

1878.
NEW ZEALAND.

MESSRS. BROGDEN'S CLAIMS.

CORRESPONDENCE AND MEMORANDA RESPECTING "THE CONTRACTORS ARBITRATION ACT, 1872," AND "THE CROWN REDRESS ACT, 1877."

Presented to both Houses of the General Assembly by Command of His Excellency.

No. 1.

The SECRETARY for the COLONIES to His Excellency the GOVERNOR.

MY LORD,—

Downing Street, 18th January, 1878.

I have the honor to transmit to you a copy of a letter which has been addressed to me by Messrs. John Brogden and Sons, in reference to the contracts entered into by them with the Government of New Zealand.

Messrs. Brogden and Sons appear to complain that an Act—"The Government Contractors Arbitration Act, 1872,"—which in its nature was a private Act, was passed by the Legislature of New Zealand without those notices having been given to them which are prescribed in the case of all private Acts, for the protection of individuals affected thereby; and I have therefore to request that you will bring the case under the consideration of your Ministers.

Governor the Most Hon. the Marquis of Normanby,
G.C.M.G.

I have, &c.,
CARNARVON.

(Enclosure.)

Messrs. JOHN BROGDEN and SONS to the COLONIAL OFFICE.

SIR,—

21, Queen Anne's Gate, Westminster, 15th January, 1878.

We have the honor to enclose herewith a short *résumé* of the facts in connection with the contracts for the construction of railways in New Zealand which we undertook, under agreements through the Government of New Zealand, on behalf of Her Majesty the Queen; as also copy of a memorial proposed to be presented to the House of Representatives of that colony for inquiry and relief in respect of an emigration agreement.

We beg to draw the attention of Her Majesty's Government to the grave and serious injustice we now suffer under from the retention of such large sums of money, and no hearing is possible without great delay and expense to the colony and ourselves.

Whereas we submit that by a speedy hearing and settlement, which the original arbitration clause insured, a mutual benefit would be the result.

One of our firm will, at great inconvenience, proceed to the colony at once, so as to confer with the Government of New Zealand as to the most desirable arrangements to be made for both interests.

We beg most earnestly that an inquiry may be recommended by Her Majesty's Government into the above cases, and that such intimation may be made by the outgoing mail to New Zealand on Friday next.

W. R. Malcolm, Esq.

We have, &c.,
JOHN BROGDEN AND SONS.

(Sub-Enclosure 1.)

21, Queen Anne's Gate, Westminster, 15th January, 1878.

MESSRS. John Brogden and Sons entered into the following contracts for the construction of railways with the Governor of New Zealand, on behalf of the Queen, at the dates named:—

Auckland and Mercer	...	...	...	...	10th August, 1872.
Napier and Pakipaki	...	...	...	...	10th August, 1872.
Wellington and Hutt	...	...	...	...	10th August, 1872.
Pieton and Blenheim	...	...	...	...	10th August, 1872.
Dunedin and Clutha ...	...	...	...	...	10th August, 1872.
Invercargill and Maitauro	...	...	...	...	10th August, 1872.

The works are all completed, and there are now pending claims for the final balances on the contracts, &c., amounting to about £172,000, and others have yet to be sent in, which will make the total sum claimed above £200,000. The New Zealand Government dispute every claim, and allege that Messrs. John Brogden and Sons have been paid everything that is due to them upon these contracts.

By the following clause in each contract disputes between the Government and the Contractors were referred to arbitration :—

“ ARBITRATION.

“30. Should any dispute arise between the Contractor and the Engineer, or between the Contractor and the Minister for Public Works or the Government, relative to the force and intent and meaning of the specifications, drawings, or conditions, or to the mode of carrying on the works, or the nature or quality of the materials used, or supplied to be used, or workmanship of work done, or as to the maintenance of the works, or as to the expense of additional works, or of alterations or deviations from the specifications or plans, or as to any other matter connected with the execution of the works, or with the contract, specifications, drawings, or conditions, or as to any matter which by this contract it is expressly provided is to be settled, ascertained, or determined by arbitration, such dispute shall be referred in writing to the sole determination, arbitrament, and award of the Judge of the Supreme Court assigned to that judicial district of the Supreme Court within which the works relative to which the dispute shall have arisen have been or are to be executed, whose award shall be final, binding, and conclusive on all parties: Provided, however, that, before any such dispute as aforesaid shall be so referred, the Contractor shall give to the Minister for Public Works one calendar month's notice, in writing, of such dispute, and of the matter and cause thereof, and in such notice the Contractor's claim shall be explicitly stated, and, if such claim be for pecuniary compensation, the amount thereof shall also be stated.

“JOHN CARRUTHERS.

“JOHN BROGDEN AND SONS.”

This clause, amongst others, in the contract was the subject of considerable discussion, the Contractors objecting to the settlement of disputes except by arbitration conducted by some one independent of either party.

Clause 3 provides that disputes between Government and Contractors are to be referred to the decision of a Judge of the Supreme Court, but that if by reason of the continued illness or absence from the district assigned to him, the dispute will be referred to another Judge, and, if either of the parties require the evidence to be heard over again, the case must be commenced *de novo*. The Government have the power of changing the Judges to different districts, and therefore have the power of causing an indefinite amount of delay and cost, and the Contractors have no remedy.

When the Contractors asked for the final balances to be certified by the Engineer on completion of the various contracts, the New Zealand Government produced an Act passed on the 10th October, 1872, called the Government Contractors Arbitration Act, which relates solely to contracts with Messrs. John Brogden and Sons, and not, as its title implied, to any other Contractor, or Contractors generally.

