

in the service (those arrangements having been already agreed to by cablegram). Should that sub-contract fall through (an event which it seems is not likely to happen), then it is understood that the bond of Messrs. John Elder and Co. and Mr. Macgregor is to be cancelled, and the Pacific Mail Company are to carry out the service.

Thomas Russell, Esq.

We have, &c.,
JOHN MACKRELL AND CO.

Sub-Enclosure to Enclosure in No. 4.

The POSTMASTERS-GENERAL of NEW SOUTH WALES and NEW ZEALAND.

Copy of Counsels' Opinion.

WE are of opinion that the provisions in the New York Revised Statutes, that, "in addition to the powers enumerated in the 1st section of this title, and to those expressly given in its charter, or in the Act under which it is or shall be incorporated, no Corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated and given," prevents the Pacific Mail Steamship Company from entering into the contract and bond in question, and that the same are not binding on and could not be enforced against the Company.

2. We are of opinion that the Company are empowered to enter into a similar contract and bond alone, and that the same could be enforced against them.

3. We are of opinion that the contract and bond cannot be enforced against Messrs. Elder and Co. and Mr. Macgregor.

4. We are of opinion that, as the contract and bond cannot be enforced against the Company and Messrs. Elder and Co. and Mr. Macgregor, the Postmasters-General are under no liabilities or obligations to the Company, or Messrs. Elder and Co. and Mr. Macgregor, by reason merely of their having executed the contract and bond.

EDWARD FRY.
J. P. BENJAMIN.

1. I am of opinion that the power of entering into joint contracts is included in "the necessary and incidental power" granted to the Company by its charter, and that the provision in the New York Revised Statutes is merely intended to prevent a corporation from undertaking matters unconnected with the purpose for which it is incorporated. It has, however, been stated orally that the Company and Messrs. Elder and Co. and Mr. Macgregor are not merely joint contractors, but are in partnership as regards the contract in question, and that this fact was known to the Postmasters-General when the latter entered into it; and as there are dicta of the Judges in the Courts of the State of New York—(see *Catskill Bank v. Gray*, 14 Barbour at 479, and the *New York and Sharon Canal Company*; the *Fullon Bank*, 7 Wendell at 415, that a corporation cannot enter into a partnership; and an express decision in *Massachusetts, Whittenton Mills v. Upton*, 10 Gray, 582, to the same effect, based upon grounds which would apply to the case of the Pacific Mail Steamship Company)—I think it probable that if the question should arise in New York, the Courts there would decide contrary to the opinion expressed by Lord Cairns in *Barned's Banking Company*, Law Report, 3 Ch. App. at 113 (see, also, *Royal Bank of India's Case*, Law Report, 4 Ch. App. at 257). I am therefore, on the whole, of opinion that the contract and bond are not binding on and could not be enforced against the Company.

2. I am of opinion that a similar contract and bond entered into by the Company alone could be enforced against the Company.

3. I am disposed to think that the contract and bond can be enforced against Messrs. Elder and Co. and Mr. Macgregor, as the case seems to me to differ from those (as in *Evans v. Bembridge*, 2 Kay and Johnson, 174, and *8 De Gex and Macnaughten and Gordon*, 100) where one person has executed a contract on the understanding and faith that others will join with him in executing it, and where he is not liable if they do not execute it. Here all that Messrs. Elder and Co. and Mr. Macgregor stipulated for has been carried out; the Company have executed the contract, and it is more than probable that they will carry it out.

4. If the contract and bond are not binding on the Company, the Company cannot enforce them against the Postmasters-General. If the contract and bond can be enforced against Messrs. Elder and Company and Mr. Macgregor, the latter can enforce them against the Postmasters-General.

J. DENNISTOUN WOOD.

16th July, 1875.

No. 5.

Mr. RUSSELL to the Hon. Dr. POLLEN.

(Telegram.)

London, 14th August, 1875.

ELDER has agreed with Pacific Mail Company. Bonds already executed. Remain security to Governments for contractors. Elders' two ships be used in service.

No. 6.

The Hon. J. T. BURNS to the Hon. the POSTMASTER-GENERAL, Wellington.

SIR,—

Sydney, 12th August, 1875.

I have the honor to acknowledge the receipt of your letter dated the 16th ultimo, in reference to the contract for the mail service *via* San Francisco entered into by the Governments of New