

be upset, yet any settlement made upon his two daughters who had married since 1873 would be valid against creditors.

It is believed that Mr. Forbes has so dealt with his property as to put it out of the reach of his creditors.

We understand that Messrs. John Elder and Co., who were employed by Mr. Forbes to build the ships for the permanent service, took steps to enforce against him payment of the bills given for the ships, and although Mr. Ure, one of the partners, went himself both to America and China for the purpose, he failed to recover anything.

It is believed that Mr. Cunningham has made and lost two or three fortunes, and that his losses in the late depreciation of silk were so large as to put it out of his power to meet his liability on the bonds, but that he has lately made a large speculation in silk, which has risen so much as to put him in considerable funds, if he now realizes the profit he can make.

Messrs. Barings, however, tell us that they have had such unsatisfactory experience of endeavouring to recover moneys from debtors in America, from the facilities which exist for enabling parties there to defeat their creditors, that they do not think it worth while to enter upon litigation to recover debts in America; and they think it very doubtful what pecuniary success might attend a judgment in the American Courts in favour of the two Governments. They therefore very strongly recommended the Governments to accept a payment of 20 per cent. of their claim if they could get it in cash down.

The counsel who have advised us in the proceedings do not see any legal difficulty in the Governments obtaining a favourable judgment, but we cannot feel the same confidence in the result of proceedings in America as we should have in proceedings in our tribunals here, and we may reasonably expect that the sympathy of the jury by whom the action against Mr. Forbes and Mr. Cunningham must be tried would be with them, not only because juries are generally unfavourable to Governments seeking to enforce penalties, however much the damage sustained may prove to have been, but because Mr. Forbes will doubtless show that he went into this arrangement with the utmost *bonâ fides*, that he afterwards found he had taken the contract for too low a subsidy, and that he lost a very large sum of money in endeavouring to carry out his undertaking.

We feel, moreover, that the delay and heavy expense necessarily attending the examination of witnesses by commission in this country and in both the colonies, and of any appeal which may be brought by the defendants to the higher tribunals in America, affect the consideration of this question. And there can be no doubt that, however successful the proceedings might ultimately be, very heavy expenses would be incurred by the Governments, which could not be recovered from the defendants as party and party costs.

After very mature consideration of all the circumstances of the case and the ultimate prospects as regards pecuniary results, and with the full approval of Sir William Power, who has had experience of litigation in America, Mr. Forster, and Mr. Lloyd, we sent you, on the 13th instant, the following telegram:—

“Have seen Barings and Mathiesons, and advise acceptance Cunningham’s offer if cash down. Try for amount for expenses. Preserve De Bussche’s settlement, although not proving satisfactory. Explanatory letter follows.”

And we trust that, after this explanation of the grounds upon which our advice was founded, you will approve of the views we expressed.

We have been pressing the trustees of Mr. De Bussche’s estate to declare a dividend, but have not yet succeeded in getting them to do so in consequence of some new claims for about £20,000 having been made, which are disputed by Mr. De Bussche. And until this question is settled the trustees are advised that they cannot safely divide the fund in hand.

As previously reported to you, the sum of £1,250 was paid down; two further sums of £1,250 each were guaranteed by two gentlemen who, at the time of giving their guarantee, appeared to be possessed of ample means; and two other instalments of £1,250 each were dependent on the result of litigation to be carried on by Mr. De Bussche with reference to the improper sale of one of his ships.

When the second instalment became payable the guarantors had got into difficulties, and only a small portion of the amount has as yet been recovered, so that the dividend expected from Mr. De Bussche’s estate might be much smaller than was at first anticipated.

In our letter to you of the 7th July last,* we suggested that in any compromise you should endeavour to get a sum sufficient to cover the expenses which the two Governments have been put to (say £500), and we informed you that the expenses in America up to the present time appeared to be about £120.

It was not thought expedient in our telegram to make the payment of this amount a *sine qua non*, as it appeared to all of us unwise to risk losing a settlement at £10,000 by such a stipulation.

We trust, however, that in your negotiation you may be able to arrange for this being paid.

We have, &c.,

The Hon. Sir Julius Vogel, K.C.M.G.

JOHN MACKRELL AND Co.

No. 25.

The Hon. the COLONIAL SECRETARY, Sydney, to the Hon. the COLONIAL SECRETARY, Wellington.

(Telegram.)

Sydney, 13th February, 1877.

ULTIMATUM received from Cunningham that his offer ten thousand pounds was in full of all demands against all parties to the contract, therefore De Bussche’s dividends come to him. Do you consent? Reply, in order that we may obtain approval of our Parliament.

The Hon. the Colonial Secretary, Wellington.

COLONIAL SECRETARY.