

1883.
NEW ZEALAND.

MESSRS. BROGDEN'S CLAIMS

(CORRESPONDENCE BETWEEN THE GOVERNMENT AND MR. C. W. CAVE, SOLICITOR FOR
MESSRS. BROGDEN AND SONS, RELATIVE TO).

Return to an Order of the House of Representatives, dated the 17th day of August, 1883.

Ordered, "That the correspondence which has taken place between the Government and Messrs. Brogden since September, 1882, be laid before this House."—(Mr. Turnbull.)

No. 1.

Mr. H. D. BELL to the Hon. the MINISTER for PUBLIC WORKS.

Wellington, 2nd December, 1882.

SIR,—

Messrs. Brogden's Claims.

I have the honour to enclose a letter just received by me from Mr. Cave, the Messrs. Brogden's solicitor.

I have replied, informing him that this letter has been forwarded to the Government, and that the absence of the Hon. Mr. Johnston from Wellington may cause some delay in reply.

I have, &c.,

H. D. BELL,

Crown Solicitor.

The Hon. the Minister for Public Works, Wellington.

Enclosure in No. 1.

Mr. C. W. CAVE to Mr. H. D. BELL.

Wellington, 1st December, 1882.

DEAR SIR,—

Re Messrs. Brogden's Claims.

As there seems likely to be some delay in disposing of the application now pending on behalf of Messrs. Brogden for leave to amend their petition of right in the Invercargill and Mataura Railway case, the present seems to me a fitting opportunity for making another effort towards effecting an arrangement which may possibly render further litigation unnecessary. With this view I should like to inquire whether the Government have resolved to treat the report of the Joint Committee of last session as final so far as regards Messrs. Brogden's claim to have the disputes between them and the Government submitted to arbitration, or whether the latter would upon any, and, if so, upon what, terms consent to a reference of the claims either under the Government Contractors Arbitration Act or in any other mode. I feel less hesitation than I otherwise should in making this inquiry, as I think the discussion in the House of Representatives which followed the bringing-up of the Report of the Committee clearly proved that a considerable section of the members of that House would favour an investigation of the claims.

Of course I do not disguise from myself that, to obtain this under present circumstances, my clients must make some concessions. These would probably require to be discussed; but I should like to state what I am prepared to advise Messrs. Brogden to agree to:—

1. As to interest: To claim only one year's interest at 10 per cent. under the contract, leaving the question and rate of interest for the remainder of the time to the decision of the arbitrator:

2. To consent to the reference to the arbitrator of the overpayments alleged in the Under-Secretary for Public Works' letter of the 12th May, 1877, and, if sustained, to consent to these being set off against sums found due on other contracts:

3. To eliminate the damage claims for imperfect plans.

I shall be glad if you will submit this letter for the consideration of the Government, and, should they instruct you to make any proposal in reference to it, I need scarcely say that it shall receive my most careful attention.

Yours, &c.,

H. D. Bell, Esq., Crown Solicitor.

CHARLES W. CAVE.

No. 2.

The UNDER-SECRETARY for PUBLIC WORKS to Mr. C. W. CAVE.

SIR,—

Public Works Office, Wellington, 9th February, 1883.

With reference to your letter of 1st December addressed to Mr. Bell, Crown Solicitor, inquiring whether the Government “have resolved to treat the report of the Joint Committee of last session as final so far as regards Messrs. Brogden’s claim to have the disputes between them and the Government submitted to arbitration, or whether the latter would upon any, and, if so, upon what, terms consent to a reference of the claims either under the Government Contractors Arbitration Act or in any other mode,” I am directed by the Minister for Public Works to state that the Government has no other reply to make than that conveyed to you in a letter dated 27th January, 1882—viz., that, while you deny the right of the Government to insist upon certain legal conditions imposed by the contracts and by Parliament, it would be premature to consider whether the Government will waive any such conditions so long as their right to rely upon them is contested.

I have, &c.,

C. W. Cave, Esq., Solicitor,
Wellington.C. T. BENZONI,
Acting Under-Secretary for Public Works.

No. 3.

Mr. C. W. CAVE to the Hon. the MINISTER for PUBLIC WORKS.

SIR,—

Wellington, 22nd February, 1883.

I have the honour to acknowledge the receipt of the letter of the Assistant Under-Secretary for Public Works, dated the 9th instant, in which the remark contained in a letter to Messrs. Brogden of the 27th January, 1882, is repeated—namely, “that while you [Messrs. Brogden] deny the right of the Government to insist upon certain legal conditions imposed by the contracts and by Parliament, it would be premature to consider whether the Government will waive any such conditions so long as their right to rely upon them is contested.”

In reply, I would ask leave to point out that the above is not an accurate description of the position at present and for some time past taken up by Messrs. Brogden in reference to their claims. On the contrary, I would submit that the course pursued by Messrs. Brogden since the judgment of the Court of Appeal, delivered in December, 1881, points to an acquiescence on their part in the decision of the Court, rather than to a denial of the right of the Government to insist on the legal conditions referred to.

