

IV. As to clause 33 of the contract, the respondent says:—

1. That no applications under this clause were received and refused to be dealt with by the respondent except upon either one of two grounds,—

- (a.) That the same were outside of the area of reservation delineated upon the said B1 plan; or
(b.) That the same included land required for *bona fide* mining purposes, or for one or more of the purposes referred to in subclauses (a), (b), (c), and (d) of clause 16 of the contract.

2. That the claimant Company itself refrained from completing all incomplete selections under this clause, on the ground that the purchase-money remains in a suspense account either until final selection of the whole block, according to the said B1 plan, or until the money is drawn out by the Company, without interest or profit.

3. That no damage has accrued to the claimant from any action or inaction by the respondent in respect of the said clause.

4. That if any damage did accrue, it did not justify the non-performance of the contract by the claimant.

V. If the claimant does not claim for general damages for breach of contract, but for specific items, then the respondent says:—

1. That the claimant is not entitled to compensation until—

(a.) The contract has been performed;

(b.) The damage, if any, has accrued.

2. The claimant is virtually suing upon an unperformed contract as upon a *quantum meruit*, and is not so entitled to sue, the contract not having been rescinded.

VI. As to the refusal by the Crown to complete titles to land selected by the company, the respondent says:—

1. That this question has been withdrawn from the reference by agreement of the parties.

VII. As to the refusals by the Crown to assent to selections by the company, the respondent says:—

1. That there have been no such refusals until after breach by the company, and after the expiration of the contract time.

VIII. As to all other matters referred, the respondent says:—

1. That they do not, nor does any one of them, disclose any valid claim.

(Filed 19th December, 1895.)

LETTER FROM UMPIRE RE AWARDS AND COSTS.

Hon. E. BLAKE, M.P., Q.C., to the CROWN SOLICITOR, Wellington.

SIR,—

Wellington Club, Wellington, N.Z., 24th December, 1895.

I beg to notify you that I have made and published my awards as umpire in the reference of matters in dispute between the New Zealand Midland Railway Company (Limited) and the Queen; and that the awards and copies are deposited in the hands of George E. Tolhurst, Esq., Resident Inspector of the Union Bank of Australia, Wellington, to be delivered to the parties entitled to them on payment to him (whose receipt will be a discharge thereof) of the costs and charges of my umpirage and awards, which amount to £6,859, and whereof the particulars are as follows:—

Fees and expenses of Sir Bruce Burnside, arbitrator appointed by the Company:—	£	£
First reference	2,100	
Second reference	525	
In all, for Company's arbitrator	—	2,625
Fees and expenses of Sir Charles Lilley, arbitrator appointed by the Governor:—		
First reference	1,500	
Second reference	Nil.	
In all, for Crown's arbitrator	—	1,500
Fees and expenses of Edward Blake, umpire:—		
First reference (exclusive of £500 already paid in equal shares by the parties, as allowance for travelling-expenses) ...	2,000	
Paid Secretary to this arbitration, appointed by Sir Bruce Burnside and Sir Charles Lilley, the fee fixed by them...	210	
Paid Clerk and Proof-reader to the arbitration, appointed by direction of Sir Bruce Burnside and Sir Charles Lilley	24	
In all, for first reference... ..	2,234	
Second reference:—		
Fees and expenses	500	
In all, for umpire	—	2,734
Grand total		<u>£6,859</u>

I have, &c.,

EDWARD BLAKE, Umpire.

Hugh Gully, Esq.,
Solicitor for the Crown, Wellington, N.Z.