

Act is to the effect that, where disputes have arisen between the contractor and the Engineer-in-Chief, they shall first be referred to the Minister, and, if his decision is against the contractor, there shall be an arbitration. Clauses 12 and 13 empower the Judge to have an inspection of the works made by skilled persons, and to take the opinion of Engineers as to any matter referred to him.

Respecting clause 4, Mr. Travers asks that the disputes might be referred at once to the Judge. To this there could be no objection; nor, to refer to another clause (31), which limits the period within which proceedings can be taken to six months, would advantage be taken of this clause. It is, of course, desirable to get the dispute settled, and refusing to go under this Act would only involve the Government in other proceedings.

Respecting the proposal to waive clauses 12 and 13, I think the Government could not be advised to agree. These might prove of great service, and by agreeing to waive them the Government might be placed in a very awkward position. Clearly no such agreement should be made until the whole of Messrs. Brogden's claims are fully before the Government, and even then I should think the more prudent course would be to leave the Judge to act as he saw fit.

As to the proposal about allowing the Judge to state a case for the opinion of the Supreme Court, there perhaps is nothing to object to in point of principle, supposing such a course can legally be taken; but certainly acquiescence in Mr. Travers's request might have the effect of keeping these matters unsettled for a very long time. Section 29 of the Act of 1872 provides that no appeal shall lie from any decision of a Judge given under the Act either to the Court of Appeal or any other tribunal. Mr. Travers's request virtually asks the Government to repeal this clause, because a Judge, if asked to state a case, would (except in an obviously frivolous matter) hardly like to refuse. But, in my opinion, it is very questionable whether, in the face of this enactment, the parties could so consent as requested; and in any case I think it premature to agree to such a course now. If it can be done it could equally well be done when the precise points at issue are ascertained. Upon the whole question I may remark that it is very nearly five months ago that Messrs. Brogden gave the required notice that they desired to have an arbitration, the exact claim made being stated in vague and general terms. Then followed Mr. Travers's letter of the 31st January last, proposing, in effect, that certain technical matters should be conceded; that Mr. Carruthers and Mr. Henderson should meet and settle all matters of mere detail; and that the claims should be investigated upon their merits. After a pause there came the letter of the 8th March, couched in rather strong language, and practically asking the Government to ignore the Act. This letter having been answered, as appears by these papers, a proposal was made to allow the claims to be tried as in an ordinary case under the Crown Redress Act, for the avowed purpose of testing the validity of the Government Contractors Arbitration Act. Consent was refused, and nothing further done up to the present time. . . .

16th May, 1877.

W. S. REID.

For the Attorney-General.—J. D. ORMOND.—20th May, 1877.

It seems to me that the course proposed by the Solicitor-General is the proper one.—FRED. WHITAKER.—22nd May, 1877.

Will the Solicitor-General be good enough to draft a reply in terms of his recommendations?—J. D. ORMOND.—29th May, 1877.

The SOLICITOR-GENERAL to MR. TRAVERS.

Crown Law Office, Wellington, 4th June, 1877.

SIR,—

The Government and Messrs. Brogden.

I have the honor to acknowledge the receipt of your letter of the 15th ultimo respecting the contemplated proceedings under "The Government Contractors Arbitration Act, 1872," and which has received careful consideration.

I will refer to the steps to be taken under section 4 in the latter part of this letter; and with regard to the proposals that the Government should concur with your clients in preventing the application of sections 12 and 13, and that the Judge should have power to submit any question of law for the decision of the Supreme Court, I have to reply that the Government cannot be advised to consent to them. Respecting both these proposals, I may remark that, even assuming valid agreements could be made upon these points (which is open to great question), the precise nature of your clients' claims is not yet before the Government, and it is rather premature to make stipulations of such a nature before it is ascertained in what these claims consist. Besides, as to the first proposal, it would be far better that the Judge should not be controlled in the exercise of powers which the Legislature has given him, and which it must be assumed he would only exercise for the purpose of doing strict justice between the parties; and, as to the second, it may well be urged that it is foreign to the scheme of the Act—one object of which was to provide for a speedy settlement of these disputes—and, in any case, such an agreement could equally well be made at a later stage of the proceedings, when the precise points at issue are ascertained.

Referring to that part of your letter which asks for an assurance that I have been correctly understood as having consented to waive any question of time under section 31, I may remind you that no statement has been made by me as to any particular clause in the Act the provisions of which would be waived; but, in answer to your letter of the 31st January last, in which, after detailing the course of proceedings under the Act, you expressed a hope that the Government would carry on the proceedings with as much freedom from technical difficulties as was consistent with their duty, you being prepared to do the same on behalf of your clients, I replied in general terms that the Government were prepared to adopt the course indicated in your letter. However I may say that, acting in the spirit in which these proposals were made, I should have considered that the question of time under the thirty-first section was not one of which the Government would have been advised to take advantage, and I should have been prepared favourably to consider a proposal that the provisions of section 4 should not be insisted on. But, since the correspondence to which I have referred took place, your clients thought