

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 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 cost of and attending the arbitration and award shall be in the discretion of the arbitrators.

47. 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.

Mr. J. MACKRELL to the Hon. J. VOGEL.

DEAR SIR,—

21, Cannon Street, London, E.C., 28th June, 1871.

I think it may be convenient to you if I give a brief epitome of the arrangements you have entered into with Messrs. Brogden and Sons for the construction of railways in New Zealand, and point out in what respect these differ from the arrangements entered into by the Government of India, and show how the former arrangements are more favourable in my opinion than the latter.

The contracts entered into with Messrs. Brogden are twofold, and for convenience have been called arrangement No. 1 and arrangement No. 2. Both arrangements have many stipulations in common, but differ as to the amounts to be expended in railways, the amount of the guarantee of dividend, the application of profits, and the terms of purchase. I will first point out those stipulations which are common to both, and which may be said to be the general terms which govern both contracts, and afterwards describe the special stipulations of each.

The Government are, at their absolute discretion, to select the lines of railway, and may regard the requirements of the colony irrespective of the remunerative character of the railways. When a railway has been decided upon, the Government are to have the necessary surveys, plans, and sections prepared, and the necessary Proclamations made enabling them to take the land, and are to determine the order and course and the terms of constructing the railway, and the specification of works and materials. Each railway is to have a single-wire telegraph with the necessary apparatus.

When such plans, sections, specifications, and working plans are prepared as will enable the probable cost of the railway to be ascertained, the Government are to divide it into sections of about ten miles each. The probable prime cost to the Contractors of making each section and the time within which the same is to be completed are then to be arranged between the Government and the Contractors, or settled by arbitration, and to this prime cost 5 per cent. thereon is to be added for the agreed profit for the Contractors. A schedule of prices to regulate the payment or allowance in respect of any alteration in the original plans, &c., is in a similar way to be arranged or settled. The Government are, within proper time, to provide the requisite land. The Government may order the original plans, &c., to be altered, or the works diminished or added to, or others substituted, and the settled price of the railway is in such case to be varied according to the schedule of prices. The Government are alone to decide what are variations from the original plans, &c., but the question of the value thereof may be referred in case of difference. The Contractors may not deviate from the original plans, &c., without the special authority of the Government, and no alteration involving an increased cost exceeding £500 may be made without the consent of the Governor in Council. If the works be delayed by reason of any variations from the original plans, &c., the time for completion is to be proportionately extended.

The Government Engineer, at the commencement of the railway, and at the beginning of each calendar month, is to estimate the probable expenditure in New Zealand during the then next three months, and the Contractors are from time to time to deposit with the Colonial Treasurer enough