

tion of price, I may be permitted now to give an example of a dispute as to *quantity* of work. In a case in which both my friend Mr. Cave and I were lately engaged, the Clutha Platelaying Contract, the line ran for a considerable distance through a swamp. The question arose as to how much earth had been put into the swamp, and it was actually argued by my friend and myself from papers and memoranda, because we could not now get the facts from measurement. £1,250 was claimed for filling in the Stirling station yard in the swamp, and we found that the other side (Messrs. Brogden) had stronger evidence on paper than we had, and I had actually to agree that a measurement being made in March last of filling in a swamp done in 1876, and if that measurement could not have been made I should have had to yield to a great extent to the evidence on paper brought by the other side. It was almost impossible to take a measurement then of work that had been done long before, but eventually the arbitrator found that £30 or £40 too little had been paid. We did not admit a discrepancy of that sort, because it is very unlikely that the Engineer's measurements should not differ to the extent of a few yards, and we were really without any possibility of an accurate measurement of the work. There was no evidence available of workmen who could give information as to the nature of the work, and their estimate of how much earth had been put in a certain place. But it happened in that case, by a most exceptional circumstance, that we had a man who had kept a diary, and perhaps a more extraordinary diary was never kept. This man had been a foreman on the works, and he had kept a careful diary of every piece of work done, and on that evidence we were able to rely, but if that man had died, or the diary had been burned or lost, we should have been in a very different position indeed. However, we had that diary and the evidence of the man, and that was of the greatest value to us. The man, I may mention, was named Matthews, and I think he really deserves some recognition at the hands of the Government for his services in that respect. I mention this to show how difficult it is after this lapse of time to fairly investigate the quantities of work mentioned in the items of the claims. Another point that must be borne in mind is that an engineer, in making a certificate, always gives and takes—a piece here may be left out, and a piece there may be put in—and the engineer very often strikes an average. This, no doubt was the case; an extra culvert in one place would be set off against a cutting left out in another, and so on; but, of course, that could not be proved now, though it might easily have been proved in 1877. If the members of the Committee will look at the claim, they will find that there is an enormous number of small items, as to which we can only say that we believe our engineers did not overlook them, and if the work was done, and the engineers did not allow for them, they had very good cause. In the Clutha case, of which I have been speaking, we found a considerable amount of work had been omitted, and that a considerable amount of extra work had been done. Very likely that was the reason there was a discrepancy between what the engineer allowed and what the arbitrator allowed, which was something under £700 out of a total claim of £12,000.

Now I have concluded what I have to say on that point, and I now ask whether the Brogdens have not been treated with exceptional liberality. If the Committee will refer to D.—19c, 1872, they will find an agreement was signed with Messrs. Brogden on the 10th August, 1872, for the purchase of railway material. That was the same day on which the first contracts for works were signed. The last paragraph of that contract, to which is the only part I wish to call attention, is as follows:—

Whereas the materials and rolling-stock intended to be purchased under the terms of this present agreement would, under the said Contract No. 3, have been supplied by the contractors, and the cost thereof would have formed part of the sum of seven hundred thousand pounds (£700,000), contracts to the amount of which it was agreed by the said Contract No. 3 should be entered into before the said Contract No. 2 was annulled: And whereas the commission to be paid as aforesaid to the contractors in respect of the advice and assistance given by them in the matters aforesaid is at the rate of five pounds per centum in lieu of the estimated profit of ten pounds per centum which the contractors assure the Government they expected to have earned had the terms of the said Contract No. 3 been adhered to: It is agreed by and between the parties hereto as follows: The said sum of seven hundred thousand pounds (£700,000) shall be reduced by one hundred and twenty-five thousand pounds (£125,000), being one-half of the said sum of two hundred and fifty thousand pounds (£250,000) to be expended as aforesaid; and it is hereby agreed that, upon the parties hereto entering into contracts for the construction of specified railways to the extent of not less than five hundred and seventy-five thousand pounds (£575,000), exclusive of the cost of such materials and rolling-stock as aforesaid, the said Contract No. 2 shall be annulled, cancelled, and of no effect.

The Committee will remember that under the resolution of the House of Representatives of the 24th October, 1871, a million's worth of contracts were to be given to Messrs. Brogden, but by the agreement of December, 1871, this amount was reduced to £700,000. On the 4th August it had been arranged that Messrs. Brogden should have contracts for £545,000, and a commission of 5 per cent. on the purchase of railway material to the extent of £250,000.

I may mention here a curious circumstance, which I should have referred to in my remarks on the passing of the Act of 1872, viz., that the first six contracts were signed on the 10th August, 1872, and that Mr. Travers's letter, enclosing the first revise of the Act of 1872, to Mr. Prendergast was dated the 13th August, so that in all probability Mr. Travers had the draft of the Act in his possession on the 10th, and he certainly had it on the 12th August. Therefore he certainly had the draft of the Bill within a day or two after, and probably at the very time that these six contracts were executed by Mr. James Brogden, as attorney for the firm, his signature being attested by Mr. Travers. The three other contracts were signed on the 19th July, 1873. These latter three were executed about nine months after the Act was passed, and by Mr. Henderson, the signatures being again attested by Mr. Travers.

*Mr. Cave:* Mr. Travers denies having seen clause 31.

*Mr. Bell:* Of course I would not impute to Mr. Travers that he would deny having seen the Bill if he remembered having seen it, but he must have forgotten it.

*Hon. Mr. Miller:* Mr. Travers having seen and altered the draft Bill, is there any record of any remarks of his upon the bearing of the clauses?

*Mr. Bell:* No. I would point out to the Committee that Mr. Travers did not say he was ignorant of the Act when he began to make arrangements with Mr. Reid in 1877. Those arrangements begun by him contemplated proceedings under the Act, and it is not until Mr. Barton is brought upon the scene that we hear anything about this fraud of passing the Act of 1872. That is the *gravamen* of