This Act was first brought to the notice of the firm affected in the year 1877, five years after the passing of the above Act, when arbitration, according to the contracts, was demanded by them. It was passed disguised as a public Statute, without the proper formalities and notices required by the New Zealand Parliament for private Statutes affecting only private interests. Messrs. Brogden had therefore no opportunity of opposing any of its provisions: it was passed without their knowledge, and it varied the contracts which they had previously entered into, and left them in the hands of Engineers and Ministers of Works.

The debates which occurred during its passage through the New Zealand Parliament (*see* “New Zealand Parliamentary Debates,” 16th August and 1st October, 1872) show that the Ministers represented that it was intended to carry out the contracts, to give power to the Judges to act in accordance with the arbitration clause, and facilitate the rapid settlement of disputes; whereas it varies the arbitration clause of those contracts in the following important particulars :—

Clause 4 constitutes the Minister for Public Works a Court of first instance, to hear and determine claims, an appeal lying from him to the Judge of the Supreme Court for the district in which the works are situated. Thus the Contractors are put to the expense of a hearing at Wellington, and, in the event of the Minister, who is one of the parties to the suit, deciding in his own favour, of a second hearing in another part of the colony.

Clause 12 empowers a Judge to employ an expert to make a report upon any matters of construction that may be in dispute, and enables the Judge to take that report as if it were *vivâ voce* evidence, thus depriving the Contractors of the right of cross-examination.

Clause 29 deprives the Contractors of any appeal from decisions under the Act, although they have never been consulted nor their consent asked to the variations in the procedure already agreed to with the Government.

Clause 31 limits the time for commencing proceedings to six months from the arising of a dispute, whereas there is no such limitation in the arbitration clause; and Messrs. Brogden are thus placed under a disability to which other subjects of Her Majesty are not liable, for, the contracts being under seal, the statutory limitation for actions is twenty years.

If Messrs. Brogden had been informed of the Act in 1872, when it passed the Legislature of New Zealand, or—being an English firm of contractors—had they been notified in England, they would certainly have made an appeal against the granting of the Royal assent to a measure which they conceive to be so unjust and unconstitutional.

By the Act of the Imperial Parliament granting the present Constitution of New Zealand (15 and 16 Vict., c. 72.), it is provided (clause 53) that it shall be competent to the General Assembly (except and subject as hereinafter mentioned) to make laws for the “peace, order, and good government of New Zealand, provided that no such laws be repugnant to the law of England.”

Can it be said to be consistent with “peace, order, and good government” that the Government, being party to contracts with any individual or firm, should vary any of the provisions of such contracts

by Statute without the consent of the other party to those contracts? and can such legislation, whereby one party to a contract alters some of its provisions without the consent of the other party, be otherwise than "repugnant to the law of England"?

The contracts for the construction of the following railways, viz., Waitaki and Moeraki (19th July, 1873), Waitara and New Plymouth (19th July, 1873), Auckland Station, &c. (19th July, 1873), Auckland and Mercer (20th August, 1873), were taken subsequent to the passing of the Government Contractors Act of 1872, but before the Royal assent to this Act had been obtained. These contracts contain the same terms and conditions and the same arbitration clause, were signed, sealed, and delivered in similar manner. But the Government Contractors Act of 1872 was not exhibited or referred to, and not produced by the Government in reference to these contracts until 1877, which was the first intimation the Contractors had of the existence of such an Act.

(Sub-Enclosure 2.)

To His Excellency the Most Honorable the Marquis of Normanby, a member of Her Majesty's Most Honorable Privy Council; Knight Commander of the Most Distinguished Order of St. Michael and St. George, Governor and Commander-in-Chief of Her Majesty's Colony of New Zealand and its Dependencies, and Vice Admiral of the same.

The Memorial of Messieurs Alexander Brogden, M.P., Henry Brogden, and James Brogden, of Queen Anne's Gate, in the City of Westminster, in England, Railway Contractors, carrying on business in copartnership under the style of John Brogden and Sons, sheweth as follows:—

1. Your memorialists in June, 1871, after many months of previous negotiation with the Honorable Julius Vogel, at that time the Treasurer of the Colony of New Zealand, and then in England, executed in duplicate three instruments, dated respectively the 21st, the 22nd, and 26th of June, 1871, and each of which was expressed to be made between the then Governor of New Zealand of the one part and the memorialists of the other part.

2. The first instrument expressed that the Governor would intrust to the memorialists, and that they would undertake, the construction of railways in New Zealand to the value of £4,500,000; that the Governor, besides paying the memorialists the cost of the railways to them, and a profit of five per cent. thereon, would make to them grants of land at the rate of three-quarters of an acre for every pound sterling of the cost of the railways, and one-fifth of which should be suitable for settlement and for settlers to take immediate possession of; that the portions of the latter required for immigrants should be granted as and when required; that the memorialists would within ten years land in New Zealand ten thousand approved European immigrants; and that the Governor would also pay the memorialists the sum of £1 per head per annum for ten years for all immigrants so landed.

3. The second instrument expressed that the Governor would intrust to the memorialists, and that they would undertake, the construction of railways in New Zealand to the value of £500,000, upon terms which did not include any arrangements with respect to immigration.

