

"MR. EDWARD JENKINS,—To ask the Secretary of State for the Colonies whether an Act has been passed by the New Zealand Legislature called 'The Crown Redress (No. 2) Act,' and whether it has been reserved for Her Majesty's approval; whether it is a provision of this Act that persons having claims against the New Zealand Government shall be deprived of any remedy against that Government for any claim arising after the passing of the Act 'unless the petition setting forth the relief sought shall be filed within twelve months after the claim or demand has arisen;' and whether any remonstrance has or will be sent to the New Zealand Government on the subject.—(Friday, 15th March.)"

(Enclosure 2.)

NEW ZEALAND LEGISLATION.

"MR. COURTNEY, in the absence of Mr. E. Jenkins, asked the Secretary of State for the Colonies whether an Act had been passed by the New Zealand Legislature called the Crown Redress (No. 2) Act, and whether it had been reserved for Her Majesty's approval; whether it was a provision of this Act that persons having claims against the New Zealand Government should be deprived of any remedy against that Government for any claim arising after the passing of the Act 'unless the petition setting forth the relief sought shall be filed within twelve months after the claim or demand has arisen;' and whether any remonstrance had been or would be sent to the New Zealand Government on the subject.

"Sir M. HICKS-BEACH said,—An Act called the Crown Redress Act has been passed in New Zealand, and was not reserved for Her Majesty's approval. The 6th section enacts that no person shall be entitled to prosecute any claims under the Act unless the petition setting forth the relief sought shall be filed within twelve months after the claim or demand has arisen. An objection to the Act was received subsequent to its passing, which has been communicated to the Governor of New Zealand."

No. 4.

MEMORANDA by the Hon. the ATTORNEY-GENERAL and the SOLICITOR-GENERAL.

Memorandum for Cabinet.

Re Brogden Contracts and the Despatches of the Secretary of State for the Colonies thereon.

THE position that the Messrs. Brogden have taken up in reference to their contracts, and the fact that, pending litigation with the Government, they have sought and obtained the interference of the Secretary of State for the Colonies, and have, through their friends, brought the provisions of "The Crown Redress Act, 1877," of New Zealand, before the House of Commons, necessitate some statement on the part of the Cabinet. As the Solicitor-General was Assistant Law Officer at the time "The Government Contractors Arbitration Act, 1872," was passed, and was the draftsman of the Act, I put a question to him, which I forward herewith, and I also send his reply.

It will be observed that the charge made against the Government and Legislature of New Zealand is that the General Assembly passed an Act without notice to the Messrs. Brogden, and that this Act interfered with their private rights. Such a charge is at once refuted by the memorandum of the Solicitor-General. It is clear that not only did the Messrs. Brogden know of the preparation of the Act, but that their solicitor drafted clauses to be incorporated in the Bill, and that his suggestions were adopted. Mr. James Brogden was in Wellington, and was, I believe, a regular attender at the sittings of the House when the Bill passed; and I cannot understand how it was that he never knew of its passing. Nor can I understand how, seeing that the firm's solicitor perused the draft Bill, and was a resident in Wellington, and has been in active practice since 1872, he could have remained in ignorance of the existence of the Act.

I need not point out that it was only when the Messrs. Brogden made large claims against the Government, and the Government declined to acknowledge them, they complained of the Act of 1872.

The Messrs. Brogden, in their memorandum, raise the question of the constitutionality of the Act. Had the Legislature of New Zealand power to pass such a statute? Ample opportunity has been granted to them, and is now open to them, to get this question tested in the Courts of the colony; and, I submit, neither the Government of New Zealand nor that of the Empire can declare whether a statute duly passed is within or without the powers of the New Zealand Legislature. The Judicial Department of the State must decide such a question.

As to "The Crown Redress Act, 1877," I need only say that the question put by Mr. Courtney to Sir M. Hicks-Beach, and the letter of the Messrs. Brogden, alike display an ignorance of New Zealand law. "The Crown Redress Act, 1877," is an enabling statute, and far more favourable to claimants against the Government than the Crown Redress Act of 1871. Under the older Act, no suit could be prosecuted without leave of the Governor; and the Court of Appeal of New Zealand held that this granting of leave was purely discretionary, and that the Governor could not be compelled to give leave (*Regina v. the Governor, ex parte O'Donoghue*). Under the Act of 1877 no such leave is necessary—a petition may be filed by any one. The only limitations on such a wide concession are—

- (1.) One month's notice to the Attorney or Solicitor-General;
- (2.) Filing the petition within twelve months after the claim or demand has arisen.

I do not understand how the Messrs. Brogden could have considered that this Act affected them. There is express provision that "The Government Contractors' Arbitration Act, 1872," is not to be repealed or affected; and there is also express provision that the provisions of this Act shall not apply to any causes of action that have arisen before its passing (8th December, 1877). The Messrs. Brogden's claims had been made a considerable time before the passing of the Act, and could not therefore be affected by any of its provisions.