1882.
NEW ZEALAND.

REPORT

OF THE

JOINT COMMITTEE

ON

MESSRS. BROGDEN'S CLAIMS,

WITH APPENDICES.

Report brought up 25th August, 1882, and ordered to be printed.

WELLINGTON.

1882.

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REPORT OF THE JOINT COMMITTEE ON THE BROGDEN CLAIMS.

Brought up 25th August, 1882, and ordered to be printed.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

FRIDAY, THE 23RD DAY OF JUNE, 1882.

Ordered, "That a Select Committee be appointed, to consist of five members, to consider and report upon the propriety of giving the consent of the Government to a reference of the Brogden claims under the provisions of 'The Government Contractors Arbitration Act, 1872.' The Committee to consist of Sir J. Hall, Mr. Macandrew, Mr. Fulton, Mr. Montgomery, and the mover. The Committee to have power to call for persons and papers, and also to sit with any Committee which may be appointed by the Legislative Council for a similar purpose, and to report within one month."—(*Hon. Mr. W. W. Johnston.*)

THURSDAY, THE 20TH DAY OF JULY, 1882.

Ordered, "That the Brogden Claims Committee have leave to postpone the bringing up of their report for a fortnight."—(*Mr. Fulton.*)

WEDNESDAY, THE 2ND DAY OF AUGUST, 1882.

Ordered, "That the Brogden Claims Committee have leave to postpone the bringing up of their report for a fortnight."—(*Mr Fulton.*)

TUESDAY, THE 15TH DAY OF AUGUST, 1882.

Ordered, "That the Brogden Claims Committee have leave to postpone their report for a week."—(*Mr. Fulton.*)

Extracts from the Journals of the Legislative Council.

TUESDAY, THE 27TH DAY OF JUNE, 1882.

Ordered, "That a Select Committee be appointed, to consist of five members, to consider and report upon the propriety of giving the consent of the Government to a reference of the Brogden claims under the provisions of 'The Government Contractors Arbitration Act, 1872.' The Committee to have power to call for persons and papers, and also to sit with any Committee which may be appointed by the House of Representatives for a similar purpose, and to report within one month. Three honorable members required that the Committee should be appointed by ballot. The Committee having been thereupon balloted for, the Hon. the Speaker announced that the Hon. Dr. Pollen, the Hon. Mr. McLean, the Hon. Mr. Stevens, the Hon. Mr. Miller, together with the mover, would constitute the said Committee."—(*Hon. Mr. Oliver.*)

WEDNESDAY, THE 26TH DAY OF JULY, 1882.

Ordered, "That the time for bringing up the report of the Brogden Claims Reference Committee be extended for three weeks."—(*Hon. Mr. Stevens*).

TUESDAY, THE 15TH DAY OF AUGUST, 1882.

Ordered, "That the time for bringing up the report of the Select Committee upon the Brogden Claims Reference be extended for one week."—(*Hon. Mr. Stevens.*)

REPORT.

THE Joint Committee to which was referred the question of the propriety of giving the consent of the Government to a reference of the Brogden claims under the provisions of "The Government Contractors Arbitration Act, 1872," have the honor to report as follows :—

That the Committee find that the contracts affected by this inquiry were nine in number, and that the first six of them, amounting to £560,446, were signed on the 10th August, 1872, six days before the Government Contractors Arbitration Act was introduced into Parliament.

That the three other contracts, amounting to £249,750, were signed on the 19th June, 1873, eight months after the Government Contractors Arbitration Act became law.

That the contracts were given to Messrs. Brogden and Sons without competition, and on terms exceptionally favourable to the contractors; allowances amounting to 32½ per centum over and above contractors' prices then current in the colony having been made to them.

That, before entering into specific engagements with the Colonial Government in the year 1872, the Messrs. Brogden insisted upon having provision made for the appointment of a special arbitrator, to whom disputes arising out of their projected contracts might be referred.

That the usual custom, which makes the engineer the final arbiter in disputes arising out of contract works, was, in the case of Messrs. Brogden, and at their instance, departed from.

That it was agreed that a Judge of the Supreme Court having jurisdiction in the Supreme Court District in which a dispute might arise should be made arbitrator, and it therefore became necessary to pass an Act in order to impose these duties on the Judges, and to give them the requisite powers to obtain evidence.

That "The Government Contractors Arbitration Act, 1872," was accordingly passed, with the knowledge of Mr. James Brogden, the partner representing the firm, who was at that time in Wellington, and who conducted the contract negotiations with the Government.

That no disputes resulting in application for arbitration appear to have occurred during the whole period when progress payments were being made to Messrs. Brogden upon their several contracts or agreements.

That when, upon completion or other termination of the several contracts or agreements, attempts to arrive at a final settlement were made, disputes arose.

That it was competent for the Messrs. Brogden, at any time when claims on their part were disputed by the Government, to have caused the matter in dispute to be referred to arbitration, in the manner provided by their contracts, and in terms of "The Government Contractors Arbitration Act, 1872."

That the Messrs. Brogden did not within the proper time, and in the manner prescribed, upon any occasion, bring the disputed claims to arbitration.

That when the time within which such disputes could be legally brought to arbitration had been allowed by Messrs. Brogden to elapse, the Government expressed their willingness, both before and after the receipt of the letter of date 8th March, 1877, from Messrs. Brogden, to allow the contractors to bring their disputed claims to arbitration under the Act.

That Messrs. Brogden refused to avail themselves of the opportunities thus afforded to them, and did not until a recent period attempt to bring their disputed claims to arbitration in the manner originally agreed upon and as provided by law.

That, owing to the action of Messrs. Brogden themselves, several years were allowed to elapse during which no effort was made by them to bring their claims to arbitration in the manner prescribed.

That, in consequence of this delay, much of the evidence which would be necessary to enable the arbitrator to arrive at a complete knowledge of the circumstances of each disputed claim is, in the case of the works themselves, effaced, and is, in the case of other evidence, no longer available.

That, for the foregoing reasons, and after a careful consideration of all the circumstances and of the documents and evidence appended to this report, the Committee cannot recommend that the consent of the Government should now be given to a reference of the Brogden claims under the provisions of "The Government Contractors Arbitration Act, 1872."

E. C. J. Stevens,
Chairman.

25th August, 1882.

MINUTES OF PROCEEDINGS.

THURSDAY, 13TH JULY, 1882.

The Joint Committee met pursuant to notice.

Present: Mr. Fulton, Sir J. Hall, Hon. Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. McLean, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

On the motion of Hon. Mr. Miller, *Resolved*, That Mr. Brogden's representative be informed that the Committee is prepared to receive any statement he may desire to make, by counsel or otherwise, on Monday, the 17th July, at 10.30 a.m., and that notice of the same be sent to the Minister for Public Works.

On the motion of Sir J. Hall, *Resolved*, That the Government be requested to furnish by Monday, the 17th July, a *précis* of the history of the case for the information of the Committee.

The Committee then adjourned until Monday, the 17th instant, at 10.30 a.m.

MONDAY, 17TH JULY, 1882.

The Committee met pursuant to notice.

Present: Mr. Fulton, Sir J. Hall, Hon. Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. McLean, Mr. Montgomery, Hon. Mr. Miller, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

The minutes of the previous meeting were read and confirmed.

Mr. Cave, on behalf of Messrs. Brogden, appeared and addressed the Committee.

Mr. Bell, on behalf of the Government, and Mr. Lawson, who stated that he was the principal representative of, and a holder of a power of attorney from, Messrs. Brogden and Son, were also present.

At 12.30, Mr. Cave having still some lengthy remarks to make, the Committee adjourned until Tuesday, the 18th instant, at 11.30 a.m.

TUESDAY, 18TH JULY, 1882.

The Joint Committee met pursuant to notice.

Present: Mr. Fulton, Sir J. Hall, Hon. Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. McLean, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

The minutes of the previous meeting were read and confirmed.

Mr. Cave continued and concluded his address on behalf of the Messrs. Brogden.

Mr. H. Bell, and with him Mr. F. Johnston, were present on behalf of the Government.

Mr. Lawson and Mr. Williams were also present.

At 1 p.m. the Committee adjourned until Wednesday next, the 18th instant, at 10.30 a.m.

WEDNESDAY, 19TH JULY, 1882.

The Committee met pursuant to notice.

Present: Mr. Fulton, Sir J. Hall, Hon. Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. McLean, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens, (Chairman).

The minutes of the previous meeting were read and confirmed.

Mr. Bell and Mr. F. Johnston were present on behalf of the Government, and Mr. Cave on behalf of Messrs. Brogden and Sons.

Mr. Lawson and Mr. Williams were also present,

Mr. Bell addressed the Committee on behalf of the Government.

In the course of Mr. Bell's address Mr. Cave observed that, if the question of prices paid for work executed for the Government were dealt with, he might probably have to call evidence on that subject.

All strangers having withdrawn, the Committee deliberated on the point whether or not the question came within the scope of the inquiry.

Moved by Mr. Montgomery, and seconded by Hon. Mr. McLean, That the counsel for the Crown be allowed to address the Committee in support of his allegation that exceptionally favourable treatment has been extended to Messrs. Brogden and Co.

The Committee divided:—

Ayes, 6.—Sir J. Hall, Hon. Mr. McLean, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen.

Noes, 2.—Mr. Fulton, Mr. Macandrew.

So it passed in the affirmative.

The Committee then adjourned until Friday next, the 21st instant, at 11 a.m.

FRIDAY, 21ST JULY, 1882.

The Committee met pursuant to notice.

Present: Mr. Fulton, Sir J. Hall, Hon Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

The minutes of the previous meeting were read and confirmed.

Mr. Travers having appeared to give evidence on behalf of Messrs. Brogden and Sons, and Mr. Cave having suggested that Mr. Travers's evidence might be conveniently taken at once, Mr. Bell said, if it was for the special convenience of Mr. Travers, he would consent to the evidence being heard at this stage.

The room having been cleared, the Committee deliberated, and, on the motion of Hon. Dr. Pollen, *Resolved*, That Mr. Bell be requested to continue his address, and that, if Mr. Cave desired to examine Mr. Travers, a time be fixed for that purpose.

The doors having been opened, Monday next, the 24th instant, was settled on as the day for Mr. Travers's evidence.

Mr. Bell then resumed his address on behalf of the Crown, in the course of which it was proposed by Mr. Montgomery to consider whether Mr. Bell's line of argument was not beyond the scope of the inquiry.

All strangers having withdrawn, the Committee decided, without division, that Mr. Bell should continue.

Mr. Bell then resumed and concluded his address.

The Committee then adjourned until Monday next, the 24th instant, at 11 a.m.

MONDAY, 24TH JULY, 1882.

The Committee met pursuant to notice.

Present: Mr. Fulton, Sir J. Hall, Hon. Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

The minutes of the previous meeting were read and confirmed.

Mr. W. T. L. Travers, Mr. Reid (the Solicitor-General), and Mr. Blair (Engineer in Charge, Middle Island), appeared and gave evidence.

At 1 p.m. the Committee adjourned until Wednesday next, the 26th instant, at 11 a.m.

WEDNESDAY, 26TH JULY, 1882.

The Committee met pursuant to notice.

Present: Mr. Fulton, Hon. Mr. W. W. Johnston, Sir J. Hall, Mr. Macandrew, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

The minutes of the previous meeting were read and confirmed.

Mr. Bell, and with him Mr. F. Johnston, appeared for the Crown, and Mr. Cave for Messrs J. Brogden and Sons.

Mr. Williams, engineer, in the employ of the Messrs. Brogden, appeared and gave evidence, in the course of which Mr. Bell objected to the witness going into details, further than to support the position that Messrs. Brogden and Sons had not been paid the full amount certified by the Engineer.

Mr. Cave submitted that he was within his rights.

Mr. Macandrew suggested that, as Mr. Bell had been allowed to bring evidence of the particularly favourable treatment of the Messrs. Brogden and Sons by Government, the Committee could hardly stop Mr. Cave from endeavouring to rebut that evidence.

All strangers having withdrawn, the Committee deliberated.

The doors were then opened.

Hon. the Chairman: We understand that Mr. Bell objects to the line of examination which has been pursued by Mr. Cave, because it bears upon the question of the grounds on which the penalties were imposed. The reply of Mr. Cave we understand to be that his examination is intended to prove that sums certified by the Engineers have not been paid, and he considers that Mr. Bell has invited him to prove that. Have I correctly stated the case?

Mr. Bell and *Mr. Cave:* Yes.

Hon. the Chairman: Then the Committee would like to know from Mr. Cave how far he proposes to continue his examination in that direction?

Mr. Cave: I propose to confine myself to one or two cases to show that sums have been certified but not paid.

Hon. the Chairman: I understand your objection, Mr. Bell, to be that you do not wish this evidence to be gone on with unless you are allowed to bring forward evidence to rebut what may be said now.

Mr. Bell: That is the case. I should like to be allowed to call rebutting evidence.

Hon. the Chairman: I understand that Mr. Bell, if allowed to bring rebutting evidence, would confine himself to evidence on these particular questions, and would not go beyond that.

Mr. Bell: Yes.

Hon. the Chairman (to Mr. Cave): The Committee are not desirous of limiting you any more than is necessary; but at the same time they think that, if matter similar to that which is being brought out by this examination is imported into the case, Mr. Bell should be allowed to bring equally full evidence in answer to it.

Mr. Cave: I do not think that I can object to that. Of course Mr. Bell will have an opportunity of cross-examining my witnesses, and I can do the same with his.

Hon. the Chairman: Under the circumstances, I think that Mr. Cave may continue his examination of the witness (Mr. Williams), which was accordingly continued, and was concluded at 1.15 p.m.

The Committee adjourned until Thursday, the 27th instant, at 10.30 a.m.

THURSDAY, 27TH JULY, 1882.

The Committee met, pursuant to notice.

Present: Mr. Fulton, Sir J. Hall, Hon. Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

Mr. Bell appeared for the Government, and with him Mr. F. Johnston; and Mr. Cave for Messrs. J. Brogden and Sons.

Mr. Maxwell, Mr. Travers, and Mr. Blair appeared and gave evidence.

In the cross-examination of the last-named witness by Mr. Cave, Mr. Bell objected to a question that Mr. Cave put to the witness, on the ground that it was going into details and opening up fresh matter.

All strangers having withdrawn, the Committee deliberated.

The doors being again opened, the Chairman said that he understood the inquiry was to show in the first instance whether the Messrs. Brogden had been paid in full on the certificate of the Engineers, and whether they had been allowed their percentage on works omitted under authority.

The cross-examination of the witness was then continued and closed, and

Mr. Cave began his final address, when, at 1.15 p.m., the Committee adjourned until Friday, the 28th instant, at 10.30 a.m.

FRIDAY, 28TH JULY, 1882.

The Committee met pursuant to notice.

Present: Mr. Fulton, Hon. Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

The minutes of the last two meetings were read and confirmed.

Mr. Bell, and with him Mr. F. Johnston, appeared for the Crown, and Mr. Cave for the Messrs. Brogden.

Mr. Cave continued and concluded his final address, at the conclusion of which the Committee adjourned until Monday, the 7th August.

WEDNESDAY, 9TH AUGUST, 1882.

The Committee met pursuant to notice.

Present: Mr. Fulton, Sir J. Hall, Mr. Macandrew, Hon. Mr. McLean, Hon. Mr. Miller, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

The minutes of the previous meeting were read and confirmed.

The Chairman read a letter from Mr. Lawson, asking for printed copies of the evidence for the use of Messrs. J. Brogden and Sons, in England.

Resolved, That Mr. Lawson's application that copies of the printed evidence in the case be given to him or sent to Messrs. Brogden and Sons, in London, before the Committee reports, be answered to the effect that the Committee is of opinion that the evidence in the case should not issue before the report.

The Committee then deliberated, and adjourned until Monday, the 14th instant, at 10.30 a.m.

MONDAY, 14TH AUGUST, 1882.

The Committee met pursuant to notice.

Present: Mr. Fulton, Sir J. Hall, Hon. Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. McLean, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

The minutes of the previous meeting were read and confirmed.

Resolved, That Mr. W. Reeves be communicated with by the Chairman on the subject of "The Government Contractors Arbitration Act, 1872."

Resolved, That the Hon. Mr. Richardson be telegraphed to, asking him if he can explain the circumstances under which the Oamaru-Moeraki Railway Contract was taken over from Messrs. Brogden and Sons, and whether penalties were deducted for non-completion of contract when the delays in carrying out such contract were caused by the action of the Government. That the Engineer in charge of the Oamaru–Moeraki Railway Contract be telegraphed to, asking him the same question as the above put to Hon. Mr. Richardson.

The Committee then adjourned until to-morrow, the 15th instant, at 11 a.m.

TUESDAY, 15TH AUGUST, 1882.

The Committee met pursuant to notice.

Present: Sir J. Hall, Hon. Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. McLean, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

The minutes of the previous meeting were read and confirmed.

The Chairman read a telegram from Mr. Reeves in answer to that sent him yesterday.

The Committee deliberated on the evidence in the case.

Resolved, That if Mr. Lowe's reply to the Chairman seem to make it advisable, Mr. Lowe be sent for to give evidence.

The Committee then adjourned until Thursday, the 17th instant, at 11 a.m.

THURSDAY, 17TH AUGUST, 1882.

The Committee met pursuant to notice.

Present: Mr. Fulton, Sir J. Hall, Hon. Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. McLean, Hon. Mr. Miller, Mr. Montgomery, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

The minutes of the previous meeting were read and confirmed.

The Chairman read telegrams from Mr. Lowe and the Hon. Mr. Richardson, in reply to those sent on the 14th instant.

The Committee deliberated on the case, and Sir J. Hall moved, That, in the opinion of the Committee, it is expedient that the limitation of time contained in the 31st section of "The Government Contractors Arbitration Act, 1872," by which Messrs. Brogden and Sons are precluded from now bringing their claims to arbitration under that Act, should be waived, on conditions to be determined.

