

Clause 28 was inserted after Mr. Travers saw it?—One barred an action in respect of any matter which ought to have been arbitrated.

Which?—Clause 28. Clause 22 seems to have limited the right of appeal from his decision as arbitrator, not in his judicial capacity.

Even in the absence of clause 28, what appeal would the parties have had to the Supreme Court?—It was not a matter of appeal. They would have sued at once.

As what?—As anything that would have been open to them.

Could they have gone behind the Engineer's certificate?—Possibly.

*Mr. Bell.*] I venture to suggest that Mr. Reid's attention should be called to clause 3, which provides that any disputes shall be referred to a Judge of the Supreme Court, and asked if, in face of clause 3, there would have been any right to proceed otherwise than under the Act of 1872—whether, in fact, the jurisdiction of the Supreme Court was not ousted by clause 3?—Yes; I should be inclined to think that is mandatory.

*Mr. Cave.*] That is, I presume, the matters of dispute under the terms of the contract?—Yes (read clause).

*Sir John Hall.* Clause 28 says, "Neither of the parties shall bring any action, suit, or proceeding against the other for or in respect of any matter so agreed to be referred as aforesaid, nor shall either bring or prosecute any writ of error or other proceeding in the nature thereof concerning any of the matters referred, or any certificate made or given under this Act."

*Mr. Cave.* But there may be disputes which under the contract are not to be referred. The contract specifies what are to be subject to arbitration, and the Act does not extend the provision of the contract in this respect. The contract specially defines what matters of dispute are to be referred to arbitration, and the Act itself provides that matters which by the contract are agreed to be referred shall be referred in the manner provided by the Act.

*Sir John Hall.* But clause 28 gives you that.

*Mr. Cave.* It has been held by the Supreme Court that it does not.

*Sir John Hall.* Well, of course, I am not a lawyer, and cannot say.

*Mr. Cave.* The Judges of the Supreme Court have come to a contrary conclusion.

*Sir John Hall* (to witness)]. May I ask whether, in fact, clause 28 does extend to anything beyond matters agreed to be referred in the contract?—Well, I do not think it does.

*Mr. Cave.*] Perhaps I may be allowed to ask this: Assuming that there are sums which have been certified by the Engineer under the contract as terms of the contractors, and those sums have not been paid, do you consider that the contractors have a right of action for the recovery of these sums?—No.

Notwithstanding that the Engineer has certified?—No.

You would consider that right of action was ousted?—Yes.

*Sir John Hall.*] But is it ousted by clause 28 or clause 3?—By both, I think.

*Mr. Bell.*] I must not be taken as concurring in Mr. Reid's opinion.

Mr. W. N. BLAIR, examined.

*Mr. Cave.* I would like to ask the Committee whether, having regard to a statement with reference to a book which has been produced, containing, as was stated, the price which had been agreed upon between Mr. Carruthers and Mr. Henderson, to allow me to ask Mr. Blair whether that book does, in fact, contain the prices agreed upon. I understood Mr. Blair was to be called for the purpose of proving that statement.

*Mr. Bell.* No.

*Mr. Cave.* Mr. Blair is said to have been present at interviews between Mr. Carruthers and Mr. Henderson, at which prices were settled; and I understood he was to have come here to verify the entries that were made in that book, as being prices agreed upon between Mr. Carruthers and Mr. Henderson. If the book is to be put in as evidence of the prices so agreed upon, I ought to be allowed to ask whether the book does contain it.

*Mr. Bell.* I do not object to his being asked that.

*Mr. Cave.* Perhaps the Committee will ask my friend whether he puts that book in as being a record of prices.

*Mr. Bell.* Yes, and it is the public works record, and is proved to be so.

*Mr. Cave.* Then I shall ask the Committee to allow Mr. Blair to be called, in order that I may ask him a few questions in reference to this book.

Mr. Blair was then called and examined.

*Mr. Cave.*] It has been stated, Mr. Blair, that you were present at certain interviews which took place between Mr. Henderson and Mr. Carruthers, at which the prices for the various contracts were settled?—I was present.

And what contracts were discussed?—Only the Taieri contracts.

And can you tell us the course which was pursued in fixing these prices?—We discussed each item.

Was their course this: The Engineer-in-Chief, with his assistant, made up his estimate, and Messrs. Brogden made up their estimates, and then the parties met and compared figures, and discussed the items and amounts so agreed upon?—Not exactly. The course pursued was this: I, on behalf of the Government, took out quantities with the assistance of other Government officers, and Mr. Dees, with his assistants, took out quantities for the contractors. Mr. Dees and I agreed upon the quantities, and then we submitted them to Mr. Carruthers and Mr. Henderson. The prices were then discussed item by item.

Were the estimates prepared and discussed previous to the meeting of Mr. Carruthers and Mr. Henderson?—I prepared an estimate, but I do not know that I submitted it officially to the Engineer-in-Chief.

Is this (producing book) the estimate that you then prepared?—What contract was that?

The Taieri contract, that is the only one with which you were connected?—Yes.