

determination of such three arbitrators, or of any two of them, shall be final and conclusive. If, before the matter, dispute, or difference shall be determined, any arbitrator shall die or become incapable, or refuse or neglect to act, the party by whom such arbitrator was appointed shall appoint some other person in his stead; and if he shall for thirty days after receiving a request from the other party to appoint an arbitrator fail so to do or to give notice of his appointment to the other party, then the party who shall have made such request may appoint an arbitrator in the stead of the arbitrator who shall have so died, become incapable, or refused or neglected to act. If the arbitrator who shall have so died, become incapable, or refused or neglected to act, shall be the arbitrator who was not appointed by either of the parties, then the provisions hereinbefore contained as to the appointment of a third arbitrator shall be applicable, and under them a successor shall be appointed in the stead of the arbitrator so dying, becoming incapable, or refusing or neglecting to act. Every arbitrator to be so substituted as aforesaid shall have the same authority as the original arbitrator. If a single arbitrator shall have been appointed and he shall die, become incapable, or refuse or neglect to act, and the parties shall not be able to unite in the appointment of another single arbitrator, then, in his stead, three arbitrators shall be appointed in the manner hereinbefore mentioned. Notwithstanding anything hereinbefore contained, the Engineer in England, in case any matter of disagreement, dispute, or difference shall arise between him and the Contractors, shall have the same powers as are hereinbefore conferred upon the Governor as to the appointment of an arbitrator, so far as regards any question which shall arise under the said 16th clause of these presents; and the said Engineer and the Contractors shall have power, from time to time, to determine the manner in which the third arbitrator shall be appointed, in case the arbitrators appointed by the Engineer and the Contractors respectively shall not agree upon the choice of a third arbitrator. This submission to arbitration may be made a rule of the Supreme Court of New Zealand, or of any of the Superior Courts of Westminster, as the case may be, or require. The costs of and attending the arbitration and award shall be in the discretion of the arbitrators.

49. The Governor enters into this contract only on behalf of the Colony of New Zealand, and by executing these presents shall bind only the said colony, and not himself personally, and shall not be deemed to have incurred any personal responsibility or liability whatsoever, and no action or suit at law or in equity or other proceeding whatsoever shall be brought or taken against the Governor in respect of these presents, or the contract hereby created or purported to be created elsewhere than in the said colony, nor in the said colony unless by any Act or law of the said colony it is now or shall hereafter be provided that actions, suits, or proceedings, in respect of contracts entered into by the Governor on behalf of the colony, may be brought or taken against the Governor as a nominal defendant.

In witness whereof the Governor hath hereunto set his hand and seal of office, and the Contractors have hereunto respectively set their hands and seals, the day and year first above written.

No. 2.

ARTICLES OF AGREEMENT entered into this 22nd day of June, 1871, between Sir George Ferguson Bowen, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, and Governor and Commander-in-Chief of Her Majesty's Colony of New Zealand and its Dependencies, and Vice-Admiral of the same, of the one part; and Alexander Brogden, Esquire, M.P., Henry Brogden, and James Brogden, all of No. 4, Queen Square, in the City of Westminster, Railway Contractors, of the other part.

WHEREAS by "The Immigration and Public Works Act, 1870" (and subject to the provisions of that Act), the Governor is empowered (section 12) to construct or cause to be constructed any lines of railway which shall be prescribed by the General Assembly as railways to be constructed under that Act, and to acquire the necessary engines, plant, and machinery for working and using the same or any of them, and (section 13) by Proclamation published in the *New Zealand Gazette*, to declare and define the limits and description and line of such railways, and the lands proposed to be taken for the purpose of the same (subject to the provisions of any Act defining such limits and descriptions), and (section 15) to contract to pay for such works in money, or to agree on such terms as he shall think fit to let or rent such railway, or guarantee to the Contractor or his assigns a certain amount of profits on the working thereof, or, on such terms as he shall think fit, to sell or purchase such railway when constructed, and in such case, either with or without conditions for the re-purchase thereof, or any such agreement may include any or all of such arrangements, or any other arrangement which in the opinion of the Governor are calculated to carry out the object of the Act, and not conflict with the same: And whereas by "The Railways Act, 1870," the Governor is empowered (section 3), under the provisions of the said firstly-recited Act, to contract or enter into arrangements with any person for the construction of all or any of the railways mentioned in the First Schedule to the now reciting Act, by guaranteeing to such person, during a period not exceeding thirty-five years, a minimum rate of interest not exceeding £5 10s. per cent. per annum of the cost of construction, at a rate per mile not exceeding that in the said First Schedule set opposite to the name of each railway, and (section 4) subject to conditions incorporated in this contract: And whereas by "The Immigration and Public Works Loan Act, 1870," the Governor is empowered to borrow and raise certain money as therein mentioned, not exceeding £4,000,000, for all or any of the purposes mentioned in the Schedule thereto, which Schedule specifies the sum of £2,000,000 for such railways as shall from time to time be determined by the General Assembly, including the expenses of raising the part of the loan, and specifies the sum of £1,000,000 for "immigration, including expenses as aforesaid." And whereas, with a view to the exercise by the Governor of the powers conferred on him by the said Acts, he has entered into arrangements with the Contractors for their making railways in New Zealand, upon the terms and in the manner hereinafter set forth: Now these presents witness that the Governor (so far as he lawfully can or may, under or by virtue of the said recited Acts or otherwise, but not further or otherwise), for