The discussion of this motion was deferred till to-morrow, the 18th instant, and the Committee adjourned.

FRIDAY, 18TH AUGUST, 1882.

The Committee met pursuant to notice.

Present: Mr. Fulton, Sir J. Hall, Hon. Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. McLean, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

The minutes of the previous meeting were read and confirmed.

The Committee deliberated on the motion moved by Sir J. Hall yesterday, who obtained leave to amend his motion so as to make it read as follows: That, whilst the Committee have no doubt that Messrs. Brogden and Sons were fully aware of the limitation as to time contained in "The Government Contractors Arbitration Act, 1872," and agreed to the same, and are satisfied that the inability of that firm to now proceed to arbitration is due to their own action, the Committee nevertheless think it undesirable that, if Messrs. Brogden and Sons have any claims against the colony, they should be permanently precluded from obtaining consideration of the same, and therefore recommend that the limitation of time contained in the 31st section of "The Government Contractors Arbitration Act, 1872," by which Messrs. Brogden and Sons are precluded from now bringing their claims to arbitration under that Act should be waived on conditions to be determined.

Further consideration of this motion was postponed, and at 1.30 p.m. the Commitee adjourned until Tuesday next, the 22nd instant, at 10.30 a.m.

WEDNESDAY, 23RD AUGUST, 1882.

The Committee met pursuant to notice.

Present: Mr. Fulton, Sir J Hall, Hon. Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. McLean, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

The minutes of the previous meeting were read and confirmed.

The Committee proceeded with the adjourned consideration of Sir J. Hall's motion.

Mr. Fulton moved, That all the words in the motion after "That," in the first line, be omitted, in order to insert other words.

And on the question being put, "That the words proposed to be omitted stand part of the question," the Committee divided:—

Ayes, 4.—Sir J. Hall, Mr. Macandrew, Mr. Montgomery, Hon. Dr. Pollen.

Noes, 5.—Mr. Fulton, Hon. Mr. W. W. Johnston, Hon. Mr. McLean, Hon. Mr. Miller, Hon. Mr. Oliver.

So it passed in the negative.

The Chairman said that he wished to express his concurrence with the Noes.

The Committee then deliberated, and adjourned until to-morrow, the 24th instant, at 10.30 a.m.

THURSDAY, 24TH AUGUST, 1882.

The Committee met pursuant to notice.

Present: Mr. Fulton, Sir J. Hall, Hon. Mr. W. W. Johnston, Mr. Macandrew, Hon. Mr. McLean, Hon. Mr. Miller, Mr. Montgomery, Hon. Mr. Oliver, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman).

The minutes of the previous meeting were read and confirmed.

On the motion of Mr. Fulton, *Resolved*, That the following resolutions be inserted after the word "That:"—

The Committee find that the contracts affected by this inquiry were nine in number, and that the first six of them, amounting to £560,446, were signed on the 10th August, 1872, six days before the Government Contractors Arbitration Act was introduced into Parliament.

That the three other contracts, amounting to £249,750, were signed on the 19th June, 1873, eight months after the Government Contractors Arbitration Act became law.

That the contracts were given to Messrs. Brogden and Sons without competition, and on terms exceptionally favourable to the contractors; allowances amounting to 32½ per centum over and above contractors' prices then current in the colony having been made to them.

That, before entering into specific engagements with the Colonial Government in the year 1872, the Messrs. Brogden insisted upon having provision made for the appointment of a special arbitrator, to whom disputes arising out of their projected contracts might be referred.

That the usual custom, which makes the Engineer the final arbiter in disputes arising out of contract works, was, in the case of Messrs. Brogden, and at their instance, departed from.

That it was agreed that a Judge of the Supreme Court having jurisdiction in the Supreme Court District in which a dispute might arise should be made arbitrator, and it therefore became necessary to pass an Act in order to impose these duties on the Judges, and to give them the requisite power to obtain evidence.

That "The Government Contractors Arbitration Act, 1872," was accordingly passed with the knowledge of Mr. James Brogden, the partner representing the firm, who was at that time in Wellington, and who conducted the contract negotiations with the Government.

That no disputes resulting in application for arbitration appear to have occurred during the whole period when progress payments were being made to Messrs. Brogden upon their several contracts or agreements.

That when, upon completion or other termination of the several contracts or agreements, attempts to arrive at a final settlement were made, disputes arose.

That it was competent for Messrs. Brogden, at any time when claims on their part were disputed by the Government, to have caused the matter in dispute to be referred to arbitration, in the manner provided by their contracts, and in terms of "The Government Contractors Arbitration Act, 1872."

That the Messrs. Brogden did not within the proper time, and in the manner prescribed, upon any occasion, bring the disputed claims to arbitration.

That when the time within which such disputes could be legally brought to arbitration had been allowed by Messrs. Brogden to elapse, the Government expressed their willingness, both before and after the receipt of the letter of date 8th March, 1877, from Messrs. Brogden, to allow the contractors to bring their disputed claims to arbitration under the Act.

That the Messrs. Brogden refused to avail themselves of the opportunities thus afforded to them, and did not until a recent period attempt to bring their disputed claims to arbitration in the manner originally agreed upon and as provided by law.

That, owing to the action of Messrs. Brogden themselves, several years were allowed to elapse during which no effort was made by them to bring their claims to arbitration in the manner prescribed.

That, in consequence of this delay, much evidence, which would be necessary to enable the arbitrator to arrive at a complete knowledge of the circumstances of each disputed claim, is, in the case of the works themselves, effaced, and is, in the case of other evidence, no longer available.

On the motion of Mr. Fulton, *Resolved*, That, for the foregoing reasons, and after a careful consideration of all the circumstances and of the documents and evidence appended to this report, the Committee cannot recommend that the consent of the Government should now be given to a reference of the Brogden claims under the provisions of "The Government Contractors Arbitration Act, 1872."

The Committee then adjourned.

FRIDAY, 25TH AUGUST, 1882.

The Committee met pursuant to notice.

Present: Mr. Fulton, Sir J. Hall, Hon. Mr. W. W. Johnston, Hon. Mr. McLean, Hon. Mr. Miller, Mr. Montgomery, Hon. Dr. Pollen, Hon. Mr. Stevens (Chairman.)

The minutes of the previous meeting were read and confirmed.

Resolved, That the Chairman report the resolutions, with the minutes of proceedings and evidence.

This concluded the Committee.

MINUTES OF EVIDENCE.

JOINT COMMITTEE ON MESSRS. BROGDEN'S CLAIMS.

MONDAY, 17TH JULY, 1882.

(Hon. E. C. J. STEVENS, in the chair.)

Messrs. Brogden were represented by Mr. Cave; and Mr. H. D. Bell, with him Mr. Fletcher Johnston, appeared for the Government.

Mr. Cave, on being called upon to open the case for Messrs. Brogden, said he would confine himself, as closely as possible, to the one question which he thought the Committee would have to consider, namely, the propriety of the Government waiving the limitation imposed by the 31st section of "The Government Contractors Arbitration Act, 1872," and he would ask the Committee to report affirmatively on that question upon the following grounds:—

1. That the 31st section of the Act is contrary to the spirit and intention of the contracts previously entered into, and curtails the rights which the law, in force in the colony at the date of the execution of the contracts, gave to Messrs. Brogden.

2. That Messrs. Brogden had no notice of the limitation of their rights, proposed by section 31 of the Government Contractors Arbitration Act, previous to the passing of that Act.

3. That the Bill was introduced into the Legislature as an Enabling Act, and not as a Statute of Limitations.

4. That the limitation imposed by the 31st section was not specially considered by the members of the Legislature, and its consequent effect upon Messrs. Brogden's rights, under their contracts, was not fully understood or appreciated.

5. That the Act is vague in its terms, and its intended operation not clearly expressed on the point, whether the jurisdiction of the law courts upon matters of dispute, arising out of the contracts, is ousted, and that no judicial interpretation on this point could be obtained until November, 1881.

6. That the limitation of *six* months was unreasonable, strict compliance being impossible, owing to the large extent of the works under the contracts, and the variety of claims arising thereunder.

7. That the Government themselves have failed to comply with the provisions of the Act.

In order to make these grounds intelligible to the Committee, it would perhaps be desirable that he should refer to the circumstances under which the contracts were entered into, in 1871, between Sir Julius Vogel, the then Premier, and Messrs. Brogden. These were provisional contracts, and it was arranged between Sir Julius Vogel and Messrs. Brogden, that one of the firm should follow Sir Julius to New Zealand. This arrangement was made while Sir Julius Vogel was in London. In December, 1871, Mr. James Brogden followed Sir Julius Vogel to the colony. The contracts were submitted to the Legislature, but confirmation of them was refused, and it was resolved that a further contract should be entered into with Messrs. Brogden, under which they should execute railways to the amount of £1,000,000. The settlement of this contract gave rise to a considerable amount of correspondence, which extended over four or five months. A portion of the correspondence, which passed between the parties interested and their legal advisers, is printed in Parliamentary paper of 1872, (D.—No. 19c.) One of the principal subjects of discussion was, the appointment of an arbiter, and it was proposed by the Government that the Engineer-in-Chief of the Colony should be appointed. But the Engineer-in-Chief seemed to have thought that this was undesirable, as, if he acted as arbiter, it would place too much power in his hands when disputes arose. Consequently he advised that a disinterested person should be appointed. Eventually a meeting took place between the Minister of Public Works and Mr. James Brogden, and the result was, that the following arrangement was come to and reduced into writing. (1872, D.—No. 19c.):—

MEMORANDUM of the Heads of an Agreement entered into by Messrs. Brogden and Co., and the Government, represented by Mr. Reeves, on the 10th April, 1872, the subject of the conference being the differences which have arisen in respect to the Genersl Conditions hitherto in force with regard to the construction of Railways in New Zealand.

1. On the subject of arbitration it was decided that, in case the Governor or Minister for Public Works, as the case may be, and the Contractors shall not agree, the matter shall be determined by arbitration; and every such matter as to which they shall not agree, dispute or difference shall be settled by arbitration, to be conducted by reference to the sole decision of the Judge of the Supreme Court in New Zealand within whose district the cause of difference or dispute may have arisen. This submission to arbitration may be made a rule of the Supreme Court of New Zealand, or of any of the superior Courts of Westminster, as the case may be or required. The costs of and attending the arbitration and award shall be in the discretion of the arbitrators.

2. It was agreed that clause 12 should be allowed to remain, subject to the understanding that the right of the Contractors to appeal to arbitration on all points included in the clause should not be prejudiced.

That clause 6 shall be retained, but that an allowance of 10 per cent. shall be made to the Contractors on any saving of expenditure which may result from their recommendations.

That clause 18 (against floods) can be retained, if the Government consider it advisable to do so.

That clause 23 (against the truck system) shall be retained, omitting the words, "at least once in every fortnight."

W. REEVES.

Subject to approval by other Ministers, of employment of Judges as arbitrators in their several districts.

JAMES BROGDEN.

That seemed to have closed the negotiations between Messrs. Brogden and the Government as far as the appointment of the arbiter was concerned, and the agreement then entered into was considered as final. The formal contracts for the construction of the railways were nine in number, six of them being entered into in August, 1872, and the remainder in July, 1873. With a view to carrying out the arrangement as to the arbiters already referred to, the following clause was introduced into the General Conditions of the Contract:—

30. *Arbitration.*—Should any dispute arise between the Contractor and the Engineer, or between the Contractor and the Minister for Public Works or the Government, relative to the force and intent and meaning of the specifications, drawings, or conditions, or to the mode of carrying on the works, or the nature or quality of materials used or supplied to be used, or workmanship of work done, or as to the maintenance of the works, or as to the expense of additional works, or of alterations or deviations from the specifications or plans, or as to any other matter connected with the execution of the works, or with the contract, specifications, drawings, or conditions, or as to any matter which by this contract it is expressly provided is to be settled, ascertained, or determined by arbitration, such dispute shall be referred in writing to the sole determination, arbitrament, and award of the Judge of the Supreme Court assigned to that Judicial District of the Supreme Court within which the works relative to which the dispute shall have arisen have been or are to be executed, whose award shall be final, binding, and conclusive, on all parties: Provided, however, that before any such dispute as aforesaid shall be so referred, the Contractor shall give to the Minister for Public Works one calendar month's notice in writing of such dispute, and of the matter and cause thereof, and in such notice the Contractor's claim shall be explicitly stated; and if such claim be for pecuniary compensation, the amount thereof shall also be stated.

That was the arbitration clause which was introduced into all the contracts, and it meant that the Judges of the Supreme Court should be the arbiters when any dispute arose. It was worthy of note that, in this clause no limitation of time was specified within which the arbitration was to take place. After the contracts had been signed, the Government appeared to have thought it necessary that some legislation should take place, in order to give effect to the arbitration clause, and a Bill was accordingly drafted by the Crown Solicitor, which was entitled "The Government Contractors Arbitration Act, 1872." That Bill, as originally drafted, was intended to be general in its application, and to apply to all contractors with the Colonial Government. The course which was adopted in reference to this draft Bill was detailed in a memorandum of Mr. Reid's (the Solicitor-General), which was printed in the Parliamentary paper E.–3, 1878, on page 9. On page 10 of that paper, is an analysis of the first revise of this bill. In its then shape, it was nothing more than an Act to enable the Judges to act as arbitrators in the case of disputes under contracts with the Government, and to provide the machinery for the conduct of any reference under the Act. *Mr. Reid*, in his memorandum on page 9, says:—"I prepared the Bill, and, in its original shape, it was proposed to apply to *all* contracts which the Government had entered into for the construction of public works; but, eventually it was limited to the contracts entered into with Messrs. Brogden." Further on, he says, that "A copy of the first revise was sent to Mr. Travers, who was then acting as Messrs. Brogden's legal adviser in Wellington." Again, he says, "This copy appears to have been sent to Mr. Travers as a matter of courtesy, and not by any means as a complete measure." Mr. Travers seemed to have read the first revise of the Bill, and to have taken very few objections to it. That being the case, it was in his (Mr. Cave's) opinion, desirable to ascertain what was the precise form of the Bill as submitted to Mr. Travers.

Sir John Hall: Were the amendments which were subsequently made in the Bill, submitted to Mr. Travers for his inspection?

Mr Cave replied that he did not know. On comparing the analysis of the revise with the Bill, as it was finally passed, it would be seen how far the sections of the one agreed with the other. (Mr. Cave here entered into a comparison of the various clauses of the revise and the Act as finally passed by the Legislature), distinguishing those imported into the latter after the perusal of the Bill by Mr. Travers. He remarked that there was no doubt the Bill had Mr. Travers's approval, subject to the modifications he had made in it, and that he had looked upon the Bill as one which related to all contractors alike. The clauses which were subsequently introduced were numbered 9, 10, 14, 17, 20, 23, 27, 28, 30, and 31.

Mr. Macandrew: And Mr. Travers now denies any knowledge of them?—Yes.

They are alleged to be innovations?—Yes.

Mr. Cave: They were in the Bill as originally introduced into the House of Representatives, but not in the first revise. Referring again to Mr. Reid's memorandum, he says, "I do not recollect having any special instructions in the matter, but prepared such a measure as I conceived would effect what was required, and carry out the principle of arbitration contained in the contracts." The Bill, as originally prepared, thoroughly effected this, and there was apparently no necessity for any alteration of it. Before the Bill was introduced into the House of Representatives, the alterations already pointed out appear to have been made as well as the alteration which limited the operation of the Act to Messrs. Brogden only. Mr. Reid remarked that, the Bill as altered, remained substantially the same measure; but this was scarcely the case, because clauses 28 and 31 effected a complete change in the rights which Messrs. Brogden originally had under their contracts. In fact these clauses expressly limited the time within which Messrs. Brogden could enforce their rights, and reduced it from twenty years to six months. It might be said that Messrs. Brogden had notice of the Bill, and might have ascertained what alterations were proposed to be made in it. He (Mr. Cave,) would ask the Committee to consider whether the course that was originally adopted was not calculated rather to lull to sleep any vigilance they might have been disposed to display with regard to taking care of their own interests. No direct notice was sent to either Messrs. Brogden or their solicitors. A copy of the Bill, as originally proposed, was sent to their solicitor (Mr. Travers), and he, being unable to discover anything which interfered with their contract rights, naturally presumed that that would be the Bill which would be introduced into the Legislature. No doubt he also thought that, as the original Bill had been submitted to him, if any alterations were to be made, they would in like manner be submitted. The Bill was read in the House of Representatives for the first time on 16th August, 1872, Mr. Fox's Government then being in power. The committal took place after the second reading, which was on the 20th September following. He (Mr. Cave,) would like to call the attention of the Committee to

the speeches which were made on that occasion by members of the House, and from them it would be seen that the Bill was introduced as one which had been prepared with the sole view of carrying out previous arrangements made with the Messrs. Brogden. That was the general tenor of the whole of the speeches. He would now read Mr. Stafford's speech in moving the second reading of the Bill. The report is as follows:—

Mr. STAFFORD, in moving the second reading of this Bill, said that he did so because he found, by correspondence which had taken place between the late Government and Mr. Brogden, that there was an express understanding arrived at with that gentleman that Judges of the Supreme Court should be made arbitrators in case of dispute between the Government and the contractors with respect to the construction of works. At the same time he took the opportunity of stating that he altogether disapproved of the principle, and if he had not found that there was an honorable obligation binding the Government, he should not have taken up the Bill. There was also a correspondence with the Judges, who expressed their objection to the method proposed, while they at the same time stated their willingness to assist the Government in the matter. There being an honorable obligation on the Government, under which contracts were submitted to Mr. Brogden and accepted by him, those contracts reciting that Judges of the Supreme Court should be the arbitrators, the Government had no option but to ask the Legislature to fulfil that obligation by passing this Bill into law.

