

required of every plaintiff and defendant in an ordinary action; but the statute, on the contrary reverses the ordinary process, and requires the plaintiffs to divine beforehand and anticipate what objections of fact and law the defendant intends to make, and so forces us to argue in the dark, and raise against ourselves any conceivable objection and then overturn it in our written statement.

We respectfully protest against such a task being imposed upon us, and against the unfairness of the statute in compelling us thus to point out to our opponents every possible objection capable of being raised, under the penalty that, if we fail to do so, the Government may object to our answering such objection when raised by them. Under these circumstances we cannot help feeling that the statement in your letter of 26th January, informing us of the intention of the Government to take advantage of every irregularity in our notices, and of every right and privilege vested in the Government or in the Minister for Public Works by the Government Contractors Arbitration Act of 1872, is almost tantamount to a threat that the Government will deprive us of our just rights upon technicalities outside the justice of the case, and will take advantage of the impossibility of the tasks imposed upon us by the statute to shield themselves from the fair consideration of our claims. Such a threat, in our humble opinion, amounts to a threat of repudiation, unfair to us and not creditable to the Colony of New Zealand; and we shall use every legitimate endeavour to prevent its being put into execution against us.

It is in the highest sense unjust that the Legislature should declare it to be our duty (our duty by statute) to settle within six months after they arose all the questions that may have arisen during the course of complicated and difficult contract works, in which numerous "disputed questions" were daily arising between the contractors and the Engineers. Had we known of the existence of these clauses of the statute, and had we attempted to perform such a duty, our engineers and overseers would have had no time to attend to their legitimate duties, and thus the impossibility of the task would have been earlier exposed. Our contracts as they stood before the passing of the statute imposed no such duties, expenses, and difficulties, and we respectfully protest against their creation by statute.

To sum up, we submit that the Legislature, as one of the contracting parties, had no more right than a private individual would have had to alter the terms of our contract with them to our disadvantage, and without our knowledge or consent.

We submit that the Legislature had no right to bar our remedy against them in six months, when by the ordinary law of the land we were entitled to six years.

We submit that the Government had no right to pass as a public statute a private Bill aimed at our interests.

We submit that the Legislature had no right to excise from our contract its arbitration clause, and substitute a far more onerous and vexatious clause as against us.

We submit that the Legislature had no right to put the Minister for Public Works, representing by his office one of the contracting "parties," in the position of a judge to decide as a preliminary step on the validity of our claims, and also to convert the arbitration provided in our arbitration clause into a kind of Star Chamber tribunal, composed of Judges appointed by the Crown, entitled to act upon any evidence (hearsay or otherwise) they may please to accept, and from whom we are to have no appeal upon error of law, error of fact, or error of any kind whatever.

Finally, we submit that the Legislature has no right to confine us to trial without jury, and then to deny us the right of appeal both here and in England.

Having thus informed the Government of our view of the statute, and of the reasons why we think it ought not to be allowed to affect our interests, we have the honor to request that the Government shall entirely waive all benefit from this statute, and all technical and other objections arising to them under or in pursuance of its provisions, and withdraw their letter of 26th January, 1877. We are advised that "The Government Contractors Arbitration Act, 1872," not being a general statute, but being an Act affecting only the parties to these contracts, its provisions can be lawfully waived by the parties interested; and, even if we are wrongly advised in this respect, we submit that the Government can doubtless secure its repeal by showing the Legislature the true character and scope of the Bill.

Also we have the honor to request that, under the circumstances, the Government shall expressly waive performance of any conditions precedent under our contract which might otherwise be held to go to our right of action; such, for example, as the absence of the written orders and other authorities for works under Clause 4 of General Conditions; the necessity for any written notices where required to be given by us to the Engineer or otherwise; the absence of certificates under clauses 25, 26, and 27 of the General Conditions; and, generally, any other conditions of a similar kind, the performance of which we might otherwise be required to prove as a condition precedent to the consideration of our claims; and, in fine, that our claims shall be disputed upon their merits and their merits alone.

We make this request for reasons appearing above, and because, amongst other things, the Government has already refused to permit the Engineers who were appointed for that purpose by the contract to give to us the necessary certificates.

After what has taken place we are no longer desirous of having our rights investigated by a Judge without a jury; and we ask that, in order to prevent any technical objection hereafter, the Government shall expressly agree not to raise any objection to a trial by jury, to take place according to the ordinary law of the land. If these requests be refused, then we will proceed, under protest, to take all necessary steps to protect our rights, whether under or in opposition to the statute of 1872, or in both ways, as we may be advised.

The Colony of New Zealand and its Government must not complain if Messrs. Brogden and Sons avail themselves of every means to prevent such grave injuries being inflicted upon them as this Act attempts to do in so unwarrantable a manner, and they reserve to themselves the right to make what use of this letter they may deem desirable both here and elsewhere, if it should be necessary to protect their rights, and to show the manner in which they have been wronged.