4. The third instrument recited the other two, and expressed that, within six months after the arrival of the three in New Zealand, the Governor would execute both or one of the first two documents, and that meantime both should bind the memorialists; and the Colonial Treasurer, in token of his approval, executed the third instrument as on behalf of the Governor, and thereby himself agreed that he would procure the Governor to execute one or both of the first and second instruments within the said six months.

5. During the negotiation of these three instruments the Colonial Treasurer suggested that one of the memorialists should follow him to New Zealand, and be at hand to carry into effect the first and second instruments, or whichever of them the Governor should execute; and that the memorialists should immediately send out a staff of engineers and others for the purposes of these contracts. At that time, as appears from the statement of the Minister (*see* Parliamentary Debates, 2nd Session of 5th Parliament, page 540), "the number of engineers in the colony accustomed to modern railway construction was exceedingly limited."

6. Immediately on the execution of these three instruments, the Colonial Treasurer returned to New Zealand; and, upon the faith of his above engagement and counsel, the memorialists, at great expense, immediately sent to New Zealand a staff of engineers and assistants (which they afterwards from time to time increased); and in August, 1871, the memorialist James Brogden followed the Colonial Treasurer to New Zealand.

7. On the 24th October, 1871, soon after the arrival of Mr. James Brogden in the colony, the Colonial Treasurer himself, in a Committee of the House of Representatives, and before execution by the Governor of either No. 1 or No. 2 Contract, moved a resolution recommending that No. 1 should not be accepted (*see* "Parliamentary Debates," 1st session of 5th Parliament, page 504). To this resolution an addition was proposed (by way of amendment), containing a recommendation that the Government should negotiate with the memorialists for the modification and extension of No. 2 Contract, or the substitution in its place of one for the construction by the memorialists of such railways, authorized or to be authorized by the Assembly, as it might be agreed should be offered to them, to the amount of £1,000,000, *at prices to be agreed to between them and the Government*, such prices being within the limits fixed by the Legislature. (*See* "Parliamentary Debates," same session, page 564.) This amendment was adopted by the House of Representatives, after an adjourned debate, on the 26th October, 1871, and the motion of the Colonial Treasurer as so amended was carried.

8. As a sequel to this resolution, the Governor, at a subsequent date, executed the Contract No. 2 *pro formâ*, and with the understanding (afterwards embodied in an actual agreement, dated the 18th of December, 1871) that it should not be deemed to have come into operation until after failure of negotiations for a substituted contract. (*see* Parliamentary Paper of 1872, D., No. 1, page 15.)

9. Mr. James Brogden, therefore, with a large and costly staff, retained and imported at a very great expense, found himself in the colony with Contract No. 1 rejected, with Contract No. 2

suspended (under the force of the quoted recommendation of the House of Representatives), with no railways to employ his staff upon, and with the prospect of inevitable delay in negotiating any contract at all.

10. Making the best he could of the circumstances, Mr. James Brogden ultimately arranged with the Government to take contracts for the construction of the following railways—viz., the Auckland to Mercer; the Napier to Pakipaki; the Wellington to Hutt Valley; the Picton to Blenheim; the Dunedin to Clutha; the Invercargill to Maitara; the Waitara to New Plymouth; and the Oamaru to Moeraki. But none of these contracts were executed until June, 1872.

11. These contracts, which amounted together to £793,107, were let to the memorialists (*conformably to the recommendation of the House of Representatives*) at agreed prices, and without being put up to public competition. But, though not submitted to public competition, the prices of the contracts granted were fixed by Mr. Carruthers, the Government Engineer, whose testimony (contained in the report referred to in paragraph 25 thereof) is that the prices were settled principally upon the rate paid for other works; that they allowed for increase to some slight extent upon the then current rates for labour; that no allowance was made nor was it taken into consideration that the Contractors were about to import labour into the colony; that it was not expected they would have to do so, because it was understood at the time that the Government were going to import a great many immigrants, whose importation would be sufficient to keep prices down to prevailing rates, and that no allowance was made to the memorialists for any loss that might fall to them by the introduction of immigrants by them. In point of fact, the granted contracts had no reference whatever to any scheme of immigration.

12. On 20th August, 1872, the Minister (the Hon. Mr. Ormond), addressing the House of Representatives, observed, with reference to these new contracts, "that the most careful consideration has been given by the Government to this subject; that the settlement of these contracts has only been effected after long, minute inquiry, and in conformity with the advice of the Engineer-in-Chief, given after careful investigation." * * * "That the prices at which Messrs. Brogden have contracted to construct these railways are fair and reasonable." And that, "when the difficult nature of the country through which these railways have to be carried, together with the largely increased price of iron, is considered, it will be allowed that the cost at which these railways are to be constructed and equipped—namely, an average of £4,865 per mile—will compare most favourably with the cost of similar works in any other country in the world." (*See "Parliamentary Debates,"* 2nd session of 5th Parliament, page 541.) And on 28th August, 1872, the Hon. the Colonial Treasurer, in an elaborate address to the House, further vindicated the fairness and reasonableness of the prices of these contracts, and expressed his conviction that the railways contracted for would be obtained "cheaper than they have been constructed in any other country in the world." (*See the same "Parliamentary Debates,"* page 738.)

13. But, during the consideration of these contracts, and as an entirely independent subject-matter of treaty, the Government, who were deeply interested in securing a large addition to the labouring population of the colony, strongly pressed upon the memorialists a negotiation for the importation of immigrants by them.

