

26. The respondent submits that the claimant Company, not having performed the contract, cannot in law maintain any claim thereunder, and that, further, the said arbitrators have no jurisdiction to make any award thereunder.

II.—27. On the 25th day of May, 1895, under and by virtue of the provisions of "The Railways Construction and Land Act, 1881," under warrant of the Governor of the colony, possession of the said line of railway was taken, and the management thereof assumed on behalf of the respondent.

28. On the 6th day of September, 1895, the claimant Company gave notice of its desire to submit to arbitration all questions therein mentioned arising out of such taking possession as aforesaid, under the provisions of clause 47 of the said contract, and further gave notice of the appointment of an arbitrator on its behalf. The said notices are lodged with the arbitrators herein.

29. On the 31st day of July, 1895, having heard by cablegram of the claimant Company's intention to serve the notice lastly hereinbefore mentioned, and again on the 21st day of September, 1895, after service in the colony of such notice, the Crown Solicitor aforesaid notified to the claimant Company that the respondent denied the right of the claimant Company to arbitrate upon the subject-matter of the said notice, upon, *inter alia*, the following grounds:—

(a.) That the said notice disclosed no valid ground for invoking the arbitration clause in the said contract, inasmuch as—

(1.) The claimant Company had entirely failed in its obligation to the colony in carrying out its contract work within the contract time;

(2.) The taking possession by the Governor under the statutory authority of "The Railways Construction and Land Act, 1881," excluded any right to proceed to arbitration under the contract:

(b.) That no dispute had arisen touching the meaning and effect of the contract, or otherwise coming within the scope of clause 47 thereof:

(c.) That the legality of such taking possession depends upon the exercise by the Governor of a statutory power; and that, if the right to take possession were disputed, an express statutory remedy is provided, and is the sole remedy:

(d.) That no dispute had arisen upon the footing upon which accounts were to be kept after taking possession:

(e.) That no dispute had arisen touching the question of restoration of possession under section 123 of the said Act.

30. That thereafter, to wit, on the 26th day of September, the respondent, by the Crown Solicitor aforesaid, notified to the claimant Company the appointment of an arbitrator on behalf of the respondent under protest, in pursuance of the hereinbefore-mentioned letter of the 21st September, 1895, and subject to the contentions therein contained.

31. The respondent submits that, by virtue of the reasons disclosed in paragraph 29 hereof, the claimant Company cannot maintain any claim in respect of the notice in the said paragraph referred to, and that the said arbitrators have no jurisdiction to make any award in respect of the matters contained therein.

(Filed 23rd November, 1895.)

(A.)

[Map showing New Zealand Midland Railway.]

NOTICE OF MOTION FOR MORE EXPLICIT PARTICULARS.

COLONY OF NEW ZEALAND.

In the Matter of an Arbitration between the NEW ZEALAND MIDLAND RAILWAY COMPANY (LIMITED), Claimant, and HER MAJESTY THE QUEEN, Respondent.

TAKE notice that Counsel for the respondent will move on Monday, the 25th November, 1895, at 10 o'clock in the forenoon, or as soon thereafter as Counsel can be heard,—

1. That such portions of the particulars of claim filed herein by the claimant Company as disclose no claim valid in law be struck out, and in particular the paragraphs Nos. 6, 7, 8, and 9 of the said particulars of claim.

2. That the claimant Company be ordered to give fuller and more explicit particulars as to the remaining paragraphs of its said particulars of claim.

Upon the grounds set out in the two several affidavits of Hugh Gully to be filed herein.

Dated at Wellington, the 23rd day of November, 1895.

HUGH GULLY,
Crown Solicitor, on behalf of Respondent.

AFFIDAVIT OF HUGH GULLY, ESQ., IN SUPPORT OF NOTICE OF MOTION *RE* JURISDICTION.

COLONY OF NEW ZEALAND.

In the Matter of an Arbitration between THE NEW ZEALAND MIDLAND RAILWAY COMPANY (LIMITED), Claimant, and HER MAJESTY THE QUEEN, Respondent.

I, HUGH GULLY, of the City of Wellington and Colony of New Zealand, Solicitor, make oath and say:—

1. That I am Crown Solicitor for the Wellington District, and am acting as solicitor for the respondent in these proceedings.