

THE AWARD (FIRST REFERENCE).

WHEREAS by a deed bearing date the 3rd day of August, 1888, between HER MAJESTY THE QUEEN (who with her heirs and successors was therein and is hereinafter referred to as "the Queen") and THE NEW ZEALAND MIDLAND RAILWAY COMPANY (LIMITED), a joint-stock company carrying on its business in the City of Christchurch in New Zealand and elsewhere (which was therein and is hereinafter referred to as "the Company"), an agreement was made for the construction and working of certain railways in New Zealand by the Company, and for certain grants and concessions to the Company by the Queen, and divers stipulations were entered into between the parties touching the premises:

And whereas the forty-seventh clause of the said deed is in the words following, that is to say:—

"It is hereby declared and agreed that, if at any time hereafter any dispute, difference, or question shall arise touching the construction, meaning, or effect of these presents, or any clause or thing herein contained, or the rights or liabilities of either of the said parties under these presents, or if the Queen and the Company shall be unable to come to an agreement within the meaning of clause 24 of these presents as to the proportional cost of any section of the said railway to be ascertained as aforesaid, or otherwise howsoever in relation to the premises, then every such dispute, difference, or question shall be referred to the arbitration of two indifferent persons, one to be appointed by each party to the reference, or an umpire to be appointed by the arbitrators in writing before entering on the business of the reference, and, if either party shall refuse or neglect to appoint an arbitrator within three months after the other party shall have appointed an arbitrator, and shall have served a written notice upon the first-mentioned party requiring such party to make an appointment, then the arbitrator appointed as aforesaid shall, at the request of the party appointing him, proceed to hear and determine the matters in difference as if he were an arbitrator appointed by both parties for that purpose; and the award or determination which shall be made by the said arbitrators or arbitrator, or of such umpire if the arbitrators shall disagree, shall be final and binding upon the said parties hereto respectively, so as such arbitrators or arbitrator shall make their or his award in writing within three months after the reference to them or him, or on or before any later day to which the said arbitrators or arbitrator by any writing signed by them or him shall enlarge the time for making their or his award, and so as such umpire shall make his award or determination in writing within one month next after the original or extended time appointed for making the award of the said arbitrators shall have expired, or on or before any later day to which the umpire shall by any writing signed by him enlarge the time for making his award; and also that no action or legal proceedings shall be commenced or prosecuted by either of the said parties hereto against the other of them touching any of the said matters in difference, unless the party to be made defendant to such action or proceedings shall have refused or neglected to refer such matters to arbitration pursuant to the provisions hereinbefore contained, or unless the time limited for making such award as aforesaid shall have expired without any such award being made; and also that all necessary witnesses on behalf of either of the parties to such reference, and all persons claiming through them respectively, shall submit to be examined by the said arbitrators, arbitrator, or umpire, upon oath or affirmation, in relation to the matters in dispute, and shall produce before the arbitrators, arbitrator, or umpire all books, deeds, maps, papers, accounts, writings, and documents within the possession or power of the said respective parties which may be required or called for, and do all other things which during the proceedings on the said reference the said arbitrators, arbitrator, or umpire may require, and that the witnesses on the reference shall, if the arbitrators, arbitrator, or umpire shall think fit, be examined on oath or affirmation; and that the costs of the reference and award shall be in the discretion of the arbitrators, arbitrator, or umpire, who may direct to and by whom and in what manner the same or any part thereof shall be paid; and that the submission to reference and any award made in pursuance thereof may, at the instance of either of the parties to the reference, and without any notice to the other of them, be made a rule or order of the Supreme Court of New Zealand: Provided that, if by the terms of any award made under any such reference as aforesaid any money shall in any manner be payable by the Queen or the Government to the Company, no attachment, or execution, or process in the nature thereof, shall be issued by or on behalf of the Company upon any rule or order of the Supreme Court as aforesaid unless and until the Governor shall on behalf of the Queen at as early a date as practicable have taken all such steps as may be necessary to have such money specially appropriated by the General Assembly to satisfy such award, and the payment of such money shall have been refused by the General Assembly: Provided also that nothing herein contained excepting the provision of clause 44 shall be deemed to control or interfere with any provision for arbitration contained in the said Act or the principal Act."

And whereas the Company did, pursuant to the said clause, appoint Sir Bruce Lockhart Burnside, Knight, an arbitrator for the purpose of an arbitration to be held under the said clause in order to determine certain disputes, differences, and questions which had arisen touching the construction, meaning, and effect of the said deed and the rights of the Company thereunder, and otherwise in relation to the matters set forth therein; and did also give notice thereof in writing to the Governor of New Zealand, and require him on behalf of the Queen to appoint an arbitrator for the purpose of such arbitration:

And whereas on the 28th day of March, 1895, the Governor of New Zealand did, pursuant to the said clause, appoint Sir Charles Lilley, Knight, an arbitrator for the purpose of such arbitration:

And whereas the said arbitrators did, on the 9th day of April, 1895, by writing signed by them, duly enlarge the time for making the award under the said reference (hereinafter called "the first reference") until the 30th day of January, 1896:

And whereas the said arbitrators did, on the 22nd day of November, 1895, before entering on the business of the first reference, by writing signed by them, duly appoint me, the Honourable Edward Blake, Q.C., M.P., to be umpire in respect of the first reference: