

I think it is inconvenient for a litigant suing the Government of New Zealand to ask for the interference of the Secretary of State pending the litigation; and more inconvenient for the Government to have to submit to the Secretary of State what may be facts and circumstances that should not be disclosed until the case of the adverse party is fully known.

In this case, however, I do not think the Government of New Zealand need conceal anything; and I would therefore advise that His Excellency be asked to transmit this memorandum, and the Solicitor-General's reply, to the Secretary of State for the Colonies.

25th May, 1878.

ROBERT STOUT.

(Enclosure.)

For the Solicitor-General.

As I understand you drafted "The Government Contractors' Arbitration Act, 1872," I would like to know whether the Messrs. Brogden knew of the passing of the Act; whether they objected to it; also, whether they made any suggestions regarding it. It is unnecessary to notice the statement made, that it was a "private Act," as the New Zealand Legislature decided otherwise. I send herewith Messrs. Brogden's letter to the Secretary of State for the Colonies.

16th May, 1878.

ROBERT STOUT.

Hon. the Attorney-General.

In answer to your inquiries, I think it will be convenient if I set out concisely the circumstances which led to the passing of "The Government Contractors Arbitration Act, 1872," and then state such facts as I am acquainted with tending to prove that the Messrs. Brogden, and those representing them, were well aware of the provisions and passage of the Act.

In the early part of 1872, Mr. James Brogden, a member of the firm, was in the colony, and negotiations were pending as to the conditions of the contracts then proposed to be entered into between the Government and the Messrs. Brogden. A matter much debated was, to whom disputes arising under the contracts should be referred for settlement. On the part of the Government, it was proposed that the Engineer-in-Chief should be sole arbiter; and to this Mr. James Brogden would not agree. Ultimately it was settled that the Judge of the Supreme Court in the district where the works were being carried on should be the arbitrator, and the Judges were asked if they would be willing to undertake the duties. [See correspondence printed in "Appendix to Journals of House of Representatives, 1872," Vol. II. D-19c.] Upon the whole, the Judges did not view the proposal with favour, doubts being expressed whether the proposed duty was consistent with the judicial character and position, but generally expressed themselves as willing to aid in carrying out the arrangements the Government had entered into. The Judges' replies have not been published, but the outcome of them was the preparation of the Government Contractors' Arbitration Act.

I prepared the Bill, and, in its original shape, it was proposed to apply to *all* contracts which the Government had entered into for the construction of public works, but eventually it was limited to the contracts entered into with the Messrs. Brogden. I do not recollect having any special instructions in the matter, but prepared such a measure as I conceived would effect what was required, and carry out the principle of arbitration contained in the contracts. A copy of the first revise was sent to Mr. Travers, who was then acting as Messrs. Brogden's legal adviser in Wellington; and I have had an analysis made of the contents of the Bill in its then shape, which is hereto attached (marked A). This copy appears to have been sent to Mr. Travers as a matter of courtesy, and not by any means as a complete measure; but with the draft Bill in this office, I find a note addressed by him to Mr. Prendergast, then Attorney-General, forwarding some draft clauses, and making certain suggestions for amending the Bill. Copies of this note, and of the clauses sent by Mr. Travers, are attached (marked B and C); and, for the purposes of comparison, I have also attached a copy of the clauses as they now stand in the Act (marked D). The other alterations suggested by Mr. Travers were made, and although it was after this that the change was made in limiting the measure to the contracts entered into with the Messrs. Brogden, yet it will be found that it remained substantially the same measure. Some of the clauses were re-arranged, and a few added; but, with the exception of clauses 27, 28, 30, and 31, I do not think anything of importance was added, and, as to these clauses, they apply equally to the Government and the Contractors. I need hardly say that Mr. Travers could at any time have been supplied with copies of the Bill, either prior to its introduction to the Assembly or subsequently.

Referring to the letter addressed by the Messrs. Brogden to the Colonial Office, dated 15th January, 1878, I observe that they complain of the provisions of sections 4, 12, 29, and 31 of the Act. I have compared these sections with the provisions of the Bill submitted to Mr. Travers, and find that section 4 of the Act is substantially the same as clause 4 of the Bill, that section 12 of the Act is similar to clause 11 of the Bill, and that section 29 of the Act stood as clause 22 in the Bill; clause 31 being, therefore, the only new clause in the Act which Messrs. Brogden allege is prejudicial to their interests.

With respect to the mode in which the Bill was passed, I may state it was introduced into the House of Representatives and read a first time on the 16th August, 1872. Mr. Fox's Government was then in power, but quitted office on the 10th September; and on the 20th of that month, Mr. Stafford, the Premier, moved the second reading. From the tenor of his remarks, it will be seen that his Government did not approve of the measure, and only proceeded with it because it was conceived that an honorable obligation lay upon them to do so. It passed its third reading on the 24th September, was introduced into the Upper House on the 25th September, and passed its second and third readings on the 1st and 3rd October respectively. The debates on the second readings in each House will be found in *Hansard*, Vol. XIII. (1872), pp. 292 and 425; and a fair summary of the debate on the second reading in the House of Representatives is contained in the *Wellington Independent* newspaper of the 21st September, 1872.