

tractor, such certificate shall, for the purpose of the progress payment to be made thereunder, be conclusive; and in case of any dispute between the Contractor and the Engineer as to the estimate therein made of value of work done, or plant or materials provided, as the case may be, of which dispute notice shall have been given by the Contractor to the Minister for Public Works within fourteen days after the delivery of the certificate to the Contractor, such dispute shall be referred to arbitration as hereinafter mentioned.

This is the right and the only right of arbitration given in the contract. This appeal from the decision of the Engineers provided notice of such appeal was given within fourteen days after the delivery of the certificate. Now, it may be said, perhaps, that the words "such certificate shall, for the purpose of progress payments to be made thereunder, be conclusive," governs the latter part of the condition, and made it applicable, not to the final certificate, but only to the certificates for progress payments; but the words are, "The certificate shall, for the purpose of progress payments, be conclusive." That part of it only applies to the progress payments. "In case no certificate" includes the final certificate. Looking at clause 25 it will be seen that where a certificate has been given notice of appeal therefrom, must be given within fourteen days. Well, I will concede this to my friend, that there are certain items of the claims as to which disputes would not arise until the final certificates of the Engineers; but they do not form a very large portion, although I admit they are a considerable portion of the claims—the part which is classified under the heading "miscellaneous"—items such as compensation for delays, imperfect plans, want of material, and so on. That part of the claims, I am free to admit, would not arise until the final certificate of the Engineer. But as to the whole of the rest of the claim, I ask the Committee to read this clause and see whether they can come to any other conclusion than that upon the contracts as they stood before the Act of 1872 was passed, no right of appeal to the Judge was given, unless notice of the appeal was given to the Government within fourteen days after the delivery of the Engineer's certificate. That limitation of time was a most beneficial provision, as I shall show when I call attention to the way in which the claims are made up. I now pass from the contracts to the Act. I am not going to trouble the Committee by going through at any length the correspondence referred to at such length by my friend, but there are one or two documents to which I wish to call attention. I say, as a matter of fact, and I ask the Committee to find, as a matter of fact, that this Act was passed with the concurrence and the full knowledge of Mr. James Brogden, the representative of the firm, and holding its power of attorney, and of Mr. Travers, the solicitor to the firm. I ask the Committee, in the first place, to compare the statements of Messrs. Brogden, made before the printing of the correspondence in the Appendix to the Journals, 1878, E. No. 3, with the charges they have made since. That seems to me a matter of great importance. The allegations made before 1878 are contained in the letter of the 8th March, 1877, from Mr. Henderson to the Minister for Public Works. I will not read it, but I will ask the Committee to see how much of it refers to clause 31. Why three paragraphs out of a long letter of more than four foolscap pages of small print? I call the attention of the Committee to the paragraphs in which clause 31 is referred to, but it would take too long to call attention to the paragraphs of the letter which do not bear upon that clause. What was the letter of 8th March, 1877? Why it was an attack upon the Act itself; not upon the limitation specially—not at all. It says you have taken away the arbitration clause and put on trial by a Judge, without jury, with no appeal, a most cumbrous method of arbitration, and so on. There is a most pointed attack upon clause 4 of the Act, which provides for an intermediate appeal to the Minister for Public Works. That clause was inserted in accordance with a suggestion of Mr. Justice Johnston. Now that clause was actually amended by Messrs. Brogden's solicitor, Mr. Travers. The clause which Messrs. Brogden fulminated against in this manner, in 1877, was one of those in which Mr. Travers actually suggested amendments in 1872. Well, then, look at paragraph four of the letter. What is their statement?

We most respectfully state that the provisions of that Act, altering and affecting our contract rights, were utterly unknown to us prior to the date of your letter, and that they are under our most careful and anxious consideration.

The letter is an attack upon the Act itself, not upon clause 31. Exception is taken to nearly every clause of the Act. Further down the Committee will find—

Had the Government, or its legal advisers, thought necessary that our contract should be materially altered, they should have communicated with us on the subject, and have followed the course required.

If the Committee will look at the attack upon clause 4,—the second attack upon that clause,—they will see—

We submit that the Legislature had no right to put the Minister for Public Works, representing by his office one of the contracting "parties," in the position of a judge to decide as a preliminary step on the validity of our claims, and also to convert the arbitration provided in our arbitration clause into a kind of Star Chamber tribunal, composed of Judges appointed by the Crown, entitled to act upon any evidence (hearsay or otherwise) they may please to accept, and from whom we are to have no appeal upon error of law, error of fact, or error of any kind whatever.

Then, passing to the letters of Mr. Henderson to the newspapers. I will refer first to the letter in the *New Zealand Times* of the 23rd January, 1878. It says:—

On looking into Messrs. Brogden's case and the law applicable to it, our solicitors found, to my great surprise, that a statute entitled "The Government Contractors Arbitration Act, 1872" (of the existence of which Messrs. Brogden and Sons had been up to that time entirely unaware), opposed a complete barrier to the prosecution of Messrs. Brogden and Sons against the Government of ordinary legal proceedings before a jury, at the same time depriving them of valuable clauses in their contracts which would have enabled them to surmount technical difficulties. Messrs. Brogden were advised that, by the operation of that statute, they would be forced to submit to the adjudication of the Supreme Court Judge, not only without the intervention of a jury, but without any right of appeal from his decision to any Court either here or in England; that full power was vested in such Judge to take unsworn evidence, not only unsworn but *ex parte* if he so pleased; and, lastly, that his judgment was to be given in the simple form of a certificate for money payable from one party to the other, such certificate giving no reasons or explanations of any kind respecting his decision. Such was the tribunal to which Messrs. Brogden were restricted by this extraordinary statute; and, to secure the Government against the possibility of any inconvenient struggle by the English contractors, a very innocent-looking little clause at the end of the statute confined the Judge to the examination of such claims only as had been disputed within the previous six months; all disputes older than six months prior to the investigation being barred. Thus, at one blow, the ordinary time allowed to creditors against their debtors by the law of the land was reduced in Messrs. Brogden's case from twenty years (Messrs. Brogden's contract being under seal,) to six months.