

by Statute without the consent of the other party to those contracts? and can such legislation, whereby one party to a contract alters some of its provisions without the consent of the other party, be otherwise than "repugnant to the law of England"?

The contracts for the construction of the following railways, viz., Waitaki and Moeraki (19th July, 1873), Waitara and New Plymouth (19th July, 1873), Auckland Station, &c. (19th July, 1873), Auckland and Mercer (20th August, 1873), were taken subsequent to the passing of the Government Contractors Act of 1872, but before the Royal assent to this Act had been obtained. These contracts contain the same terms and conditions and the same arbitration clause, were signed, sealed, and delivered in similar manner. But the Government Contractors Act of 1872 was not exhibited or referred to, and not produced by the Government in reference to these contracts until 1877, which was the first intimation the Contractors had of the existence of such an Act.

### (Sub-Enclosure 2.)

To His Excellency the Most Honorable the Marquis of Normanby, a member of Her Majesty's Most Honorable Privy Council; Knight Commander of the Most Distinguished Order of St. Michael and St. George, Governor and Commander-in-Chief of Her Majesty's Colony of New Zealand and its Dependencies, and Vice Admiral of the same.

The Memorial of Messieurs Alexander Brogden, M.P., Henry Brogden, and James Brogden, of Queen Anne's Gate, in the City of Westminster, in England, Railway Contractors, carrying on business in copartnership under the style of John Brogden and Sons, sheweth as follows:—

1. Your memorialists in June, 1871, after many months of previous negotiation with the Honorable Julius Vogel, at that time the Treasurer of the Colony of New Zealand, and then in England, executed in duplicate three instruments, dated respectively the 21st, the 22nd, and 26th of June, 1871, and each of which was expressed to be made between the then Governor of New Zealand of the one part and the memorialists of the other part.

2. The first instrument expressed that the Governor would intrust to the memorialists, and that they would undertake, the construction of railways in New Zealand to the value of £4,500,000; that the Governor, besides paying the memorialists the cost of the railways to them, and a profit of five per cent. thereon, would make to them grants of land at the rate of three-quarters of an acre for every pound sterling of the cost of the railways, and one-fifth of which should be suitable for settlement and for settlers to take immediate possession of; that the portions of the latter required for immigrants should be granted as and when required; that the memorialists would within ten years land in New Zealand ten thousand approved European immigrants; and that the Governor would also pay the memorialists the sum of £1 per head per annum for ten years for all immigrants so landed.

3. The second instrument expressed that the Governor would intrust to the memorialists, and that they would undertake, the construction of railways in New Zealand to the value of £500,000, upon terms which did not include any arrangements with respect to immigration.

4. The third instrument recited the other two, and expressed that, within six months after the arrival of the three in New Zealand, the Governor would execute both or one of the first two documents, and that meantime both should bind the memorialists; and the Colonial Treasurer, in token of his approval, executed the third instrument as on behalf of the Governor, and thereby himself agreed that he would procure the Governor to execute one or both of the first and second instruments within the said six months.

5. During the negotiation of these three instruments the Colonial Treasurer suggested that one of the memorialists should follow him to New Zealand, and be at hand to carry into effect the first and second instruments, or whichever of them the Governor should execute; and that the memorialists should immediately send out a staff of engineers and others for the purposes of these contracts. At that time, as appears from the statement of the Minister (*see Parliamentary Debates*, 2nd Session of 5th Parliament, page 540), "the number of engineers in the colony accustomed to modern railway construction was exceedingly limited."

6. Immediately on the execution of these three instruments, the Colonial Treasurer returned to New Zealand; and, upon the faith of his above engagement and counsel, the memorialists, at great expense, immediately sent to New Zealand a staff of engineers and assistants (which they afterwards from time to time increased); and in August, 1871, the memorialist James Brogden followed the Colonial Treasurer to New Zealand.

7. On the 24th October, 1871, soon after the arrival of Mr. James Brogden in the colony, the Colonial Treasurer himself, in a Committee of the House of Representatives, and before execution by the Governor of either No. 1 or No. 2 Contract, moved a resolution recommending that No. 1 should not be accepted (*see "Parliamentary Debates,"* 1st session of 5th Parliament, page 504). To this resolution an addition was proposed (by way of amendment), containing a recommendation that the Government should negotiate with the memorialists for the modification and extension of No. 2 Contract, or the substitution in its place of one for the construction by the memorialists of such railways, authorized or to be authorized by the Assembly, as it might be agreed should be offered to them, to the amount of £1,000,000, *at prices to be agreed to between them and the Government*, such prices being within the limits fixed by the Legislature. (*See "Parliamentary Debates,"* same session, page 564.) This amendment was adopted by the House of Representatives, after an adjourned debate, on the 26th October, 1871, and the motion of the Colonial Treasurer as so amended was carried.

8. As a sequel to this resolution, the Governor, at a subsequent date, executed the Contract No. 2 *pro formâ*, and with the understanding (afterwards embodied in an actual agreement, dated the 18th of December, 1871) that it should not be deemed to have come into operation until after failure of negotiations for a substituted contract. (*See Parliamentary Paper of 1872, D., No. 1, page 15.*)

9. Mr. James Brogden, therefore, with a large and costly staff, retained and imported at a very great expense, found himself in the colony with Contract No. 1 rejected, with Contract No. 2