There was nothing in Mr. Stafford's speech from which it could be gathered that this was anything more than a Bill to carry out the conditions of the contract with Messrs. Brogden, and to enable the Judges to act as arbitrators. Not a word was said with regard to the Act limiting the time under which the arbitration should take place. Mr. Fox, in speaking on the subject, said:—

That the honorable member seemed to consider himself to be in a better position to interpret the wishes of the Judges in the matter than those who had carried on the negotiations, although he had only read the correspondence. Those who had carried on the negotiations now told the honorable member plainly that the Judges were quite willing to act, and all they required was, that the matter should be put in such a form as would prevent their position as arbitrators from conflicting with their judicial functions. He might take that opportunity of saying that the Government had received every assistance, in this and other matters, from the Judges, who had never shrank from encumbering themselves with any work which the Government asked them to do.

Mr. ROLLESTON said: He would not, after what had fallen from the Premier concerning the circumstances under which this Bill was brought down, offer any objection to the second reading. In saying that, however, he did not wish it to be understood that he considered this a Bill which ought to have been submitted to the Legislature. He looked upon it as one of those appendices to the public works scheme which would be considered hereafter as one which should not have been brought into existence. If there was one thing the Legislature should watch over more than another it was its judiciary, so that the position of the Judges might not be embarrassed, which would be the case if this Bill were passed. It seemed to him that cases might arise under a Bill of this kind, if its operation were extended, in which great evils might accrue. There were in this Colony District Judges, each having his own district, and a vacancy might arise, when very considerable pressure might be brought to bear upon the Government of the day to put some particular person into that district, having well known views of cases which were likely to come before him. He did not say that was probable, but he was putting an extreme case to show that the Bill was wrong in principle. There were things in a free country which the Legislature should guard most jealously. One of those was the freedom of the Press; another, the free expression of public opinion; another, the independence of the Judges; and another, trial by jury. He looked upon this as a most dangerous Bill, but, in consideration of the way in which the Government was pledged to it, he would not oppose it. The present Government was in a most difficult position with regard to this measure, for in the contracts already entered into with Mr. Brogden, they were committed to these Courts of arbitration, although the House had not given its sanction to that system. If, however, they were to throw out this Bill, Mr. Brogden might say to the Government, "We entered into contracts with you on the understanding that the Judges were to be arbitrators: that condition has not been fulfilled, and therefore we will come down upon you for compensation." In such a case as that, the Government might be placed in great difficulty. He wished, therefore, to record his opinion that under ordinary circumstances he would certainly have opposed this Bill, but, as matters stood, he thought the Government and the House were committed to it.

Mr. SHEPHARD said: The honorable member for Avon said it might interfere with the judicial duties of the Judges, but he forgot that, without this Bill, the contractors must go before the Judges, whereas the Bill did away with all legal technicalities, and enabled the Judges to make an award. The functions of the Judges were in no way inferfered with, as the Bill merely gave them extended jurisdiction.

Mr. FITZHERBERT said the Judges were not sitting as a Court of arbitrators, and his impression was, the case was settled by the Judges sitting *quoad* Judges. The whole of these observations, however, did not touch the point at issue. They were not sitting there to discuss the question as they would be if that Bill were one introduced by the Government. In fact, the House was not asked to give a free vote upon the measure, because its action had been forestalled, an agreement having been *de facto* entered into which contemplated an arrangement of this kind. Let them not, then, discuss the merits of the Bill as if they were free agents debating the expediency of the Judges acting as arbitrators, for their hands were tied. He did not think this was at all an occasion for impugning the conduct of the late Government, which might have been wise and proper, and had the present Government been placed in the same circumstances, he would not say that it would not have decided in the same way. But that was not the case before the House. They had before them these facts: An agreement had been entered into with Messrs. Brogden, contemplating an arrangement of this sort. Now, should they give these gentlemen any ground for complaining that this contemplated arrangement had not been carried out? It must not be ordinary reasons that should induce them to pursue a course like that; but they must be very grave reasons indeed. No such grave arguments presented themselves to his mind. Objections did present themselves, but not of such an overwhelming character as to induce him or the Government to enter upon a different course of action to that which their predecessors had followed.

Thereupon the Bill was read a second time.

On the 24th September, 1872, the Bill was passed in the House of Representatives, and on the following day it was read a first time in the Legislative Council. The second reading took place in the Legislative Council on the 1st October, 1872. The Hon. Mr. SEWELL, who introduced the Bill, said:—

That the Bill provided for the settlement of any disputes that might arise between the Government and Messrs. Brogden in respect to the railway contracts with that firm. He would not trouble the Council with details of the circumstances which gave rise to the arrangement that was the foundation of the Bill, which provided that all disputes should be referred to the arbitration of a Judge or Judges of the Supreme Court. No doubt the objection would strike honorable members that it would be constituting the Judges of the Supreme Court into a tribunal of arbitration which ordinarily has the character of an inferior tribunal, and would itself be usually amenable to the jurisdiction of the Supreme Court. He had been led to believe that the Judges themselves would not raise any practical objections to the present proposal, which, no doubt, provided the highest and best possible tribunal for the settlement of any disputes that might arise between the Government and the large contracting firm he had referred to.

The Hon. Mr. WATERHOUSE understood that the Bill was the result of an arrangement entered into between Messrs. Brogden and the Government, and the question could scarcely be reopened without reopening negotiations that had, to a certain extent, been brought to a conclusion. Under these circumstances, doubtless the Council would not think it desirable to take any other course than to accept the Bill. At the same time, he would say he should do so not without some degree of misgiving, for it appeared to him they were devolving upon the Judges of the Supreme Court, functions which should scarcely be imposed upon them. It was for the Judges to decide more as to a question of law

than to a question of fact, and it was for the jury to decide the facts; but under this Bill the Judges would have to decide, not only upon questions of law, but likewise upon questions of fact. That was open to a serious objection, and although they might pass this Bill under the very exceptional circumstances in which it was introduced to their notice, he doubted whether they should make it a precedent for similar legislation applying to other matters.

The Hon. J. L. HART remarked, that honorable members would learn from papers that had been laid on the table, the precise agreement with Messrs. Brogden, that had led to the framing of the Bill. (The honorable member read paragraph 1 of No. 9 of paper D., No. 19 C.)

The Hon. Mr. MILLER thought that, although the honorable gentleman had made some valuable suggestions, he had been entirely out of order in all that he had said. The subject under consideration was the Government Contractors Arbitration Bill. He would ask the honorable gentleman if he ever knew of a Government contract which could not be broken by the contractor, and whether he ever knew of the Government going into an arbitration case without getting the worst of it, or of regulations being made so stringent as to prevent a contractor from breaking them. He had had some experience in such matters, and he was bound to say that he had scarcely ever seen a Government work about which there was not some dispute, and if the dispute was submitted to arbitration, the Government had to pay heavy damages. The Bill was in reality the outcome of a great deal of consideration and negotiation between the Government and Mr. Brogden. The fact was, that the arbitration under the original contract was of an extremely cumbrous character, for the usual course had been adopted that was pursued in carrying out public works in this colony, under which the Government had invariably come out worsted. Various proposals had been made for settling any disputes that might arise. One was, that they should be referred to the Governor of a neighbouring colony, but he did not think that would have been a very good way to get over the difficulty. The plan of submitting disputes to the Judge of the Supreme Court in whose district the matters to be determined might arise, was a good one. No one could be more reluctant than he was to impose duties of that kind upon the Judges; but he really did not know of any valid objection that could be taken to it, if the Judges had consented to act as arbitrators. The disputes would be settled by the highest judicial authorities, and it appeared to him that if any one should object to the course of so referring matters in dispute, it certainly should not be the Government, but rather the contractor. It was quite obvious that an infinite amount of cost and trouble would be saved in this way, and he thought that there would be very little doubt in any one's mind that the Judges' award would be in accordance with truth and justice. Under these circumstances, he believed the Bill was a wise one, and the Council might feel sure that, in passing it, they would be adopting the best possible course for settling any disputes in connection with the Brogden contracts.

The Hon. Mr. HALL trusted the Council would pass the Bill, although, no doubt, some fault might be found with the system which it was proposad to introduce. He thought, before they denied the expediency of passing it, it would be right for honorable gentlemen to consider the whole circumstances of the case for which the measure was to provide a remedy. Although the negotiations which led to the preparation of the Bill did not pass under his personal observation, he was acquainted with the fact that very protracted personal negotiations had taken place; and in referring to the great desirability of having some comparatively cheap and speedy method of settling disputes with contractors, he would allude to the fact that in every one of the Australian colonies in which large railway works had been carried out, no large railway contract had been brought to a conclusion without its being followed by an expensive and protracted lawsuit. If the Bill were rejected, its rejection would be productive of great evil, and it would be very much to be regretted. The system adopted had been agreed to by both parties, and he would not be travelling beyond the record in saying it had met with the approval, or, at any rate, the cordial acceptance, of the Judges. He did not say that was so in every individual case, but that it was so generally was the impression left on his mind by the conversations on the subject which had taken place between himself and his late colleagues. He thought it was a step in the right direction, that provision should be made, at the outset of such large undertakings as they were now embarking in, for the purpose of avoiding protracted and expensive litigation, which had followed the execution of the large contracts in the Australian colonies, and he thoroughly believed that very much good would result from the passing of the Bill.

Hon. W. W. Johnston: Was Mr. Brogden in New Zealand when the Bill was in print?

Mr. Cave believed he was, but to a certain extent enquiry was lulled by submitting the Bill to Mr. Travers, who naturally thought he would be made acquainted with the fact if it were proposed to make any alterations in the Bill. It was quite possible, also, that Mr. Reid, in introducing the clauses which were objected to, might not have foreseen the construction which the Courts would ultimately put upon them. Mr. Reid, in his memorandum of E.–3, 1878, to some extent supports that view of the case, when he says:—

> Although in reporting on the facts connected with this matter, I am not called upon to point out that the Messrs. Brogden have never experienced any *actual* inconvenience from the provisions of the Act,—their complaints being as yet matters of assumption,—nor to state what I conceive to be fallacies in the arguments put forward by them.

This paragraph would appear to favor the conclusion that Mr. Reid then considered Messrs. Brogden's view of the Act as a fallacious one. It seemed to him (Mr. Cave,) that Mr. Reid himself did not take exactly the same view of the Act which has since been taken by the Judges. Possibly Mr. Reid's intention was, that the Act should limit the time during which the Judges might be called upon to sit as arbitrators. This construction was shared in by many eminent lawyers both in this colony and at Home. Both Mr. Travers and Mr. Macassey, who were well known in New Zealand, held the same views on the subject. That was to say, they were of opinion that the jurisdiction of the Court was not ousted by the Act, but that the Act was intended to provide a supplementary remedy. Mr. Beresford, an eminent English barrister, gave a similar opinion. This was, of course, given upon an *ex parte* case. Since then, the Appeal Court of the Colony had given a decision to the effect that the Act did oust the jurisdiction of the Law Courts. That judgment was delivered in November last. Having considered the circumstances under which the Act was passed, it now became desirable that the operation of the Act in reference to the claims put forward by Messrs. Brogden, should be considered by the Committee. The bulk of the contract work was completed in the early part of 1876, and the accounts for those works were sent in in February of that year. An account of the Waitara and New Plymouth Railway contracts was sent in on the 21st February, 1876, as were also the accounts for the Picton and Blenheim Railway, and the Napier and Pakipaki Railway. Some objection having been taken to these accounts, amended accounts were sent in in May, 1876. These accounts were accompanied by a letter, to the following effect:—

SIR,— Wellington, 10th May, 1876.

As we find that the accounts for the Waitara and New Plymouth Railway Contract, forwarded to you with our letter of 21st February, 1876, have been sent in in a form not consistent with the terms of the contract, we now beg to hand you corrected accounts.

You will observe that the amounts now sent show that we claim—(1.) Contract amount; (2.) Additions to contract; (3.) Interest charges; (4.) Station accommodation; (5.) Interest charges on station accommodation; and, after deducting cash received from Government, there remains a balance still due to us of £3,072 18s. 10d., and request you will issue instructions for that amount, to be paid to us with as little delay as possible.

I have, &c.,

JOHN BROGDEN & SONS,

The Hon. the Minister for Public Works. (*per* JOHN HENDERSON).

There were similar letters in regard to all the contracts. Frequent communication took place between Mr. Henderson, Messrs. Brogden's representative, and Mr. Carruthers, the Engineer-in-Chief for the Colony. In June, 1876, the Government announced to the Messrs. Brogden that they could not accept the accounts as delivered, and declined to pay the claims. Mr. Knowles, the Under-Secretary for Public Works, wrote as follows :—

GENTLEMEN,— Public Works Office, Wellington, 19th June, 1876.

I am directed by the Hon. the Minister for Public Works to inform you that the Engineer-in-Chief, having carefully gone into the accounts submitted by you in reference to certain of your railway contracts, finds—

1. That on the Waipawa, Picton and Blenheim, Picton and Blenheim 10 per cent., and Winton and Kingston 10 per cent. Contracts, the full amounts due to you thereon have been paid.

2. That there are due to you on the Napier Contract a sum of £95 13s., and on the Invercargill 10 per cent. account a sum of £30 10s. 6d.

3. That on the Waitara Waitara 10 per cent., and Invercargill Contracts, you have been overpaid; of the exact amounts of each of which you will hereafter be informed.

I have, &c.,
JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. J. Brogden & Sons, Wellington.

During the intervening months,—between June and December,—there was a great deal of correspondence between Mr. Henderson and the Engineer-in-Chief, and on 21st December a formal notice of claim as required by the provisions of the Act, was given with reference to the Waitara and New Plymouth Railway Contract. This notice was in the following terms :—

Waitara-New Plymouth Railway.

SIR,— Wellington, 21st December, 1876.

We have the honor hereby to give you notice, that a dispute has arisen between us and the Government with reference to the Waitara and New Plymouth Railway Contract, in respect of the following matters :—

1. We claim for contract sum, £41,000. The Government claim to deduct therefrom moneys for alleged reductions in the work, the right to do which we dispute.

2. We claim for addition to contract, as per details already rendered, including station accommodation and interest charges, the sum of £13,178 9s. 10d.

We also claim a further additional sum of £135 14s. 7d., including interest charges to the 30th April, 1876, for repairs of rolling-stock, during construction, as per clause 17 of specification; making a total of additions to contract of £13,314 4s. 5d.

We also claim further interest charges until date of payment. The Government dispute our claim to part of the above.

We, therefore, give you notice, that we require that the matters so in dispute be referred to arbitration after the expiration of one month from the service of this notice, as provided by the 27th clause of the General Conditions of our contract.

We have, &c.,
JOHN BROGDEN & SONS,
(*per* JOHN HENDERSON).

The Hon. the Minister for Public Works.

After this it appears to have been suggested that the Engineer-in-Chief and Mr. Henderson should meet with a view to discuss the claims, and the representative of Messrs. Brogden wrote the following letter to the Minister of Public Works :—

SIR,— Wellington, 20th January, 1877.

With reference to your letter, No. 174, of 18th instant, we shall feel obliged by being informed when it will be convenient for the Engineer-in-Chief to meet us here, in order that the claims in connection with the Chain Hills Platelaying Contract may be proceeded with, as the delay in coming to an early settlement *on this* AND OTHER CLAIMS is attended with considerable expense to us, especially as we are anxious to close our affairs in this colony without unnecessary delay.

We trust, therefore, that the Government will oblige us by arranging for a meeting at an early date, to enable us, if possible, to come to an amicable arrangement in regard to these claims, as we have no doubt the Government are equally anxious with ourselves for these matters to be settled.

We have, &c.,
JOHN BROGDEN & SONS,
(*per* JOHN HENDERSON).

The Hon. the Minister for Public Works.

On 26th January, 1877, Mr. Knowles, the Under-Secretary, replied to that letter as follows :—

GENTLEMEN,— Public Works Office, Wellington, 26th January, 1877.

I am directed by the Hon. the Minister for Public Works to acknowledge the receipt of your four letters of the 21st December, severally giving notice of a dispute having arisen in respect of the contract entered into by Messrs. Brogden & Sons as regards the railways therein mentioned, the four railways being the Picton and Blenheim, the Napier and Pakipaki, the Waitara and New Plymouth, and the Invercargill and Mataura.

The Minister intended to have deferred acknowledging the receipt of your letters, as above, until he was in a position to have gone fully and finally into the matter in dispute; but, after giving them such consideration as he is able, the Minister instructs me to inform you that he finds some of the matters in dispute cannot finally be fully investigated during the absence of the Engineer-in-Chief. On that officer's return, now shortly expected, a definite reply shall, however, be sent to you. Meanwhile, I am to state that it is not intended by this acknowledgment to waive any irregularity in the terms or form of the various notices you have given, nor to waive any right or privilege vested in or accorded to the Government or the Minister for Public Works under "The Government Contractors Arbitration Act, 1872."

I have, &c.,
JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. Brogden & Sons.

Hon. Dr. Pollen: Who was the Engineer-in-Chief who was referred to by Mr. Knowles?

Mr. Cave said it was Mr. Carruthers, who was absent from Wellington at that time. He had no doubt that that letter had the effect of directing the attention of both Mr. Brogden and Mr. Travers to the alterations in the Contractors Act, and led to their taking action. On the 29th January there was a letter from Mr. Knowles, stating that the Engineer-in-Chief was expected to return to Wellington by the first steamer leaving Lyttelton, and, that on his arrival, he would be consulted in regard to the matter of a meeting between himself and Mr. Henderson. On the 31st January, 1877, Mr. Travers wrote to Mr. Reid as follows :—

SIR,— *Re Brogden.* Wellington, 31st January, 1877.

With reference to the conversation between us at our yesterday's interview with respect to the claims of the Messrs. Brogden against the Government, I now beg to put in writing the course which I think would be most satisfactory to both parties, in the hope that it may meet the approval of the Government.

