

I am only asking you if a clause of limitation of some kind, which everybody would anticipate, should be in the Act?—I do not know that everybody should anticipate it. It was reasonable to expect a clause of that kind, I say.

Now, you have spoken of the ousting of the jurisdiction of the Supreme Court. Supposing there had been no appeal provided from the final arbitrament of the Engineer, could the Messrs. Brogden have sued in the Supreme Court for sums that had been certified to by the Engineers?—There are conditions precedent without which they could not have sued—that is to say, sued directly for the money. The Engineer may improperly withhold his certificate by collusion with his employer. That is met of course by the Bill in its present condition.

But assuming that the Engineers have acted *bond fide*, could the Messrs. Brogden have sued successfully in the Supreme Court?—Clearly not, if their right to recover depended on the performance of a condition precedent, which this had not performed.

Therefore the appeal from the Engineer was a privilege granted to the Messrs. Brogden?—Yes; an appeal is always in the nature of a privilege.

It was a special privilege, was it not? A contractor is always bound by the certificate of the engineer, unless he can show there has been some fraud?—Yes, I think it is a privilege which has not been conceded to other contractors.

And a privilege which you have told the Committee there should be some limit to?—I may have said that also, but many Judges have remarked on the stringency of these clauses in contracts. They are very stringent, and operate sometimes with very great hardship; and you, Mr. Bell, know very well that some Judges have said that it seems unfair to take advantage of the competition that exists for employment in matters of this kind to insist on the introduction of clauses which have frequently been used in a very arbitrary manner to the injury of honest workmen.

You are aware that these conditions were settled by yourself?—Oh, yes; settled as far as the Messrs. Brogden were concerned.

Therefore, if there is anything wrong in the conditions, Messrs. Brogden's solicitors are responsible?—We will take a share of the responsibility.

Supposing the Parliament was now to repeal the Government Contractors Arbitration Act and excise the arbitration clause, could your clients recover one sixpence?—(Laughing) I will not give an opinion on that unless I get a very handsome fee. I do not mean to say there may not be very considerable difficulties, but I remember it being once stated that it is the privilege of an Englishman to try even a desperate case.

But did your clients?—They are not my clients. Mr. Cave is—my partner—and I am absolutely excluded by the terms of our partnership from participation in the profits which may arise from this business.

Well, supposing the Parliament were to repeal the Act of 1872, and excise the arbitration clause from the contract, could a contractor recover anything except what had been certified to by the Engineers, unless he could prove collusion?—You are asking me a question on a matter on which I am profoundly ignorant, because I have very little knowledge indeed of the claims of the Messrs. Brogden. I may tell you that some years ago Messrs. Brogden placed their affairs in the hands of Mr. Barton. I have not acted for several years for them, and I am very ignorant of the character of their claims. I have seen the papers in one case—*Brogden v. the Queen*; and, as the questions under discussion were raised by demurrer, I have not gone into the merits of their case.

But Mr. James Brogden was your client in 1872?—Oh, yes.

Do you remember whether he was in Wellington at the time the Act was passing?—I dare say he was. I think he did not leave Wellington until after all the matters connected with the contract were completed.

Do you know whether he was a constant attendant behind the Speaker's chair in the House?—He was so far interested in these matters that he was very likely to be present during the discussion of matters of this kind.

Are you aware that he took an interest in the debate on the turning out of the Fox Government in 1872?—Very likely. How far he contributed to that I do not know.

Can you give the Committee your opinion as to whether Mr. Brogden saw this Bill or not?—He must have seen the draft at all events; and if you ask me for my opinion as to whether he saw the printed Bill as introduced I should say yes; but whether he understood it is another matter. He never consulted me on these special clauses at all, and I have no recollection of ever speaking to him on the subject of this Bill, except in connection with the suggested amendments.

Was he a good man of business?—Well, some people say he is not as good as his brother Alexander.

Alexander is an exceptionally good man?—I do not think Mr. James Brogden was a good man of business myself. In fact, had he acted wisely, he would have packed up his traps and gone from New Zealand altogether, without entering upon any works there. I told him the probability was that his firm would be landed in a very serious loss by the time their contracts were completed.

Was Mr. Brogden such a bad man of business that he would fail to understand the effect of clause 31, if he saw it?—I do not know really; I could not tell you. I think Mr. James Brogden was shrewd enough in that way, but I think he was much more likely to allow matters of that kind to pass than his brother Alexander would be.

There is no charge, I believe, subsequent to the charge of the 13th August?—Not that I can find in the account. Indeed I feel pretty sure that nothing further was done. I have no recollection whatever of discussing the terms of the Bill at all.

I want to know whether in 1877 or 1878 you discussed the question of the Act with Mr. Henderson at all?—I do not think Mr. Henderson was my client at that time.

*Mr. Cave*: Yes, he was, at that time.

*Mr. Travers*: In 1877 he was, but I do not think he was in 1878.

*Mr. Bell*.] He was both your and Mr. Barton's client?—I think he was much more Mr. Barton's client than mine.