

Before such reply could be given, viz., on the 30th December, a statement of claim under the above contract was delivered by you, and I assume that this is intended as a preliminary to proceedings under the Act of 1872. As the Act allows only fourteen days for the delivery of propositions in reply to a claim, I think you must have anticipated that I should set up all legal defences available to the Government. The propositions of fact and law will be delivered to you to-morrow, under protest to the jurisdiction on various grounds, including the limitation defined by section 31 of the Act.

By delivering the statement without waiting for reply to your letter of the 13th December, you have practically asserted that your clients have a legal right to proceed to arbitration, whether the Government consent or not. In the course of the proceedings it will no doubt be finally ascertained and decided by the Courts of law whether you have such legal right, or whether, as we are advised, the Government have the power to prevent your proceeding at all. But so long as you deny the existence of the power, it is useless for the Government to consider how and to what extent they would choose to exercise it. Before anything in that direction is done, it is obvious the legal position should be determined. I cannot consent to accept any document previously delivered as a sufficient notice under section 7, as I am of opinion that no such notice has ever been given.

C. W. Cave, Esq.

I have, &c.,

H. D. BELL.

On 15th March, 1882, the Assistant Under-Secretary for Public Works, wrote to Messrs. Brogden a letter, the third paragraph of which ran as follows:—"The Government agree with you in your statement that you are entitled to be paid for the works you have done for the Government. According to the Government account you have been paid all that is due to you for such works. I am to call your attention to the actual facts of the case."

Sir John Hall: You have explained the cause of the delay which took place in regard to the non-prosecution of Messrs. Brogden's claims. Now, bearing in mind what you have said, do you think the Government ought to pay any interest on the money which is alleged to be due, if it really is due?

Mr. Cave did not ask the Committee to say anything about that. He would leave that matter to be settled by arbitration, and he thought the Government would be justified in taking up the position that they were not bound to pay the full rate of interest for a considerable portion of the time.

Sir John Hall: The interest is chargeable at the rate of 10 per cent., is it not?

Mr. Cave said that was the rate of interest that was chargeable, but he thought that the amount to be paid should either be left to the arbitrator to decide, or be the subject of agreement between Messrs. Brogden and the Government. He (Mr. Cave) was quite certain that Messrs. Brogden would not claim the whole of the 10 per cent. He did not propose in opening the case to make any further remarks in justification of Messrs. Brogden's claim; but he would submit that he had shown substantial reasons why the Committee should report favorably, at all events, in regard to those contracts which were entered into before the passing of the Act. Neither Messrs. Brogden, Mr. Henderson, nor Mr. Travers was aware of the limitation clause until long after the Act was passed. Mr. Travers said he did not know of the existence of it until the end of 1877. He certainly read the first revise of the Bill, but it was quite probable that he did not read the Act after it had become law. It was not the custom for lawyers to hunt up the Statute Books for the purpose of reading Acts of Parliament until the necessity for doing so arose in carrying out their avocation. In his opinion, the speeches that were delivered in both Houses of Parliament clearly showed that the Bill was introduced simply as an Act to enable the Judges of the Supreme Court to act as arbitrators. He submitted that the limitation of six months was an unreasonable one, having regard to the extent of the works to be executed, and the variety of the claims that must arise under them. And it might be pointed out that the six months' limitation was really reduced to five months, because, under the 4th and 7th clauses, a month's notice had to be given to the Minister if action were intended to be taken by the contractor. He (Mr. Cave) contended that the limitation was an unreasonable one, and one which it was impossible to comply with. He submitted also that the Government themselves had failed to comply with the provisions of the Act. At present he had nothing further to urge on behalf of Messrs. Brogden, and he now left the case in the hands of the Committee, from whom he was sure it would receive attentive and impartial consideration.

Mr. Bell would like to know whether the Messrs. Brogden contended that they had not received every shilling they were entitled to?

Mr. Cave replied that he had carefully abstained from going into the merits of the claims in any way except with regard to the deductions to which he had referred, and he thought that was scarcely a question which he should be called upon to answer. It was certain, however, that sums which had been certified to by the Government Engineers, had not been paid, because the Government claimed that they had a "set-off."

Mr. Bell: Taking the final certificates upon all the contracts together, do you contend that Messrs. Brogden have not received the whole of the sums which the Government Engineers reported they were entitled to?

Mr. Cave thought he could go so far as to say that payment had been made of all sums which the Government Engineers had certified to be due so far as those certificates had been submitted to Messrs. Brogden, but he could not say anything about the final certificates, nor was he in a position to say what amounts the Engineers had actually certified for.

The Committee then adjourned until the following Thursday.

WEDNESDAY, 19TH JULY, 1882.

Mr. Cave: Before the learned counsel for the Crown commences his statement, I should like to make one remark on the subject of the admission he asked me yesterday if I was prepared to make. Since then, I have looked into the papers, and I find I cannot make the admission he asks. It seems to me, however, that the matter is one not appertaining to this enquiry. The Committee have before them the fact of the claims, and also the fact that the Government assert they have paid Messrs. Brogden the whole of the money to which they are entitled. If the Committee think it desirable that evidence should be taken on the point suggested by my friend, of course I shall have the opportunity of cross-examining the witnesses, and of producing evidence in reply, if necessary. But as I am now instructed, I cannot make the admission.