

MEMORANDUM OF AGREEMENT AS TO SECOND REFERENCE.

COLONY OF NEW ZEALAND.

In Arbitration. — Between THE NEW ZEALAND MIDLAND RAILWAY COMPANY (LIMITED), Claimant, and HER MAJESTY THE QUEEN, Respondent.

It is hereby agreed between the claimant and the respondent—

1. That the matters referred to in the particulars delivered by the claimant in pursuance of notice of arbitration dated the 13th day of July, 1895, shall be deemed to be duly included in the matters referred to arbitration herein, and the parties consent that the same are to be submitted to the award of the umpire, except as hereinafter provided.

2. That the matter referred to in paragraph 6 of the said particulars is withdrawn from the reference herein.

3. The respondent undertakes to complete all titles to lands which have been selected by the claimant, and which have been *bonâ fide* sold or mortgaged.

4. All questions under paragraph 5 of the said particulars relating to the non-completion of such titles are withdrawn from this reference to arbitration.

5. That the objections made by the respondent to the completion of the titles above-mentioned were so made only to protect the rights of the Crown; and this memorandum of agreement is entered into without prejudice, and is not to be taken in any way an admission on the part of either the claimant or the respondent.

Dated at Wellington, this 19th day of December, 1895.

GEORGE HARRIS,
Claimant's Solicitor.

HUGH GULLY,
Crown Solicitor, on behalf of Respondent.

ANSWER TO CLAIMANT'S PARTICULARS OF CLAIM.

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. As to the claimant's particulars of matters referred, the respondent says:—

That the respondent repeats the allegations contained in the statement of respondent's case filed herein on the 23rd day of November, 1895.

II. As to the whole of the claimant's causes of action in all matters referred, the respondent says:—

1. That the claimant has broken its contract and cannot found any claim thereunder.
2. That the respondent has not committed any breach of the contract; but, even if the respondent had broken the said contract, the claimant is not entitled to rely upon such breach, on the grounds,—

- (a.) That such breach or breaches did not go to the full consideration of the contract;
- (b.) That the claimant has failed to elect to rescind upon any such breach;
- (c.) That such breach has been waived.

3. That if the respondent has broken the said contract, the claimant has suffered no damage by such breach; but, on the contrary, would, if compelled to perform its said contract, suffer heavy loss.

4. That the claimant has not been and is not willing and able to perform its part of the said contract.

5. That the claimant has abandoned the said contract.

6. That the Arbitration Court has no power under the contract to award damages.

7. That the lines of railway have been taken possession of under the provisions of "The Railways Construction and Land Act, 1881," which excludes any right to arbitration under the contract.

III. As to the mining reservations, the respondent says:—

1. That the opinion of His Excellency the Governor under clause 16 of the contract is conclusive.

2. That the said reservations were duly and *bonâ fide* made under the contract, and that the claimant can only rely upon proof of *mala fides* on the part of the respondent.

3. That the said reservations are, in fact, auriferous within the proper interpretation of the said contract.

4. That if the said reservations have been made in excess or improperly, the said excess or impropriety did not excuse the breach by the claimant of the said contract.

5. That no damage to the claimant had accrued at the date of the institution of proceedings under the said reference.

6. That if any damage has accrued to the claimant, then such damage was not the cause of the claimant's breach of contract.

7. That the financial difficulties alleged to have been caused by the making of the said reservations—

- (a.) Is in law too remote; and
- (b.) Cannot be affected by any evidence extrinsic of the contract.