Arbitration Court is constituted and settles the procedure, the Company will be prepared to conform

to any direction that may be given as to filing or serving particulars.

The analogy you appear to set up in the last paragraph of your letter now under answer does not apply. The Company will be prepared to deliver "particulars" in much less than "a week" so soon as the Arbitration Court is in a position to treat the proceedings as in the nature of "an action."

As to the memorandum you refer to as handed to you "undated and unsigned" in April last,

it was enough, surely, that it was delivered to you by the representatives of the Company.

As to your somewhat excited remarks touching the absence of knowledge on your part as to the Company's case, I might refer to the difficulties which have unnecessarily been raised by the Government in the way of obtaining access to sources of information, which being of a public character might have been expected to have been treated as other than private, but I refrain. I may mention, however, that in addition to the claims indicated in the memorandum of April, there will, as you may surmise, now be a further claim in respect of the taking possession by the Crown of the railway in May last.

I have, &c.,

For the New Zealand Midland Railway Company (Limited),

ROBERT WILSON,

Hugh Gully, Esq.,

Engineer-in-Chief and General Manager.

Crown Solicitor, Wellington.

P.S.—I am just in receipt of your letter of the 25th instant, to which this is a sufficient reply.

NOTICE SETTING FORTH PRINCIPLE ON WHICH DAMAGES CLAIMED BY COMPANY IN RESPECT OF MINING RESERVES.

In Arbitration.—The New Zealand Midland Railway Company (Limited) and Her Majesty the Queen.

Where two parties have made a contract which one of them has broken, the damages which the other ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either as arising naturally—that is, according to the usual course of things—from such breach of contract, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of a breach of it.

If the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both parties, the damage resulting from the breach of such contract which they would reasonably contemplate would be the amount of injury which would ordinarily follow from a breach of contract under the special circumstances so known and communicated.

It is a rule of interpretation that the intention of the parties is to be ascertained from the whole contract considered in connection with the circumstances known to them both. If it appear by such circumstances that the contract was entered into, and known by both parties to be entered into, for a particular purpose, whether to secure special gain or to avoid anticipated loss, the liability of each will be determined and the amount of damages ascertained with reference to the effect of the breach in hindering or defeating that object.

The contemplation of damages will include such as arise according to the intrinsic nature of the contract and the surrounding facts and circumstances, made known to the parties at the time of

making it.

Application of these Principles to the Company's Case.

The inducement and main consideration moving from the Queen to the Company, and in consequence of which the Company agreed to enter upon the construction of the railway, was the prospective granting of land on the basis of the B 1 value to the extent of 50 per cent. of the statutory cost (for land-grant purposes) of the railway, and the prospective improved values of such lands.

It was contemplated by both parties that the Company should rely for its financial power upon

the advantages and security which the land-grant would give it.

It was therefore within the contemplation of the parties that any material injury to or depreciation in value of the lands within the authorised area would hinder or destroy the financial power

of the Company.

It was known to both parties that certain of the lands were of special value, because, inter alia, of their vicinity to the line, of their vicinity to the settled districts, or of the large quantities of valuable timber and coal upon such lands, and that the Company relied upon its right to select these lands as a material part of the inducement to and consideration of the contract.

It was the contract between the parties that that right of selection should be subject only to the right of the Crown to reserve lands which were, or should be, from time to time required for bonâ fide mining purposes. It was the duty of the Crown to exercise that right in a reasonable manner and in good faith.

The reservation of lands proclaimed was not the due exercise by the Crown in good faith of the right of reservation provided by the contract, and therefore was a breach of contract by the

Crown.

The notice of proposed reservation of other blocks not yet proclaimed was an intimation by the Crown of its intention not to adhere to its contract, and the Company was entitled to treat it as a breach of contract by the Crown.