

The reason we make the above request, without awaiting the preparation of the petition, is that so short a time remains within which the validity of the statute in question must be settled so as to still leave sufficient opportunity for us to enforce our claims under the Act, if bound by it.

We have, &c.,

JOHN BROGDEN AND SONS,  
(per JOHN HENDERSON.)

The Hon. the Minister for Public Works, Wellington.

On the 22nd March, 1877, the following reply was sent to the Messrs. Brogden :—

GENTLEMEN,—

Public Works Office, Wellington, 22nd March, 1877.

In reply to your letter of the 20th instant, I am directed by the Hon. the Minister for Public Works to inform you that the purpose for which you seek to obtain the consent of the Governor to a petition under the Crown Redress Act—viz., to test the validity of the Government Contractors Arbitration Act, 1872—is not a purpose for which the desired consent should be given.

I have, &c.,

Messrs. Brogden and Sons,  
Wellington.

CHARLES T. BENZONI,  
(in the absence of Under-Secretary for Public Works.)

On the 15th May, 1877, Mr. Travers wrote to the Solicitor-General as follows :—

SIR,—

*Re Brogden.*

Wellington, 15th May, 1877.

I have been requested to address you again with reference to the contemplated proceedings under the provisions of "The Government Contractors Arbitration Act, 1872."

The Messrs. Brogden are desirous that the Government should waive any proceedings under the 4th section, allowing all matters in dispute to go direct to the Judge in the first instance.

They are further desirous that the Judge should be empowered, at the request of either parties, to submit any question of law for the decision of the Supreme Court, if his decision should be unsatisfactory. I have pointed out that this is not provided by the Act, but I apprehend that by consent such a power might be given to the Judge independent of the Act, and that such a power would probably be satisfactory to the Judge himself.

Some doubt exists in the mind of their agent here whether, in our former correspondence, you consented to waive any question of time under section 31. I have informed them that I understood you to have agreed on the part of the Government to do so, but it would be satisfactory to my clients if you would, assuming I rightly understood you, repeat that assurance.

With respect to the first three points above referred to, I have the honor to request that you will inform me, at your early convenience, whether the Government will consent to all questions going direct to the Judge instead of first passing through the stage mentioned in section 4; whether the Government will concur in an arrangement, pending legislative alterations, to avoid the Judges acting under the powers given by sections 12 and 13; and whether the Government will consent to give the Judge power, at the request of either party, to refer any matter of law for the consideration of the Supreme Court.

The Solicitor-General, Wellington.

I have, &c.,

WM. THOS. LOCKE TRAVERS.

The reply of the Solicitor-General to that letter was dated 4th June, 1877, and was to the following effect :—

Crown Law Offices, Wellington, 4th June, 1877.

SIR,—

*The Government and Messrs. Brogden.*

I have the honor to acknowledge the receipt of your letter of the 15th ultimo, respecting the contemplated proceedings under "The Government Contractors Arbitration Act, 1872," and which has received careful consideration.

I will refer to the steps to be taken under section 4 in the latter part of this letter; and with regard to the proposals that the Government should concur with your clients in preventing the application of sections 12 and 13, and that the Judge should have power to submit any question of law for the decision of the Supreme Court, I have to reply that the Government cannot be advised to consent to them. Respecting both these proposals, I may remark that, even assuming valid agreements could be made upon these points (which is open to great question), the precise nature of your clients' claims is not yet before the Government, and it is rather premature to make stipulations of such a nature before it is ascertained in what these claims consist. Besides, as to the first proposal, it would be far better that the Judge should not be controlled in the exercise of powers which the Legislature has given him, and which it must be assumed he would only exercise for the purpose of doing strict justice between the parties; and, as to the second, it may well be urged that it is foreign to the scheme of the Act,—one object of which was to provide for a speedy settlement of these disputes,—and, in any case, such an agreement could equally well be made at a later stage of the proceedings, when the precise points at issue are ascertained.

Referring to that part of your letter which asks for an assurance that I have been correctly understood as having consented to waive any question of time under section 31, I may remind you that no statement has been made by me as to any particular clause in the Act the provisions of which would be waived; but, in answer to your letter of the 31st January last, in which, after detailing the course of proceedings under the Act, you expressed a hope that the Government would carry on the proceedings with as much freedom from technical difficulties as was consistent with their duty, you being prepared to do the same on behalf of your clients, I replied in general terms that the Government were prepared to adopt the course indicated in your letter. However, I may say that, acting in the spirit in which these proposals were made, I should have considered that the question of time under the thirty-first section was not one of which the Government would have been advised to take advantage, and I should have been prepared favorably to consider a proposal that the provisions of section 4 should not be insisted on. But, since the correspondence to which I have referred took place, your clients thought proper, on the 8th March last, to address a letter to the Minister, couched in language which almost rendered further correspondence impossible, and certainly was not calculated to facilitate proceedings. Under the circumstances, therefore, I think it better at present not to make any promise, either with respect to sections 4 or 31, and content myself with repeating the assurance contained in my reply to your letter of the 31st January.

W. T. L. Travers, Esq., Solicitor, Wellington.

I have, &c.,

W. S. REID.

There was in this letter no distinct assurance that the limitation imposed by section 31 would not be relied upon, but, on the contrary, there was an express reservation of the provisions of the Act. It was distinctly stated by the Solicitor-General that no statement had been made by him that the provisions of the Act would be waived, as previously remarked. At this time Messrs. Brogden were advised that they had their remedy outside the Act, and they accordingly determined to proceed with their action. Consequently on the 5th July, 1877, a petition of right in reference to the Waitara and New Plymouth Railway Contract, was forwarded by Messrs. Travers & Co. to the Solicitor-General, for presentation to the Governor, for signature. The following letter accompanied the petition :—

SIR,—

*Re Brogden.*

Wellington, 5th July, 1877.

We have the honor to forward herewith petition under "The Crown Redress Act, 1871," and to request you will be good enough to procure the necessary consent of His Excellency the Governor to the filing of the same. The claim arises under the contract between the Queen and the Messrs. Brogden, for the construction of the Waitara and New Plymouth Railway.

The Hon. the Solicitor-General, Wellington.

We have, &c.,

TRAVERS, OLLIVIER, & Co.

The Committee adjourned at this stage of the proceedings to next day.