

2. That the notice dated the 30th day of November, 1894, a copy whereof is hereunto annexed marked "A" was served upon the respondent's representative in the colony on the 14th day of January, 1895.

3. That the time for performance of the contract referred to in the said notice expired on the 17th day of January, 1895, and at that time the claimant had constructed only about one-third of the total mileage it had contracted to construct. The cost of the work so constructed, on the basis of the estimate for land-grant purposes contained in the contract, is less than one-fifth of the total estimated cost of the works which the claimant contracted to construct, computed on the said basis.

4. That the respondent was thereupon advised that, owing to the non-performance by the claimant of its contract obligations, there had been such a breach of the contract as disentitled the claimant to go to arbitration thereunder.

5. That accordingly the claimant was notified of the position by letter dated the 27th day of March, 1895, a copy whereof is hereunto annexed marked "B."

6. That the appointment of an arbitrator on behalf of the respondent was made under protest, and subject to the objection in the last paragraph hereof mentioned, as appears by letter dated the 28th day of March, 1895, a true copy whereof is hereunto annexed marked "C."

7. That on the 25th day of May, 1895, under and by virtue of the provisions of "The Railways Construction and Land Act, 1881," and of "The East and West Coast (Middle Island) and Nelson Railway and Railways Construction Act, 1884," and of "The Midland Railway Contract Act, 1887," the Governor of the colony caused possession to be taken of the line of railway, and the said line has since remained in the possession and under the control of the respondent.

8. That thereafter the claimant caused a further notice, a true copy whereof is hereunto annexed marked "D" to be served upon the Agent-General of the colony in London, and, upon this being notified by cablegram to the Government, I wrote to the claimant a letter, copy whereof is hereunto annexed marked "E."

9. That on the 6th day of September, 1895, the notice in the last paragraph hereof mentioned was served upon the respondent's representative in the colony, accompanied by a letter, a copy whereof is annexed hereto and marked "F."

10. That I thereupon wrote to the General Manager of the claimant Company in the colony, and to the claimant's secretary in London, letters, of which copies are annexed hereto marked "G" and "H" respectively.

11. That the respondent has always been and is ready and willing to test the question as to whether there has been unreasonable or inexcusable delay by the claimant in the prosecution of its works, or whether the claimant has committed or suffered a wilful breach of its contract, in the manner provided by "The Railways Construction and Land Act, 1881," but the claimant has failed to take any steps thereunder.

12. That, by virtue of the matters hereinbefore mentioned, the respondent submits that the claimant has no power or authority to invoke the arbitration clause of the said contract, and that the arbitrators have no jurisdiction to hear any claim thereunder.

HUGH GULLY.

Sworn at Wellington, this 23rd day of November, 1895,
before me—

T. F. MARTIN,
A Solicitor of the Supreme Court of New Zealand.

(A.)

[This is the copy-notice marked "A," referred to in the annexed affidavit of Hugh Gully, sworn this 23rd day of November, 1895, before me—T. F. MARTIN, a Solicitor of the Supreme Court of New Zealand.]

[See "Notice of Appointment of Arbitrator" (First Reference), *ante*, p. 1.]

(B.)

[This is the copy-letter marked "B" referred to in the annexed affidavit of Hugh Gully, sworn this 23rd day of November, 1895, before me—T. F. MARTIN, a Solicitor of the Supreme Court of New Zealand.]

MEMORANDUM for R. WILSON, Esq., General Manager, New Zealand Midland Railway Company (Limited).

SIR,—

Crown Solicitor's Office, Wellington, 27th March, 1895.

I beg to give you notice, on behalf of Her Majesty the Queen, that as the time for performance of the contract, dated the 3rd day of August, 1888, made between Her said Majesty of the one part and the above Company of the other part, expired on the 17th day of January, 1895, and that as the Company has failed or refused to perform its obligations thereunder, the said Company has broken, abandoned, and rescinded the said contract, and is not entitled to claim any right, benefit, or privilege thereunder.

The proceedings in pursuance of the Company's notice to arbitrate must therefore be taken to be subject to and without prejudice to the above.

I have, &c.,

HUGH GULLY,
Crown Solicitor.