Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of the Pacific Mail Steamship Company of New York v. *the Honourable Charles James Roberts, Her Majesty's Postmaster-General for New South Wales, from the Supreme Court of New South Wales; delivered* 13*th February* 1892.

Present:

LORD WATSON.
LORD MACNAGHTEN.
LORD MORRIS.
LORD HANNEN.
SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

Their Lordships entirely concur in the conclusion at which the Supreme Court of New South Wales has arrived, although they are not prepared to say that the language of the contract of the 3rd of June 1884 is plain, or its meaning altogether free from doubt. Whatever may be the true construction of that agreement, and whatever may have been the respective rights and obligations of the Appellants and the Postmaster-General of New Zealand when the Government of New South Wales withdrew from the contract, their Lordships are of opinion that the claims of the Appellants in the present action can not be supported.

The contract of the 3rd of June 1884, to which the Appellants and the Postmasters-General of New South Wales and New Zealand were parties, was a contract for a mail service

69590. 100.—2/92. A

between Sydney and San Francisco by way of Auckland, to run for the period of two years computed from the 29th of November 1883. So long as the contract remained in full force the annual remuneration or subsidy payable to the Appellants was to be 50,000*l.*, of which the Government of New South Wales was to contribute 18,750*l.* But the Postmaster-General of New South Wales had the option of withdrawing from the contract at the end of the first year on giving three months' notice. He availed himself of this option, and withdrew on the 29th of November 1884. On his withdrawal he ceased to have any voice in the management of the service, and the contribution from New South Wales ceased to be payable.

While the notice of withdrawal was still pending, a proposal was made by the Appellants to the Government of New South Wales that they should cancel the notice on the terms of being relieved from some portion of their contribution. There was a negotiation as to the extent of the relief. Ultimately the Government of New South Wales agreed to the Appellants' proposal, on the footing that their contribution for 1884–85 should be reduced to the sum of 11,750*l.*, and upon the express condition that the Appellants should procure the concurrence of the Government of New Zealand to this arrangement.

The Government of New Zealand declined to concur, unless the Appellants would make precisely the same reduction in their favour. This concession the Appellants refused. Thereupon the Government of New Zealand, insisting that the Government of New South Wales were not at liberty to cancel the notice of withdrawal, and that under the New Zealand Post Office Act of 1881 they could prevent the New South Wales mails being carried by the Appellants while

receiving a subsidy from them, and also insisting that they had the right if they chose to require the Appellants to maintain the full service with the diminished subsidy, compelled the Government of New South Wales to pay them 7,000*l.* by the threat of putting in force their powers under the Act of 1881.

After the Government of New South Wales had come under these terms the Postmaster-General of New Zealand telegraphed to the Appellants in the following words: "We give "you permission to carry New South Wales "mails to and from San Francisco."

In point of fact the service was never interrupted. During the year 1884–85 the Appellants performed the very same services which they would have been required to perform if New South Wales had not withdrawn from the contract.

The Appellants now claim from the Government of New South Wales the sum of 11,750*l.* as the agreed remuneration for their services during the year 1884–85. The answer of the Government of New South Wales is this: "We "never agreed to pay you anything for the year "1884–85. Our proposal was conditional on "your procuring the concurrence of New "Zealand to our remaining parties to the con-"tract. You failed to procure their concurrence. "We were not allowed to remain parties to the "contract or to resume our position, and we "have actually been compelled to pay 7,000*l.* to "New Zealand, to prevent the stoppage of our "mails, in consequence of your having failed to "procure the concurrence of New Zealand." It appears to their Lordships that this answer, which is true in fact, is a complete defence to the Appellants' claim for the sum of 11,750*l.* as payable under an express agreement. The suggestion that was made during the argument that when the

Appellants received the telegram from the Postmaster-General of New Zealand, giving them permission to carry the New South Wales mails to and from San Francisco, the condition on which the Government of New South Wales offered to pay the sum of 11,750*l.* was fulfilled, and that therefore they became bound to pay that sum to the Appellants as well as the sum of 7,000*l.* to New Zealand, scarcely deserves serious consideration.

The alternative claim of the Appellants is a claim as on a *quantum meruit*, upon an implied agreement that they were to be paid by New South Wales for the services rendered during the year 1884–85. It is plain that there was no implied agreement of the sort. The Appellants submitted to the requirements of the Government of New Zealand and carried the New South Wales mails, because they accepted the view that the New Zealand Government could force them to do so. It was after they had acknowledged themselves to be powerless in the matter that the Government of New South Wales paid the Government of New Zealand to ensure the continuance of services which the Appellants admitted they could neither withhold nor perform without the permission of the Government of New Zealand. At one time, indeed, they did demur to carrying the New South Wales mails without receiving remuneration from that Colony. The Government of New South Wales at once took offence, and pointed out that they could compel them to carry their mails under the New South Wales Post Office Act, paying a gratuity of a penny a letter. Then the Appellants altered their tone. They wrote to say that, although they protested, they would not refuse to carry such mails as the Postmaster-General might be pleased to put on board. They added that the meaning of their protest had been misunderstood, and they expressed a hope that

they might still continue to enjoy "the strong "sympathy" which the Government of New South Wales had always felt towards their Company. Nothing can show more plainly that there was no implied contract for remuneration. The Appellants consented to carry the New South Wales mails without requiring the gratuity of a penny a letter, in the hope that the Government of New South Wales would use their good offices on their behalf with the Government of New Zealand, and that in that way some arrangement might be made, more fair, or at least more satisfactory to the Appellants.

In the result therefore their Lordships are of opinion that the appeal must be dismissed, and they will humbly advise Her Majesty accordingly.

The Appellants will pay the costs of the appeal.