

WEDNESDAY, 18TH JULY, 1882.

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

Mr. Cave appeared for Messrs. Brogden and Mr. Bell, with him Mr. Fletcher Johnston, for the Government.

Mr. Cave was invited to continue his address to the Committee.

Mr. Cave said that at the close of the proceedings, on the previous day, he had arrived at the point when the Messrs. Brogden had determined to take action against the Government on account of their claim, under the Waitara and New Plymouth Railway Contract. The letter he had last quoted was not answered until August, 1877, but on the 20th July, 1877, Mr. Henderson made the following proposition to the Government:—

SIR,—

Wellington, 20th July, 1877.

We have the honor to submit for your consideration the following method of settling all differences between the Government and ourselves relating to the railways we have constructed in New Zealand:—

1. That the Engineer-in-Chief and Mr. Henderson go through the accounts with a view of agreeing to as much as possible, and eliminating such items as are agreed on.

2. That all differences as to work and labour done and materials supplied, or as to the price of extra work, or as to whether we are entitled to the various claims in our accounts, or as to any other matter upon which the Government and ourselves may not agree, should be referred to either of the following gentlemen, viz., Thomas Higginbotham, Esq., Engineer-in-Chief for Victorian Government, and Robert Watson, Esq., Assistant Engineer-in-Chief for Victorian Government, to decide such differences upon their respective merits, and whose decision shall be finally binding and conclusive on both parties, each party being at liberty to be represented by counsel if they so desire.

We make the above offer without prejudice, and request the favour of an early reply.

We have, &c.,

JOHN BROGDEN & SONS,
(per JOHN HENDERSON.)

The Hon. the Minister for Public Works, Wellington.

On the 14th August, 1877, the Under-Secretary for Public Works wrote declining the offer contained in that letter. This, therefore, left Messrs. Brogden no alternative but to proceed with the petition of right. On August 17th of that year a communication was addressed to Messrs. Brogden and Sons, as follows:—

GENTLEMEN,—

Wellington, 17th August, 1877.

In reply to your letter of the 5th July, in which you enclose a petition by Messrs. J. Brogden & Sons, praying the Governor's assent to certain claims arising out of their Waitara and New Plymouth Railway contract being filed under "The Crown Redress Act, 1871," I am directed by the Hon. the Minister for Public Works to inform you that His Excellency will be advised to consent to the filing of the petition. Will you be good enough to communicate further therein with the Solicitor-General.

I have, &c.,

JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. Travers, Ollivier, & Co., Wellington.

The petition was accordingly filed, and on the 19th October, 1877, the pleas of the Government to that petition were delivered. They set up, as a defence to the Messrs. Brogden's claims, the Government Contractors Arbitration Act. The replications to the pleas was delivered on the 22nd October, 1877, and the third replication set up the 31st clause of the Act as an answer to the plea. The replication is in effect, as follows:—

That in so far as the matters set forth in the petition are disputes between the suppliants and the Government, such disputes arose more than six calendar months before the filing of the petition, and neither the Government nor the Minister for Public Works took or adopted any of the ways, means, or proceedings, provided by the Act, for referring the same to arbitration under the provisions thereof.

The replication simply raised the question, whether or not the time within which action could be taken under the Act had passed by. On 11th Dec., 1877, in consequence of the Government having received notice of an assignment which had been made by Messrs. Brogden, previously to the filing of the petition, a further plea was put in on behalf of the Crown, to the effect that, as Messrs. Brogden had parted with their interest in the contracts, they were not the proper parties to sue at the time the proceedings were instituted. This had the effect of staying the proceedings. When that fact became known in England the interest was reassigned to Messrs. Brogden, and application was made to the legal advisers of the Government to withdraw the plea of the assignment, in order that the issues raised by the other pleas should be tried on their merits in the usual way. The legal advisers of the Government, however, declined to accede to this. Inasmuch, therefore, as the assignment had been executed previous to the commencement of the proceedings, and it was obvious that the Messrs. Brogden were not the proper parties to have sued at the time the petition was filed, they had no alternative but to discontinue the action. The assignment had been made before the institution of proceedings, although the fact was not known in New Zealand until after the petition had been filed, and the cause was at issue.

Sir John Hall: Would not the assignment, according to the English law, have prevented the action from being carried on?

Mr. Cave: No; because in England the action would have been carried on in the name of the original creditor. On 26th July, 1878, Mr. Travers addressed a letter to the Solicitor-General, setting forth the reasons why he declared it necessary that the proceedings should be discontinued. That letter read thus:—

To the Honorable the SOLICITOR-GENERAL, Wellington.

Wellington, 26th July, 1878.

SIR,—

Re Brogden Waitara Case.

Your letter to us of yesterday crossed one which we had addressed to you on the same subject. We regret that the Government cannot be advised to withdraw the pleading in question, and with reference to your suggestion "that the object of the petitioners may be attained by a further appropriate pleading," we beg to call your attention to the following points:—In the first place, the pleading in question raises no matter affecting, or material to the merits of the case. In the next place, it is either good or bad in law—if good, then it cannot be disposed of by any pleading on the part of the petitioners, seeing that they do not dispute the facts alleged in it. If bad, then there can be no object on the part of the Government in retaining it. Again, if it be good, any answer in pleading which did not dispose of it would be open to a demurrer.

I. 7.—2.