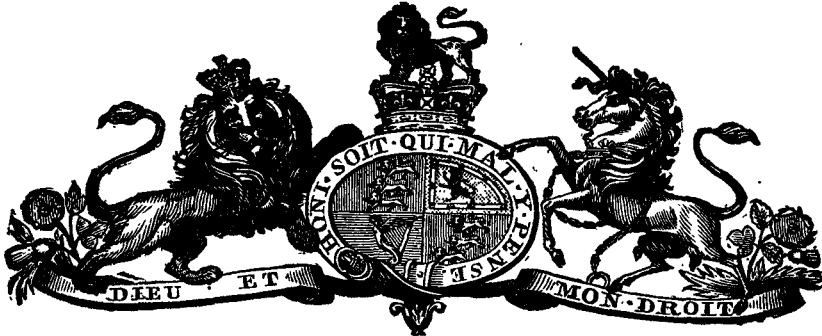


NEW ZEALAND.



TRICESIMO SEXTO

VICTORIÆ REGINÆ.

No. XVII.

ANALYSIS.

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| <p>Title.
Preamble.</p> <ol style="list-style-type: none"> 1. Short Title. 2. Interpretation. 3. Disputes between Government and Contractors to be referred to decision of Judge of the Supreme Court. 4. Where dispute between Chief Engineer and Contractor, to be referred to the Minister. 5. Statement of claim and proposition of law or fact to be made and signed by parties, and filed in Supreme Court office. 6. Party desiring a reference to apply to Judge to fix day and place for proceeding therein. 7. Notice to be given to the Minister. 8. Judge may direct how reference to be carried on. 9. May require the attendance of witnesses. 10. On appointed day, the parties to attend before Judge and proceed in reference. 11. Judge may hear evidence, and may require production of plans, &c. 12. Judge may direct inspection by skilled persons. 13. May obtain opinions of Engineers, &c. 14. Payment of fees &c. to skilled witnesses and engineers, &c. | <ol style="list-style-type: none"> 15. Parties not attending, Judge may proceed <i>ex parte</i>. 16. Parties may appear by counsel or solicitor. Judge may adjourn proceedings. 17. Parties may apply for leave to amend statements, &c. 18. Notices, &c., how to be served. 19. Judge to give a certificate of his decision, and what may be stated in certificate. 20. Several certificates may be given. 21. Certificate to be filed in Court. 22. Effect of certificate. 23. Certificate not to be set aside for informality. 24. Costs. 25. Penalty for non-attendance as witness, or for neglect to obey order of Judge. 26. Procedure of Supreme Court to be applicable. 27. No power to parties to revoke. Death not to abate proceedings. 28. Parties not to bring action or prosecute writ of error. 29. No appeal from Judge's decision. 30. Judges to make rules, &c. 31. Limitation of time within which reference may be had. |
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AN ACT for referring Disputes occurring between certain Contractors and the Government of the Colony to the decision of a Judge of the Supreme Court, and for giving Jurisdiction to such Judge in certain cases therein. Title.
 [10th October, 1872.]

WHEREAS certain Statutes now are in force within the Colony of New Zealand authorizing the construction erection and maintenance of railways and other public works in the said Colony: And whereas other Statutes may from time to time hereafter be in force for such and other like purposes: And whereas certain contracts have been already and others may hereafter be entered into for the construction of such works between Her Majesty the Queen and certain persons carrying on business in copartnership under the Preamble.

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style of "John Brogden and Sons:" And whereas disputes may arise under such contracts, and it is expedient that provision should be made for summary and final settlement of such disputes:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. The Short Title of this Act shall be "The Government Contractors Arbitration Act, 1872," and it shall come into operation on the passing thereof.

Interpretation.

2. In the interpretation of this Act, the following words and expressions shall be deemed to have the meanings hereby assigned to them, respectively, unless it shall appear from the context that some other meaning should be assigned thereto:—

The word "Minister" shall mean the Minister appointed under "The Immigration and Public Works Act, 1870," and shall include the Minister for the time being authorized by the Governor to act for such Minister in respect of any public work as herein defined.