Assuming that the Government will treat the existing notices as a sufficient compliance with the Act, Messrs. Brogden will at once file in the Court here their claim in respect of the Napier and Pakipaki line, with the propositions of law and fact in support of it.

The Government will then file any counter-propositions.

Before the Court is asked to appoint a day for hearing the matter, Mr. Henderson will be willing to meet the Engineer-in-Chief, and go through the claim, for the purpose of eliminating all items in respect of which no dispute exists; or Mr. Henderson will meet with Mr. Carruthers before the claim is filed, for the purpose of reducing it to the actual elements in dispute.

When the latter have been ascertained by either of the above courses, issues could, with the sanction of the Judge, be drawn by you and myself, so as to raise all the questions involved in the dispute; and the decision of his Honor on these questions would guide both parties in regard to similar questions arising out of the other cases, either party being at liberty, however, to treat such questions as still open with respect to other lines.

It is not my wish, acting for the Messrs. Brogden, to pursue these investigations in any spirit of hostility towards the Government, or in a manner likely to embarrass or inconvenience them; and I trust that the Government, on their part, will consent to carry on the proceedings with as much freedom from technical difficulties as may be consistent with their duty; I, on the part of the Messrs. Brogden, being quite willing to waive technical points in the course of the proceedings.

I should be glad to have your views upon the above at your early convenience, this letter being, of course, without prejudice.

I have, &c.,

The Hon. the Solicitor-General, Wellington. WM. THOS. LOCKE TRAVERS.

He (Mr. Cave) would call attention to this fact: That at this time the Government were in a position to set up the plea of six months' limitation, inasmuch as the accounts had been delivered in May, 1876. In June, 1876, the Government had announced to Messrs. Brogden that they had disputed the claims, so that in consequence of the negotiations which had taken place between June and December, 1876, between the Engineer-in-Chief and Mr. Henderson, the six months had been allowed to slip by—in other words, the six months during which action under the Government Contractors Act should have been taken, had been allowed to lapse. Messrs. Brogden therefore thought it would be necessary to obtain a distinct promise from the Government, that they would not raise the question of the six months' limitation.

Hon. H. J. Miller: You have said that the amended accounts were sent in in May?

Mr. Cave replied that that was the case. On June 19th, 1876, the Government replied in the terms of the letter of that date already referred to.

Mr. Macandrew: There is no allusion to the Government Contractors Act in that letter?

Mr. Cave: No; the first allusion to that was in January, 1877, possibly it was then that they first became alive to the effect of the 31st clause of the Act.

Mr. Macandrew: But even then the six months had elapsed?

Mr. Cave: Yes; and that probably accounted for the anxiety Messrs. Brogden evinced to have a definite promise from the Government, that they would not enforce the limitation clause, or set it up as a bar to the claim.

Hon. Mr. Miller: Are we to understand that up to this time—*i.e.*, January, 1877, the Messrs. Brogden took no cognizance of the Act.

Mr. Cave: Yes; of course, they knew that an Act had been passed to enable the Judges to act as arbitrators, but there was nothing in the debates in the House which would direct their attention specially to the 31st clause of the Act.

Hon. G. McLean: Sir John Hall refers to a cheap and speedy method of settling this question in his speech in the Legislative Council.

Mr. Cave said this was a cheap and speedy method of settlement.

Mr. Macandrew: I understood you to say that Messrs. Brogden & Sons had no knowledge of the six months' limitation clause being in existence until January, 1877?

Mr. Cave: Yes; so far as I have been able to ascertain, no allusion was made to the Government Contractors Arbitration Act previously. Up to that time there was no question as to disputed claims. The question was only raised after the works had been completed.

Sir John Hall: You assume that neither the Messrs. Brogden nor their representatives read the Bill, as it was passed by the Legislative Council?

Mr. Cave: Yes; and he could quite understand that that would be so, because the interval between the second reading of the Bill and the time it passed was very short.

Hon. Dr. Pollen: The Government said that they were bound by the Act?

Mr. Cave could quite understand that to be the case, and then Mr. Travers read the Act and found that the alteration had been made.

Mr. Montgomery: Do you contend that the Contractors did not read the Bill?

Mr. Cave said it had been stated by Messrs. Brogden that they were not aware of the provision in the Bill. There might not have been any necessity to refer to the Act, as no disputes had arisen.

Hon. Mr. Miller: It would appear that the Messrs. Brogden had been mislead by the title of the Bill?

Mr. Cave: Yes; and, as he had said, there would be no necessity for them to refer to the Act, as no disputes arose during the progress of the works. The fact that the 31st clause might be set up as a defence to Messrs. Brogden's claim was not brought under the notice of Mr. Travers until January, 1877. During January and February of that year some interviews appeared to have taken place between the Engineer-in-Chief and Mr. Henderson, but nothing came of them. On the 14th February, 1877, Mr. Reid replied to Mr. Travers' letters of the 31st January, 1877, as follows:—

Crown Law Office, Wellington, 14th February, 1877.

SIR,— *The Government and the Messrs. Brogden.*

I have the honor to acknowledge receipt of your letter of the 31st ultimo respecting the submission to arbitration of Messrs. Brogden's claims against the Government, and, in reply, to inform you that the Government are prepared to adopt the course indicated in the letter above referred to. I think it will be more convenient that Mr. Henderson should meet the Engineer-in-Chief and settle the items in dispute before the claim is filed, and these gentlemen can arrange accordingly.

I have, &c.,

W. T. L. Travers, Esq., Solicitor, Wellington. W. S. REID.

In reply to a remark of a member of the Committee, Mr. Cave said his object was to state the case to the Committee as fairly as he could, and not to put forward only those points which were favorable to the Messrs. Brogden. In February, 1877, it was arranged that Mr. Henderson and the Engineer-in-Chief should meet with the object of going over the items in dispute. Two or three meetings took place, but the Engineer-in-Chief found that he was without sufficient information on the subject, and, as it seemed likely that the items in dispute would be very numerous, he decided that it would not be advisable to go on with the investigation in that form. At the same time Mr. Henderson desired Mr. Travers to come to a definite understanding, if possible, with the Government as to whether the latter intended to plead the limitation clause. It may be mentioned here that about this time Mr. Henderson (possibly unfortunately for Messrs. Brogden) consulted another solicitor (Mr. Barton) on the subject of the claims, who appears to have taken a somewhat different view of the case from that which Mr. Travers took, and, acting on that solicitor's advice, a letter was written by Mr. Henderson to the Government, on the 8th March, 1877. He (Mr. Cave) had not yet had an opportunity of perusing that letter, but he believed that it contained certain insinuations against the good faith of the Government, and against the Solicitor-General, which ought not to have been made, and for which he believed there was no foundation. There could be no doubt, that whatever was done by Mr. Reid, in connection with that Bill, was done in perfect good faith, and with no intention of taking unfair advantage of the Messrs. Brogden. He (Mr. Cave) thought he would be able to satisfy the Committee that Messrs. Brogden themselves considered this letter of the 8th March, 1877, a most ill-advised one, and felt that the charge which it contained should not have been made. There could be no doubt that the Messrs. Brogden did not in any way endorse Mr. Barton's statements, inasmuch as they did not follow his advice in subsequent proceedings. On the contrary, they very soon afterwards ceased to employ him. Mr. Alexander Brogden always expressed very great regret that the letter of the 8th March was written, and, on more than one occasion, expressed a wish that it could be withdrawn. He (Mr. Cave) hoped that any remarks he might make, or might have made, might be so construed as to indicate that he had no charge to make against the Solicitor-General, but at the same time he thought that Mr. Reid did not fully appreciate the difference that the alteration in the Act would make in the rights of Messrs. Brogden. In reply to the letter of the 8th March, 1877, a letter was written on the 19th of the same month by Mr. Ormond, the Minister for Public Works, as follows:—

GENTLEMEN,— Public Works Office, Wellington, 19th March, 1877.

I have to acknowledge the receipt of your respective letters of the 8th and 16th instant, the former of which has caused considerable surprise to the Government. On the 31st January last your legal adviser, Mr. Travers, addressed a letter to the Solicitor-General, proposing a certain course of action under "The Government Contractors Arbitration Act, 1872," for the purpose of determining disputes between the Government and ourselves in respect to the execution of your contracts.

To this letter a reply was given assenting to the course proposed, and I was therefore wholly unprepared for the proposals contained in your letter of the 8th instant, and the tone in which they were made. I do not propose to discuss with you the merits and probable working of the Act referred to, but I must be allowed to say that in my opinion your letter is based upon a misconception as to its effect and operation. Indeed I am advised that the Act only prescribes the necessary machinery for giving effect to the terms of the contracts entered into by your firm respecting the reference of dispute to Judges of the Supreme Court. Nor can I look upon the past action of the Legislature, nor the past or proposed action of the Government, as having in any degree prejudiced the investigation of your claims against the latter.

Respecting those portions of your letter of the 8th instant which speak of "threats of repudiation," and which contain remarks tending to show that the Government had, in procuring the passage of this Act, knowingly obtained unfair advantages over you, I can only say that your statements are erroneous and wholly uncalled for.

On behalf of the Government I entirely disclaim any wish to embarrass you in taking proceedings under the Act of 1872; but that Act is now law, and I am advised that the request made by you to dispense with its provisions could not be entertained; and I am further advised that the admissions and consents you ask for are unreasonable, and such as the Government have no power to agree to. It must be recollected that the Government is not in the position of a private person. There is a duty to the public, whose affairs the Government are called upon to administer, which must be considered paramount.

To the course formerly proposed on your behalf, and assented to on behalf of the Government by the Solicitor-General, I am prepared to adhere; but I cannot consent to such terms for conducting the references as would preclude the Government from having a thorough investigation of the matters alleged to be in dispute.

I have, &c.,

Messrs. John Brogden and Sons, Wellington. J. D. ORMOND.

That letter would show that he (Mr. Cave) was right in his opinion, that at the time the letter was written the Solicitor-General did not take up the position, that the 31st clause of the Act was an absolute bar to the prosecution of Messrs. Brogden's claims in the courts of law. That letter, however, clearly showed and stated that it was not in the power of the Government to dispense with the provisions of the Act. That being the position which the Government took up, and Mr. Henderson being advised that the reference under the Act was merely a supplementary mode of procedure, and that it was still open to the Messrs. Brogden to proceed under the Crown Redress Act in the ordinary way. A letter was written to the Government to the effect that the Messrs. Brogden intended taking proceedings under the provisions of the Crown Redress Act, in respect of their claim under the Waitara and New Plymouth contract. The letter referred to ran as follows:—

SIR,— Wellington, 20th March, 1877.

We beg to inform you that we have instructed our solicitors to take proceedings against the Government in the Supreme Court by petition under "The Crown Redress Act, 1871," such proceedings being for the purpose of testing the validity of "The Government Contractors Arbitration Act, 1872."

We have therefore the honor to request that the consent of His Excellency the Governor may be given in the manner required by section 2 of the "Crown Redress Act," to a petition setting forth the particulars of our claims for work and labour done, and for materials supplied by us for Her Majesty the Queen, and also in a second count setting forth one or more of the contracts entered into between Her Majesty the Queen and ourselves, together with the breaches of contracts on which we claim damages.

We are unable to send with this letter the form of petition, but, as the action will be simply to recover for our work, labour, and materials, such action being sufficient to raise the question of the jurisdiction of the Supreme Court outside "The Government Contractors Arbitration Act, 1872," we presume the Government will intimate their intention of either granting or withholding such consent, without requiring the formality of awaiting the preparation of the petition itself.

The reason we make the above request, without awaiting the preparation of the petition, is that so short a time remains within which the validity of the statute in question must be settled so as to still leave sufficient opportunity for us to enforce our claims under the Act, if bound by it.

We have, &c.,
JOHN BROGDEN AND SONS,
(*per* JOHN HENDERSON.)

The Hon. the Minister for Public Works, Wellington.

On the 22nd March, 1877, the following reply was sent to the Messrs. Brogden :—

GENTLEMEN,— Public Works Office, Wellington, 22nd March, 1877.

In reply to your letter of the 20th instant, I am directed by the Hon. the Minister for Public Works to inform you that the purpose for which you seek to obtain the consent of the Governor to a petition under the Crown Redress Act—viz., to test the validity of the Government Contractors Arbitration Act, 1872"—is not a purpose for which the desired consent should be given.

I have, &c.,
CHARLES T. BENZONI,
(in the absence of Under-Secretary for Public Works.)

Messrs. Brogden and Sons,
Wellington.

On the 15th May, 1877, Mr. Travers wrote to the Solicitor-General as follows :—

SIR,— *Re Brogden.* Wellington, 15th May, 1877.

I have been requested to address you again with reference to the contemplated proceedings under the provisions of "The Government Contractors Arbitration Act, 1872."

The Messrs. Brogden are desirous that the Government should waive any proceedings under the 4th section, allowing all matters in dispute to go direct to the Judge in the first instance.

They are further desirous that the Judge should be empowered, at the request of either parties, to submit any question of law for the decision of the Supreme Court, if his decision should be unsatisfactory. I have pointed out that this is not provided by the Act, but I apprehend that by consent such a power might be given to the Judge independent of the Act, and that such a power would probably be satisfactory to the Judge himself.

Some doubt exists in the mind of their agent here whether, in our former correspondence, you consented to waive any question of time under section 31. I have informed them that I understood you to have agreed on the part of the Government to do so, but it would be satisfactory to my clients if you would, assuming I rightly understood you, repeat that assurance.

With respect to the first three points above referred to, I have the honor to request that you will inform me, at your early convenience, whether the Government will consent to all questions going direct to the Judge instead of first passing through the stage mentioned in section 4; whether the Government will concur in an arrangement, pending legislative alterations, to avoid the Judges acting under the powers given by sections 12 and 13; and whether the Government will consent to give the Judge power, at the request of either party, to refer any matter of law for the consideration of the Supreme Court.

I have, &c.,
WM. THOS. LOCKE TRAVERS.

The Solicitor-General, Wellington.

The reply of the Solicitor-General to that letter was dated 4th June, 1877, and was to the following effect :—

Crown Law Offices, 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 favorably 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 proper, on the 8th March last, to address a letter to the Minister, couched in language which almost rendered further correspondence impossible, and certainly was not calculated to facilitate proceedings. Under the circumstances, therefore, I think it better at present not to make any promise, either with respect to sections 4 or 31, and content myself with repeating the assurance contained in my reply to your letter of the 31st January.

I have, &c.,
W. S. REID.

W. T. L. Travers, Esq., Solicitor, Wellington.

There was in this letter no distinct assurance that the limitation imposed by section 31 would not be relied upon, but, on the contrary, there was an express reservation of the provisions of the Act. It was distinctly stated by the Solicitor-General that no statement had been made by him that the provisions of the Act would be waived, as previously remarked. At this time Messrs. Brogden were advised that they had their remedy outside the Act, and they accordingly determined to proceed with their action. Consequently on the 5th July, 1877, a petition of right in reference to the Waitara and New Plymouth Railway Contract, was forwarded by Messrs. Travers & Co. to the Solicitor-General, for presentation to the Governor, for signature. The following letter accompanied the petition :—

SIR,— *Re Brogden.* Wellington, 5th July, 1877.

We have the honor to forward herewith petition under "The Crown Redress Act, 1871," and to request you will be good enough to procure the necessary consent of His Excellency the Governor to the filing of the same. The claim arises under the contract between the Queen and the Messrs. Brogden, for the construction of the Waitara and New Plymouth Railway.

We have, &c.,
TRAVERS, OLLIVIER, & Co.

The Hon. the Solicitor-General, Wellington.

The Committee adjourned at this stage of the proceedings to next day.

WEDNESDAY, 18TH JULY, 1882.

(Hon. E. C. J. STEVENS in the chair.)

Mr. Cave appeared for Messrs. Brogden and Mr. Bell, with him Mr. Fletcher Johnston, for the Government.

Mr. Cave was invited to continue his address to the Committee.

Mr. Cave said that at the close of the proceedings, on the previous day, he had arrived at the point when the Messrs. Brogden had determined to take action against the Government on account of their claim, under the Waitara and New Plymouth Railway Contract. The letter he had last quoted was not answered until August, 1877, but on the 20th July, 1877, Mr. Henderson made the following proposition to the Government:—

SIR,— Wellington, 20th July, 1877.

We have the honor to submit for your consideration the following method of settling all differences between the Government and ourselves relating to the railways we have constructed in New Zealand:—

1. That the Engineer-in-Chief and Mr. Henderson go through the accounts with a view of agreeing to as much as possible, and eliminating such items as are agreed on.

2. That all differences as to work and labour done and materials supplied, or as to the price of extra work, or as to whether we are entitled to the various claims in our accounts, or as to any other matter upon which the Government and ourselves may not agree, should be referred to either of the following gentlemen, viz., Thomas Higginbotham, Esq., Engineer-in-Chief for Victorian Government, and Robert Watson, Esq., Assistant Engineer-in-Chief for Victorian Government, to decide such differences upon their respective merits, and whose decision shall be finally binding and conclusive on both parties, each party being at liberty to be represented by counsel if they so desire.

We make the above offer without prejudice, and request the favour of an early reply.

We have, &c.,
JOHN BROGDEN & SONS,
(*per* JOHN HENDERSON.)

The Hon. the Minister for Public Works, Wellington.

On the 14th August, 1877, the Under-Secretary for Public Works wrote declining the offer contained in that letter. This, therefore, left Messrs. Brogden no alternative but to proceed with the petition of right. On August 17th of that year a communication was addressed to Messrs. Brogden and Sons, as follows:—

GENTLEMEN,— Wellington, 17th August, 1877.

In reply to your letter of the 5th July, in which you enclose a petition by Messrs. J. Brogden & Sons, praying the Governor's assent to certain claims arising out of their Waitara and New Plymouth Railway contract being filed under "The Crown Redress Act, 1871," I am directed by the Hon. the Minister for Public Works to inform you that His Excellency will be advised to consent to the filing of the petition. Will you be good enough to communicate further therein with the Solicitor-General.

