1890.
NEW ZEALAND.

VOGEL v. THE QUEEN.

(COPY OF PETITION OF RIGHT FILED IN THE SUPREME COURT OF NEW ZEALAND BY THE HON. SIR JULIUS VOGEL, K.C.M.G.)

Laid on the Table by the Hon. Mr. Mitchelson, with the Leave of the House.

In the Supreme Court of New Zealand, Wellington District.

To the Queen's Most Excellent Majesty.—Your faithful subject, Sir Julius Vogel, K.C.M.G., at present residing at St. Margaret's Mansions, in the County of Middlesex, in England, humbly showeth:—

1. That your petitioner was, on the 19th day of October, 1876, appointed Agent-General for the Colony of New Zealand, such appointment to take effect as from the 9th day of September, 1876, and on the 17th day of April, 1879, was appointed an Agent under "The New Zealand Consolidated Loan Act, 1877," so long as he should continue to be Agent-General.

2. That in or about the month of February, 1879, whilst holding the said office of Agent-General, your petitioner joined the board of directors of the New Zealand Agricultural Company (Limited), and your petitioner, immediately on becoming a director as aforesaid, so informed the Government of the said Colony of New Zealand, and requested their sanction.

3. That the Government in office at the time of your petitioner becoming a director as aforesaid, of which Sir George Grey was Premier, refused to sanction your petitioner's connection with the said New Zealand Agricultural Company (Limited), and several communications passed between your petitioner and the Government of the said Colony of New Zealand on the subject, one of which was a cablegram in the following terms: "Government considered letter June seventeen. Still holds former opinion. Now requests you to resign office director, Agricultural Company, at once. Reply yes or no by telegraph. Government cannot allow Agent-General to take any part in politics at Home or in any private business."

4. That on the 3rd day of November, 1879, your petitioner received from Sir John Hall, the then Premier of the said Colony of New Zealand, a cablegram, of which the following is a copy: "Vogel, London.—Wire names late Government knew assisting organize company, because statement respecting this knowledge reasonable time be allowed you arrange retire. Present Government agree inexpedient you remain director or engage Home politics.—Hall." To which your petitioner replied as follows: "Premier, New Zealand.—Stout certainly, and best my belief Macandrew and Ballance. Cannot name time resign. Shareholders would think it unfair entertain such intention now. Am willing to take loan agency payment by percentage, and act Agent-General without salary long as suits Government. Reply.—Vogel, London, 6." And on the 11th day of November received a cablegram from Sir John Hall, of which the following is a copy: "To Vogel, London.—Agency-General incompatible other business. Government considering expediency relieving therefrom, appointing you Agent Inscribed Stock at centage. Report fully by post arrangements you would propose; sketch scheme, estimate annual conversion. We should associate two Agents with you. Anxiously waiting news loan.—Hall."

5. That your petitioner, on the 31st day of January, 1880, received a new appointment as Agent under the said "Consolidated Loan Act, 1877," from which new appointment the limitation "so long as he should continue to be Agent-General," was expressly omitted.

6. That your petitioner received a letter from Sir John Hall, the then Premier of the said colony, bearing date the 26th day of February, 1880, which said letter indicated the intention of the Government in making the said appointment of the 31st day of January, 1880, and setting forth the nature and benefits of the said appointment.

7. That, under the said appointment of the 17th day of April, 1879, and again under the said appointment of the 31st day of January, 1880, and the letter of the Premier explaining the same, your petitioner became entitled to receive from Her Majesty a commission at a reasonable rate upon the amount of stock inscribed, and also a percentage at a reasonable rate on the amount of any loan or loans that might thereafter be raised.

8. That in the year 1879 "The New Zealand Loan Act, 1879," was passed, and on the 15th

day of August, 1879, your petitioner with two other persons was appointed Agent for raising the loan under that Act, and as such Agent he, with the other Agents, made and carried out all arrangements for the raising of the Five-million Loan, the Bank of England being authorised to receive tenders for the said Five-million Loan more than one month after the receipt by your petitioner of the said cablegram of the 10th day of November, 1879.

9. That, at the time when the said cablegram of the 10th day of November, 1879, was despatched by the Government of the said Colony of New Zealand, the commissions and percentages upon the raising and conversion of the said Five-million Loan were, as far as could possibly be foretold, the only source from which, for many years to come, any profit could be derived from the appointment of your petitioner as Agent; and your petitioner understood and alleges that your Majesty's Government of the colony led and intended to lead him to understand that he should be paid by and receive from your Majesty such commissions and percentages; and your petitioner acted upon such belief and understanding.

10. That one of the Agents associated with your petitioner in floating the said loan was Sir Penrose Goodchild Julyan, who stipulated, immediately before the said loan was floated, that before he lent his aid to the floating of the said loan the payment for his services should be fixed; and the amount of the said payment was accordingly fixed, but without any express sanction of your Majesty's said Government, and was subsequently paid by your Majesty's said Government as a matter of course.