The word "Engineer" shall mean the Engineer who shall from time to time be appointed by the Minister to have principal charge of any public work on behalf of the Government, and to be for the purposes of the contract, and this Act, the Engineer with reference to such work.

The term "public work" shall mean and include any railway tramway road bridge building erection or structure whatsoever, and also all works of whatsoever nature connected with or relating to any such railway tramway road bridge building erection or structure.

The word "contract" shall mean any contract already or hereafter entered into between the Governor in the name of Her Majesty the Queen, and Messieurs Alexander Brogden, Henry Brogden, and James Brogden (carrying on business as aforesaid under the style of "John Brogden and Sons"), for the execution of any public work; and the term "Contractor," where hereinafter used, shall mean the said Alexander Brogden, Henry Brogden, and James Brogden, and shall include such person or persons as by the contract it is provided the term "Contractor" shall include.

The term "the parties" shall mean the "Contractor" of the one part, and the "Minister" of the other part; and whenever throughout this Act the term "parties" is used, the same shall, in so far as it affects Her Majesty the Queen, the Governor, or the Government of the Colony, be deemed to mean the Minister.

The expression "a Judge of the Supreme Court" shall mean any Judge of the Supreme Court for the Judicial District of the Supreme Court within which the works relative to which the dispute shall have arisen have been or are to be executed.

Disputes between Government and Contractors to be referred to decision of Judge of the Supreme Court.

3. In any case where, under the provisions of any contract, it may be provided that any dispute arising between the parties thereto, or between the Engineer and the Contractor, or between the Contractor and the Government, that such dispute shall be referred to the sole determination arbitrament and award of the Judge of the Supreme Court assigned to the Judicial District of the Supreme Court within which the works relative to which the dispute shall have arisen have been or are to be executed, then and in any such case such dispute

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shall be referred to the decision of a Judge of the Supreme Court in the manner hereinafter provided :

Provided that where any such Judge shall, by reason of continued illness or absence from the district assigned to him, be unable to proceed with the reference so to be made to him, or in case of the death of such Judge before the determination of the reference, then the dispute shall be heard and determined by the Chief Justice of the Supreme Court, or before some other Judge of the said Court to be appointed by him: Provided further that if in such case as last aforesaid any evidence shall have been heard by or before the Judge to whom the dispute shall have been originally referred, the taking of evidence shall, if either of the parties require it, be commenced *de novo* before the Chief Justice, or the Judge appointed by him. And any dispute so referred as herein lastly provided, and all the proceedings relating thereto or consequent thereon, shall be heard conducted and may be enforced as if the same were referred to the Judge who, but for such illness absence or death, would have heard and determined the same.

4. Whenever any such dispute shall have arisen between the Engineer and the Contractor, the matter in dispute shall be referred to the Minister for his decision; and in case the decision of the Minister shall be adverse to the Contractor, then the latter shall be entitled to avail himself of the provisions for arbitration hereinafter contained but not otherwise.

Where dispute between Chief Engineer and Contractor, to be referred to the Minister.

5. If any dispute shall arise between either of the parties to any contract as hereinbefore mentioned upon any matter or thing which according to the terms of such contract ought to be or might be referred to arbitration as aforesaid, then either party desiring to proceed to arbitration under this Act shall prepare a statement in writing, setting forth in a concise manner the nature and extent of the claim made by such party, and the propositions of fact and law which such party desires to submit to a Judge of the Supreme Court in support of such claim, and shall deliver a copy of such statement of claim and propositions to the other party; and the other party may, within fourteen days after receipt of such statement, deliver to the party from whom the same shall have been received, such propositions of fact and law as such other party desires to submit to such Judge in opposition to such claim.

Statement of claim and proposition of law or fact to be made and signed by parties and filed in Supreme Court Office.

At any time within one month after the expiration of the said fourteen days, the party desiring the reference shall cause a copy of such claim and of any propositions of fact or law in support thereof, or which shall have been delivered in opposition thereto, to be filed in the office of the Registrar of the Supreme Court in the Judicial District where according to this Act such reference may be had :

Provided that if in such district there be more than one such office, then such copies shall be filed at the office of the Supreme Court in such district at the town or place where the Judge assigned to such district usually resides.