I have, &c.,
JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. Travers, Ollivier, & Co., Wellington.

The petition was accordingly filed, and on the 19th October, 1877, the pleas of the Government to that petition were delivered. They set up, as a defence to the Messrs. Brogden's claims, the Government Contractors Arbitration Act. The replications to the pleas was delivered on the 22nd October, 1877, and the third replication set up the 31st clause of the Act as an answer to the plea. The replication is in effect, as follows:—

That in so far as the matters set forth in the petition are disputes between the suppliants and the Government, such disputes arose more than six calendar months before the filing of the petition, and neither the Government nor the Minister for Public Works took or adopted any of the ways, means, or proceedings, provided by the Act, for referring the same to arbitration under the provisions thereof.

The replication simply raised the question, whether or not the time within which action could be taken under the Act had passed by. On 11th Dec., 1877, in consequence of the Government having received notice of an assignment which had been made by Messrs. Brogden, previously to the filing of the petition, a further plea was put in on behalf of the Crown, to the effect that, as Messrs. Brogden had parted with their interest in the contracts, they were not the proper parties to sue at the time the proceedings were instituted. This had the effect of staying the proceedings. When that fact became known in England the interest was reassigned to Messrs. Brogden, and application was made to the legal advisers of the Government to withdraw the plea of the assignment, in order that the issues raised by the other pleas should be tried on their merits in the usual way. The legal advisers of the Government, however, declined to accede to this. Inasmuch, therefore, as the assignment had been executed previous to the commencement of the proceedings, and it was obvious that the Messrs. Brogden were not the proper parties to have sued at the time the petition was filed, they had no alternative but to discontinue the action. The assignment had been made before the institution of proceedings, although the fact was not known in New Zealand until after the petition had been filed, and the cause was at issue.

Sir John Hall: Would not the assignment, according to the English law, have prevented the action from being carried on?

Mr. Cave: No; because in England the action would have been carried on in the name of the original creditor. On 26th July, 1878, Mr. Travers addressed a letter to the Solicitor-General, setting forth the reasons why he declared it necessary that the proceedings should be discontinued. That letter read thus:—

To the Honorable the SOLICITOR-GENERAL, Wellington.

Wellington, 26th July, 1878.

SIR,— Re *Brogden Waitara Case.*

Your letter to us of yesterday crossed one which we had addressed to you on the same subject. We regret that the Government cannot be advised to withdraw the pleading in question, and with reference to your suggestion "that the object of the petitioners may be attained by a further appropriate pleading," we beg to call your attention to the following points:—In the first place, the pleading in question raises no matter affecting, or material to the merits of the case. In the next place, it is either good or bad in law—if good, then it cannot be disposed of by any pleading on the part of the petitioners, seeing that they do not dispute the facts alleged in it. If bad, then there can be no object on the part of the Government in retaining it. Again, if it be good, any answer in pleading which did not dispose of it would be open to a demurrer.

We have to observe that the assignment mentioned in the pleading in question was evidently made in ignorance of the fact that by the law of New Zealand a cause in action is assignable at law, and that any action founded upon it must be brought in the names of the assignee, and it will be observed that in this case the assignment was made before the commencement of the action, and therefore the action was commenced at a time when the assignors had no longer any right to sue.

Under these circumstances and with notice that the contracts have been re-assigned, the Government are, as we submit, imposing unnecessary difficulties in the way of the petitioners, who desire to have the question raised by the material pleadings determined on their merits. In conversation on Wednesday last between our Mr. Travers, senior, and the Attorney-General, the latter though of course, not speaking officially, intimated that the Government would doubtless be advised to accede to the petitioners' request, as to insist on retaining the plea would be a quibble, and we candidly think that the Government in a matter of this kind should desire to force upon petitioners the risk of demurrer, or the alternative of discontinuing the present proceeding, which can only entail upon them unnecessary cost.

We trust you will see your way to reconsider the decision mentioned in your note of yesterday, and inform us at all events whether you do so or not at your earliest convenience, as the delay which has already occurred is of serious moment to the petitioners.

Should you adhere to your decision, we should feel obliged by your informing us whether in the event of discontinuance, the Governor will be advised to endorse a new petition.

We have, &c.,
TRAVERS & SON.

There were subsequent interviews between Mr. Travers and the Solicitor-General, but eventually the Government were advised to adhere to their determination not to withdraw the plea. Consequently the proceedings were discontinued, and the Messrs. Brogden had to pay the expenses that the Government had incurred in defending the action. On the 4th October, 1878, Messrs. Brogden applied that a new petition of right should be issued, and, on the 17th of that month, the following reply was sent to Mr. Travers, by Mr. Knowles, the Under-Secretary for Public Works:—

SIR,— Public Works Department, Wellington, 17th October, 1878.

I am directed by the Hon. the Minister for Public Works to acknowledge the receipt of your letter of the 5th October, addressed to the Hon. the Attorney-General, in which you forward a petition of right in connection with the Waitara and New Plymouth Contract entered into by Messrs. Brogden & Sons with the Queen, and requesting that the Governor's assent may be given thereto.

In reply, I am directed to remind you that you have discontinued the proceedings taken on Messrs. Brogden's behalf under a former consent, and to inform you that Messrs. Brogden & Sons, through Mr. Barton, their solicitor, have on the 1st October, applied for leave to file a petition of right in respect of their Invercargill Contract.

Under these circumstances, the Minister is of opinion that, as the questions involved in the Waitara and New Plymouth Contract will be raised in the suit on the Invercargill Contract, there is therefore no necessity to have two actions pending, and he is, consequently, unable to advise the Government to grant the consent asked for in your letter.

I have, &c.,
JOHN KNOWLES,
Under-Secretary.

W. T. L. Travers, Esq., Wellington.

It will be found on reference to a letter addressed by Messrs. Brogden to Mr. Malcolm, on the 15th January, 1878, and printed in Parliamentary Paper E–3, 1878, p. 1, that it had been determined that one of the Messrs. Brogden should come out to the colony with the view of consulting the Government on the subject of the claims, and all proceedings were accordingly stayed until the arrival of Mr. Alexander Brogden in the colony in the latter part of 1880. Circumstances prevented Mr. Alexander Brogden from coming out earlier. On arriving in the colony, Mr. Alexander Brogden immediately put himself in communication with the Public Works Office, the Minister being absent from Wellington at the time. Owing to this absence of the Minister, Mr. Brogden had no communication with him until February, 1881. Negotiations went on between February and June, 1881, but eventually it was found that they were likely to result in nothing, Mr. Brogden then resolved to proceed with the Invercargill claim in respect of which Mr. Barton had formerly acted as Messrs. Brogden's solicitor. The petition in that case was filed on 8th June, and the Government again pleaded that the jurisdiction of the Court was ousted by the operation of the Government Contractors' Act. The question was argued on demurrer in November, 1881, and the Court of Appeal, before which the case was heard, decided that the jurisdiction of the Supreme Court was ousted by the Act. In December, 1881, Messrs. Brogden filed a statement of their claim in respect of the Waitara and New Plymouth Contract. Again the Government set up the Act, averring that the claim was barred by the 31st clause. The point was argued before Mr. Justice Gillies, in March last, and he held that he had no jurisdiction in consequence of the causes of action having arisen more than six months previously to the filing of the claim. The consequence was that the Messrs. Brogden were left without redress unless they could either induce the legislature to repeal the limitation clause of the Act, or prevail on the Government to waive their right to plead that clause. Before concluding, there was one more matter in connection with Mr. Reid's memorandum to which attention might be called. He (Mr. Cave) referred to the memorandum in Parliamentary papers, page 9, of "E.–3," 1878, and that was the following:—

He remarks that "with the exception of clauses 27, 28, 30 and 31. I do not think anything of importance was added; and as to these clauses they apply equally to the Government and the Contractors."

That nothing was added materially affecting Messrs. Brogden's contracts beyond these clauses, was probably quite true, but have the Government applied the Act equally to themselves as to the Contractors?

What course did the Government adopt in the month of May, 1877?

In that month it was admitted that the sum of £7,910 4s. 11d. was due to the contractors on the Moeraki Contract. That appeared in a letter from the Public Works Office of the 12th May, 1877, which was couched in the following terms:—

GENTLEMEN,— Public Works Office, Wellington, 12th May, 1877.

Referring to the applications that have been personally made by Mr. Billing for the payment of the sum of £7,910 4s. 11d., being the amount still unpaid on the Moeraki Contract, the Hon. the Minister for Public Works directs me to inform you that, the following items amounting to £3,325 5s., will require to be deducted therefrom, viz.:—

	£	s.	d.
Penalties on Kakanui Bridges Contract	160	0	0
Penalties on Moeraki deviation	256	5	0
Maintenance failed to be performed	160	0	0
Penalties on Moeraki Contract	2,749	0	0
	£3,325	5	0

As the above amount, together with the over-payment of £4,582 15s. 1d. on the Waitara and Invercargill Contracts (together, £7,908 0s. 1d.,) will nearly absorb the amount applied for, the Minister is unable at present to direct any further payment to be made.

The equity of this decision will, no doubt, meet with your concurrence.

I have, &c.,
JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. Brogden & Sons, Wellington.

At that time Messrs. Brogden were claiming further sums as being due to them on both the Waitara and Invercargill Contracts—in fact, on all their contracts—and it was admitted that the Government owed them £7,910 4s. 11d. on the Moeraki Contract. Now, surely, the proper course for the Government to have pursued, in respect of the deductions which they claimed, would have been to have taken steps to obtain a decision under the Government Contractors Arbitration Act. The Government wished to make certain deductions, and it was a question in dispute whether they were entitled to make them. By a previous decision of the Court of Appeal it had been settled that the right of set-off did not belong to the Crown, and that the Crown had no right to retain, by way of set-off, moneys which were due from them to a contractor, against sums which were alleged to be due to the Government by the contractor on other contracts. Therefore the Government, by arbitrarily setting off these sums which they alleged were due to them by the contractors, against the sums which they admitted were due to the contractors on another contract, were not only committing an illegal Act, but they were also evading the provisions of the Government Contractors Act themselves. This, too, was long after the six months, during which proceedings should have been commenced, had expired. But since that date what course had been pursued by the Government? From time to time investigations had been made by the Government officers into these claims, and the result of every investigation up to the present time had been to show that something was due to the contractors.

Hon. Dr. Pollen: Do you mean upon every contract?

Mr. Cave could not say that, but he knew that that was the result in regard to several of the contracts. He could not say that there had been an investigation in the case of every contract.

Sir John Hall: You only contend that the Messrs. Brogden have been underpaid on the whole of their contracts?

Mr. Cave said that what he wished to show was, that the position the Government took up in February, 1876, had not been maintained up to the present time. In 1877 the Government claimed that they had a right to "set-off" against Messrs. Brogden's claims, the amount that they were alleged to have been overpaid on the Waitara and New Plymouth and Invercargill Contracts. They charged that alleged over-payment as a "set-off" against the sums which they admitted to be due to Messrs. Brogden on the Moeraki Contract.

Later still, on 28th February, 1877, a further certificate was forwarded to Messrs. Brogden, which changed the figures again, but Messrs. Brogden had not been informed how the figures last referred to had been arrived at, nor why the variation in the figures had been made. That certificate showed that the sum of £698 5s. 7d. was due to Messrs. Brogden by the Government. It covered six of the contracts, and showed that there had been some sort of an investigation into them at any rate.

Mr. Macandrew: In respect of what contract was the over-payment made?

Mr. Cave: The Invercargill and Mataura, and Waitara and New Plymouth Contracts.

Mr. Macandrew: What was the sum alleged to be overpaid?

Mr. Cave: The sum alleged to have been over-paid on the Waitara and New Plymouth Contract was £2,572, and on the Invercargill and Mataura Contract the amount was stated to be £2,009 16s. 5d. Then the balance was made up by the penalties which the Government claimed to deduct on account of the Moeraki Contract, while at the same time they admitted that they owed money to Messrs. Brogden on account of that contract. In connection with these penalties, he (Mr. Cave) would read a letter, which was written on 25th March, 1881, by Messrs. Brogden & Sons to the Hon. R. Oliver, Minister of Public Works, at Wellington. It was as follows:—

SIR,— Wellington, 25th March, 1881.

We have the honor to refer to a letter received from the Government (P.W. 76-5640), under date 12th March, 1877, which states that the Minister for Public Works directs that sums amounting to £3,325 5s., will require to be deducted from moneys due to us on account of certain penalties having been incurred on the Moeraki Contract, and Kakanui and Island Creek Bridges Contract.

We cannot recognize the right of the Government to make any such deduction, as the delays were caused entirely by the action of the Government, over which we had no control.

We give a few of our reasons for coming to this conclusion.

The earthwork in several positions was delayed for several months at the request of the Government, and delays have been occasioned by slips in cuttings, deviations of line, alterations, extras, and additions.

The Kakanui and Island Creek Bridges were not ordered until May, 1874, and the Mill Stream Bridge not until 29th April, 1875, and there were several variations from the plans, ordered after the bridges had been commenced. The Kakanui Bridge was for a long time delayed waiting for the Engineer to decide on the foundations.

The detail drawings of the Otepopo Bridge were not received until August, 1875, and the mode of construction of the Waimotu Bridge was not decided on by the Engineer until October, 1875.

An extra bridge was ordered in October, 1876, and both earthwork and permanent-way were materially delayed on account of the Kaka Bridge, the last alteration for which we did not receive until 11th October, 1876,—nine months after the contract time had expired.

The deviation at Otepopo delayed the commencement of that portion of the work for five months.

The Government did not decide to line the tunnel at Otepopo until June, 1874, after which the material had to be prepared.

The platelaying and ballasting were delayed for several months for want of rolling-stock and permanent-way material which the Government should have supplied; and in February, 1876, we had to ask for six miles of rails and fastenings, which had not then been supplied to us.

In addition to the above, the extras and additions to the contracts would alone entitle us to more than twelve months' extension of time.

We do not burden you with further particulars, of which, however, we have a great number.

We have, therefore, to request that the amount withheld from from us improperly as penalties be paid to us without delay.

We have, &c.,
JOHN BROGDEN & SONS.

He explained with regard to the Kakanui and Ireland Creek bridges referred to in this letter, that the Government had recently investigated that claim, and had come to the conclusion that the deductions should not have been made, and the amount which Mr. Higginson, (the engineer appointed by the Government) decided to be due to Messrs. Brogden, had since been paid to them by the Government. The letter he had read showed that at the time these penalties were deducted for non-completion of the contract, orders for a considerable portion of the work had not even been received from the government, and consequently when the claims were investigated it was clearly proved that the deductions should not have been made.

Mr. Macandrew: You are referring to this case as an example, I presume?

Mr. Cave: Yes. He was doing so because it was a case which dealt particularly with the penalties. He had no doubt that if further investigation were made, it would be seen that still more money was due to the Messrs. Brogden. It had already been shown that up to the end of 1878, the proceedings for the prosecution of the claims were being actively carried on, and reasons had been given for the delay between the year 1878 and the time of Mr Brogden's arrival in the colony in 1880. There was no doubt that there was a cessation of proceedings during that time, but the removal of Mr. Barton from Wellington, the death of Mr Henderson, and the delay in Mr. Brogden's coming out to the colony were sufficient to account for this cessation, and to show that there was no intention on the part of Messrs. Brogden to abandon the proceedings. Messrs. Brogden fully recognised the necessity for a member of their firm visiting the colony, with a view to a compromise, if possible.

Sir John Hall: Was there not an action at that time pending in England?

Mr. Cave thought not, though an action might have been pending, but practically all proceedings were in abeyance. In fact, no action had been taken in the case of Brogden v. The Queen, since the decision of the Court of Appeal had been given. There was an order obtained for a commission to examine witnesses in England, but that order has never been executed.

Hon. G. McLean: How was it that you were always moving for a petition of right under the the Crown Redress Act, instead of trying to get the Government to waive the limitation clause?

Mr. Cave: The advice that Messrs. Brogden received, both in England and in the colony, was to the effect that they still had their remedy in the Law Courts of the colony. From the time of filing the petition of right, it was understood by both parties that the object of filing it was to test the question whether or not the Act did oust the decision of the Judges. The Crown practically admitted that the petition of right was filed by Messrs. Brogden, with the view of ascertaining whether the position they took up was the correct one or not. To prove that such was the fact, he (Mr. Cave) would refer to a speech which was made by the Hon. George McLean, in 1878, which showed that the Government had resolved to allow the matter to be determined according to law. Messrs. Brogden never got a definite assurance that the 31st clause of the Act would be waived, and, unfortunately, when negociations were in progress, Mr. Barton came upon the scene, and the letter of 8th March was written, the result being that the Government officers were not afterwards disposed to deal with the matter in the amicable spirit they might have done, if that letter had not been written. There had been frequent offers made by Messrs. Brogden to submit the claims to arbitration before filing the petition in the Waitara and New Plymouth case, and even subsequently similar offers were made. On 20th June, 1881, a letter was written by him (Mr. Cave) to the Crown Solicitor, offering to refer the matter to arbitration, but at that time proceedings were pending. If the Government had then agreed to waive the 31st clause of the Act, there could be no doubt that the matter would have been submitted to arbitration. On 10th January, 1882, the Messrs. Brogden addressed a letter to the Minister for Public Works to the following effect:—

SIR,— Wellington, 10th January, 1882.

