

us of the steps they have taken against Mr. Forbes and with regard to Mr. Cunningham, and, to enable you to report fully upon the matter, we append hereto a copy of the instructions we sent to Messrs. Foster and Thomson, and of the reply which we have now received.

*As to the Permanent Service.*

Neither we nor the solicitors to the New South Wales Government have as yet received any instructions as to any proceedings under the bond with reference to this contract. We think it right, however, to draw attention to the necessity of making a definite requisition upon the contractors as to the carriage of mails, and stating the times at which the Government wish them to be carried similar to what was done under the temporary contract, before any proceedings could be taken under the bond.

The penalty under the bond is payable on failure to provide ships to carry the mails as required, and it will be therefore necessary to support an action on the bond, to show that a formal requisition was served upon the contractors, and that within a reasonable time to enable them to perform it.

It is not necessary that the requisition should have reference to the actual date of the commencement of the permanent service, as the contract provides for the carrying of such mails as may be required at any time, and from time to time, within six years of the 27th instant.

It may therefore suffice to serve a requisition when Mr. Vogel and Mr. Samuel arrive in England, and a table can be agreed upon; but any proceedings under the bond will have to be delayed until default is made in complying with that notice, which must appoint times at a reasonable distance in point of date from the time of giving the notice.

The Agent-General for New Zealand.

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

Enclosure 2 in No. 77.

Messrs. PEACHEY and LLOYD, and JOHN MACKRELL and Co., to Messrs. FOSTER and THOMSON.

DEAR SIRS,—

London, 29th October, 1874.

In November, 1873, a contract was entered into by Messrs. Hayden Hezekiah Hall, of Sydney, and Mr. Paul Siemen Forbes, of the house of Russell and Co., of Shanghai, with the Postmasters-General of New South Wales and New Zealand, for the performance of a temporary mail service between San Francisco and the colonies, two prints of which contract we send herewith.

For the due performance of this contract a bond was entered into by Mr. Hall and Mr. Forbes; and also by Mr. Cunningham, of Boston, U.S., and Mr. De Bussche, as their sureties, to secure to the Postmasters-General the payment of the sum of £25,000 in the event of either of the necessary vessels not being provided to perform the service, or of such vessels not being kept at the stations, or of the employment of vessels not according to the description contained in the contract, an attested copy and prints of which bond we send herewith.

At the same time a contract was entered into for a permanent mail service, the performance of which was secured by a similar bond, but the permanent service was not to commence until the end of next month.

Default has taken place in the performance of the temporary contract, the contractors having failed to provide the necessary ships to carry on the service, and having failed also to continue at the stations those ships which were provided.

Under these circumstances we have been instructed to take the necessary steps to recover the sum of £25,000 payable under the bond, and actions have been commenced in England against Mr. Hall, who is now here, and against Mr. DeBussche.

Mr. Forbes and Mr. Cunningham are both in America, Mr. Forbes being, as we understand, in New York, and Mr. Cunningham at Boston. We are authorized to instruct you to take the necessary proceedings on behalf of the Postmasters-General against these two gentlemen to recover the £25,000 under the bond.

We have been advised to bring separate actions against Mr. Hall and Mr. De Bussche, as in the action against Mr. Hall we could claim damages as well under the contract as the liquidated sum under the bond, whereas against Mr. De Bussche we could only claim under the bond.

The bond was settled by counsel in England, having regard to the decision in the case of *Mercer v. Irving* (Ellis, Blackburn, and Ellis, 563), and we are advised that, as the bond is framed, the sum thereby secured is payable as liquidated damages, and not by way of penalty.

The only address we have of Mr. Forbes is the Union Club, New York; but no doubt both he and Mr. Cunningham are well known and easily to be found.

It is stated that Mr. Forbes has sunk a considerable sum in the service; but the failure of the service is due to his withdrawal from it at a very critical time, and when, had he not done so, there was every prospect of its being established on a satisfactory footing. The result to the Governments will doubtless be the having to organize the service under much greater difficulties, and having to give a much higher subsidy than that agreed upon with Mr. Hall and Mr. Forbes.

We are informed that Mr. Forbes is, or was, possessed of very considerable property; but it has been intimated to us that his property has been so dealt with as to prevent its being reached by his creditors.

We learn that proceedings are being taken on behalf of Mr. Hall against Mr. Forbes, by Mr. Chittenden, of New York, and that Mr. Chittenden has considerable information as to Mr. Forbes's means, and he may probably be willing to give you any information you may require.

We have not sufficient knowledge of the practice of your Courts to enable us to judge as to the evidence which will be required in support of the necessary proceedings to recover under the bond; but we will lose no time in furnishing you any information or evidence which you may require. As regards our actions in England, we purpose examining Mr. Hall to prove the default under the contract,