14. That this was a matter of great interest to the Government is amply testified by an article dated 17th January, 1875, contributed by the Colonial Treasurer (then Prime Minister) to "Fraser's Magazine," in London, and in which he says, "In the United States, I believe, every immigrant is held to be worth £200. It is generally considered in New Zealand that this is the reverse of an excessive estimate. Large as is the number already introduced into the colony, my latest advices urge the demand for more." The great need of immigrants in the view of the Government is also strongly impressed upon the Agent-General for the colony in England by the Minister for Public Works, in that Minister's letter of the 25th November, 1871. (*See Parliamentary Paper, 1872, D., No. 1, page 8.*)

15. The negotiation with the memorialists relative to immigration was in consequence of the urgent want thus expressed. It was initiated by the Government, and pressed upon the memorialists. To a certain point it was carried on in the colony between the Hon. the Minister for Immigration and the memorialist James Brogden, but being deemed by the latter an affair of too much importance, and devolving upon him too great a degree of responsibility to be undertaken without the concurrence of his partners, it was, in November, 1871, relegated to the Agent-General for the colony in England, on the part of the Government (*see Parliamentary Paper, 1872, D., No. 1, page 10*), and to the partners of your memorialists' firm resident in England, on behalf of the firm.

16. On receipt by the Agent-General of his despatches from the colony on this subject, he opened a communication upon it with the memorialists Alexander and Henry Brogden, who were then without any advices from the memorialist James Brogden concerning it. Long negotiations followed, and the result was that, on faith of the assurances referred to below, an instrument, dated the 27th of June, 1872, and expressed to be made between the Governor of New Zealand by the Agent-General of the one part, and the memorialists of the other part, was executed by the Agent-General on behalf of the Governor, and by the memorialists by the hands of Alexander and Henry Brogden. This instrument is fully set forth in the Parliamentary Paper, 1872, D., No. 19b., and it purports that the memorialists will send out such a number not exceeding two thousand able-bodied men, besides wives and children, as the Agent-General shall require; that the Agent-General will cause them to be conveyed to the colony, and the Governor will make all payments in respect of their conveyance; that the Governor will deal with them on their arrival in as beneficial a manner as other immigrants are received and dealt with on behalf of the Governor on arrival in the colony; that the memorialists will repay the Governor £10 in respect of every such adult immigrant, and to be secured, with interest, by joint and several promissory notes of the memorialists in a given form, and with liberty to the Governor to deduct the amount of any due notes from any moneys payable by him to the memorialists in respect of any railway or works executed by them; and that the memorialists might take from every adult immigrant a promissory note for a sum not exceeding £15, in payment of that for which payment was to be made to the Governor, and to cover the risk of non-payment of such sum.

17. The scheme embodied in this instrument of the 27th June, 1872, was accepted by the memorialists Alexander and Henry Brogden entirely at the instance and upon the faith of the representations of the Agent-General, who from time to time communicated to them the urgent despatches of the Hon. Mr. Gisborne on the subject of the paramount necessity of a prompt and continuous flow of from *eight thousand to ten thousand* emigrants into the colony (Parliamentary Papers, 1872, D. No. 1), and the Agent-General earnestly pressed upon them the resumption and completion of the treaty which Mr. James Brogden had begun with the Minister in the colony. Acceding to this, at the Agent-General's strong instance, they intimated their willingness to assist the immigration schemes of the Government by some arrangement which should neither yield them any profit nor expose them to any loss; and they suggested that they should keep account of the moneys expended, and the repayments received from emigrants, and that the account should be ultimately settled upon the basis of repaying actual outlay. It was in anticipation that such would be the basis of agreement between themselves and the Government that the memorialists, before the execution of the document of 27th June, 1872, sent out between six hundred and seven hundred emigrants and their families. But the Agent-General objected that there was no finality in such an agreement. At the same time, he vouched to the memorialists Alexander and Henry Brogden, in the strongest possible manner, and as from his own actual personal experience, that the terms which were ultimately embodied in the document of June, 1872, would fully and effectually indemnify them from all loss; and they, without experience themselves, but implicitly relying upon this assurance (which to them was invested with all the weight attached to the *ex officio* utterance of a Government authority), and confiding entirely in it, executed the document in question, and proceeded to act upon it until, in the whole, they had despatched twelve hundred and ninety-nine able-bodied emigrants to the colony, representing, according to the quoted estimate of the Prime Minister, a net value to the country of no less than about £260,000.

18. At the time these statements of the Agent-General led to the memorialists executing the deed of June, 1872, it was also represented to them by him that the Government itself was dealing with emigrants on a similar footing of making advances and taking promissory notes; that it was found a satisfactory course to the Government; that there were no difficulties in the way of recovering and enforcing these notes; that the law of arrest prevailed in the colony, and was effectual; and that other emigrants would be exported by the Government upon very similar terms. And all these representations were received by the memorialists as authentic, and contributed to induce them to accept the deed of June, 1872, instead of the basis they had themselves desired.

