

into operation;" and on the 13th July, 1876, Mr. Kirchner wrote to Dr. Featherston, "The second vessel of the next season begins the new contract under the new charter"—viz., that as to the 4,000. If, therefore, the contracts were to be successively performed, it would naturally follow that if there was a breach in the performance of one, that to be subsequently performed would not come into operation. Dr. Featherston's despatch seems to have regarded his acceptance of Messrs. Sloman's letter of the 12th May, 1874, as simply binding them to find ships for the 4,000 emigrants, which Mr. Kirchner was to provide in case the Queensland contract should be properly carried out.

As, therefore, the claims of Messrs. Sloman and Co. and Mr. Kirchner are to be considered only upon their equities, it may, it seems, fairly be insisted that Dr. Featherston's views, so frequently and forcibly expressed by him, were correct; and, therefore, that as the Queensland contract was not performed in due time, the subsequent contracts never had any operation. Mr. Sloman will evidently contend that the non-performance of the Queensland contract was waived by the acceptance of ships and despatch of emigrants after the 14th November, 1875. It will be shown presently under what circumstances these were sent.

Although Dr. Featherston admitted the liability to forward emigrants actually accepted up to the 7th February, 1876, he did not evidently intend thereby to allow them to be sent under any of the arrangements which had then, as he viewed it, expired; for in his despatch of the 17th May, 1876, above referred to, he states that after the 31st December, 1875, it was his intention to "charter vessels from him (Sloman) on special agreements, quite outside the Queensland contract," in case shipping should be needed for emigrants actually accepted by Kirchner.

It does not appear, however, that at the end of 1875, when the Queensland contract had expired and had not been fulfilled, Dr. Featherston informed the parties of his intention to insist that the contract for the 4,000 could not under the circumstances come into operation; and it was not until the 7th February, 1876, that he informed Messrs. Sloman and Mr. Kirchner that free emigration was stopped.

It remains, then, to be seen, in order to do equity, what engagements were entered into or liabilities incurred by Messrs. Sloman and Co. or Mr. Kirchner, before the 7th February, 1876, with a view to completing the Queensland contract, or carrying out the 4,000 contract, in respect of which they may reasonably claim to ask for compensation.

We think it desirable to consider these claims separately, and, therefore, proceed to examine the grounds on which, as it seems to us, they should be respectively considered and finally.

As to Claims of Messrs. Sloman and Co.

MR. KIRCHNER, in his letter of the 11th April, 1876, states that Mr. Sloman "has decided to forward the emigrants, amounting to 416 adults, under the transferred Queensland contract, which he does not consider completed yet. . . . The 'Fritz Reuter,' the ship by which Mr. Sloman intends shipping the emigrants, will, I expect, be ready for use by the end of the month;" and in his letter of the 13th April to Dr. Featherston, he states, "Mr. Sloman consulted his lawyer during his late stay in London, and acted on his advice in sending the emigrants under the transferred Queensland contract. It appears that it had already expired when the 'Fritz Reuter' and 'Gutenberg' were despatched." If this were so, it appears, however, that the emigrants had been accepted some time before the termination of the Queensland contract, and the Government were, therefore, bound to send them.

Messrs. Sloman and Co., however, by their letter of the 15th March, 1876, to Dr. Featherston, write, "Your Agent, Mr. Kirchner, engaged of us, in conformity with, and in the terms of, our contract with you yourself of the 12th May, 1874 (which was not the Queensland contract, but the one as to the 4,000), two ships for the conveyance of emigrants to New Zealand for you or your Government's account, to proceed from this on the 10th and 25th April—that we have supplied these ships, the 'Fritz Reuter' and the 'Humboldt'—that they are both here in port, and will in proper time be ready."

No allegation is found in the letters that any other ships had been placed or set apart for the service, and Mr. Kirchner, in his letter under date of the 6th March, 1876, writes, "On my return from London" (this would seem to have been about the middle of February, 1876), "where you mentioned to me that you wished faith to be kept with engaged emigrants, I wrote to Mr. R. M. Sloman to lay on two vessels on the 10th and 25th April for them. This is my whole extent of liability to Mr. Sloman."

The "Fritz Reuter" was despatched with the 416 adults; and in Mr. Kirchner's letter of the 13th April, 1876, he states, "The 'Fritz Reuter' has ample room for the engaged 416 emigrants; Mr. Sloman intends therefore to despatch the 'Humboldt' to Dona Francisca, in Brazil, with emigrants, who, I am sorry to say, are partly recruited from emigrants refused for New Zealand."

No allegation is found in the correspondence that there was any loss in respect of the "Humboldt" being sent to the Brazils instead of to New Zealand. If there was no such loss, it would seem that Messrs. Sloman and Co. would be fairly compensated if they were paid for the emigrants despatched by the "Fritz Reuter," with interest.

In the action brought by Messrs. Sloman and Co. they claim £25,000 for the breach of two alleged contracts of May, 1874.

In Dr. Featherston's despatch of the 17th May, 1876, above referred to, he says that he would most willingly agree to the payment of the passage money of the 416 emigrants sent by the "Fritz Reuter" on receiving a full discharge from all claims against the Government on the part of Mr. Kirchner, Mr. Sloman, and all parties concerned.

It is right, however, that we should remind you that had Mr. Sloman performed his engagement to the Government under date of 17th February, 1872, with reference to the "Louis Knorr" contract, a sum of £7,500 would have been received by the Government from the emigrants. His guarantee was as follows:—"I hold myself personally responsible for the true fulfilment of the contract which you have agreed upon with Messrs. Lewis Knorr and Co., so far as we are concerned."