

He explained with regard to the Kakanui and Ireland Creek bridges referred to in this letter, that the Government had recently investigated that claim, and had come to the conclusion that the deductions should not have been made, and the amount which Mr. Higginson, (the engineer appointed by the Government) decided to be due to Messrs. Brogden, had since been paid to them by the Government. The letter he had read showed that at the time these penalties were deducted for non-completion of the contract, orders for a considerable portion of the work had not even been received from the government, and consequently when the claims were investigated it was clearly proved that the deductions should not have been made.

*Mr. Macandrew*: You are referring to this case as an example, I presume?

*Mr. Cave*: Yes. He was doing so because it was a case which dealt particularly with the penalties. He had no doubt that if further investigation were made, it would be seen that still more money was due to the Messrs. Brogden. It had already been shown that up to the end of 1878, the proceedings for the prosecution of the claims were being actively carried on, and reasons had been given for the delay between the year 1878 and the time of Mr Brogden's arrival in the colony in 1880. There was no doubt that there was a cessation of proceedings during that time, but the removal of Mr. Barton from Wellington, the death of Mr Henderson, and the delay in Mr. Brogden's coming out to the colony were sufficient to account for this cessation, and to show that there was no intention on the part of Messrs. Brogden to abandon the proceedings. Messrs. Brogden fully recognised the necessity for a member of their firm visiting the colony, with a view to a compromise, if possible.

*Sir John Hall*: Was there not an action at that time pending in England?

*Mr. Cave* thought not, though an action might have been pending, but practically all proceedings were in abeyance. In fact, no action had been taken in the case of Brogden v. The Queen, since the decision of the Court of Appeal had been given. There was an order obtained for a commission to examine witnesses in England, but that order has never been executed.

*Hon. G. McLean*: How was it that you were always moving for a petition of right under the the Crown Redress Act, instead of trying to get the Government to waive the limitation clause?

*Mr. Cave*: The advice that Messrs. Brogden received, both in England and in the colony, was to the effect that they still had their remedy in the Law Courts of the colony. From the time of filing the petition of right, it was understood by both parties that the object of filing it was to test the question whether or not the Act did oust the decision of the Judges. The Crown practically admitted that the petition of right was filed by Messrs. Brogden, with the view of ascertaining whether the position they took up was the correct one or not. To prove that such was the fact, he (Mr. Cave) would refer to a speech which was made by the Hon. George McLean, in 1878, which showed that the Government had resolved to allow the matter to be determined according to law. Messrs. Brogden never got a definite assurance that the 31st clause of the Act would be waived, and, unfortunately, when negotiations were in progress, Mr. Barton came upon the scene, and the letter of 8th March was written, the result being that the Government officers were not afterwards disposed to deal with the matter in the amicable spirit they might have done, if that letter had not been written. There had been frequent offers made by Messrs. Brogden to submit the claims to arbitration before filing the petition in the Waitara and New Plymouth case, and even subsequently similar offers were made. On 20th June, 1881, a letter was written by him (Mr. Cave) to the Crown Solicitor, offering to refer the matter to arbitration, but at that time proceedings were pending. If the Government had then agreed to waive the 31st clause of the Act, there could be no doubt that the matter would have been submitted to arbitration. On 10th January, 1882, the Messrs. Brogden addressed a letter to the Minister for Public Works to the following effect:—

SIR,—

Wellington, 10th January, 1882.

In your letter of the 22nd ultimo you request us to state what method we can suggest by which our claims can be settled otherwise than in the manner and within the time specially appointed by the Legislature for the purpose. With regard to the method, we suggest the course which all ordinary business people would adopt, and which, in the end, will have practically to be adopted, viz., a comparison and enquiry between any person you may appoint and ourselves, so as to eliminate from the accounts all items about which there can be no possible reasonable dispute. As to many of the items in dispute, the discussion would no doubt diminish them by showing that we were wrong, or would establish them by convincing your appointee that the Government were wrong; and as to the remainder, we are agreeable either to refer them to the Judges of the Supreme Court in their respective districts, or some other arbitrator, or to a jury. On our part, we are quite prepared to waive all technicalities or formalities, only stipulating that, if the Government claim to correct any measurements or quantities of work done and previously certified and paid for, they should be called upon to show a *prima facie* case, and bear the whole cost of our witnesses in support if they fail in establishing their claim. If they dispute only the principle of the payment, on the ground that it should be included in the contract price, we are content that the ordinary rule as to costs should apply. We should then expect the Government to dispense with technicalities and formalities on their side, and that the fact that the works were ordered and executed and accepted and enjoyed by the Government, and the reasonableness of the prices, should be the questions to be settled. There will be most probably some question of interpretation of clauses of the contract, which could be settled by an appeal to the Supreme Court. If we have omitted anything in this proposal which ought to be added, so as to give the fullest and fairest inquiry into the facts, it is unintentional on our part, and we will willingly consider any other suggestion.

On the second point, as to the time specially appointed by the Legislature within which these questions can be settled, we defer our reply until we see your answer to Mr. Cave's letter of the 19th ultimo. We beg again to observe that our object is to get at the facts, and to terminate, in the speediest manner, the legal technicalities and fallacies which have hitherto obscured them. With this view we will endeavor to co-operate with the Government in any way they may suggest, so as to save time and expense to all parties.

We are quite prepared to compromise for a specific sum, and to discuss the terms and mode of payment; but, before putting any such proposition forward, we must be informed whether the Government are prepared to deal with the matter in that way.

We have, &c.,

The Hon. the Minister for Public Works, Wellington.

JOHN BROGDEN and SONS.

P.S. Mr. Brogden will very shortly return to England, and it is therefore necessary to lose no time in replying to this letter.

On the day following a letter was written by Mr. Bell, the Crown Solicitor, as follows:—

DEAR SIR,—

11th January, 1882.

*Messrs. Brogden's Claims, Waitara-New Plymouth Contract.*

You will remember that when I received your letter of the 19th December I informed you that the questions asked therein could not be answered by me, but must be considered by the Government, and that it would be impossible to give a reply until after the Christmas holidays.