

This entirely alters the case, and I am not sure now that the service will require more than three boats the first five or six months. However, I still think it will be best to leave the Timetables for arrangement in the colonies. Mr. Reep fully concurs in the opinion that there should be an interval of 48 hours between the arrival of the Southampton boat at Colon and the departure of our vessel from Panama.

I have, &c.,

JAS. WORLEY.

The Honorable Crosbie Ward, Esq.,
&c. &c.

No. 58.

Ex parte—The Inter-Colonial Royal Mail Steam Packet Company (Limited), in the matter of the Panama Contract.

Counsel is referred to the accompanying Act of Parliament of New Zealand, 21 and 22 Vic., No. 15, Sec. 15, and to the Act of Parliament 26th Vic., No. 16, Sec. 2, and to the accompanying Copy Despatch from the Governor of New Zealand to the Duke of Newcastle, and the Copy Minute accompanying it; and he is requested to advise the Inter-Colonial Royal Mail Steam Packet Company whether or not, in his opinion, Mr. Crosbie Ward, the Postmaster-General of New Zealand, is authorised to enter into a contract which will bind the New Zealand Government for the carriage of mails between that Colony and Panama with the yearly subsidy of £63,000.

A contract for this purpose is now being prepared by the Post Office authorities here.

The Company are anxious to enter into it, and if the Postmaster-General has authority to bind his Government, his signature will of course be sufficient; but if not, the ratification of the Government of the Colony must be obtained.

Mr Ward contends that the Act of 1862 is merely permissive, and that he, as Postmaster-General, has power to enter into a contract for the carriage of the mails, quite irrespective of that Act.

I think that Mr Crosbie Ward, the Postmaster-General of New Zealand, is not empowered to enter into the contract in question on the behalf of the New Zealand Government. I think section 15 of the New Zealand Post Office Act 1858, 21 and 22 Vict., No. 15, does not confer upon him the power to enter into the contract, although that Section in terms authorizes the Postmaster to enter into contracts for the carriage and conveyance of mails by sea and by land. The General Assembly of New Zealand, under the Colonial Inland Posts Act, 12 and 13 Vic., c. 66, had no power to authorise their Postmaster to enter into contracts for the conveyance of mails beyond the limits of the Colony; nor does the 15 and 16 Victoria, c. 72, under which a representative constitution was granted to the colony, confer any such power. That power belongs exclusively to the British Government by virtue of the 7 and 8 Vict., c. 49, and 11 and 12 Vict., c. 66, and upon principles of public policy I think the power conferred by the New Zealand Act can only be legally exercised with respect to contracts for the conveyance of mails on the continent of the colony, or on the seas between the different islands.

I think that Mr Crosbie Ward has no authority to enter into the contract in question under the provision contained in the 2nd section of the New Zealand Act of 1862. The power conferred by that Act to make arrangements with the British Government for the conveyance of the mails by the particular route is specially delegated by the New Zealand Legislature to the Governor in Council. By the New Zealand Interpretation Act, 1858, section 9, the term "Governor in Council" is defined to mean "the Governor, with the advice and consent of the Executive Council of New Zealand." Besides, the proposed contract exceeds in amount the authorised limit specified in the local statute; I apprehend that a contract exceeding the authorised amount would be *extra vires*, and therefore not enforceable.

R. A. FISHER.

Temple, 11th December, 1863.

No. 59.

43 Chancery Lane,
12th December, 1863.

DEAR SIR,—

I received your letter of this morning; it came when Mr. Worley and I were just going to see Mr Fisher, the Counsellor who gave the opinion adverse to your powers of entering into the Contract.

On explaining to him the nature and intention of the Contract proposed to be entered into, he considers that provided that you are acting under the instructions of the Governor of New Zealand, you *have* power to make it, so that is all right and satisfactory; but, as I told you yesterday, I should have advised the Company to enter into the Contract under any circumstances provided you were willing to sign it.

Mr. Worley and I were looking anxiously for you all day. I sent you the Draft Contract altered in red ink, this morning; and I fear there are alterations made in one or two clauses which were not intended. I refer more particularly to the last two lines of clause 5.

I am anxious, if possible, that you should not be delayed; but I really fear that we shall not get the contract finished on Monday, though (as I told Mr. Worley,) I am quite prepared under