In support of this view I would call attention to the fact that, directly the Court of Appeal had delivered judgment to the effect that Messrs. Brogden’s claim could not be adjudicated upon in a Court of law, they accepted the position thus imposed on them, and, without delay, commenced proceedings under the Government Contractors Arbitration Act, with a view to a reference of one of the claims to arbitration. The remedy provided by the above-mentioned Act being, however, in its turn, denied to them, the only tribunal in the colony left open to Messrs. Brogden was Parliament, and to that body they accordingly resorted, praying that, as a matter of equity, the obstacle to an arbitration might be removed. By neither of these proceedings have they, as I submit, denied the right of the Government to insist on the legal conditions referred to, and, of course, whilst the decision of the Court of Appeal remains unreversed, it would be idle for them to do so. Their request now is that, in return for certain concessions and reductions which they are willing to make, some of the legal conditions may be waived. Under these circumstances, I trust the Government will now be disposed to deal with the matter in an equitable spirit, and will consider my letter of the 1st December, with a view to arranging some course of procedure by which a final settlement of the claims may be secured.

I have, &c.,

The Hon. the Minister for Public Works, Wellington.

CHARLES W. CAVE.

No. 4.

Mr. C. W. CAVE to the Hon. the PREMIER.

Wellington, 25th May, 1883.

SIR,—

Re *Messrs. Brogden’s Claims*.

At the interview which Mr. Lawson had the honour to have with you a short time since, you expressed your willingness to look into the papers in connection with those claims after your return from Auckland, with a view to considering whether you could recommend any course of action to the Government which might result in a compromise of the matters in dispute, and the relinquishment of all legal proceedings by Messrs. Brogden.

From communications which I have lately received from England I have reason to believe that a much smaller sum than that mentioned by Mr. Alexander Brogden to Sir John Hall (£100,000) would now be accepted in discharge of the claims, and I should have no hesitation in agreeing, on behalf of my clients, to stay all legal proceedings if the Government could see their way to recommend to Parliament the payment of a lump sum in settlement.

What this sum should be, Mr. Lawson and I are prepared to discuss with you, if you think fit to favour us with another interview.

Trusting you will be able now to give the matter your consideration,

I have, &c.,

The Hon. the Premier, Wellington.

CHARLES W. CAVE.

No. 5.

The Hon. the PREMIER to Mr. C. W. CAVE.

SIR,—

Government Offices, Wellington, 28th May, 1883.

I have the honour to acknowledge the receipt of your letter of the 25th instant, with reference to the Messrs. Brogden's claims on the Government of New Zealand.

2. In accordance with my promise I have again considered the subject of a compromise of the matters in dispute, and the consequent relinquishment of all legal proceedings by Messrs. Brogden, and I have submitted your proposal to the Cabinet.

3. The conclusion arrived at is the same as that which I communicated to you on a former occasion—namely, that the Government does not desire to withhold from Messrs. Brogden any portion of what may be due to them, nor that they should relinquish any legal proceedings which are available for the enforcement of their claims.

Charles W. Cave, Esq., Wellington.

I have, &c.,

FRED. WHITAKER.

No. 6.

Mr. C W. CAVE to the Hon. the PREMIER.

SIR,—

Wellington, 12th June, 1883.

Re *Messrs. Brogden's Claims*.

I have the honour to acknowledge receipt of your letter hereon on the 28th ultimo, in which you remark "that the Government does not desire to withhold from Messrs. Brogden any portion of what may be due to them, nor that they should relinquish any legal proceedings which are available for the enforcement of their claims;" and, in reply, I would ask leave to call your attention again to my letter of the 22nd February last, addressed to the Hon. the Minister for Public Works, in which I endeavoured to point out that Messrs. Brogden had, in fact, submitted to the judgment of the Court of Appeal delivered in December, 1881, by which it was decided that the legal conditions pleaded by the Government were, in law, a good defence to the claims. The Government is no doubt aware that, within the last few days, a discontinuance has been entered on the first count of the petition of right in the case of "*Brogden v. The Queen*," so that all legal proceedings in the colony are at an end. This being so, I venture to hope that the Government will now be of opinion that the time has arrived when the matter may be dealt with on an equitable basis, and will consent either to discuss the propriety of settling for a lump sum, as suggested in my letter of the 25th May, or will agree to refer the claims to arbitration upon some such terms as are mentioned in my letter to Mr. Bell of the 1st December last.

The Hon. the Premier, Wellington.

I have, &c.,

CHARLES W. CAVE.

No. 7.

Mr. C. W. CAVE to the Hon. the PREMIER.

SIR,—

Wellington, 4th July, 1883.

Re *the Brogden Claims*.

May I be allowed to call your attention to my letter of the 12th June last, and to ask that, if possible, I may receive a reply thereto before the next San Francisco mail for England, leaving here on the 15th instant, as I am extremely desirous of then forwarding to Messrs. Brogden the decision at which the Cabinet have arrived.

The Hon. the Premier, Wellington.

I have, &c.,

CHARLES W. CAVE.

No. 8.

Mr. C. T. BENZONI to Mr. C. W. CAVE.

SIR,—

Public Works Office, Wellington, 6th August, 1883.

In reply to your letter of 4th ultimo, addressed to the Hon. the Premier, I am directed by the Minister for Public Works to inform you that the Government cannot entertain your application, after the report of the Joint Committee which sat last session on the Brogden claims.

I have, &c.,

C. W. Cave, Esq., Solicitor,
Wellington.C. T. BENZONI,
Acting Under-Secretary for Public Works.

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