In your letter of the 22nd ultimo you request us to state what method we can suggest by which our claims can be settled otherwise than in the manner and within the time specially appointed by the Legislature for the purpose. With regard to the method, we suggest the course which all ordinary business people would adopt, and which, in the end, will have practically to be adopted, viz., a comparison and enquiry between any person you may appoint and ourselves, so as to eliminate from the accounts all items about which there can be no possible reasonable dispute. As to many of the items in dispute, the discussion would no doubt diminish them by showing that we were wrong, or would establish them by convincing your appointee that the Government were wrong; and as to the remainder, we are agreeable either to refer them to the Judges of the Supreme Court in their respective districts, or some other arbitrator, or to a jury. On our part, we are quite prepared to waive all technicalities or formalities, only stipulating that, if the Government claim to correct any measurements or quantities of work done and previously certified and paid for, they should be called upon to show a *primâ facie* case, and bear the whole cost of our witnesses in support if they fail in establishing their claim. If they dispute only the principle of the payment, on the ground that it should be included in the contract price, we are content that the ordinary rule as to costs should apply. We should then expect the Government to dispense with technicalities and formalities on their side, and that the fact that the works were ordered and executed and accepted and enjoyed by the Government, and the reasonableness of the prices, should be the questions to be settled. There will be most probably some question of interpretation of clauses of the contract, which could be settled by an appeal to the Supreme Court. If we have omitted anything in this proposal which ought to be added, so as to give the fullest and fairest inquiry into the facts, it is unintentional on our part, and we will willingly consider any other suggestion.

On the second point, as to the time specially appointed by the Legislature within which these questions can be settled, we defer our reply until we see your answer to Mr. Cave's letter of the 19th ultimo. We beg again to observe that our object is to get at the facts, and to terminate, in the speediest manner, the legal technicalities and fallacies which have hitherto obscured them. With this view we will endeavor to co-operate with the Government in any way they may suggest, so as to save time and expense to all parties.

We are quite prepared to compromise for a specific sum, and to discuss the terms and mode of payment; but, before putting any such proposition forward, we must be informed whether the Government are prepared to deal with the matter in that way.

We have, &c.,

The Hon. the Minister for Public Works, Wellington. JOHN BROGDEN and SONS.

P.S. Mr. Brogden will very shortly return to England, and it is therefore necessary to lose no time in replying to this letter.

On the day following a letter was written by Mr. Bell, the Crown Solicitor, as follows:—

DEAR SIR,— 11th January, 1882.

Messrs. Brogden's Claims, Waitara-New Plymouth Contract.

You will remember that when I received your letter of the 19th December I informed you that the questions asked therein could not be answered by me, but must be considered by the Government, and that it would be impossible to give a reply until after the Christmas holidays.

Before such reply could be given, viz., on the 30th Decemher, a statement of claim under the above contract was delivered by you, and I assume that this is intended as a preliminary to proceedings under the Act of 1872. As the Act allows only fourteen days for the delivery of propositions in reply to a claim, I think you must have anticipated that I should set up all legal defences available to the Government. The propositions of fact and law will be delivered to you to-morrow, under protest to the jurisdiction on various grounds, including the limitation defined by section 31 of the Act.

By delivering the statement without waiting for reply to your letter of the 13th December, you have practically asserted that your clients have a legal right to proceed to arbitration, whether the Government consent or not. In the course of the proceedings it will no doubt be finally ascertained and decided by the Courts of law whether you have such legal right, or whether, as we are advised, the Government have the power to prevent your proceeding at all. But so long as you deny the existence of the power, it is useless for the Government to consider how and to what extent they would choose to exercise it. Before anything in that direction is done, it is obvious the legal position should be determined. I cannot consent to accept any document previously delivered as a sufficient notice under section 7, as I am of opinion that no such notice has ever been given.

I have, &c.,

C. W. Cave, Esq. H. D. Bell.

On 15th March, 1882, the Assistant Under-Secretary for Public Works, wrote to Messrs. Brogden a letter, the third paragraph of which ran as follows :—"The Government agree with you in your statement that you are entitled to be paid for the works you have done for the Government. According to the Government account you have been paid all that is due to you for such works. I am to call your attention to the actual facts of the case."

Sir John Hall : You have explained the cause of the delay which took place in regard to the non-prosecution of Messrs. Brogden's claims. Now, bearing in mind what you have said, do you think the Government ought to pay any interest on the money which is alleged to be due, if it really is due ?

Mr. Cave did not ask the Committee to say anything about that. He would leave that matter to be settled by arbitration, and he thought the Government would be justified in taking up the position that they were not bound to pay the full rate of interest for a considerable portion of the time.

Sir John Hall: The interest is chargeable at the rate of 10 per cent., is it not ?

Mr. Cave said that was the rate of interest that was chargeable, but he thought that the amount to be paid should either be left to the arbitrator to decide, or be the subject of agreement between Messrs. Brogden and the Government. He (Mr. Cave) was quite certain that Messrs. Brogden would not claim the whole of the 10 per cent. He did not propose in opening the case to make any further remarks in justification of Messrs. Brogden's claim ; but he would submit that he had shown substantial reasons why the Committee should report favorably, at all events, in regard to those contracts which were entered into before the passing of the Act. Neither Messrs. Brogden, Mr. Henderson, nor Mr. Travers was aware of the limitation clause until long after the Act was passed. Mr. Travers said he did not know of the existence of it until the end of 1877. He certainly read the first revise of the Bill, but it was quite probable that he did not read the Act after it had become law. It was not the custom for lawyers to hunt up the Statute Books for the purpose of reading Acts of Parliament until the necessity for doing so arose in carrying out their avocation. In his opinion, the speeches that were delivered in both Houses of Parliament clearly showed that the Bill was introduced simply as an Act to enable the Judges of the Supreme Court to act as arbitrators. He submitted that the limitation of six months was an unreasonable one, having regard to the extent of the works to be executed, and the variety of the claims that must arise under them. And it might be pointed out that the six months' limitation was really reduced to five months, because, under the 4th and 7th clauses, a month's notice had to be given to the Minister if action were intended to be taken by the contractor. He (Mr. Cave) contended that the limitation was an unreasonable one, and one which it was impossible to comply with. He submitted also that the Government themselves had failed to comply with the provisions of the Act. At present he had nothing further to urge on behalf of Messrs. Brogden, and he now left the case in the hands of the Committee, from whom he was sure it would receive attentive and impartial consideration.

Mr. Bell would like to know whether the Messrs. Brogden contended that they had not received every shilling they were entitled to ?

Mr. Cave replied that he had carefully abstained from going into the merits of the claims in any way except with regard to the deductions to which he had referred, and he thought that was scarcely a question which he should be called upon to answer. It was certain, however, that sums which had been certified to by the Government Engineers, had not been paid, because the Government claimed that they had a "set-off."

Mr. Bell: Taking the final certificates upon all the contracts together, do you contend that Messrs. Brogden have not received the whole of the sums which the Government Engineers reported they were entitled to ?

Mr. Cave thought he could go so far as to say that payment had been made of all sums which the Government Engineers had certified to be due so far as those certificates had been submitted to Messrs. Brogden, but he could not say anything about the final certificates, nor was he in a position to say what amounts the Engineers had actually certified for.

The Committee then adjourned until the following Thursday.

Wednesday, 19th July, 1882.

Mr. Cave: Before the learned counsel for the Crown commences his statement, I should like to make one remark on the subject of the admission he asked me yesterday if I was prepared to make. Since then, I have looked into the papers, and I find I cannot make the admission he asks. It seems to me, however, that the matter is one not appertaining to this enquiry. The Committee have before them the fact of the claims, and also the fact that the Government assert they have paid Messrs. Brogden the whole of the money to which they are entitled. If the Committee think it desirable that evidence should be taken on the point suggested by my friend, of course I shall have the opportunity of cross-examining the witnesses, and of producing evidence in reply, if necessary. But as I am now instructed, I cannot make the admission.

Mr. Bell's Address.

Mr. Bell: I may state at the outset that I have no desire or intention to ask the Committee to listen to any matters connected with the details of the claims. I propose to treat them upon the lines followed by my friend Mr. Cave, with one exception. I think the Committee will see that the question for their decision may present these two aspects—first, if the Messrs. Brogden could say that sums which had been certified as correct by the Government Engineers, and which had become payable to them, were wrongfully retained by the Government from them. I should admit at once that it would not only be the proper functions of the Committee to report to the House that the Messrs. Brogden were entitled to claim these moneys in any court of law, but I should say that in my humble opinion no Government would ever resist the right of persons to have such claims fully investigated. But if the question be whether the Messrs. Brogden shall now be allowed to appeal in the manner provided by the Act of 1872 from the decisions of the Engineers, they having received all that the Engineers have certfied to, then the Committee ought carefully to consider whether that appeal should be allowed, notwithstanding the lapse of time. I think the Committee will now see why I lay stress upon that particular question. If it be a question of appeal, then that question is before the Committee to decide. But if it can at all be said that this enquiry is not whether there should be an appeal from the decisions of the Engineers, but whether the Government are retaining in their own possession money to which the Messrs. Brogden became entitled on the certificates of the Engineers, then the question is an entirely different one. I desire to prove, and I think I shall conclusively prove, that the Messrs. Brogden have been treated in this matter with exceptional consideration and liberality by the Government of the colony. And my first reason for saying so is, that there was an arbitration clause put in the contracts, and also in the Act of 1872, which gave them a position of advantage which no other contractors in the world I believe, and certainly none in this colony ever had. And I say as a matter upon which there is no doubt—it is a matter of law—that no contractor can recover in a court of law any moneys under an ordinary contract except such as have been certified to by the Engineer, who by the terms of the contract in ordinary cases is not only the arbitrator, but the final arbitrator. The members of the Committee must be conversant with cases of the kind where attempts have been made to settle in courts of law disputed claims under contracts, and unless it has been possible to show that there has been collusion between the contractor and the Engineer or architect, there is no right of recovery. The Messrs. Brogden say that but for the Act of 1872 they would have been able at any time within twenty years to bring actions on their contracts in courts of law, but this is not correct, unless there are moneys which have been certified to, but not paid. If what the Engineers have certified to has been paid in full, then the Brogdens, but for the arbitration clause in the Act and in the contracts could not, nor could any contractor in a similar position have sued the Government in any court of law. That has been settled by decisions in England, followed by the Court of Appeal here in the cases of Brogden v. the Queen, and Smythe v. the Queen. I am not going to trouble the Committee with more upon that point, but I hope the Committee will allow me to read a short passage upon it, which is framed in language more forcible than my own. I am reading from a decision by Lord Justice James, in the Court of Appeal in England, in the case of Sharpe *v.* San Paulo Railway Company, L.R., 8 Ch., 597.

> The Engineer has made his certificate, finding an ultimate balance upon all the accounts, which certificate is not, according to my view of the pleadings, impeached on any of the grounds which the Court can take congnizance of. It is not pretended that the Engineer did not come to a conclusion to the best of his belief, and according to the best of his judgment. He was to determine the sums to be paid, and was not like an arbitrator dealing with evidence, or like a Judge dealing with a law suit. The very object of leaving these things to be settled by an Engineer is, that you are to have the practical knowledge of the Engineer applied to it, and that he, as an independent man, is to say what is the proper sum to be paid under the circumstances. That is the ordinary course between such companies and such contractors, and practically it is found to be the only course that is convenient for all parties, and just to all parties.

And Lord Justice Mellish in the same case says :—

> There is no doubt that a mere agreement, that matters shall be referred to arbitration, does not by itself take away jurisdiction from courts of justice. Nevertheless, a contract may be so framed as under ordinary circumstances to take away the jurisdiction of courts of law and courts of equity to determine what is the amount payable under the contract. Wherever, according to the true construction of the contract, the party only agrees to pay what is certified by an Engineer, or what is found to be due by an arbitrator, and there is no agreement to pay otherwise, that is to say, in every case where the certificate of the Engineer is made a condition precedent to the right to recover, there the Court has no right to dispense with that which the parties have made a condition precedent, unless, of course, there has been some conduct on the part of the Engineer or company which may make it inequitable that the condition precedent should be relied on. If nothing of that sort has happened, then the parties are bound by that which they have made a condition precedent.

I read that to show that I am only stating the law, as it has been decided by the highest authority, that a contractor has ordinarily no right of appeal to Courts of Law from the decisions of the engineer, unless he can show that the decision was fraudulent. Now this leads us to enquire how the conditions of the contracts with Messrs. Brogden were arranged? I ask the Committee to remember that these contracts were not entered into by public tender. It was a matter of compromise. A resolution of the House was passed, and in consequence of that resolution Messrs. Brogden obtained the contracts. I ask the Committee to remember that if the tendering had been public the conditions of the contracts would have been arranged by the Government and in the ordinary form, and the Engineer would have been the final arbitrator, and no right to appeal to a Court of Law could ever have existed. The Messrs. Brogden, however, were in this position, that they were able to insist upon an alteration in the terms of the contract, because they were not tendering upon conditions framed with other tenderers. They themselves were parties to the settlement of the terms, and they insisted; and the Government (not without hesitation, and after refusing for a long time because it was a matter of the first importance) conceded that the contracts should provide for an appeal from the Engineer. This was granted in the terms of the contracts, and it is a concession which no other contractors in the world, I believe, and certainly no others in this colony ever obtained. Messrs. Brogden got that concession at last, and a provision was inserted in the contracts allowing an appeal from the Engineer to a Judge of the Supreme Court of New Zealand. The Judges were consulted, of

course. The matter could not have been done without their consent, and eventually they consented. The letters of the Judges have never been printed—I do not know that it is proper they should be printed—but I may state that the view of the Judges was that there would be continual references from the contractors to them; and the objection of the Judges to the proposal was only this, that it might interfere with the performance of their judicial duties, because they would be called upon so frequently. That is the view they took at the time. The Judges having consented—I will produce the letters of the Judges if the Committee desire—I submit to the Committee that it must have been obvious to every person connected with the matter that an Act of Parliament was required. It seems to me a matter so transparently plain that it does not require the least argument; but as it has been disputed so often, I am inclined to think I must be wrong in thinking it so transparently plain. But I ask the Committee to remember this. There was a reference under the contract to one person, and to that one person only. I ask if it would not be absurd to have such a reference unless that one person was bound to take the reference; there would be no sense in referring it to a specified person, unless that person was bound to take the reference. Moreover, the Judge of the Supreme Court had no power to take such a reference without an Act of Parliament—none whatever. I would ask the Committee to remember this, that a Judge sitting in the Court contemplated by the Act of 1872 was not sitting in the Supreme Court any more than a Judge sitting as President of a Compensation Court is sitting in the Supreme Court. The Judge of the Supreme Court is a person; the Court in which he sits is the Supreme Court. No judge could have taken the duties under this contract without special legislation. Moreover, he had no power of examining witnesses or taking other proceedings unless he were given it by Act of Parliament. Therefore, I say that it must have been clear to every person party to that agreement that an Act of Parliament would be necessary to enforce that provision. Now, at that time Mr. James Brogden was in the colony. It is very well known he was here in Wellington, and attended the sittings of Parliament regularly, regularly occupying a seat behind the Speaker's chair. That is not for a moment denied. But supposing he were not, if the Committee will look at the Appendix to the Journals D. 19c, 1872, they will find a letter from Mr. James Brogden to the Minister for Public Works, in which he states that during his absence from Wellington, his attorney, Mr. Travers, is authorized to act in his behalf.

Now I ask the Committee to remember how constantly it has been said that Mr. Brogden and Mr. Travers had no notice of the Act. Of course, I am coming in a moment to the proof that Mr. Travers had ample notice; but I am now going to ask the Committee to consider the evidence that Mr. James Brogden had ample notice. It has been said by Mr A. Brogden? I am not sure if it has been said in letters, but, at any rate, it has been said that notice to Mr. Travers was in no sense notice to the firm, even if such notice had been given, and I have referred to that letter to show that if Mr. James Brogden was not in Wellington, if I do not prove conclusively that he was sitting behind the chair while the Act was passing, his Attorney, Mr. Travers, was entitled to act for him.

Mr. Cave: The letter says "During our absence in the South."

Mr. Bell: I leave it to the Committee to consider which construction of the letter is right, mine or my friend's. Now the first thing that was done as the Committee will remember, was to settle the conditions of the contract that was preliminary to the passing of the Act of 1872; and I would ask the Committee to see what was the provision in the contract for differences which might arise between the Contractor and the Engineer. If the Committee will refer to clause 25, which refers to payments, they will find these words:—

Payments will be made monthly, for each calendar month, as the works proceed, on the certificate in writing of the Engineer, at a rate not exceeding 90 per cent. on the value of the work actually done, as estimated by the Engineer, having due regard in such estimate to the actual value thereof, and at a rate not exceeding 50 per cent. on the value of such plant and materials on the ground as may be approved by the Engineer, as fit and necessary for the work, as estimated by the Engineer, having due regard in such estimate to the actual value thereof; such certificates for work done, and materials and plant supplied, in each calendar month, to be delivered to the Contractor within fourteen days after the termination of such month, and the balance, less 5 per cent., together with the amount deposited as cash security, if any, in fourteen (14) days, or as nearly as may be, after the Engineer shall have certified under his hand that the works have been finally and satisfactorily completed, and that such balance, together with the cash security, is due to the Contractor.

So according to the ordinary provision progress payments would be made to 90 per cent, and the balance on the final certificate of the Engineer. It goes on to refer to these certificates:—

No sum or sums of money shall be considered to be due or owing to the Contractor, nor shall the Contractor make any claim for or on account of any work executed or maintained by him, or for or on account of plant or materials supplied by him, unless such certificate as aforesaid shall have been given by the Engineer as aforesaid.

Now, that is the first condition, the Engineer's certificate was to be a condition precedent. Not a single sixpence was to be paid unless certified by the Engineer. I will continue to read:—

Nor shall any sum or sums of money so certified be considered to be made payable to the Contractor until the expiration of fourteen days after such certificate shall have been presented to the Minister for Public Works; nor shall any omission to pay the amount of such certificate at the time the same shall be held payable be deemed or held to be a breach of or to vitiate the contract; but, in case of such omission, the Contractor shall be entitled to interest.

