

Sir B. BURNSIDE: Has the other side a remedy as against the Queen?

*Sir R. Stout*: We have in this colony a remedy against the Queen, or, at least, what is equivalent, against her representative.

Sir B. BURNSIDE: You have the remedy against the property of the colony. Is that a remedy against the Queen in the same way as it would be called a remedy against a private individual?

*Sir R. Stout*: It is true it is not in the same sense the same, as the Queen cannot be seized.

Sir B. BURNSIDE: Is it not really a fiction?

*Sir R. Stout*: It is a necessary fiction in order to enable the government of a colony to be carried on.

Sir B. BURNSIDE: Just in the same way as in the other colonies it would be against the Attorney-General?

*Sir R. Stout*: Sometimes they put it in that form. It was the same under the old system in dealing with public companies under the Joint Stock Companies Act, where they had a Government officer who was responsible.

Sir B. BURNSIDE: In some of the Line colonies actions are brought against the Attorney-General.

*Sir R. Stout*: In Victoria they are brought against the Queen, and the Act there is similar in some respects to our Act—the Crown Suits Act—which allows an action to be brought against Her Majesty. But I submit that it is not a party to the contract who has made this defamatory statement. Assuming a party to the contract has made this statement, such party may be sued for defamation—if he has made the statement as against another. I have mentioned that by our law a statement made before a Select Committee is privileged. The other claim is, "That the company, being formed for the purpose of constructing a railway on the system of land-grants, as provided by 'The East and West Coast (Middle Island) and Nelson Railway and Railways-Construction Act, 1884,' and as expressed in the contract between the parties, and being thus known to the Queen as a company which would have to raise money from time to time by share or debenture capital, or both, to enable it to carry out the contract, was, by reason of the premises, prejudiced and prevented from raising the capital necessary." That is No. 9, and it refers to the whole of the other particulars, Nos. 1 to 8. These particulars are merely summarising the mode in which the damage arises. Instead of putting it in the way mentioned in No. 9, it might have been put in the old form, "wherefore plaintiff claims so much damages." The question is, however, of little value, excepting as to form.

Sir C. LILLEY: Has the company summarised in any way its alleged claim?

*Sir R. Stout*: No; we have received nothing excepting this statement, and it is the most detailed thing we have. I submit this is no detail at all.

Sir C. LILLEY: You have no idea of the company's money-claim?

*Sir R. Stout*: No; we do not know how it is made up in any way at all. I submit we are entitled as of right to fuller details of the first four; and, as to 5, 6, 7, 8, the arbitrators should now say, after consideration of course, that they ought to be struck out. We ought not to have our time spent in dealing with them. I would also point out that when details are given we ought also to have the same right as we would have in an action here—namely, that in regard to this sum of £1,584,000 it ought to be shown how the damages are made up, so much for each breach. For example, giving an illustration, the whole of the timber that might have been taken off the area might only have amounted to £50 in value. The timber on the west coast of New Zealand is so plentiful that really very little is made out of it. I do not suppose that the people there make 3d. per 100ft. for royalty, although sometimes it might go up to 1s. On account of the labour in getting it and the cost of exportation there is very little profit. We wish for details of that item, and I submit that we are entitled to them.

*Mr. Hutchison*: Of course, the arbitrators have at present little or no knowledge of the particulars of the company's claim; but it would be a mistake to suppose that the Crown is not very familiar indeed with the grievances of the company.

Sir C. LILLEY: We are not.

*Mr. Hutchison*: The information is sought presumably for the other side. The counsel for the Crown complains that the Crown is not informed as to this, that, and the other matter. Well, I might be challenged, but I think I am right in saying that the Crown is very familiar indeed with the particulars under the various heads indicated.

*Sir R. Stout*: No.

*Mr. Hutchison*: The first four paragraphs of the particulars are in the nature of general statements, I admit at once. I would say with reference to these, as well as to the other paragraphs of the particulars, that if the other side will wait and hear the opening address of counsel in this case they will have the fullest particulars under every head. To ask us to say, for instance, what the items of damage are in the first paragraph—namely, "That the undertaking of the company being work to be remunerated in part by land, as provided by clause 16 of the contract, the Queen, contrary to the provisions of the said contract, refused and prevented the exercise by the company of its rights of selection over large areas of land within the authorised area"—would be to raise a mixed question of law and fact, because although, as my learned friend indicated, large reservations are purported to have been made, we challenge the right of the Crown to have made any one of those reservations.

*Sir R. Stout*: In all the districts?

*Mr. Hutchison*: In all the districts. My friend is aware that the crucial point in this clause 16 is that with reference to the mining reserves. We say at once that the Crown has not taken the proper steps to reserve a single acre of land for mining reserves on the West Coast. If we are to be asked, then, to give particulars, it would be to say that the whole of the reservations that are purported to have been made have not been properly made.

*Sir R. Stout*: If they are not made you can select.