

If the Engineer wrongfully refuses to give a certificate the contractor could appeal to the arbitrator under the contract?—Yes; I admit that the contractor could not succeed in an action in the Supreme Court in the absence of a certificate, unless the refusal to give it had been made wrongfully, but of course there would still be an appeal to the arbitrators.

But supposing that the Engineer had given his decision *bona fide* there would be no appeal?—No.

Sir John Hall.] Then, in point of fact, the arbitration clause in the contract places Messrs. Brogden in a better position than they would have been if it had not been there?—Perhaps so. The whole thing amounts to this, if a man likes to go to law with a desperate case he has to incur the penalty of costs.

Mr. W. N. BLAIR, examined.

Mr. Bell.] You were the Engineer in charge of the Taieri Railway contract?—I was.

With regard to the deductions, how did you estimate the amount that was to be deducted from the contract price?—I estimated that amount in the same way that I estimated the additions—that is, in accordance with the schedule prices—prices as agreed on mutually. In the case of the extras, I added to the prices which I took $12\frac{1}{2}$ per cent for contingencies and 10 per cent for contractors' profits. In the case of the deductions, only the $12\frac{1}{2}$ per cent was added; consequently the contractors got 10 per cent on the contract works omitted; but nothing was allowed for management or extras.

You were not aware that there had been added to the original price 10 per cent. for contractors' profit, 10 per cent. for management, and $12\frac{1}{2}$ per cent. for contingencies?—The contingencies and profits were not a percentage; but the management was a lump sum.

Mr. Cave.] Were the deductions agreed upon with Messrs. Brogden in any way?—Not in the final certificate. There was no person on the ground who could enter into an agreement. I waited for several months in order to see whether I could get some person in the Messrs. Brogden's employ to go through the accounts with me.

Were not particulars of the deductions furnished to Messrs. Brogden?—I do not know whether they were given in the case of the final certificate, but they were in all others.

Were the deductions taken off from time to time in the progress certificates?—Yes.

Did you make up that statement of deductions from the progress sheets?—Yes, so far as they had gone.

What is the total amount of deductions?—£9,009 3s. 8d.

[*Mr. Cave* was here stopped in his examination of the witness, and, the room being cleared of strangers, the Committee deliberated. When the doors were again opened and the parties interested had been called in, the Chairman informed *Mr. Cave* that the Committee preferred that the examination should be confined to the facts and not to the merits of the case, and without going into the details of the matter.]

Mr. Cave (to the witness)]. Will you explain how you come to the conclusion that the 10 per cent. has been allowed on these deductions?—Because we calculated them at the same rates as we did the additions.

Are all the prices agreed upon contained in that book which you have in your hand?—No; because in some cases we give the net cost, and in others we give the total cost including all percentages and profits.

You know nothing about the Auckland and Mercer contract?—No.

Sir John Hall.] It was stated in evidence yesterday that an arrangement had been come to between *Mr. Carruthers* and Messrs. Brogden's representative to the effect that *Mr. Williams* should go down to Otago with the view of settling up with you in regard to the Taieri contract, and that *Mr. Williams* went down accordingly, but found that you had no instructions on the subject, and that, therefore, he had to return without doing what he was sent down to do. Is that the case?—I have no recollection of the matter, and there is no record of it in the office. I certainly had no instructions from head-quarters on the subject, and I had no communication from Messrs. Brogden about it. If *Mr. Williams* applied to me it was done in a very informal manner, and I have no recollection of it. I was on one occasion asked by Messrs. Brogden to give a final certificate. That was on the 30th January, 1877. The letter which Messrs. Brogden then wrote is, to the best of my recollection, the only communication I have had with Messrs. Brogden on the subject. I recollect that *Mr. Williams* went down to go into the Chain Hills arbitration case, which was conducted by *Mr. Higginson*, and he also at that time wanted to go into the question of the Clutha platelaying, but I declined to go into the Clutha platelaying matter unless a proper deed of submission were prepared.

If you had understood that *Mr. Williams* had gone down, by arrangement, to go into the matter with you, and you had had no instructions, what course would you have pursued?—I should have asked the Engineer-in-Chief to instruct me.

Did you do so?—No. Furthermore, if there had been an agent on the ground when the contract was finished, I should have gone into the matter without referring to Wellington at all, but there was nobody there on behalf of the contractors. After waiting a long time, I was instructed to send up the final certificate, without reference to the contractors. This was done, the certificate being dated the 16th March, 1876.

Hon. Dr. Pollen.] If any such arrangement had been made between *Mr. Carruthers* and *Mr. Henderson*, you would in due course have received advice on the subject?—Yes.

And in the event of your not receiving this advice by letter, it was quite competent for you to receive your instructions by telegraph?—Yes; if *Mr. Williams* had come to me and told me that he had come down under an arrangement made with *Mr. Carruthers*, I should at once have telegraphed to Wellington for instructions.

Hon. Mr. Oliver.] If *Mr. Williams* had told you that he had come down after making an arrangement with *Mr. Carruthers*, and you had not received any advice of it, you would have communicated with head-quarters?—Yes.