such contract had originally contained provisions in that behalf, and shall be binding on the parties thereto accordingly." How can it be suggested that an unreasonable time elapsed for giving a concession? Surely that reminds us of the old proverb of looking a gift horse in the mouth. We were not bound to give this concession. We have given it, and we have given it by statute. How can they claim damages because we have not given it before?

Sir C. LILLEY: Have they taken advantage of the Act?

Sir R. Stout: They have taken advantage of the Act, and constructed the line on the deviation. It was a concession to them, and it is enough to stamp their case altogether when they make such a claim as this. Then we come to the next—clause 9. This seems extraordinary. My friend cites two authorities to support his contention. If you have a contract you are entitled to exact from the contractor a penalty of so much per day for non-performance, and, if you ask the man to perform some work in the nature of an extra, then the time is enlarged. That is ordinary law. But that is not claimed here. He founds the extras on two concessions—namely, on the change from the tunnel to the Abt system at Arthur's Pass, and the deviation from the eastern to the western side of Lake Brunner. They call them extras. It is a concession given to them, and they say, "Because you gave us one concession, therefore you must give us another concession as to time." There is no suggestion that this was an extra in any sense of the term, and I repeat that this is simply in the discretion of the Queen to grant this extension of time. It is not a thing bound to be given, and therefore we have not given it. How can they claim damages because it has not been given to them? They claim damages because other concessions were not given to them before, and they say they can get damages because other concessions were given. I again repeat that this decision comes within a class of cases for suing for penalties.

Mr. Hutchison: Which recognise that a reasonable time should be allowed.

Sir R. Stout: You know you are referring to the case of the architect. That case was this: An architect had it in his discretion to say whether an extension of time would be granted for the extras or not, and the Court were divided, two one way and four the other. They held that it was not the province of an architect to bind the plaintiff, and that therefore the plea was not good. That was what they held: the term was not provided for in the contract binding on both parties there would have been an end of it. Now, here, how can it be said that you are to claim damages if you do not give an extension? It is for the Government to say if it is to be given. I can understand this class of cases to be suitable for this purpose. I can understand my friend to say we have not broken the contract for non-completion; but that is not the purpose he seeks to utilise this class of cases for at all. He says that because we do not give this extension of time therefore the company is entitled to damages. That statement cannot be maintained. Then, as to the statements made by the Minister for Public Works. How possibly can that be said to relate to the contract when the arbitration case was agreed to be settled by arbitration? I am not called upon to say whether the company has or has not a good cause of action against the colony for defamation. Suppose it has. My point is this: that this is not a thing to be settled by the arbitrators at all. A statement is sufficient to show that there is no relation to the contract, but that they founded a claim for damages to be submitted to arbitration; that the arbitrators should have the right to lie by for a time, and then prove as to whether an injury was done outside to the company by defamation. I submit it could not be dealt with under section 8. Then, as to section 9, I need not refer to that again, because it is simply a summing-up of the other. We need not object to that.

Sir C. LILLEY: If we strike 7, 8, and 9 out we shall have to strike out others.

Sir R. Stout: I am not caring about that. I submit that the Arbitrators should say as to the taxation question, as to the withholding of consent, and as to sections 7 and 8; also that these are things not put before the arbitration at all. It is only wasting time to deal with them. I submit that the Arbitrators should say that we are entitled to the dates and details and particulars. We ask for them, and if they can be granted—and I am told they can be got from the speeches of counsel—they should be given; and also how they make up their damages. This amount, £1,584,900, is