19. But, since executing that deed, there is not one condition of the things represented which has not been changed. The Government began by taking out their own emigrants in the same vessels with those of the memorialists upon other and more favourable terms,—thus creating jealousy and discontent on the part of the latter. It then proceeded to grant entirely free passages to emigrants other than those of the memorialists, and so raised the feeling of the latter from one of discontent to one of accusation against the memorialists, whom they charged with defrauding them, and against whom every device to avoid payment of their promissory notes was deemed lawful. The Court of Bankruptcy, which, as the memorialists are informed, had always refused discharges to those who were indebted to the Government for cost of immigration, granted discharges to those who were indebted to the memorialists. The Government afterwards ceased to enforce the promissory notes of their own emigrants, thereby showing their estimate of the value of securities which the memorialists had been so strongly assured by the Agent-General to be effectual. At length, every possible chance of recovery was extinguished by the repeal of the law of arrest for debt. Yet the Government claims to remain creditor of the memorialists, after having itself destroyed the security which the Agent-General had *ex officio* assured them was ample to protect them from loss in undertaking the liability to pay for the export of emigrants to enrich the governed country.

20. In this state of things, and in consequence of the losses sustained by the memorialists through their endeavour to assist the immigration plans of the Government by the means provided in the deed of June, 1872, Mr. James Brogden, in October, 1872, at an interview with the Hon. the Minister for Immigration, claimed, as an act of justice, that the Government should relieve the memorialists from that deed. The claim was further urged in a correspondence between the Minister and Mr. James Brogden in October and November, 1872, and between the memorialists in England and the Agent-General on the 15th 26th, 27th, and 28th of May, the 12th of June, and the 10th of July, 1873. This correspondence is all set out *in extenso* in the Appendix to the Report of the Committee, hereinafter referred to. (See the Parliamentary Paper, 1873, I.—5, pages 19 to 22.) The letter of the memorialists to the Agent-General, of the 12th June, 1873, recapitulated to the latter the fact of the Government having originated the negotiations which resulted in the deed of June, 1872; the pressure put both by the Government and himself upon them to undertake it; their statements to the Agent-General at the time that they sought no profit, but desired to make no loss; the strong assurances of the Agent-General of the amplitude of the security against loss, and upon the faith of which assurances alone the memorialists entered into the deed; and many of those subsequent measures of the Government to which the defalcations of the immigrants, in spite of the assurances of the Agent-General, are to be traced.

21. To the statements of that letter of the 12th of June, 1873, no contradiction has ever been offered by the Agent-General, either to the memorialists or to the Government; but they have for two years been acquiesced in, and are, therefore, to be taken as proved.

22. In their letter of the 10th July, 1873, to the Agent-General, already referred to (1873, I.—5), the memorialists showed that the amount in which their immigrants were indebted to them on promissory notes for the agreed rate of passage, and for nearly £11,500 advanced for kits, outfits, and sundries, was £39,874 13s. 9d.; and that, against the item for passage money, the memorialists had given to the Government their own promissory notes for £18,240, of which only £1,007 18s. 8d. had been received back; and they proposed that they should be relieved from these latter promissory notes, and should transfer to the Government those of the immigrants, to enable the Government to collect

them, and apply the moneys collected in reduction rateably of the passage-money and the memorialists advances.

23. The Government, however, refused assent to the memorialists' applications. They, therefore, in August, 1873, presented a petition to the honorable the House of Representatives, praying inquiry into their case, with a view to such relief as might be just. To that petition they ask now to refer.

24. The petition was referred to the Public Works and Immigration Committee, who heard evidence upon it, and made their report, dated 24th September, 1873.

25. The proceedings of the Committee—the evidence taken by them, and their report—are contained in the before-mentioned Parliamentary Paper (1873, L-5). The evidence of Mr Carruthers, referred to in paragraph 11 of this memorial, is contained in that report, and it is fully confirmed as well by the evidence of Mr. Billing (given in answer to questions 102 to 106 of the minutes of the evidence taken by the Committee, and set forth in the same Parliamentary Paper) as by the statements of the Ministers referred to in paragraph 12 thereof.

26. The report itself was to the effect that the memorialists prayed to be relieved from the loss to which they alleged they had been subjected under their immigration contract with the Government; that the Committee, having taken all the evidence that was available to them on the subject of the claims put forward in the petition, were of opinion "that the statements in the said petition were not substantiated;" that, "so far as they were able to judge, there was no good ground for such claim, either in law or in equity;" and that the Committee were further of opinion that, "in the absence of proof," it would be a bad precedent to entertain claims founded upon vague allegations, and the admission of which would do away with all finality in a system of public contracts under written engagements.

27. The conclusions reported by the Committee being therefore based on the want of sufficient evidence, the memorialists renewed the subject in a letter, dated the 25th of March, 1874, addressed to the Agent-General (*see* Parliamentary Paper, 1874, D-3A.), recalling to his attention their letters of the 12th June and 10th July, 1873; again setting forth the state of accounts with respect to expenditure upon immigration; reiterating the history of the deed of June, 1872, and of the representations and assurances of the Agent-General which induced them to undertake it; renewing their former claim for relief; supporting it by urging the advantage the country derived from the introduction of above two thousand emigrants at a cost of £35,000 to the memorialists; and appealing to the honor of the Government to recoup them the outlay incurred in thus benefiting the country.

28. In the same letter of 25th March, 1874, the memorialists also quoted a memorandum of the Minister for Public Works to the Cabinet (No. 66, April 1st, 1873), which says, "*The only thing which has kept the rates of labour from rising to rates ruinous to the various interests in the colony has been the shipment of so much labour by Messrs. Brogden.*" In fact, as the same letter states, out of twelve hundred and ninety-nine able-bodied immigrants introduced by the memorialists there remained working for their firm at that date only seventy-six. That number was afterwards reduced to thirty-nine, and, ultimately, to none. Practically, therefore, the whole number imported by the memorialists violated their engagements to the memorialists under a sense of the disadvantage at which they were placed relatively to Government immigrants, and distributed themselves throughout the colony, working for other employers, and producing that benefit to the colony, at the expense of the memorialists, which the Minister for Works has described in the above extract.

