

MINUTES OF EVIDENCE.

JOINT COMMITTEE ON MESSRS. BROGDEN'S CLAIMS.

MONDAY, 17TH JULY, 1882.

(Hon. E. C. J. STEVENS, in the chair.)

Messrs. Brogden were represented by Mr. Cave; and Mr. H. D. Bell, with him Mr. Fletcher Johnston, appeared for the Government.

Mr. Cave, on being called upon to open the case for Messrs. Brogden, said he would confine himself, as closely as possible, to the one question which he thought the Committee would have to consider, namely, the propriety of the Government waiving the limitation imposed by the 31st section of "The Government Contractors Arbitration Act, 1872," and he would ask the Committee to report affirmatively on that question upon the following grounds:—

1. That the 31st section of the Act is contrary to the spirit and intention of the contracts previously entered into, and curtails the rights which the law, in force in the colony at the date of the execution of the contracts, gave to Messrs. Brogden.

2. That Messrs. Brogden had no notice of the limitation of their rights, proposed by section 31 of the Government Contractors Arbitration Act, previous to the passing of that Act.

3. That the Bill was introduced into the Legislature as an Enabling Act, and not as a Statute of Limitations.

4. That the limitation imposed by the 31st section was not specially considered by the members of the Legislature, and its consequent effect upon Messrs. Brogden's rights, under their contracts, was not fully understood or appreciated.

5. That the Act is vague in its terms, and its intended operation not clearly expressed on the point, whether the jurisdiction of the law courts upon matters of dispute, arising out of the contracts, is ousted, and that no judicial interpretation on this point could be obtained until November, 1881.

6. That the limitation of *six* months was unreasonable, strict compliance being impossible, owing to the large extent of the works under the contracts, and the variety of claims arising thereunder.

7. That the Government themselves have failed to comply with the provisions of the Act.

In order to make these grounds intelligible to the Committee, it would perhaps be desirable that he should refer to the circumstances under which the contracts were entered into, in 1871, between Sir Julius Vogel, the then Premier, and Messrs. Brogden. These were provisional contracts, and it was arranged between Sir Julius Vogel and Messrs. Brogden, that one of the firm should follow Sir Julius to New Zealand. This arrangement was made while Sir Julius Vogel was in London. In December, 1871, Mr. James Brogden followed Sir Julius Vogel to the colony. The contracts were submitted to the Legislature, but confirmation of them was refused, and it was resolved that a further contract should be entered into with Messrs. Brogden, under which they should execute railways to the amount of £1,000,000. The settlement of this contract gave rise to a considerable amount of correspondence, which extended over four or five months. A portion of the correspondence, which passed between the parties interested and their legal advisers, is printed in Parliamentary paper of 1872, (D.—No. 19c.) One of the principal subjects of discussion was, the appointment of an arbiter, and it was proposed by the Government that the Engineer-in-Chief of the Colony should be appointed. But the Engineer-in-Chief seemed to have thought that this was undesirable, as, if he acted as arbiter, it would place too much power in his hands when disputes arose. Consequently he advised that a disinterested person should be appointed. Eventually a meeting took place between the Minister of Public Works and Mr. James Brogden, and the result was, that the following arrangement was come to and reduced into writing. (1872, D.—No. 19c.):—

MEMORANDUM of the Heads of an Agreement entered into by Messrs. Brogden and Co., and the Government, represented by Mr. Reeves, on the 10th April, 1872, the subject of the conference being the differences which have arisen in respect to the General Conditions hitherto in force with regard to the construction of Railways in New Zealand.

1. On the subject of arbitration it was decided that, in case the Governor or Minister for Public Works, as the case may be, and the Contractors shall not agree, the matter shall be determined by arbitration; and every such matter as to which they shall not agree, dispute or difference shall be settled by arbitration, to be conducted by reference to the sole decision of the Judge of the Supreme Court in New Zealand within whose district the cause of difference or dispute may have arisen. This submission to arbitration may be made a rule of the Supreme Court of New Zealand, or of any of the superior Courts of Westminster, as the case may be or required. The costs of and attending the arbitration and award shall be in the discretion of the arbitrators.

2. It was agreed that clause 12 should be allowed to remain, subject to the understanding that the right of the Contractors to appeal to arbitration on all points included in the clause should not be prejudiced.

That clause 6 shall be retained, but that an allowance of 10 per cent. shall be made to the Contractors on any saving of expenditure which may result from their recommendations.

That clause 18 (against floods) can be retained, if the Government consider it advisable to do so.

That clause 23 (against the truck system) shall be retained, omitting the words, "at least once in every fortnight."

W. REEVES.

JAMES BROGDEN.

Subject to approval by other Ministers, of employment of Judges as arbitrators in their several districts.