11. That your petitioner, relying on the understanding aforesaid, did not consider it necessary for him to join with the said Sir Penrose Goodchild Julyan in specially stipulating for payment of his services previously to the issue of the Five-million Loan.

12. That your petitioner resigned the office of Agent-General for the said Colony of New Zealand on the 8th day of October, 1880, and in the month of November, 1880, Sir Francis Dillon Bell was appointed to be Agent-General in the place of your petitioner from the date when he should take over the duties of the said Agent-Generalship, and the said Sir Francis Dillon Bell did take over the said duties on the 18th day of February, 1881.

13. That during the whole time after the appointment of the 17th day of April, 1879, and again during the whole time after the receipt of the said cablegram of the 10th day of November, 1879, and again during the whole time after the receipt of the new appointment as Agent under the said Act of 1877, and again during the whole time after the said Sir Francis Dillon Bell had assumed the office of Agent-General until the month of July, 1881, your petitioner continued to act as Agent for the conversion of stock under the said Act of 1877, and very large amounts of stock were converted, including the whole of the Five-million Loan.

14. That on the 17th day of June, 1881, the commission of all the Agents under the said Act of 1877 was revoked; and on the 23rd day of September, 1881, "The New Zealand Consolidated Stock Act 1877 Amendment Act, 1881," was passed, whereby provision was made for the appointment of two Agents under the said "New Zealand Consolidated Loan Act 1877," in the place of three as theretofore.

15. That a new commission to two Agents under the said Act was issued on the 6th day of November, 1881, giving the new Agents the same powers as the Agents had theretofore had; and your Majesty's Government of the colony did not include your petitioner in such new commission.

16. That the said revocation of your petitioners appointment as one of the Agents under the said Act of 1877 was a direct breach of the contract agreement and understanding between your Majesty's said Government and your petitioner, pursuant to and in part performance of which your petitioner had resigned the office of Agent-General of the colony.

17. That the said new appointment of Agents, excluding your petitioner, was a further breach of the said contract, agreement, and understanding.

18. That your Majesty's said Government of the colony has refused to pay to your petitioner any commission or percentage upon the amount of loans floated and converted by him as Agent before or after the 10th day of November, 1879, alleging as a reason that your petitioner, while holding the office of Agent-General, was not entitled to any remuneration for such services.

19. That, as to the period between the 10th day of November, 1879, and the 18th day of February, 1881, the petitioner alleges that he held the said office of Agent-General for the convenience of your Majesty's said Government; and that your Majesty's said Government contracted and agreed with your petitioner that he should receive usual and reasonable percentages and commissions for his services rendered in the floating and conversions of loans, notwithstanding his nominal tenure of the office of Agent-General.

20. That, as to the period between the 18th day of February, 1881, and the 17th day of June, 1881, your petitioner did not then hold the office of Agent-General, and during that period he held the said appointment under the Act of 1877, and a large amount of loan, to wit £1,600,000, was converted and inscribed during that period by your petitioner under such appointment; yet your Majesty's Government has always refused and still refuses to pay your petitioner for such services.

21. Your petitioner claims to be entitled to receive from and claims from your Majesty,—

(1.) A percentage at the rate of $\frac{1}{8}$ per cent. upon all stock converted or inscribed between the 17th day of April, 1879, and the 17th day of June, 1881, or between the 10th day of November, 1879, and the 17th day of June, 1881; or,

(2.) In the alternative, and as part of or in substitution for, and not in addition to, the first claim, a commission at the rate of $\frac{1}{8}$ per cent. upon the amount of the Five-million Loan; or,

(3.) In the alternative, and not in addition to the first and second claims, a percentage at the rate of $\frac{1}{8}$ per cent. upon all stock converted or inscribed between the 18th day of February, 1881, and the 17th day of June, 1881; and

(4.) In addition to, and not in substitution for, the first, second, and third claims, the sum of £7,000, as damages for breaches by your Majesty of the contract between your Majesty's Government and your petitioner—that is to say, by the revocation of your petitioner's said appointment on the 17th day of June, 1881, and by the exclusion of your petitioner from the appointment of the 5th day of November, 1881.

22. And your petitioner prays that, for the purposes of the first and third claims, proper accounts and inquiries may be taken and had for the purpose of ascertaining the amount due to your petitioner.

Your petitioner therefore most humbly prays that your Majesty will be most graciously pleased to order that right be done in this matter, and that your Majesty's Attorney-General in New Zealand may be required to answer the same; and that your petitioner may henceforth prosecute his complaint in the said Court, and take such other proceedings as may be necessary.

And your petitioner, as in duty bound, shall ever pray.

JULIUS VOGEL,
(By his agent, Harry B. Vogel).

[*Approximate Cost of Paper.*—Preparation, Nil; printing (1,300 copies), £1 15s.]

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1890.