29. As an answer to this letter, the Agent-General afterwards communicated to the memorialists a letter addressed to himself by Sir Julius Vogel, then Prime Minister, dated the 3rd July, 1874 (*see* Parliamentary Paper, 1874, D-1A., pp. 17, 18), expressing the opinion of the Government that they were not entitled to the relief they asked, nor to any relief whatever. This letter entirely passes by, without answer or notice, all the untraversed assurances of the Agent-General which induced the deed of June, 1872. It maintains the right of the colony to subsequently grant free passages (a right not denied by the memorialists, but the consequence of which to them was properly dwelt on). It represents free immigration as a boon to them, on account of their large contracts, not noticing how much greater boon it would have been if they had not been drawn so largely into contributing to it. It adverts to the granting of these contracts free from public competition as a reason why the memorialists should import labour, but ignores entirely not only the resolution of the honorable the House of Representatives of 24th October, 1871 (paragraph 7 hereof), but also the claim which the lapse of both the first contracts gave them, and the evidence of Mr Carruthers; but no allowance whatever was made in the contract prices for such an expenditure, but *that the prices were fixed upon the supposition of Government importation of immigrants*, and principally upon the rates paid for other works. It refers to heavy margins which it assumes to have been allowed to the memorialists for contingencies, and this in the face of the evidence of Mr. Carruthers that the allowance for these contingencies was the same as would have been allowed to any other contractor. In forgetfulness of the statements made to the House as well by the Hon. Mr. Ormond as by the Prime Minister himself (paragraph 12 hereof), and although no suggestion of the kind is contained in any of the evidence taken before the Committee, the letter asserts that results have shown that by submission to public tender the contracts could have been let at cheaper rates. And it quotes as a fact that some other English contractors for a railway in Tasmania spontaneously introduced labour to carry out their contracts, but it is silent as to the prices allowed to those contractors, and establishes no parallel between their case and that of the memorialists.

30. The memorialists feel it impossible to accept as final a decision based on ground so entirely at variance with the course of events set forth in this memorial as those enumerated in the last-quoted letter of the Prime Minister. They are suffering an enormous loss from their attempt to assist the Government scheme of immigration. Considering the indisputable facts that labour, to the intrinsic value to the colony of £260,000, has been imported, at their cost, without a fraction of provision for it in their prices for works; that that cost would have clearly fallen on the Government if they had not been induced to undertake it; and that it has been cast upon the memorialists by the *ex officio* assurances of the Government Agent-General, which they could not but confide in, the memorialists humbly submit it to the sense of honor and justice which they are confident will always actuate the Government and

Legislature of New Zealand, that the assurances of the Agent-General (acting under the most urgent pressure of the Government, as evidenced by the despatches of the Ministers above referred to) ought to be fulfilled to your memorialists, and that they ought to be indemnified by the Government from all loss in the matter of the immigration proceedings undertaken by them at Government instance and under the circumstances in this memorial stated.

Your memorialists therefore humbly pray that their case may be again inquired into, and that adequate relief may be granted to them in the premises.

And your memorialists, as in duty bound, &c., &c.

ALEXANDER BROGDEN.
HENRY BROGDEN.
JAMES BROGDEN.

No. 2.

The SECRETARY for the COLONIES to His Excellency the GOVERNOR.

MY LORD,—

Downing Street, 7th February, 1878.

With reference to my predecessor's Despatch No. 8, of the 18th January, I have the honor to transmit to you, for communication to your Ministers, a copy of a further letter from Messrs. John Brogden and Sons, in reference to the effect which "The Crown Redress Act, 1877," of the New Zealand Legislature may have upon their claims against your Government.

I have, &c.,

Governor the Most Hon. the Marquis of Normanby,
G.C.M.G.

M. E. HICKS BEACH.

(Enclosure.)

MESSRS. JOHN BROGDEN AND SONS to the COLONIAL OFFICE.

MY LORD,—

21, Queen Anne's Gate, Westminster, 31st January, 1878.

On the 15th instant we had the honor to address a letter to your Lordship on the subject of our claims against the Government of New Zealand, and on the 18th instant we were favoured with a communication from Mr. Malcolm, in reply, for which our thanks are due to your Lordship.

Since that time we have received from New Zealand a copy of a new Act, passed by the Legislature there in November last, entitled "An Act to amend 'The Crown Redress Act, 1871,'" to which we beg leave to call your Lordship's attention.

It appears to us that this Act may have a very prejudicial effect upon claims such as ours, and especially that the 6th clause of it has or may have the effect of a new statute of limitations, restricting to the extraordinary short period of twelve months the right of taking proceedings for recovery of claims.

We respectfully submit to your Lordship the great injustice of such an Act, which has no parallel in Great Britain; and beg that your Lordship will be pleased to consider the propriety of advising Her Majesty, by Order in Council, to disallow it.

We submit also that, while the earlier clauses of the Act affect to provide new remedies for other subjects of Her Majesty in New Zealand, the 5th section again places, or at least continues, us in an exceptional position; and in fact that, while the rest of the community is supposed to be benefited, we are continued under all disabilities which "The Government Contractors Arbitration Act, 1872," may have put upon us.

We have, &c.,

The Right Hon. Lord Carnarvon,
Secretary of State for the Colonies, &c.

