

No. 24.

The Hon. H. A. ATKINSON to the Hon. the COLONIAL SECRETARY, Sydney.

SIR,—

Colonial Secretary's Office, Wellington, 2nd December, 1876.

At the request of my colleague the Postmaster-General, I have the honor to forward you a copy of a communication addressed to Sir Julius Vogel by Messrs. J. Mackrell and Co., of London, reporting upon the matter of the proceedings taken by them for the recovery of the penalties due under the contracts and bonds executed by Messrs. P. S. Forbes and H. H. Hall, and their sureties.

I have to remark that the telegram stated to have been despatched from London on the 13th September last has not reached the Government.

I have, &c.,

H. A. ATKINSON.

The Hon. the Colonial Secretary, Sydney.

Enclosure in No. 24.

Messrs. JOHN MACKRELL and Co. to the Hon. Sir J. VOGEL.

Re Old Postal Contracts.—Samuel and Another v. Hall and Others.

DEAR SIR JULIUS,—

21, Cannon Street, London, 21st September, 1876.

We received your telegram as follows:—"Re Cunningham: You have misunderstood previous action and telegram. I now ask you on behalf both Governments cable your specific advice, shall we accept Cunningham's offer ten thousand pounds, with release to all parties, exclusive settlement already made with De Bussche, or shall we try for more?"

We understood this telegram to mean that you wished us to inquire into the position of Mr. Forbes and his sureties, and, having regard to all the circumstances of the case, to advise what course it seemed to us expedient for the Governments to take, irrespective of the legal bearing of the matter.

Accordingly, we communicated with Messrs. Barings and Messrs. Mathiesons as to the position of Mr. Forbes and Mr. Cunningham, they being the firms from whom, when the contracts were entered into, we obtained information as to the position of the parties.

We also conferred with Mr. Lloyd, who has been acting in this matter as solicitor to the Government of New South Wales; and afterwards, with him, had a conference with Mr. Forster, the Agent-General for that colony; and we had a conference with Sir William Power, as the Agent-General of your colony, upon the information we had obtained, and the general circumstances of the case.

We now beg leave to report upon the whole matter.

Actions were commenced here in October, 1874, against Mr. Hall and Mr. De Bussche upon the temporary contract and bond, and have been concluded. Judgment has been entered up against Mr. Hall, but no instructions have been given us to issue execution under it. Mr. De Bussche became bankrupt, and proofs were admitted against his estate for the £50,000 payable to the Governments under both bonds. The creditors, however, subsequently thought fit to accept an offer made by the bankrupt and his friends to pay a sum of £7,500 by instalments, in consideration of the bankruptcy being annulled. Mr. De Bussche was also to pay the costs of the action brought against him; but the costs of the proceedings against Mr. Hall are still outstanding.

Simultaneously with the proceedings instituted here, Messrs. Foster and Thomson, of New York, were instructed to sue Mr. Forbes and Mr. Cunningham in the American Courts, and they brought an action against them in the New York Supreme Court, at the suit of Mr. Samuel and yourself, as the Postmasters-General of the two colonies, for the recovery of the £25,000 secured to be paid under the temporary contract and bond, but no proceedings have as yet been commenced against Mr. Forbes and Mr. Cunningham as to the permanent contract.

In this action answers have been put in on the part of the defendants, and the defence relied upon is—1st. That, as an inducement to defendants to enter into the temporary contract and execute the bond, Mr. Samuel promised them that if Mr. Hall and Mr. Forbes would undertake the temporary service, the plaintiffs would themselves assume all losses under that contract. 2nd. That the plaintiffs before breach entered into agreements with Hall to substitute steamships of less capacity, &c., than those stipulated for by the contract, and to change the times of sailing and the character of the service; and as such agreements were entered into without the knowledge of the other defendants, the temporary contract and bond were void. With regard to the first of these defences, we understand that Mr. Samuel will deny the existence of any such inducement as is alleged being held out to the defendants; and as to the second defence, our counsel has advised the pleadings to be amended in a manner which would cause this plea to be struck out. It would, however, be necessary for the plaintiffs to prove the breaches and to rebut the first defence, and as our counsel advises to prove the law of England (where the contract was entered into) as to the £25,000 being liquidated damages, and also to be ready to show the damage actually sustained in case the American Courts should not so hold, the evidence on the part of the Governments will have to be taken in London, Sydney, and Wellington upon commissions issued out of the New York Supreme Court, upon interrogatories and cross-interrogatories, to be read upon the trial. The interrogatories are already prepared, and they have been settled by counsel.

When the contracts were entered into, we had, as you know, the most satisfactory reports from Messrs. Barings and Messrs. Mathiesons as to the position of Mr. Forbes and Mr. Cunningham.

We now learn, however, that, since 1873, the position of both these gentlemen has materially changed; Mr. Forbes, who was then the head of the house of Russell and Co., of Shanghai, having been gazetted out of the firm, and being, it is believed, now dependent on money settled upon his wife and allowances from his children; and Mr. Cunningham having sustained large losses as a partner in the same house.

We have not been able to obtain information as to the circumstances under which the settlements were made by Mr. Forbes, and although any settlement made since his difficulties upon his wife might