NEW ZEALAND MIDLAND RAILWAY ARBITRATION.

MINUTES OF EVIDENCE, ETC.

STATEMENT BY HON. E. BLAKE.

FRIDAY, 29TH NOVEMBER, 1895.

The Court sat at 10 a.m.

Hon. E. BLAKE: I am sorry to announce that the eminent jurists who have been appointed by the parties to settle their differences in this matter have intimated to me their inability to agree, and have withdrawn from the matter; and that consequently that onerous duty falls upon me alone. I have received this notice in the matter: "The New Zealand Midland Railway Company (Limited) and the Queen. We, the arbitrators in the above matters between the New Zealand Railway Company (Limited) and the Queen, do hereby notify to you that we are unable to agree on the matters submitted to us upon the law so submitted, and we withdraw from the further hearing of the said matters. Dated 29th day of November, 1895. (Signed): B. L. BURNSIDE, CHARLES LILLEY." I therefore proceed to undertake the duties which devolve upon me. Although the request of the parties that I should be present has enabled me to participate in the argument, yet, under the circumstances, I am quite prepared, if counsel desire to make any observations on the points which have been already submitted, to hear them. If not, I will proceed to indicate my views on the subject, so far as I consider it necessary to do so. [Counsel on both sides intimated that they did not wish to say anything further]. It is convenient, perhaps, that I should in the first place make a formal direction that the Crown should file a written statement of its case on the subject of its second reference, as it did in respect of the first reference. It is necessary to do that, owing to the proceedings of yesterday. Dealing with the questions which have been raised, and not troubling you with reasons, I assume that the principal question to be decided to-day is the objection raised by the Crown—and I am now dealing with the first reference—that there is at this time no power in the arbitrators or umpire to act under the provision in the deed, first because of the seizure of the line which has taken place, and secondly because of the alleged rescission of the contract. I will just say that I do not think that is the effect of the seizure. I think, notwithstanding the seizure—assuming its validity—the power of the arbitrators and the umpire remains. As to the alleged rescission, that, of course, is a mixed question of law and fact; and, although more evidence was opened on argument than bore on the main issue—evidence which might be contested on the ground of irrelevancy, but which, so far as I was able to gather, was in all respects relevant to other branches of the inquiry—I am prepared to receive that evidence, subject to considerations which may arise, when it comes in due order. But I do not propose to accede to the suggestion made on behalf of the Crown to anticipate the time for the reception of that evidence at present—first, because my impression at this moment is adverse to the legal position of the Crown on this point; and secondly, because in doubtful matters as to power I believe I shall serve the interests of both parties best by assuming that I have power. If, on the merits, I decide for the Crown, the question will fall. If I decide against the Crown, and am wrong, that wrong can be easily, speedily, and inexpensively redressed. But if I were wrongly to decline to exercise my power the consequences to both parties would be very much more serious, inasmuch as the whole of the proceedings up to this time and the great expense involved would be abortive; very much more delay would ensue, and other complications might arise. Therefore, on balancing matters, it seems to me that I shall serve the interests of both parties best by taking the course of not declining jurisdiction. As to the further particulars which were requested by the Crown, I do not think I am called upon at this moment to make any further order. I understand that the demands made on behalf of the Crown for further particulars have been partly met; but, if it appears, on further investigation, that these demands have not been fully complied with, I shall be glad to receive at once any further application or suggestion as to additional particulars, because it is of great importance to the parties on both sides to know early what they have to meet and to be prepared to meet it. Then there is the suggestion made on behalf of the Crown as to the inadmissibility of certain particulars. I have formed an opinion on some of these, but I think the most convenient course will be to wait for the evidence; when perhaps it may be found to be convenient to hear the evidence on some of them, even although I may have formed an adverse opinion. I have not prejudged any of them, and, unless the convenience of the course requires it, it will be better to reserve my opinion on them for the present. As to the objections to certain evidence made on both sides, but mainly on the side of the Crown, it is obviously better not to express any opinion on the evidence until it is formally tendered at the proper time and in the proper way. So much as to the first reference. As to the second reference, the principal question doubtless is the power to deal under the arbitration with the seizure of the railway under the contract. My present impression is that the company's contention that the arbitration clause applies to that is extremely difficult to maintain; but I think it is convenient on this head to adopt the same course as to the question of power that I do in the first reference. What points to this course more strongly