JOHN BROGDEN AND SONS.

No. 3.

The AGENT-GENERAL to the Hon. the COLONIAL SECRETARY.

SIR,—

7, Westminster Chambers, London, S.W., 21st March, 1878.

I have the honor to transmit herewith a copy of a letter which I received from Messrs. Mackrell and Co., enclosing me a copy of a notice given by Mr. E. Jenkins, in the House of Commons, of a question he intended to ask on the Crown Redress (No. 2) Act of New Zealand. I also forward an extract from the *Times* newspaper of the 16th instant, giving the question as asked by Mr. Courtney, in Mr. Jenkins's absence, and the reply made by the Secretary of State for the Colonies.

I have, &c.,

The Hon. the Colonial Secretary, Wellington.

JULIUS VOGEL,
Agent-General.

(Enclosure 1.)

DEAR SIR JULIUS,—

21, Cannon Street, London, 12th March, 1878.

We notice in the Parliamentary Papers that Mr. E. Jenkins has given notice of a question which he intends to put to the Colonial Secretary on Friday next, and a copy of which we enclose.

We are, &c.,

JOHN MACKRELL AND CO.

"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.

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.

My attention has lately been called to a letter written by Mr. Travers, and published in the *New Zealand Times* of the 4th of April last, in which he admits he knew of the existence of the Act, "but had never read it till it became necessary for him to do so in connection with Messrs. Brogden's claims against the Government;" and then charges the Government and Legislature with a breach of faith by introducing into the Act a set of provisions which materially modified the rights the Messrs. Brogden had under their contracts. A copy of this letter is appended (marked B).

Although, in reporting on the facts connected with this matter, I am not called upon to point out that the Messrs. Brogden have never experienced any *actual* inconvenience from the provisions of the Act—their complaints being as yet matters of assumption—nor to state what I conceive to be fallacies in the arguments put forward by them; yet, as so long a period has elapsed since the Act was passed, I think I may allude to the position of political parties at that time. The Fox Ministry vacated office in 1872, upon an adverse vote as to the administration of the Immigration and Public Works policy. During the debates, which lasted from 21st August to the 5th September, constant reference was made to the negotiations and arrangements with the Messrs. Brogden, both in England and in the colony; and, as I believe Mr. James Brogden was then in Wellington, and Mr. Travers certainly was, it is difficult to conceive that this Bill should have been passed through the Assembly unnoticed, especially looking at all the facts stated in this report, and bearing in mind the remarks made by Mr. Stafford on its second reading, and which were noticed in the journals of the day.

22nd May, 1878.

W. S. REID.

(Appendices.)

APPENDIX A.

Analysis of Bill intituled "The Government Contractors Arbitration Act, 1872."

(1st Revise.)

1st August, 1872.

PREAMBLE recites that there are statutes in force for erection of public works in colony, and that, as disputes may arise with persons executing such works, it is expedient provision should be made for summary and final settlement of such disputes.

Clause 1. Short Title.

Clause 2. Interpretation.

Clause 3. Disputes between Government and Contractors to be referred to decision of Judge of the Supreme Court.

Clause 4. Where dispute between Chief Engineer and Contractor, to be referred to the Minister for his decision; and in case decision of Minister adverse to Contractor, then latter entitled to avail himself of provisions for arbitration thereafter contained. Provision for one calendar month's previous notice to Minister.

Clause 5. Statement of matter in dispute to be settled and signed. Copy of statement to be served by party proceeding to a reference, and filed in Supreme Court.

Clause 6. Either party refusing or neglecting to state case, Judge may proceed *ex parte*.

Clause 7. Procedure on filing of statement.

Clause 8. Judge to fix day and place of proceeding with reference.

Clause 9. Judge may direct how reference to be carried on.

Clause 10. Judge may hear evidence on oath or affirmation, and may require production of papers, plans, contracts, &c.

Clause 11. Judge may direct inspection of works by skilled persons, and report or certificate of such persons may be taken and received by Judge as if evidence had been taken *vivâ voce*.

Clause 12. May obtain opinions of engineers, accountants, and other skilled persons.

Clause 13. Parties not attending reference, Judge may proceed *ex parte*.

Clause 14. Parties may appear by counsel or solicitor. Judge may adjourn proceedings.

Clause 15. Notices, how to be served on the Minister and Contractor respectively.

Clause 16. Judge to give a certificate of his decision, and what may be stated in certificate. Payment of money by one party to other, whether as damages or costs. What shall be done or be refrained from being done by either of them, in respect of any matter relating to contract or arising thereout, or the proceedings on the reference.

Clause 17. Copy of certificate to be filed in Supreme Court, at place where proceedings conducted.

Clause 18. Effect of certificate to be similar to judgment or decree of Supreme Court in its ordinary jurisdiction. Crown may proceed thereon as upon a debt due to Crown. Contractor to be entitled to have same satisfied, as provided by "Crown Redress Act, 1871."

Clause 19. Costs to be paid as Judge shall, in his discretion, think fit to order, and shall be included in and form part of certificate.

Clause 20. Penalty for non-attendance as witness, or for neglect to obey order of Judge.

Clause 21. Procedure of Supreme Court to be applicable.

Clause 22. No appeal from Judge's decision, either to the Supreme Court, or Court of Appeal, or other tribunal; but every decision shall be final, &c., on parties.

APPENDIX B.

DEAR PRENDERGAST,—

Wellington, 13th August, 1872.

