

If none, then the matter is disposed of by this, that the Company is without the funds to enter into further obligations, and can only provide funds to meet the interest on the debentures for the period of the contract."

This statement was, however, made subject to a reservation of such legal rights as the claimant Company might have (if any).

15. The claimant Company by its attorney and general manager in New Zealand has repeatedly, both before and after the hearing of the said petition, unequivocally stated the intention of the claimant Company not to proceed with the said works specified in paragraph 14 of this statement, except upon terms and conditions not included in the said contract.

16. The respondent alleges that the true reason why the claimant Company has failed to perform its obligations under the said contract is that it has been unable or unwilling to provide the funds required for the completion of the works.

17. Owing to such inability or unwillingness the claimant Company has from time to time—while continuing to act under the said contract as being in force—made application to Parliament for concessions under and modifications of such contract. Such modifications and concessions were before the aforesaid Parliamentary Committee in 1892, and certain further proposals were in like manner brought before Parliament in 1893 and 1894. Some of the modifications and concessions asked for by the claimant Company have been refused, but the following concessions have been made, and accepted by the claimant Company under the contract—namely:

(1.) A deviation applied for by the claimant Company, whereby the claimant Company was permitted to construct its line of railway on the eastern side of Lake Brunner instead of on the western side.

(2.) The construction of an incline line instead of a tunnel at Arthur's Pass.

18. The concessions mentioned in the last preceding paragraph hereof were made upon the application by the claimant Company in its own interest, and resulted, or would result if the work were proceeded with, in a large reduction of the cost to the claimant Company of the construction of its works. The claimant Company's own estimate of the saving upon the substitution of the incline line at Arthur's Pass is the sum of £559,881.

19. The respondent further alleges that, by virtue of the matters hereinbefore specified, and upon the further grounds hereinafter set out, the claimant Company is estopped from contending that there has been any breach by the respondent excusing the non-performance by the claimant Company of its obligations under the said contract.

20. That, nevertheless, upon the aforesaid Parliamentary petition for relief in 1892, the claimant Company contended that the respondent had committed breaches of the said contract, *inter alia* :—

(1.) By reserving an aggregate area of 184,000 acres as reserves under and by virtue of the power in that behalf contained in sub-clause (c) of clause 16 of the said contract, although the total area of 750,000 acres therein specified had not been exceeded. (This area has since 1892 been materially increased.)

(2.) By delaying in acceding to certain applications under clause 33 of the said contract.

The other grievances alleged on the hearing of the said petition were not founded upon any alleged breach of contract or legal obligation, but upon alleged claims upon the colony for concessions and modifications of the contract.

21. As to the matters specified in sub-paragraphs (1) and (2) of the last preceding paragraph hereof the respondent says :—

(1.) That there has been no breach by the respondent of any legal obligation or duty in respect of such matters;

(2.) That the claimant Company has continued up to the end of the said contract time to insist upon the said contract as subsisting, and in particular has continued to select land thereunder, the last of such selections having been made on the 16th day of January, 1895, the day before such contract time expired.

22. On the 14th day of January, 1895, the claimant Company gave notice of its desire to arbitrate under the provisions of clause 47 of the said contract, and of the appointment of an arbitrator on its behalf.

23. On the 27th day of March, 1895, the respondent, by the Crown Solicitor, notified to the claimant Company that, as the time for performance of the said contract had expired, and as the claimant Company had failed or refused to perform its obligations thereunder, the claimant Company had broken, abandoned, and rescinded the said contract, and was not entitled to claim any right, benefit, or privilege thereunder; and that the proceedings in pursuance of the claimant Company's notice to arbitrate must be taken to be subject and without prejudice to the respondent's notification.

24. That thereafter, on the 28th day of March, 1895, the respondent, by the Crown Solicitor aforesaid, notified the appointment of an arbitrator, subject to the consequences of the breaches of contract by the claimant Company, and without prejudice to the contention that the claimant Company was barred by its own breaches and non-performance of the provisions of the said contract.

25. The consequences of the failure by the claimant Company to perform its contract have been :—

(a.) The loss of the benefit which would have accrued to the colony had the said railway contracted to be built by the claimant Company been duly completed;

(b.) The locking up during a period of ten years of an area of upwards of 5,000,000 acres of Crown land, reserved for the purposes of selection by the claimant Company, which special area is shown upon the plan "B 1" annexed to the said contract.

(c.) The loss to the colony of the land-grants already made to the claimant Company upon the faith of its said contract, which said land-grants amount in the aggregate to an area of 373,677 acres.