6. The party desiring a reference shall give a reasonable notice to the other party of such filing and of the time of the application hereinafter mentioned; and as soon as conveniently may be after the filing of such copies as aforesaid, such first-mentioned party shall apply to the Judge assigned to the district to hear and determine the matter of such claim, and to fix a day time and place for proceeding in the matters so to be referred to him as aforesaid.

Party desiring a reference to apply to Judge to fix day and place for proceeding therein.

Notice of the time and place so fixed shall in all cases be given to the other of the said parties, unless such other party shall appear at the application for fixing the same.

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Notice to be given to the Minister.

7. Before any dispute, whether occurring between the Engineer and Contractor or either of the parties, shall be referred by any Contractor under the powers in this Act contained, the Contractor shall give to the Minister one calendar month's notice in writing of such dispute, and of the matter and cause thereof; and in such notice the Contractor's claim shall be explicitly stated, and, if such claim be for pecuniary compensation, the amount thereof shall also be stated.

Judge may direct how reference to be carried on.

8. Every such reference shall be conducted in such manner as the Judge shall direct; and he shall have power to direct what notices shall be served, and on whom and in what manner such notices shall be served, and shall give such other directions concerning the conduct of the reference as to him may seem fit.

May require the attendance of witnesses.

9. The Judge, at his discretion, or on the application of either of the parties, by notice in writing under his hand may summon any person or persons whose evidence may be considered by him or by such parties to be material to the subject-matter of the reference, to attend before him, at a time and place to be specified in such notice, for the purpose of giving evidence touching or concerning the matters in dispute.

On appointed day, the parties to attend before Judge and proceed in reference.

10. On the day, and at the time and place appointed by the Judge as hereinbefore provided, the parties, by themselves or by their counsel or solicitors, shall attend before the Judge, for the purpose of proceeding in the reference.

Judge may hear evidence, and may require production of plans, &c.

11. It shall be lawful for such Judge, at such time and place within his Judicial District as aforesaid, and whether in open Court or in Chambers, and upon such proof of notice to parties interested as to the Judge shall seem sufficient, to take and hear evidence, upon oath or affirmation, in support of or in opposition to the several matters so to be referred to him in manner aforesaid.

And for all or any of the purposes aforesaid may require any of the parties, or any other person or persons, to produce or cause to be produced before him on such reference all plans drawings contracts specifications papers and writings whatsoever touching or concerning all or any of the matters aforesaid.

Judge may direct inspection by skilled persons.

12. For the purpose of arriving at a clear understanding of all or any of such matters, it shall be lawful for the Judge to make or cause to be made an inspection of any public work in respect of which any such reference shall be had and referred to him as aforesaid, or of any part thereof, or any materials composing the same or any part thereof, or of any other thing that may be the subject of dispute as aforesaid, and capable of being inspected, and for that purpose may require one or more skilled and competent persons to conduct and make such inspection, and may fix a time within which such inspection shall be made, and within which a report shall be made to such Judge of the public work or materials so required to be inspected as aforesaid; and the report or certificate in writing of any such persons whom the Judge may direct or require to do any of the things herein provided for shall and may be taken and received by such Judge, and acted upon by him as effectually as if he had taken the evidence of such person *vivâ voce*.

May obtain opinions of Engineers, &c.

13. If it shall become necessary, in the opinion of the Judge, whether in the course of the reference or at any time thereafter, before he shall finally have decided on the matters so referred to him as aforesaid, it shall be lawful for him to call before him such engineers surveyors architects accountants or other skilled persons as may seem to him requisite or necessary for the purpose of obtaining from them or any of them opinions upon any question or questions in respect of any matter or thing arising out of or in relation to the

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subject of such reference, and upon which he may desire the same on any of the matters to be so submitted to him as aforesaid.

14. The fees and charges to be allowed to any persons making any such inspection or report, or giving any such opinions as in the two last preceding sections mentioned, shall be settled by the Judge in accordance with any scale to be fixed as hereinafter is provided, and the Judge shall, by order under his hand directed to the Colonial Treasurer, require him to pay such fees and charges out of the Consolidated Revenue of the Colony in the first instance; and the Colonial Treasurer is hereby authorized to pay the amount expressed in any such order accordingly.