I send you two sections in draft, which I venture to suggest in lieu of sections 5, 6, and 7 of the proposed Contractors Arbitration Bill. I also suggest the following alteration:—

In section 4, lines 16 and 17, to omit the words "a settlement of such difference," and insert "arbitration." To omit the proviso at end of section 18. It appears to me that, as drawn, a con-

tractor would have no remedy unless money had actually been voted; whilst, by omitting the proviso, he would be in the same position as an ordinary judgment creditor, entitled to ask for appropriation if none already existed.

The Hon. J. Prendergast.

Yours truly,

WM. THOS. LOCKE TRAVERS.

APPENDIX C.

IF any dispute shall arise between either of the parties to any contract, as hereinbefore mentioned, upon any matter or thing which, according to the terms of such contract, ought to be or might be referred to arbitration as aforesaid, then either party desiring to proceed to a reference under this Act shall prepare a statement in writing, setting forth in a concise manner the nature and extent of the claim made by such party, and the propositions of fact which such party desires to submit to the arbitrator in support of such claim, and shall deliver a copy of such statement of claim and propositions of fact to the other party, and the other party may, within seven days after receipt of such statement, deliver to the party from whom the same shall have been received, such propositions of fact as such other party desires to submit to the arbitrator, in opposition to such claim.

At any time after the expiration of ten days from the service in manner aforesaid of any statement of claim and propositions of fact in support thereof, the party desiring the reference shall cause a copy of such claim and of any propositions of fact in support thereof, or which shall have been delivered in opposition thereto, to be filed in the office of the Registrar of the Supreme Court, in the chief town of the province or county where, under the provisions of this Act, such reference may lawfully be had, and shall, as soon as conveniently may be after the filing thereof, apply to the Judge of the said Court to hear and determine the matter of such claim, and to fix a day, time, and place for proceeding in the matters so to be referred to him as aforesaid. Notice of the filing of such statement shall in all cases be given to the other of the said parties.

APPENDIX D.

5. If any dispute shall arise between either of the parties to any contract, as hereinbefore mentioned, upon any matter or thing which, according to the terms of such contract, ought to be or might be referred to arbitration as aforesaid, then either party desiring to proceed to arbitration under this Act shall prepare a statement in writing setting forth in a concise manner the nature and extent of the claim made by such party, and the propositions of fact and law which such party desires to submit to a Judge of the Supreme Court in support of such claim, and shall deliver a copy of such statement of claim and propositions to the other party; and the other party may, within fourteen days after receipt of such statement, deliver to the party from whom the same shall have been received, such propositions of fact and law as such other party desires to submit to such Judge in opposition to such claim.

At any time within one month after the expiration of the said fourteen days the party desiring the reference shall cause a copy of such claim, and of any proposition of fact or law in support thereof, or which shall have been delivered in opposition thereto, to be filed in the office of the Registrar of the Supreme Court in the judicial district where, according to this Act, such reference may be had.

Provided that, if in such district there be more than one such office, then such copies shall be filed at the office of the Supreme Court in such district, at the town or place where the Judge assigned to such district usually resides.

6. The party desiring a reference shall give a reasonable notice to the other party of such filing, and of the time of the application hereinafter mentioned; and as soon as conveniently may be after the filing of such copies as aforesaid, such first-mentioned party shall apply to the Judge assigned to the district to hear and determine the matter of such claim, and to fix a day, time, and place for proceeding in the matters so to be referred to him as aforesaid.

Notice of the time and place so fixed shall in all cases be given to the other of the said parties, unless such other party shall appear at the application for fixing the same.

APPENDIX E.

[*New Zealand Times*, 4th April, 1878.]

MESSRS. BROGDEN'S CLAIMS.

To the Editor of the *New Zealand Times*.

SIR,—

Mr. Henderson was in error in stating that I did not know of the existence of the Government Contractors Act until the year 1877. I knew of its existence, but had never read it until it became necessary for me to do so in connection with the claims of the Messrs. Brogden against the Government. It then appeared to me that the Government, and the Legislature by which the Act had been passed, had been guilty of a gross breach of faith towards the Messrs. Brogden, by introducing into the Act a set of provisions which materially modified the rights they had under their contracts. Messrs. Brogden were informed by the Government in office, when their contracts were entered into, that an Act would be requisite to give to the Judges of the Supreme Court authority to act as arbitrators under the contracts, and to provide for the course of procedure; but they assumed that the Government would act in good faith, and therefore did not watch the Act as it passed through the Assembly. The consequence of their reliance on the good faith of the Government has been, that their rights under their contracts have been seriously interfered with.

Wellington, April 3.

I have, &c.,

WM. THOS. LOCKE TRAVERS.

No. 5.

The Hon. the PREMIER to His Excellency the GOVERNOR.

Memorandum for His Excellency.

SIR GEORGE GREY presents his respectful compliments to the Marquis of Normanby, and acknowledges the receipt of two despatches from the Secretary of State's Department, London, dated 7th February and 18th March, 1878.

Sir George Grey transmits herewith a memorandum by the Attorney-General of New Zealand, which covers a copy of correspondence between the Attorney-General and the Solicitor-General, respecting the questions raised by the despatches; and Sir George Grey requests that the Marquis of Normanby will be good enough to forward those documents to the Secretary of State.

G. GREY.

Wellington, 14th June, 1878.

By Authority: GEORGE DIDSBUY, Government Printer, Wellington.—1878.

Price 9d.]