

*The Chairman.*] What is your definition of an engineer's final certificate?—The final certificate is a statement that is prepared when the works are completed. We give progress certificates as the works go on, and when they are finished we make a detailed statement, showing the contract amount and all additions and deductions: we call that the final certificate.

Would you consider that anything short of a certificate bearing the signature of the Engineer-in-Chief would be a final certificate?—The certificate of the Engineer in charge of the contract would be the final certificate.

*Hon. Mr. Oliver.*] Final as to payments?—Yes.

Are accounts of all payments kept in the office?—Yes. I may explain that, as a rule, the Engineer who superintends the contractor's work is the person who gives a final certificate, and that such certificate is binding on all parties.

Is the District Engineer in a position to say what the amount due to the contractor may be or is? Yes; he is always in that position. The case of Messrs. Brogden was exceptional, because additions were made in Wellington, and before making up this final certificate I communicated with Wellington and got the correct amount of the previous payments.

*Mr. Cave* addressed the Committee on behalf of Messrs. Brogden as follows: I should have been glad if, consistently with my duty to my clients, I could have allowed the case to close at this point, but I feel bound to offer a few remarks on the case made by my learned friend, and endeavour to point out how, in my view, he has failed to establish the propositions submitted by him to the Committee, as reasons why they should report unfavourably on Messrs. Brogden's claim to a further inquiry. My learned friend has stated the case in two aspects: First, he submitted to the Committee, and undertook to prove, that every sum which had been certified by the Engineers as due to Messrs. Brogden had been paid. Upon that point, I contend that I have clearly proved, as regards one of the items for work in connection with the Auckland and Mercer Railway, that the sum certified has not been paid. As regards the deductions on the Oamaru and Moeraki contract, I think I have shown conclusively that those are deductions which the Government were not justified in making. It is clear that in May, 1877, there was a sum of £7,910 4s. 11d. due to the contractors, and it is quite clear that none, or only a very small portion, of that sum has ever been paid.

*Mr. Bell:* Mr. Maxwell's evidence was to the effect that £4,400 had been paid on that certificate.

*Mr. Cave:* His evidence was to the effect that there was only a sum of £4,000 underpaid. Of course my learned friend can say that the contractors have been paid this sum by the alleged overpayments on the other contracts, but, even though that may be the case, the Government are not justified in setting up one claim against the other. My friend did not deny that there had been a judgment of the Court of Appeal to the effect that the right of "set-off" did not belong to the Crown. The Government have no right to take up the position that the amount due on the Moeraki contract has been paid. If they desired to set up the alleged overpayment against Messrs. Brogden, they should have put themselves in a position which they could legally maintain. They should have taken steps to obtain the decision of the arbitrator on the point, and then, if they had been able to prove that the overpayments had in fact been made, they would no doubt have got such an order as would have justified them in setting off one amount against the other. I contend that I am now justified in maintaining before this Committee that the sum of £7,910 4s. 11d., certified as due on the Moeraki contract, has not been paid. And then as to the overpayment accounts: these have been made up by a gentleman sitting in his office in Wellington, who is not even the Engineer under the contracts. The fact that Messrs. Brogden had no opportunity of taking part in the making-up of the accounts is, I think, sufficient to induce the Committee to recommend that further inquiry should be instituted. In the two cases into which inquiry has been properly made, what has been the result? As regards the Chain Hills and Kakanui contracts it has been shown that in each case sums were due to the contractors, and those sums have since been paid by the Government, whilst in every other case where the Government have been able to set up the Government Contractors Arbitration Act they have done so, and have refused to allow any inquiry. After the evidence which has been given this morning by Mr. Maxwell as to the manner in which the certificate of the 28th February, 1879, was made up, I would ask the Committee whether they can for a moment hesitate to say that some further inquiry ought to be granted to Messrs. Brogden. This is a certificate which purports to deal with six of the contracts, and was made entirely upon an *ex parte* investigation, at which the Messrs. Brogden had no opportunity of stating their case. My learned friend, as his second proposition, submitted that if he were able to prove that the amounts certified to by the Engineers had been paid in full, then, except for the arbitration clause in the contract, Messrs. Brogden would have had no right of appeal whatever. I say that, that is not the true state of the case, because Messrs. Brogden would have had still a right of action on their contracts, and it is clear to my mind that they could have maintained their action notwithstanding the absence of the certificate of the Engineers. I do not think it is necessary that I should say anything in reference to the remarks of my learned friend to the effect that the Act was absolutely indispensable in this case, but it certainly seems to me that, inasmuch as the Judges had given their consent to their appointment as arbitrators, the same end might have been attained by the passing of a resolution of the House, empowering the Judges to sit in that capacity. There is an Act entitled "The Supreme Court Practice and Procedure Act, 1866," which gives full power to arbitrators to compel the attendance of witnesses and production of documents, and empowers them to deal with any matters which may be submitted to them as arbitrators in as full and complete a manner as a Judge in a case before the Supreme Court. Therefore there was, to my mind, no actual necessity for passing this Bill. The legal advisers of the Government, however, thought a special Act requisite, and therefore the Government Contractors Act was passed. I contend, however, that Act was all along intended to be nothing more than an Act to enable the Judges to sit as arbitrators. And then my learned friend, having endeavoured to prove that the final certificates had been given, alleged that Messrs. Brogden, under clause 26 of the general conditions, were limited to fourteen days within which they could appeal. I would ask the Committee to look at clause 4 of the general conditions of the contract, under which the contractor is bound, upon receiving an order from the Engineer for extra works, to execute them. That clause is as follows:—