Payment of fees &c. to skilled witnesses and engineers, &c.

Upon the final determination of the matters referred, the Judge shall decide by whom such fees and charges shall be paid, either wholly or in part; and if the same are directed, by the certificate to be given by the Judge as hereinafter provided, to be paid by the Contractor, the same may be deducted out of any moneys payable to him, or otherwise may be recovered as hereinafter provided.

15. If either of the said parties shall fail or neglect to attend at such reference after having been lawfully required to attend in pursuance of any notice so to attend, or who shall fail or neglect to produce any contract plans drawings papers or writings as aforesaid after having been lawfully required to do so in manner aforesaid, it shall be lawful for the said Judge to proceed with the subject-matter of such reference *ex parte*.

Parties not attending, Judge may proceed *ex parte*.

16. Either of the said parties may appear by counsel or solicitor, and shall be entitled to examine cross-examine and re-examine witnesses who may be examined by or before such Judge.

Parties may appear by counsel or solicitor.

The Judge may adjourn such reference and the proceedings thereon from time to time as he shall see fit, and for such time and to such place as he may think fit; but no such adjournment shall continue for a longer period than three calendar months.

Judge may adjourn proceedings.

17. At any time during the proceedings on any such reference it shall be lawful for either of the parties to apply to the Judge to amend any statement of claim or propositions of law or fact delivered or filed by such party under the powers herein contained; and if the other of such parties shall not consent to such amendment, the Judge shall decide as to the reasonableness of the application, and may either grant or refuse the application, upon such terms as to adjournment of the proceedings and as to the allowance of costs to the last-mentioned party as to the Judge shall seem meet.

Parties may apply for leave to amend statements, &c.

18. Any notice or other instrument which it may be necessary or requisite to serve upon the Minister under this Act, may be served at the office of the Public Works Department, at Wellington, by leaving the same with the Engineer or the Secretary for Public Works; or if the Minister shall approve of any person to accept notices or other instruments on his behalf, in any Judicial District in which any reference is under this Act to be had, then such service may be on such person.

Notices, &c., how to be served.

And any notice or other instrument which it may be necessary or requisite to serve upon the Contractor may be served upon him either personally or by leaving the same at his last known place of business in the Judicial District of the Supreme Court in which any such contract may be in course of execution, or may have been executed or carried on, or by leaving the same with any foreman or person in charge of any public work forming the subject of such contract.

All notices served as and in manner herein provided shall, on proof thereof to the satisfaction of the Judge, be deemed to have

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been effectually served upon the party affected or intended to be affected thereby.

Judge to give a certificate of his decision, and what may be stated in certificate.

19. The Judge before whom such reference shall be had shall, by a certificate under his hand and the seal of the Supreme Court, addressed to the Governor of the Colony, certify to him the decision at which he shall have arrived upon the matters so referred to him.

In and by any such certificate the Judge may order the payment of money by one of the parties to the other of them, whether as damages or costs, and in and by any such certificate or instrument may prescribe and direct what shall be done and performed by either of the said parties or by both of them, or what shall be refrained from being done by either of them or both of them, whether such direction or performance shall have reference to the subject-matter of any such contract and is specified or referred to therein, or as to any act matter or thing connected with or arising out of such contract or the proceedings had on any such reference.

Several certificates may be given.

20. If the Judge shall think fit he may give several certificates, each on part of the matters referred to him as aforesaid, instead of one certificate on all the matters referred, and every such certificate on part of the matters shall for such time and for such purposes as is or are mentioned therein, be binding as to all the matters to which it extends as if the matters therein mentioned were all the matters referred, and notwithstanding no certificate shall then or thereafter be given in respect of the other matters in dispute and reference as aforesaid.

Certificate to be filed in Court.

21. A copy of every certificate made or given as aforesaid shall be forthwith recorded in the Supreme Court at the place where the statements of claim aforesaid or the propositions of law or fact (as the case may be) shall have been filed, and either of the parties shall have the right of making copies thereof or taking extracts therefrom on payment of the usual and customary fees in such cases prescribed by the practice of the Supreme Court.

Effect of certificate.

