

sovereign power to repudiate any portion of the bargain made. We respectfully submit that the statute of which we complain does repudiate the bargain, and has been so framed as to place us under disabilities and disadvantages not imposed upon us either by our contracts or by the law of the land as it existed at the time we entered into those contracts, and, we may add, the law of the land as it still exists for all men but ourselves.

We find, on reference to *Hansard*, that the Government Contractors Arbitration Bill was introduced into both Houses of the Legislature professedly by express arrangements with ourselves, and also professedly for the sole purpose of legalizing the arbitration clause of our contracts, and rendering it compulsory on the Judges of the Supreme Court to act as arbitrators under that clause. The Bill was passed by both Houses on the distinct representation that such was its whole scope, and that it was brought in by special arrangement with us, and in order to keep faith with us. If such had been the whole scope of the Bill we should have had nothing of which to complain.

Had the Government or its legal advisers thought necessary that our contract should be materially altered, they should have communicated with us on the subject, and have followed the course required by the Parliamentary Standing Orders, and practised previous to the introduction of private Bills. The Bill in question was strictly a private Bill, brought in to affect our private rights, and those of no other contractors; and we complain that it was a fraud upon us to introduce it as a public general statute, and entitle it "The Government Contractors Arbitration Act, 1872," when it was in fact a Bill confined (as stated in the preamble and second section) exclusively to the contracts already and hereafter to be entered into between Her Majesty the Queen and certain persons carrying on business in copartnership under the style of John Brogden and Sons. Such a Bill ought to have been previously published and notified to us in the same manner as any gas, waterworks, banking corporation, or any other Bill affecting private interests in an exceptional manner is usually published and notified to the parties whose interests are involved.

We will now proceed to point out some of the principal alterations made by the statute in our contracts, and also some of the disabilities under which the statute attempts to place us.

We are unable, within the limits of a letter like this, to notice all the wrongs it inflicts upon us.

It has excised from our contracts the arbitration clause agreed upon between the parties, and has substituted in its place a clause far more vexatious and onerous upon us, as we shall frequently show.

It has reduced the time within which we must assert our contract rights from the ordinary legal limitations of six years to the very oppressive limitation of six months, and has so worded and hedged round the limitation of six months that it becomes a question whether we are not already barred by this Act of our remedy for all items which the Government may be able to prove were disputed items more than six months before the commencement of any arbitration proceedings under the Act.

It has created between the parties a new tribunal, viz., the Minister for Public Works, who is by section 4 made judge in his own cause, and whose decision must be first obtained before the "contractor" shall be entitled to "avail himself of the provisions of arbitration hereinafter contained."

By this clause (4) the Minister may, in the investigations before himself, consume the whole of our six months' limitation of right of procedure—the statute placing no restrictions on him in that respect.

It has authorized "the Arbitrator" not only to act upon unsworn testimony, but even to take the report or certificate "in writing" of a person whom he may send to inspect the works; such report and certificate shall and may be acted upon by him ("the Arbitrator") as effectually as if he had taken the evidence of such person *vivâ voce* (section 12).

Thus the Arbitrator can deprive us of the right of cross-examining the skilled witnesses brought against us, and may ground his decision against our claims upon the certificate of some gentleman who is himself acting not upon his knowledge, but upon the hearsay statements of Government officials or others. The Arbitrator can also, by depriving us of all the usual and proper remedies against witnesses who swear falsely, enable the person giving such certificate to send a false certificate almost with impunity. We are advised and believe the alteration in our case of the usual rules of evidence in judicial proceedings may place us at a serious disadvantage, especially before a tribunal from which we have no appeal.

The Arbitrator is, by section 29, made the final judge between us, without appeal from him upon either law or fact to any tribunal whatever; and we are, by section 28, also deprived of right of action, suit, or proceeding against the other party, and of all writ of error, or other proceedings in the nature thereof, concerning any of the matters referred or any certificate made or given under the Act. Thus the doors of all the ordinary tribunals and appellate tribunals both here and in England are closed or attempted to be closed against us by this statute, and that too in matter involving our right to hundreds of thousands of pounds sterling. The arbitration clauses of our contracts imposed upon us no such disabilities as those above mentioned: they left open to us our right of appeal to all proper appellate tribunals both here and in England, and did not preclude us from bringing an ordinary action to be tried before a jury of our countrymen if, for any reason appearing to us a proper one, we should deem arbitration an unfit course in any particular instance.

The machinery provided by the statute is so cumbrous as to render it almost if not quite impossible for us to comply with its requirements, whilst several of its clauses are so contradictory of each other that by complying with one we risk the violation of another, thus enabling difficulties to be thrown in our way at almost every step in the arbitration.

We will now proceed further to explain the first and sixth grounds of objection above stated, which require further explanation than is afforded by our foregoing statement of the objections themselves. As to the first ground, viz., the alteration of our arbitration clauses in our several contracts was favourable in the following essential particulars, viz., that, in case any Government Engineer unjustly refused us his certificate for contract or extra work done, we could appeal from his decision against us to the Arbitrator, and such Arbitrator could, by his decision in our favour, practically certify in cases where it was right and proper that such certificate should be given.