

We have to observe that the assignment mentioned in the pleading in question was evidently made in ignorance of the fact that by the law of New Zealand a cause in action is assignable at law, and that any action founded upon it must be brought in the names of the assignee, and it will be observed that in this case the assignment was made before the commencement of the action, and therefore the action was commenced at a time when the assignors had no longer any right to sue.

Under these circumstances and with notice that the contracts have been re-assigned, the Government are, as we submit, imposing unnecessary difficulties in the way of the petitioners, who desire to have the question raised by the material pleadings determined on their merits. In conversation on Wednesday last between our Mr. Travers, senior, and the Attorney-General, the latter though of course, not speaking officially, intimated that the Government would doubtless be advised to accede to the petitioners' request, as to insist on retaining the plea would be a quibble, and we candidly think that the Government in a matter of this kind should desire to force upon petitioners the risk of demurrer, or the alternative of discontinuing the present proceeding, which can only entail upon them unnecessary cost.

We trust you will see your way to reconsider the decision mentioned in your note of yesterday, and inform us at all events whether you do so or not at your earliest convenience, as the delay which has already occurred is of serious moment to the petitioners.

Should you adhere to your decision, we should feel obliged by your informing us whether in the event of discontinuance, the Governor will be advised to endorse a new petition.

We have, &c.,
TRAVERS & SON.

There were subsequent interviews between Mr. Travers and the Solicitor-General, but eventually the Government were advised to adhere to their determination not to withdraw the plea. Consequently the proceedings were discontinued, and the Messrs. Brogden had to pay the expenses that the Government had incurred in defending the action. On the 4th October, 1878, Messrs. Brogden applied that a new petition of right should be issued, and, on the 17th of that month, the following reply was sent to Mr. Travers, by Mr. Knowles, the Under-Secretary for Public Works:—

SIR,—
Public Works Department, Wellington, 17th October, 1878.
I am directed by the Hon. the Minister for Public Works to acknowledge the receipt of your letter of the 5th October, addressed to the Hon. the Attorney-General, in which you forward a petition of right in connection with the Waitara and New Plymouth Contract entered into by Messrs. Brogden & Sons with the Queen, and requesting that the Governor's assent may be given thereto.

In reply, I am directed to remind you that you have discontinued the proceedings taken on Messrs. Brogden's behalf under a former consent, and to inform you that Messrs. Brogden & Sons, through Mr. Barton, their solicitor, have on the 1st October, applied for leave to file a petition of right in respect of their Invercargill Contract.

Under these circumstances, the Minister is of opinion that, as the questions involved in the Waitara and New Plymouth Contract will be raised in the suit on the Invercargill Contract, there is therefore no necessity to have two actions pending, and he is, consequently, unable to advise the Government to grant the consent asked for in your letter.

I have, &c.,
JOHN KNOWLES,
Under-Secretary.

W. T. L. Travers, Esq., Wellington.

It will be found on reference to a letter addressed by Messrs. Brogden to Mr. Malcolm, on the 15th January, 1878, and printed in Parliamentary Paper E-3, 1878, p. 1, that it had been determined that one of the Messrs. Brogden should come out to the colony with the view of consulting the Government on the subject of the claims, and all proceedings were accordingly stayed until the arrival of Mr. Alexander Brogden in the colony in the latter part of 1880. Circumstances prevented Mr. Alexander Brogden from coming out earlier. On arriving in the colony, Mr. Alexander Brogden immediately put himself in communication with the Public Works Office, the Minister being absent from Wellington at the time. Owing to this absence of the Minister, Mr. Brogden had no communication with him until February, 1881. Negotiations went on between February and June, 1881, but eventually it was found that they were likely to result in nothing, Mr. Brogden then resolved to proceed with the Invercargill claim in respect of which Mr. Barton had formerly acted as Messrs. Brogden's solicitor. The petition in that case was filed on 8th June, and the Government again pleaded that the jurisdiction of the Court was ousted by the operation of the Government Contractors' Act. The question was argued on demurrer in November, 1881, and the Court of Appeal, before which the case was heard, decided that the jurisdiction of the Supreme Court was ousted by the Act. In December, 1881, Messrs. Brogden filed a statement of their claim in respect of the Waitara and New Plymouth Contract. Again the Government set up the Act, averring that the claim was barred by the 31st clause. The point was argued before Mr. Justice Gillies, in March last, and he held that he had no jurisdiction in consequence of the causes of action having arisen more than six months previously to the filing of the claim. The consequence was that the Messrs. Brogden were left without redress unless they could either induce the legislature to repeal the limitation clause of the Act, or prevail on the Government to waive their right to plead that clause. Before concluding, there was one more matter in connection with Mr. Reid's memorandum to which attention might be called. He (Mr. Cave) referred to the memorandum in Parliamentary papers, page 9, of "E.-3," 1878, and that was the following:—

He remarks that "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."

That nothing was added materially affecting Messrs. Brogden's contracts beyond these clauses, was probably quite true, but have the Government applied the Act equally to themselves as to the Contractors?

What course did the Government adopt in the month of May, 1877?

In that month it was admitted that the sum of £7,910 4s. 11d. was due to the contractors on the Moeraki Contract. That appeared in a letter from the Public Works Office of the 12th May, 1877, which was couched in the following terms:—

GENTLEMEN,—
Public Works Office, Wellington, 12th May, 1877.
Referring to the applications that have been personally made by Mr. Billing for the payment of the sum of £7,910 4s. 11d., being the amount still unpaid on the Moeraki Contract, the Hon. the Minister for Public Works directs me to inform you that, the following items amounting to £3,325 5s., will require to be deducted therefrom, viz.:—

	£	s.	d.
Penalties on Kakanui Bridges Contract	160	0	0
Penalties on Moeraki deviation	256	5	0
Maintenance failed to be performed	160	0	0
Penalties on Moeraki Contract	2,749	0	0
	£3,325	5	0