22. The effect of every such certificate shall be similar to that of a judgment order or decree of the Supreme Court for or against the Crown under "The Crown Debts Act, 1866," or "The Crown Redress Act, 1871," as the case may be.

Certificate not to be set aside for informality.

23. No certificate made or given under the provisions of this Act shall be void or liable to be set aside for any irregularity or informality.

Costs.

24. The costs charges and expenses of whatsoever nature, of and attending such reference, and of all proceedings consequent upon or incidental thereto, and of all necessary acts matters and things which shall or may be had made done or performed by any such Judge or by his direction under the powers hereof, or by either of the parties, shall be borne and paid by and between the said parties, in such proportions as to the Judge shall seem meet or as he shall in his discretion think fit; and the allowance or award of such costs, and the direction by and to whom the same shall be paid, shall be included in and form part of the certificate so to be made as aforesaid.

Penalty for non-attendance as witness, or for neglect to obey order of Judge.

25. If any person having been duly summoned to attend on any such reference as aforesaid, whether for the purpose of giving evidence in any matter connected therewith or to produce any plan contract paper writing or instrument whatsoever, or for the purpose of being examined on any matter of opinion which the Judge shall desire to submit to such person, or if any party to such reference shall refuse or neglect to comply with any direction or order made by such Judge in relation thereto and under the powers herein contained, every such person shall be liable to the like penalties which by the practice of the

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Supreme Court would attach to such person for or by reason of any non-attendance as such witness on non-compliance with any such rule or order as aforesaid in a civil action in the Supreme Court.

26. In the summoning of witnesses, and in all proceedings relating to any reference held under this Act, in the taking of evidence as aforesaid, and in the taxation of costs of any such reference, the practice and procedure of the Supreme Court for the time being relating to civil actions shall be followed, so far as they may be found or made applicable to such proceedings; and witnesses summoned to attend such reference, and parties thereto, shall be subject to the same liabilities as witnesses in and parties concerned in the trial of an action in the Supreme Court would be subject to in like cases: Provided that nothing in this or the preceding section contained shall be held or construed to render any witness or party liable to any penalty or proceeding in any of the cases therein mentioned, unless such witness or party shall have been duly summoned or had notice to attend such reference, or may have been required to do or omit to do some act in the like manner in which he would have been summoned or required to attend as a witness in a civil action in the Supreme Court as aforesaid, or if a party might be required to do or omit to do some act in any such action as aforesaid.

Procedure of Supreme Court to be applicable.

27. After the commencement of any reference under this Act, neither party shall have power to withdraw from such reference, or to revoke or recall any statement of claim or proposition of fact or law submitted, without the consent of the other of the said parties.

No power to parties to revoke.

The death of either of the parties pending any reference under this Act shall not affect the same, but such reference may be proceeded with and may be determined in the same manner as if the certificate of the Judge had been made or given in the lifetime of the parties so dying, and the personal representatives of the party so dying shall be considered for all purposes to be a party or parties to the reference.

Death not to abate proceedings.

28. Neither of the parties shall bring any action suit or proceeding against the other for or in respect of any matter so agreed to be referred as aforesaid, nor shall either bring or prosecute any writ of error or other proceeding in the nature thereof concerning any of the matters referred or any certificate made or given under this Act.

Parties not to bring action or prosecute writ of error.

29. No appeal shall lie from any decision of a Judge given under or in accordance with the provisions of this Act, either to the Supreme Court or to the Court of Appeal or to any other Court or tribunal, but every such decision shall be binding final and conclusive on the parties concerned in or affected by any such reference.

No appeal from Judge's decision.

30. The Judges of the Supreme Court, or any three of them of whom the Chief Justice shall be one, shall have power to make any rules not inconsistent with this Act, and thereby may prescribe the forms of notices certificates and other proceedings, and provide for the general conduct of any reference as herein is provided for, and may also fix a scale of costs allowable on such proceedings, and may fix a scale of fees to be allowed to witnesses under such reference.

Judges to make rules, &c.

31. Whenever either of the parties shall desire to proceed to a reference under the provisions of this Act, the proceedings for that purpose shall be commenced within six months after the particular dispute or matter of difference shall have arisen, and not afterwards, unless with the consent of the other of the said parties.

Limitation of time within which reference may be had.