Of course, making the certificate a condition precedent, we have to go on to see what was to be the right of arbitration, because, of course, that makes the Engineer the final arbitrator, as it is said the Contractor shall not be paid unless the Engineer has certified.

In case the Engineer shall neglect or refuse to certify the amount due to the Contractor in respect of the work, or plant or materials, in manner and within the times mentioned in the foregoing condition, and shall continue such neglect or refusal for a period of fourteen days succeeding the fourteenth day after the end of the month in which the work was done, or the plant or material supplied, as the case may be, the Contractor shall be entitled to measure and value the same, having due regard in his estimate to the actual value thereof, and the measure and value so estimated by the Contractor shall be temporarily accepted by the Governor so far as regards the progress payment to be made to the Contractor in respect thereof under the foregoing condition, and the payment provided by that condition shall be made accordingly, with interest thereon at the rate of ten pounds percentum per annum, during the period of delay occasioned by the neglect or refusal of the Engineer: Provided always that in all cases in which a certificate shall, within the period or further period hereinbefore provided, as the case may be, have actually been delivered to the Con-

tractor, such certificate shall, for the purpose of the progress payment to be made thereunder, be conclusive; and in case of any dispute between the Contractor and the Engineer as to the estimate therein made of value of work done, or plant or materials provided, as the case may be, of which dispute notice shall have been given by the Contractor to the Minister for Public Works within fourteen days after the delivery of the certificate to the Contractor, such dispute shall be referred to arbitration as hereinafter mentioned.

This is the right and the only right of arbitration given in the contract. This appeal from the decision of the Engineers provided notice of such appeal was given within fourteen days after the delivery of the certificate. Now, it may be said, perhaps, that the words "such certificate shall, for the purpose of progress payments to be made thereunder, be conclusive," governs the latter part of the condition, and made it applicable, not to the final certificate, but only to the certificates for progress payments; but the words are, "The certificate shall, for the purpose of progress payments, be conclusive." That part of it only applies to the progress payments. "In case no certificate" includes the final certificate. Looking at clause 25 it will be seen that where a certificate has been given notice of appeal therefrom, must be given within fourteen days. Well, I will concede this to my friend, that there are certain items of the claims as to which disputes would not arise until the final certificates of the Engineers; but they do not form a very large portion, although I admit they are a considerable portion of the claims—the part which is classified under the heading "miscellaneous"—items such as compensation for delays, imperfect plans, want of material, and so on. That part of the claims, I am free to admit, would not arise until the final certificate of the Engineer. But as to the whole of the rest of the claim, I ask the Committee to read this clause and see whether they can come to any other conclusion than that upon the contracts as they stood before the Act of 1872 was passed, no right of appeal to the Judge was given, unless notice of the appeal was given to the Government within fourteen days after the delivery of the Engineer's certificate. That limitation of time was a most beneficial provision, as I shall show when I call attention to the way in which the claims are made up. I now pass from the contracts to the Act. I am not going to trouble the Committee by going through at any length the correspondence referred to at such length by my friend, but there are one or two documents to which I wish to call attention. I say, as a matter of fact, and I ask the Committee to find, as a matter of fact, that this Act was passed with the concurrence and the full knowledge of Mr. James Brogden, the representative of the firm, and holding its power of attorney, and of Mr. Travers, the solicitor to the firm. I ask the Committee, in the first place, to compare the statements of Messrs. Brogden, made before the printing of the correspondence in the Appendix to the Journals, 1878, E. No. 3, with the charges they have made since. That seems to me a matter of great importance. The allegations made before 1878 are contained in the letter of the 8th March, 1877, from Mr. Henderson to the Minister of Public Works. I will not read it, but I will ask the Committee to see how much of it refers to clause 31. Why three paragraphs out of a long letter of more than four foolscap pages of small print? I call the attention of the Committee to the paragraphs in which clause 31 is referred to, but it would take too long to call attention to the paragraphs of the letter which do not bear upon that clause. What was the letter of 8th March, 1877? Why it was an attack upon the Act itself; not upon the limitation specially—not at all. It says you have taken away the arbitration clause and put on trial by a Judge, without jury, with no appeal, a most cumbrous method of arbitration, and so on. There is a most pointed attack upon clause 4 of the Act, which provides for an intermediate appeal to the Minister for Public Works. That clause was inserted in accordance with a suggestion of Mr. Justice Johnston. Now that clause was actually amended by Messrs. Brogden's solicitor, Mr. Travers. The clause which Messrs. Brogden fulminated against in this manner, in 1877, was one of those in which Mr. Travers actually suggested amendments in 1872. Well, then, look at paragraph four of the letter. What is their statement?

We most respectfully state that the provisions of that Act, altering and affecting our contract rights, were utterly unknown to us prior to the date of your letter, and that they are under our most careful and anxious consideration.

The letter is an attack upon the Act itself, not upon clause 31. Exception is taken to nearly every clause of the Act. Further down the Committee will find—

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.

If the Committee will look at the attack upon clause 4,—the second attack upon that clause,—they will see—

We submit that the Legislature had no right to put the Minister for Public Works, representing by his office one of the contracting "parties," in the position of a judge to decide as a preliminary step on the validity of our claims, and also to convert the arbitration provided in our arbitration clause into a kind of Star Chamber tribunal, composed of Judges appointed by the Crown, entitled to act upon any evidence (hearsay or otherwise) they may please to accept, and from whom we are to have no appeal upon error of law, error of fact, or error of any kind whatever.

Then, passing to the letters of Mr. Henderson to the newspapers. I will refer first to the letter in the *New Zealand Times* of the 23rd January, 1878. It says:—

On looking into Messrs. Brogden's case and the law applicable to it, our solicitors found, to my great surprise, that a statute entitled "The Government Contractors Arbitration Act, 1872" (of the existence of which Messrs. Brogden and Sons had been up to that time entirely unaware), opposed a complete barrier to the prosecution of Messrs. Brogden and Sons against the Government of ordinary legal proceedings before a jury, at the same time depriving them of valuable clauses in their contracts which would have enabled them to surmount technical difficulties. Messrs. Brogden were advised that, by the operation of that statute, they would be forced to submit to the adjudication of the Supreme Court Judge, not only without the intervention of a jury, but without any right of appeal from his decision to any Court either here or in England; that full power was vested in such Judge to take unsworn evidence, not only unsworn but *ex parte* if he so pleased; and, lastly, that his judgment was to be given in the simple form of a certificate for money payable from one party to the other, such certificate giving no reasons or explanations of any kind respecting his decision. Such was the tribunal to which Messrs. Brogden were restricted by this extraordinary statute; and, to secure the Government against the possibility of any inconvenient struggle by the English contractors, a very innocent-looking little clause at the end of the statute confined the Judge to the examination of such claims only as had been disputed within the previous six months; all disputes older than six months prior to the investigation being barred. Thus, at one blow, the ordinary time allowed to creditors against their debtors by the law of the land was reduced in Messrs. Brogden's case from twenty years (Messrs. Brogden's contract being under seal,) to six months.

If the Committee will look at that letter also, they will see that (though clause 31 is incidentally referred to), it is an attack upon the Act itself. It says that the arbitration provided by the contract was taken away, and in its place were put a series of provisions which were never consented to by the Contractors. So in Mr. Henderson's letter to the *Evening Post* of the 2nd April, 1878, in the second paragraph, these words are used:—

You raise another issue, that it "verges upon the wonderful that 'The Government Contractors Arbitration Act, 1872,' should have passed both Houses of Parliament without the knowledge of the solicitor and agent of the firm resident in Wellington," and should remain five years on the statute-book without the party chiefly interested being aware of its existence." In reply to this, I will first answer for Mr. Travers, the solicitor alluded to, and then for the agent (myself). The solicitor certainly was not aware up to the end of the year 1876, for he at that time served upon the Government a number of notices based upon stipulations in the contract done away with by the statute, and which notices were immediately objected to by the Government, who called attention to the statute, and declared their intention of enforcing its provisions. When, after receipt of this letter, I consulted with the solicitor, he distinctly informed me (and doubtless would also inform you,) that, up to the time he served the notices above referred to, he was wholly unaware of the existence of the statute. The agent (myself) was equally ignorant of its existence. At the time it was introduced, I, as engineer superintending Messrs. Brogden's contract works, was with my engineer wholly absorbed in assisting the Government making surveys and laying out railway lines. The Bill was introduced into Parliament only ten days after Messrs. Brogden's contracts had been signed, and it was pushed through both Houses almost immediately after its introduction. I was at that time under the impression, and no doubt so was Messrs. Brogden's solicitor, that the material rights and obligations of the parties had been immutably fixed and ascertained in and by the contract, and I had no shadow of a suspicion that the Government, without consulting Messrs. Brogden, and under pretence of an arrangement with them, intended to pass Bill through the Legislature so seriously affecting their rights and obligations.

Then, I will call my friend's attention to the concluding paragraph of this letter:—

Those who do a great wrong frequently seek to cover its perpetration by slanders and abuse. The members of the late Government appear to form no exception to this rule, and hence the misrepresentations they have so industriously propagated, and hence their untruthful statement that the Courts are open to Messrs. Brogden for the assertion of their claim. The Courts are closed. Trial by jury is for Messrs. Brogden an impossibility. Appeal is cut away from them, and the Government Contractors Arbitration Act amounts to *an act of repudiation*, as being utterly at variance with contracts entered into by the Government with Messrs. Brogden previous to the passing of the said Act. I do not blame the Parliament, but I do blame the late Ministry, or such other persons as have misled the Parliament.

Mr. Cave: That is Mr. Barton's letter.

Mr. Bell: I do not know if the newspaper letters were written by Mr. Barton. I ask the Committee now to look at Mr. Traver's letter of the 3rd April:—

Mr. Henderson was in error in stating that I did not know of the existence of the Government Contractors Act until the year 1877. I knew of its existence, but had never read it until it became necessary for me to do so in connection with the claims of the Messrs. Brogden against the Government. It then appeared to me that the Government, and the Legislature by which the Act had been passed, had been guilty of a gross breach of faith towards the Messrs. Brogden, by introducing into the Act a set of provisions which materially modified the rights they had under their contracts.

A limitation clause was certainly included in the Act, but is it a provision which materially modified their rights under the contract?

Mr. Cave: A clause ousting the jurisdiction of the Supreme Court was also included.

Mr. Bell: Of course. But that did not modify the contractor's rights under the contract.

There never is any right of appeal from an arbitrator. You cannot bring error upon an arbitration. Nobody ever heard of such a thing. The Act says the decision of the Judge shall be final. The Act says no more than the law would imply without the Act. These clauses which say there shall be no appeal do not enact anything new.

Mr. Cave: The right of action is taken away.

Mr. Bell: Of course. What is the use of having a clause providing for a final arbitration if there is to be an action also? I call the attention of the Committee to these statements to show what was the nature of the allegations made before the Appendix to the Journal of 1878 was printed. My friend Mr. Cave has stated that these letters, with the exception of Mr. Travers', were written by Mr. Barton, and he very frankly disclaims the charges of unfair conduct made in them. But the letter to the Secretary of State printed in the Appendix to the Journals of 1878 was certainly not written by Mr. Barton.

Mr. Cave: It was written by Mr. Henderson.

Mr. Bell: I do not know who it was written by, but it is dated from 21, Queen Anne's Gate, Westminster, and it was certainly adopted by the firm in England, and therefore I do not think my friend can disclaim that letter. That letter makes an attack upon a number of clauses of the Act, and incidentally upon clause 31. I trust the Committee before coming to a decision upon the question will read the parliamentary paper E.—3 of 1878 containing that letter. It is of great importance that the Committee should see the result of the enquiry made by the Grey Government in 1878 into the allegations made by Messrs. Brogden in that year. That letter to the Secretary of State was sent by him to the Governor, and the Grey Government ordered an enquiry into the charges made in it. In that letter clause 4 is objected to most strongly—a clause which had been amended by their own solicitor. Clause 12 is objected to most strongly—that had been consented to by their own solicitor. Clause 3 is also objected to—objected to most strongly. That also had been approved by Mr. Travers. And then the writers formulate their charge that the Act was passed behind their backs, and entirely without notice to them, in these words—

If Messrs. Brogden had been informed of the Act in 1872, when it passed the Legislature of New Zealand, or—being an English firm of contractors—had they been notified in England, they would certainly have made an appeal against the granting of the Royal assent to a measure which they conceive to be so unjust and unconstitutional.

By the Act of the Imperial Parliament granting the present Constitution of New Zealand (15 and 16 Vic., c. 72), it is provided (clause 53) that it shall be competent to the General Assembly (except and subject as hereinafter mentioned) to make laws for the "peace, order, and good government of New Zealand, provided that no such laws be repugnant to the law of England."

Can it be said to be consistent with "peace, order, and good government" that the Government, being party to contracts with any individual or firm, should vary any of the provisions of such contracts by Statute without the consent of the other party to those contracts? And can such legislation, whereby one party to a contract alters some of its provisions without the consent of the other party, be otherwise than "repugnant to the law of England?"

The contracts for the construction of the following railways, viz., Waitaki and Moeraki (19th July, 1873), Waitara and New Plymouth (19th July, 1873), Auckland Station, &c. (19th July, 1873), Auckland and Mercer (20th August, 1873), were taken subsequent to the passing of the Government Contractors Act, 1872, but before the Royal assent to this Act had been obtained, These contracts contain the same terms and conditions and the same arbitration clause, were signed, sealed, and delivered in similar manner. But the Government Contractors Act of 1872 was not exhibited or referred to, and not produced by the Government in reference to these contracts until 1877, which was the first intimation the contractors had of the existence of such an Act.

If the Committee will read the whole letter, they will see that I am right in saying that the objection is pointed at the passing of the whole Act. They say it was passed *ex post facto*—that it makes conditions materially affecting their contract rights. Of course that point is a charge against clause 31, amongst others, but that is an incident of the charge. The inquiry took this form. Mr. Stout, the Attorney-General, referred the letter to Mr. Reid, the Solicitor-General, who thereupon wrote a memorandum, which Mr. Cave read yesterday to the Committee, and to which I do not propose further to refer. That memorandum is in E. 3, 1878. It is too long to read now, but I am sure the Committee will do the Government the justice to read it. Mr. Reid puts the facts very clearly. He appended Mr. Travers' letter to Mr. Prendergast, dated 13th August, 1872, with the amendments which he suggested in the Act. Now, that letter proves that Mr. Travers perused a copy of the first revise of the Act. True, the first revise did not include section 31, nor did it include sections 27, 28, and 30. But I wish to call attention to the fact that Mr. Travers had a copy of the Act, and notice was given him that it was going to be introduced in Parliament. The Government, as a matter of courtesy, sent him a copy of the first revise, and Mr. Travers' letter in reply will also be found in E. 3, 1878—"Dear Prendergast, &c." Mr. Travers' amendments consisted of two long clauses, which were inserted. Mr. Travers was, of course, making the suggestions on behalf of Messrs. Brogden. Another point is this, that though the first revise sent to Mr. Travers did not contain clause 31, it did contain the preamble, which reads thus:—

Whereas certain statutes are now in force within the Colony of New Zealand, authorising the construction, erection, and maintenance of railways and other public works in the said colony; and, whereas, other statutes may from time to time hereafter be in force for such and other like purposes: And, whereas, certain contracts have been already, and others may hereafter be entered into for the construction of such works between Her Majesty the Queen, and certain persons carrying on business in copartnership under the style of "John Brogden & Sons." And whereas disputes may arise under such contracts, and it is expedient that provision should be made for summary and final settlement of such disputes.

That is the preamble to the Act, and therefore Mr. Travers knew that it was to provide for a *summary and final* settlement of disputes, although, unfortunately, clause 31 was not in that first revise. That, effectually, disposes of the charge, that Messrs. Brogden did not know the Act was about to be introduced into Parliament. It did not interfere with their contract rights, but actually provided on their right of appeal from the Engineer. It is perfectly plain there must be some limit of time for such appeals. It is quite evident that they cannot be left open for twenty years, as Messrs Brogden have suggested. I do not say the time should be limited to six months, that may be too short, but there must be some limit; that it should be so seems to me to be too clear to require further argument, and I contend, therefore, that Mr. Travers and Mr. Brogden should have watched the limitation clause which was certain to be inserted. As has been pointed out by a member of the Committee, a considerable time elapsed after the Bill was printed and before it was read a second time. In the interval there was a change of Government, and it is a very well known fact that Mr. James Brogden was in Wellington when that change took place. The Bill was brought in, no doubt, by the Fox Government, but it was read a second time on the motion of Mr. Stafford, the then premier, who was not at all inclined to take any advantage of the Brogdens to their harm; it will be found that Mr. Stafford stated most distinctly, that the Bill was brought in in pursuance of an arrangement with Messrs. Brogden, and that although he strongly disapproved of it, yet felt bound to move the second reading of the Bill. The measure was carried through Parliament by the Stafford Government, who expressed in both Houses their dislike to it; but explained that it was passed to fulfil an honorable obligation entered into by the Government with Messrs. Brogden. It may be said, that although Mr. Brogden was sitting behind the chair nearly every night, yet that he was neither present at that particular debate nor read it in *Hansard*; but a pretty full report of the debate in the House of Representatives appeared in the *Wellington Independent* the next morning, 21st September, 1872; and in that report, as in *Hansard*, Messrs. Brogden are referred to by name and the nature of the Act explained.

