

vested in them by the Act. We shall write you further on the subject *via* Brindisi. We note that a proposal has been made to the Solicitor-General, but no copy of it is enclosed, so that we are quite unable to judge of its contents.

We have, &c.,

Messrs. John Brogden and Sons, Wellington, New Zealand.

JOHN BROGDEN AND SONS.

EXTRACT from Letter to Messrs. J. BROGDEN and SONS, London, from Mr. J. BILLING, dated Wellington, 9th April, 1877.

Proceeding against Government.— . . . Upon Mr. Henderson's return from Australia, in December last, he saw Travers respecting the course of procedure to be observed in sending in our claims, and Mr. Travers naturally took the arbitration clause of general conditions of our several contracts, being quite unaware at the time of the existence of the Government Contractor's Arbitration Act of 1872 until his attention was called to it by the Solicitor-General in February last.

The Government.—The Premier has apparently urged his colleagues to force us to go under the Act of 1872. Their letters show no concession—no compromise—but a rigid interpretation of every clause in that Act. On our part, we cannot accept the Act, for the reasons shown in our letter to Government of the 8th ultimo. We are doing all we can to get redress or fairplay, but there is a desire to fence on their part: to keep us here dilly-dallying until Parliament meets. The stakes are too heavy to be trifled with, and I can assure you we are both perplexed as to what our course of action should be. Our letters to them have been couched in such terms as we thought would meet with your approval, and our recent course of action is in many respects similar to that taken by you in respect to Emigration Contract. . . .

DEAR SIRS,—

21, Queen Ann's Gate, Westminster, S.W., 8th June, 1877.

From our previous letters, and those of Messrs. Tahourdin and Hargreaves, you will now thoroughly understand that the Government Contractors Arbitration Act does not bar the recovery of our claims under the general law and by the ordinary methods of procedure. It is merely an Act for regulating the method of proceeding, if arbitration takes place, and its limitations merely apply to proceedings under that Act, should any be taken. As you have now refused arbitration under the Act you will have to proceed under the ordinary laws, and will ignore the Act. This we think is made quite clear in the previous correspondence. At the same time we think you ought to lose no opportunity of enforcing upon the attention of the Government the injustice of withholding payments, and especially of retentions which are not made because certificates are withheld by their Engineers acting under their instructions. If an amicable settlement can be obtained, we are sure that we need not impress upon you its desirability, so as to avoid the great delays and expense of litigation. If the latter cannot be avoided, of course it will be conducted with a view to the proceedings being prosecuted here, should the decision be against us in the colony, and from this point of view alone you will see the necessity of keeping us fully informed of your proceedings in the colony.

We have, &c.,

Messrs. John Brogden and Sons,

JOHN BROGDEN AND SONS.

Wellington, New Zealand.

Hon. Mr. Johnston: You have spoken from time to time of the dates of completion of the contracts. Did you receive certificates from the Engineer when the works were finally completed?

Mr. Cave: No; we have never received final certificates. We applied to the Engineers on the works for those certificates, but they were refused by the Engineers acting under orders from the Government. The letter of the 9th February, 1877, by Mr. Knowles, Under-Secretary for Public Works, refers to that:—

GENTLEMEN,—

Public Works Office, Wellington, 9th February, 1877.

It having come to the knowledge of the Government that several of their Railway Engineers have recently been applied to by you for certificates in terms of clause 25 of the general conditions of your railway contracts, I am directed by the Hon. the Minister for Public Works to inform you that the Engineer-in-Chief is the Engineer under that clause, and that application should be made to him.

I have, &c.,

JOHN KNOWLES,

Under-Secretary for Public Works.

Messrs. Brogden and Sons, Wellington.

As to who was the proper Engineer to certify, Messrs. Brogden always contended that it was the Engineer engaged on the works. Only one Engineer is referred to throughout the whole of the contracts, and that is the Engineer in charge of the works.

Hon. Mr. Johnston: That would mean the Engineer-in-Chief.

Mr. Cave: No; Messrs. Brogden always assumed that the Engineer-in-Chief was not the proper person, and that his certificate would be valueless for their purposes.

Hon. Mr. Johnston: Apparently the contracts were completed in 1875 and 1876. A difference having arisen in this way in 1876, you desired to proceed to a reference, and to obtain some assurance in doing so from the Government that they would not plead the limitation-of-time clause.

Mr. Cave: Yes; but we could never get that assurance.

Hon. Mr. Johnston: Having reasonable ground to believe that the Government would not plead it, apparently in 1877 you were going to proceed to this reference. Then I understand you to say that Messrs. Brogden changed their minds, because, on farther consideration, they recognized that to proceed would acknowledge the validity of that Act, which they did not wish to do.

Mr. Cave: If they had once accepted the Act they would have been bound by it, at all events so far as concerned that contract; but as six months had expired, and as the Government were in a position to plead the limitation clause, Messrs. Brogden did not feel themselves safe in going on unless they obtained an explicit assurance that the clause would not be pleaded. Therefore they were forced to seek relief by another remedy.

Hon. Mr. Johnston: But it always comes back to this: that the refusal to proceed to the reference was entirely a voluntary act on the part of Messrs. Brogden.

Mr. Cave: Not entirely, because I submit, from the view they took of the matter, they knew very well they were barred by the limitation clause, unless they could obtain a waiver from the Government. That was their object in trying to get the waiver, because they knew the effect of clause 31. They knew they could be stopped under the Act.

Hon. Mr. Johnston: But it was quite a different thing to seek to obtain a general waiver of the Act, and to acquire the knowledge that this clause would not be pleaded.

Mr. Cave: I submit it is scarcely that. Mr. Reid's letter does not amount to that. Mr. Travers, in his letter of the 31st January, 1877, to Mr. Reid, says, "Assuming that the Government will treat the existing notices as a sufficient compliance with the Act, Messrs. Brogden will at once file in the Court here their claim in respect of the Napier and Pakipaki line, with the propositions of law and fact in support of it. The Government will then file any counter-propositions." But there is nothing there stating that the Government will not set up the Act, and there is nothing in Mr. Reid's letter which binds the Government not to set up the Act. In fact, it is shown by the memorandum of the 27th January, 1877, that the Government did not intend to waive it, but intended to keep it as a sort