

My learned friend has suggested that the statements referred to might be privileged. Well, that is a plea which he may raise; if he does, we will meet it at the proper time. I would only anticipate here that, if primarily such a plea were proper, we might contend that there was separate and repeated publications of these statements under circumstances which destroyed the privilege. That is our allegation. In the meantime I need only say here that we will be prepared, if necessary, to meet his plea at the proper time. As the element of finance outside the shareholders of the company is embodied in and runs through the whole contract, defamation by one of the parties, incapacitating the other in the performance of the contract is, I submit, an element in the assessment of damages. My learned friend suggests that in a contract between two private parties a defamatory statement by one against the other would be cause for a separate action at law for damages. That ordinarily would be the remedy of the aggrieved party; but the forum which the parties to this contract have set up is one that is seized of all differences and questions in dispute, and is able to settle all questions arising under the contract, or "in any way whatsoever relating thereto," if I remember the phraseology aright. The ninth paragraph of the particulars reads: "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 to complete the railway and to perform its other obligations, and from realising the benefits and rights conferred on it by the contract." This is in effect what I have been urging as underlying all the previous paragraphs of our statement of claim, and without reiterating too often the point, which is, however, of the utmost importance, I would leave it on that footing—namely, that financing for the purpose of providing funds for completing the railway was an essential element in the contemplation of the parties from the very beginning, and that therefore these various paragraphs, from 5 to 9, both inclusive, are pertinent and relevant to the present proceedings. As to the others—1 to 4—as I have indicated, they will be developed in the course of the opening, and this course of giving information to the other side will, I think, be more convenient than any attempt to give at the present stage a more detailed statement of particulars specifying blocks, subdivisions, and so on. As to paragraph 2, that is impossible without first of all dealing with the question of law. As to paragraph 3, that, no doubt, is very general, but will not, I think, be so when the opening address is finished. And as to paragraph 4, well, we can give a number of figures now, but that, I think, also would be better left until after the address. And even if my learned friend has anything further to say in the meantime as to further particulars, I would ask the Court to allow us to proceed. Will the Court also hear my learned friend, Mr. Cooper?

Sir B. BURNSIDE: At present we think it necessary only to hear one counsel; during the proceedings we may think it necessary to hear all.

*Sir R. Stout*: It appears clearly from Mr. Gully's affidavit that we have been asking for particulars from the very first. We have been continually asking them to give us details of their claim, and up to the present we have received none; and this little paper giving details cannot surely be any real explanation of what we have to meet. How are we to meet claims made against us upon such flimsy particulars as these? I submit that they would not be deemed sufficient for an action of £10 in the Magistrate's Court; and we have a claim made against us of over a million and a half of money with no further particulars than these. My friend says that all the reserves were improperly made, and that the mode of making them was wrong. If so, how has he been prevented from selection over them? Did he ever make a selection over reserves said to have been improperly made, or claim them?

*Mr. Hutchison*: The evidence will show that.

*Sir R. Stout*: The evidence will show nothing of the kind. We want it put down in black and white. Then, we want the dates on which the applications were made to select over these lands and refused; we want the details. I never knew that they wanted to select over these lands; and they would have been no use to them if they had. The lands were utterly useless for any purpose under the sun; they would not even grow rabbits. Then, as to section 2 of the statement of claim—that if the lands were properly reserved the company was hindered and prevented in the exercise of its rights by being refused the right to the timber on such lands—surely we have a right to know when the application was made. As to the argument of Mr. Hutchison that this turns upon the right of finance, supposing it had been stated at the Select Committee that the company was years ago at the end of its finance and insolvent, and the reserves were made years after, how could that affect them? The important thing is to get the data. I want to know how it was, if all the reserves were improperly made, they said on a former occasion they had no fault to find with the policy of reserving. If they say they were improperly made, I say, give us the dates and the particulars. Then, as to the second claim—the timber—surely we have a right to ask when they were refused permission to exercise their right to the timber. It must be within their knowledge. Then, as to the third paragraph, that the Queen has permitted the removal of timber. We know nothing of that. We want to know to whom the licenses were given and where given. It may be raised that we have given the licenses to cut timber, but we must have the names and dates given. We cannot meet a general statement like this without evidence.

Sir C. LILLEY: Would you be responsible for a breach of the law by a miner if he exceeded his right?

*Sir R. Stout*: I do not know that we are. Suppose a miner cut the timber and sold it unknown to us, we cannot be responsible for that. Under clause 18 of the contract we have the right to keep timber for existing saw-mills—"required for saw-milling industries in existence at the date when the Queen shall consent to the exercise of such option by the company"—so that the date is