It is a short report, but it called the attention of everybody who read the paper to the fact that a Bill was then being passed through the House dealing with this arbitration clause in the Brogden contracts. I say it is not reasonable to suppose that Mr. James Brogden (who, of course, as I admit, has made no misrepresentation about the matter—he has simply forgotton it being here in attendance in the House, being here for the very purpose of attending to matters relating to the contracts, and then taking a very great interest in political matters, being no doubt keenly alive to what was said about himself in the papers and in Parliament) could have missed the debate in both Houses, and could have missed the reports in *Hansard* and the newspapers. Mr. James Brogden was long in Wellington, the Bill took a considerable time in its passage through both Houses; it was a Bill to grant him the appeal he had insisted upon. Mr. Brogden must have known—and there can be no question that Mr. Travers, as a lawyer of great experience, must have known—that a Bill was necessary to give effect to the arbitration clause in the contracts. Indeed, Mr. Travers fully admits this in his letter to the *New Zealand Times* of the 3rd April, 1878. There is not a shadow of doubt that a Bill was necessary, and I do not think it reasonable for Messrs. Brogden to say they did not know it. I believe that Mr. James Brogden was sitting behind the chair with Mr. Travers while the Bill was passing, each with a copy in his hand, but I cannot now produce positive evidence to that effect. Not one word of alteration was made in the Bill in either House; the Bill was passed just as it was brought in, including clause 31.

Hon. Mr. Miller: What clauses did Mr. Travers put in?

Mr. Bell: Clauses 4 and 18 he amended, and clauses 5 and 6 he drafted. We have no record of Mr. Travers having seen clause 31. I only submit that it is reasonable to suppose that Mr. Travers and Mr. Brogden did both see it. If the attack had been directed throughout against clause 31—if it had been admitted throughout that the Messrs. Brogden knew of the Bill, but it had been from the first alleged that clause 31 was inserted behind their backs—that would be very different thing. But the assertion until 1878 was that neither the Messrs. Brogden nor their solicitors had any notice or information of any part of the Bill. It is only since the publication of Mr. Travers' letter to Mr. Prendergast that the objections have been limited to the 31st clause. I desire before passing from this point to show that Mr. Cave was wrong in one statement he made yesterday, that Messrs. Brogden had practically abandoned the action of Mr. Barton in 1877. It may have been so privately, but certainly not to the Government. I wish to refer to the letter on page 31 of the printed correspondence, Mr. A. Brogden to Minister, 30th January, 1882.

Then the Government say we could have had this inquiry under the Contractors Act without delay, but did not avail ourselves of it. Let us examine this matter: the first intimation we or our agent here, Mr. Henderson, or Mr. James Brogden, ever had of the existence of "The Contractors Act, 1872," was in January, 1877, after we had sent in our final accounts in respect of all our contracts excepting the Auckland and Oamaru cases. The startling character of the provisions of that Act, especially those limiting the time for arbitration to six months from the time when any particular dispute arose, and giving the arbitrator power to take unsworn evidence, without the opportunity of cross-examination, &c., quite overwhelmed our representative and took us equally by surprise. Notices to arbitrate were at once served by us, and the Government were asked to acknowledge that the notices were proper, but they refused to accept them as in order, and never intimated their willingness to waive the limitation of six months, and therefore retained the position at any moment to say that they relied on that limitation. This Act was declared to have taken away our rights at common law and closed the courts of justice to us. It was new to us and unexpected, and therefore we naturally strove to test our common-law rights before adopting any of its provisions, one of which is that, in respect of any matter in which we proceed under the Contractors Arbitration Act, we voluntarily give up any right of action at law.

Then comes lower down—

It may seem extraordinary that we did not take steps to protect our interests while the Act was being passed, and remained ignorant of it for so long a time. Of our ignorance of it there is no doubt; and there is not much in that fact to occasion surprise, as it is essentially a private Act, and deals with no one but ourselves; but neither in New Zealand nor in England was any notice, such as is required in the case of private Bills, given to us. Its title is calculated to mislead, as it is called by the general term "The Government Contractors Arbitration Act," although it only applies to us, and not to the many other contractors with the Government, and its clauses were altered at the last moment in a manner materially affecting our interests and our position under the contracts, and this without any intimation to us or obtaining our consent. It is not necessary to state that this was done designedly, but the fact that the Act closes the courts of justice of the colony to us, and limits us to six months to go before the arbitrator, shows that we have suffered most grievous wrong by this kind of legislation, passed without consulting us and behind our backs.

Messrs. Brogden there repeat practically the charge of bad faith that was made by Mr. Barton, though of course they couch it in less vigorous language. I am not going to trouble the Committee with that any further. I submit that it is more than plain—that it is perfectly clear—that Mr. James Brogden, the attorney, and Mr. Travers, the solicitor of the firm, saw and knew of the whole of the provisions of the Act of 1872 as it passed through the House. They both forgot the fact. But coming to the correspondence of 1877, after the claims of 1876 had been made, let us see whether the Government desired then to insist upon the limitation of time. I say, it is plain upon the face of the correspondence, they never did. And to make it, if possible, more plain than it is upon the correspondence between the Solicitor-General and Mr. Travers, I now put in the official memoranda which then passed between the Government of the day and the law advisers. The Committee will find that notices requiring arbitration upon four of the Brogden contracts were served by the Messrs. Brogden on the Minister, in December, 1876. These notices were referred to the Solicitor-General, who, on the 20th January, 1877, wrote a long memorandum for the Under-Secretary of Public Works. The first part of it is not very material to the present point, but it will be seen that throughout Mr. Reid anticipated that an enquiry upon the merits, and without technicalities, was to take place. The four last paragraphs are of great importance. Mr. Reid says:—

I am aware that getting up this detail will involve a good deal of trouble, but, as the matter will finally be decided by the Judge of the Supreme Court, who sits as Arbitrator, special care must be taken to set everything out concisely but clearly.

The notices themselves are, I think, irregular, and ought to have been given under the Government Contractors Act of 1872; and in this Act is a provision that the party desiring a reference shall take proceedings under the Act within six months after the dispute has arisen, unless with consent of the other party. This is not a provision which the Government would take advantage of, unless for good cause; but it may be useful to us should Messrs. Brogden desire to put the Government to inconvenience by bringing on all these claims at once in different parts of the colony.

I think these notices should be acknowledged, and Messrs. Brogden informed that there are several matters stated in their notices which cannot be settled in the absence of the Engineer-in-Chief, but that on his return a final reply will be sent.

The letter should state expressly that, in so acknowledging the notices, it is not intended to waive any irregularity in the terms or form thereof, nor to waive any right or privilege vested in or accorded to the Government or the Minister for Public Works under "The Government Contractors Arbitration Act, 1872." A suggestion might be added that in any future steps to be taken Messrs. Brogden's legal advisers should communicate directly with the Law Officers of the Government.

Mr. Reid says distinctly that the six months' limitation would be used only for the purpose of preventing the Messrs. Brogden from bringing on their claims at the same time in different parts of the colony. He proposed, in fact, to say to them:—"You may bring on one arbitration now—say the Waitara case—and in three months hence the Wellington, or any other case," and so on. It would not be fair to the Government that a number of cases should be brought on at once.

The last paragraph of Mr. Knowles' letter to Messrs. Brogden, of the 26th January, 1877, written pursuant to Mr. Reid's advice, is as follows:—

The Minister intended to have deferred acknowledging the receipt of your letters, as above, until he was in a position to have gone fully and finally into the matter in dispute; but, after giving them such consideration as he is able, the Minister instructs me to inform you that he finds some of the matters in dispute cannot finally be fully investigated during the absence of the Engineer-in-Chief. On that officer's return, now shortly expected, a definite reply shall, however, be sent to you. Meanwhile I am to state that it is not intended by this acknowledgment to waive any irregularity in the terms or form of the various notices you have given, nor to waive any right or privilege vested in or accorded to the Government or the Minister for Public Works under "The Government Contractors Arbitration Act, 1872."

The Committee will see that the reservation of rights was simply for the purpose of being able to say to the Messrs. Brogden, you shall not bring in your claims in such a manner as to inconvenience us. Then follows Mr. Travers letter of 31st January, 1877. That refers to a conversation Mr. Travers had with Mr. Reid. Mr. Travers refers to the fact that he had discussed the subject with Mr. Reid, and from a letter I shall refer to later on it appears that Mr. Travers understood from Mr. Reid at that interview that the Government would not insist upon clause 31 of the Act. In the letter of the 31st January, 1877, Mr. Travers suggests to Mr. Reid the course which should be adopted. Mr. Travers proposes that the existing notices should be treated as having been given under the Act, that he should at once file his propositions of law and fact, on the Napier contract, that the Government should file theirs in reply, that issues should be settled and a day appointed for hearing the case. He concludes the letter with the following words:—

It is not my wish, acting for the Messrs. Brogden, to pursue these investigations in any spirit of hostility towards the Government, or in a manner likely to embarass or inconvenience them; and I trust that the Government, on their part, will consent to carry on the proceedings with as much freedom from technical difficulties as may be consistent with their duty; I, on the part of the Messrs. Brogden, being quite willing to waive technical points in the course of the proceedings.

Mr. Reid forwards this letter to the Under-Secretary with the following memorandum.

I send you this letter received by me to-day. It seems to me Mr. Travers's proposal is fair and reasonable, and one that should be entertained by the Government. The decision in one of the cases will practically settle all the questions in dispute respecting the various contracts; and should this be favorable to the Government it is not likely the Messrs. Brogden will proceed with other cases; and if, on the other hand, the Government do not succeed in their view it would be useless going to increased expense and loss of time in further cases. Will you please lay this before the Minister for instructions. The details, of course, remain to be finally settled.

W. S. Reid.

And on the 14th February, Mr. Ormond minuted on the correspondence "The course advised by the Solicitor-General is approved." Mr. Travers had proposed a course of procedure in which neither party was to rely on technical difficulties, the Government assent to it, and say let us get through with it at once. Then there is Mr. Reid's answer to Mr. Travers, dated 14th February, 1877:—

I have the honor to acknowledge receipt of your letter of the 31st ultimo, respecting the submission to arbitration of Messrs. Brogden's claims against the Government, and, in reply, to inform you that the Government are prepared to adopt the course indicated in the letter above referred to. I think it will be more convenient that Mr. Henderson should meet the Engineer-in-Chief and settle the items in dispute before the claim is filed, and these gentlemen can arrange accordingly.

Sir, all we wanted at that time—in 1877—was to get the enquiry through and have it over. Perhaps it is not strictly evidence, but I may be allowed to say that I was then acting Crown Solicitor, and I received instructions from the Crown Law Office, given under the belief that the matter was to be finally settled then once and for all. And so it would have been but for the letter of 8th March, 1877. Messrs. Brogden suddenly changed their front, and said, "We will have nothing to do with the Act." Mr. Travers had settled with Mr. Reid in January that the cases should be settled under the Act of 1872, but Messrs. Brogden, in March, fulminated their blast against the Act, and declared they would have nothing to do with it. Then what followed? The Messrs. Brogden had broken off the negotiations, and would not proceed in the form prescribed by law, though Mr. Travers offered to do so. I do not propose to read the letter of the 8th March or Mr. Ormond's reply at length, but the Committee will find that, in reply to the letter of the 8th March, in which Messrs. Brogden repudiated the arrangement made by Mr. Travers, and made a long attack on the honor and good faith of the colony in reference to the Act of 1872.

To the course formerly proposed on your behalf, and assented to on behalf of the Government by the Solicitor-General, I am prepared to adhere; but I cannot consent to such terms for conducting the references as would preclude the Government from having a thorough investigation of the matters alleged to be in dispute.

On the 15th May, 1877, Mr. Travers wrote, reopening the former negotiation. Apparently the Messrs. Brogden had reconsidered their decision, as expressed in the letter of the 8th March, for the letter of the 15th May refers to contemplated proceedings under the Act of 1872. Mr. Travers, in the fifth paragraph of this letter, says:—

Some doubt exists in the mind of their agent here whether, in our former correspondence, you consented to waive any question of time under section 31. I have informed them that I understood you to have agreed on the part of the Government to do so, but it would be satisfactory to my clients if you would, assuming I rightly understand you, repeat that assurance.

In Mr. Reid's memorandum to the Minister the Committee will find these words:—

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.

On the 4th June Mr. Reid replied to the letter of the 15th May, the last paragraph being as follows:—

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 31st section was not one of which the Government would have been advised to take advantage, and I should have been prepared favorably 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 proper, on the 8th March last, to address a letter to the Minister, couched in language which almost rendered further correspondence impossible, and certainly was not calculated to facilitate proceedings. Under the circumstances, therefore, I think it better at present not to make any promise, either with respect to sections 4 or 31, and content myself with repeating the assurance contained in my reply to your letter of the 31st January.

It is a carefully written, and, I think, a very fair letter; and the Committee will specially note that Mr. Reid, after giving an interpretation of the assurance contained in his reply to the letter of the 31st January, expressly repeats that assurance.

Mr. Reid throughout adhered to the arrangement of January, and Mr. Ormond, too, in answering the letter of the 8th March, though the provocation offered by that letter was strong, intimated that the Government were still prepared to carry out that agreement.

On the 20th July, 1877, Messrs. Brogden wrote suggesting an arbitration by engineers. This, of course, the Government had no power to agree to; but the Committee will find that the Under-Secretary, in his reply of the 14th August, 1877, uses these words:—

I am to point out that the contracts themselves prescribe a method of settling all disputed questions arising out of the same, and that the Legislature has provided ample means for giving effect to the proceedings which those contracts contemplate. Under these circumstances, and bearing in mind that the Government are now, as they always have been, quite willing that the questions in dispute should be settled in the manner so prescribed, there does not appear to the Minister to be any sufficient ground for warranting a departure from the course which the law directs to be followed.

Well, I think I have conclusively proved that the object of the Government in 1877, was to get these matters settled. The Government then said in plain terms, "We will waive clause 31." I have introduced these memoranda by the Solicitor-General to prove that the Government had been advised to waive, and had concurred in waiving clause 31, in 1877, whatever might be the legal right of the Government.

Messrs. Brogden, however, repudiate the arrangement of January by their letter of the 8th March, and, after negotiations, were revived by Mr. Travers in May and June, they, for the second time, rejected the proposal to proceed to an immediate arbitration, and then insisted on proceeding by petition of right to test the question whether they could not sue the Government in the Supreme Court, notwithstanding the provisions of the Government Contractors Arbitration Act of 1872.

If they had with proper diligence brought the proceedings under the petition of right to issue, the position here now would have been very different. But, what did they do? They asked for, and obtained, leave to file a petition of right in the Waitara case, for the purpose of testing this very question. There was no undue delay with respect to the Waitara case, perhaps, though I am not going to admit that; but it is upon them to show that they pressed that claim with all the speed they could get out of their lawyers, which, I daresay, was not much. Of course I am speaking of lawyers in general. The Government pleaded, as they had the right to the provisions of the Act of 1872. As a bar to the action in the Supreme Court, Messrs. Brogden wished to go to the Supreme Court, whereas both the Act and the contract said they should go to a Judge of the Supreme Court sitting in an Arbitration Court.

The Chairman: Do you say it was practically arranged that the Government should so plead.

Mr. Bell: They asked for a petition of right to decide the question, but the Solicitor-General said leave to file a petition could not be granted for that purpose. It was, however, understood, if they did present it, the Government would plead the Act of 1872. The Government pleaded that Messrs. Brogden could not sue in the Supreme Court, but that their proper forum was the Arbitration Court provided by the Act of 1872. That being pleaded, the Messrs. Brogden replied. You cannot set that up because of clause 31 of the Act of 1872. You ought if you wanted these matters decided in the Arbitration Court to have yourselves brought them into the Court of Arbitration within six months. You did not do that, and so the Act of 1872 is no longer available to you. They themselves in 1878 in their replication to the Government pleas set up clause 31. From first to last the Government never set up clause 31 until compelled to do so in 1882. That is the plain state of the case. It is clause 31 which the Messrs. Brogden then relied on, which they now ask the Committee to say the Government should not rely on, and therefore that they should be allowed to go into the Arbitration Court. The Committee will understand that the Government did not plead clause 31. The Government pleaded that they could not be sued in the Supreme Court in respect of disputes under the Brogden contract. The Messrs. Brogden replied, you should have gone to the Arbitration Court yourselves within six months, but you have elected to abandon that forum. They said in fact, "It is your business to take up our disputes"—that is the assertion of their replication. That was in October, 1877. As my friend told the Committee, the reason why the Waitara case came to an end was that the Government received notice from the assignees of the money; and the Government, acting for the protection of the assignees, pleaded the assignment, and in the end the action fell through. The Brogdens having got a reassignment, applied for leave to amend. I am not going into the reasons why that leave was not given. But leave was given to the Brogdens to file a new petition of right in the Invercargill-Mataura claim. Leave was refused to file a new petition of right in the Waitara claim, because the point then for decision was only one point, and it would have been useless to have two actions to decide one point, which the Government were confident would be decided in their favor. There never was any doubt in the minds of the law advisers of the Government, that the Act of 1872 created the forum for settlement of the disputes, and that the jurisdiction of the Supreme Court was thereby ousted; and therefore it would have been a waste of money to grant a new petition, and to decide the same question on two actions. The same course was followed by the Hall-Government, in 1881, in refusing leave to Messrs. Brogden to file new petitions of right until this question had been disposed of in the petition then before the Court. The course the Messrs. Brogdens took in this petition of right in regard to the Invercargill Mataura claim, I desire to call attention to, because it has, I think, caused the greater part of the present difficulty, I am going to give dates, and I rely on those dates to show that the Messrs. Brogdens themselves have created the difficulty which they now seek to get out of through this Committee. The Waitara petition was filed on the 8th September, 1877, and the assignment was pleaded in December, 1877. The Crown interfered on the 11th December, with an after plea of the assignment, and the petition was discontinued on the 27th November, 1878. So the whole of 1878 was lost by the Messrs. Brogdens and not by the Government. There was an attempt to set up the reassignment; but, of course, all this waste of time could have been avoided if they had asked for leave to file a new petition on the same or any other contract.

Mr. Cave: There was a request that the plea of assignment should be withdrawn on the ground of the reassignment.

Mr. Bell: The additional plea setting up the assignment was delivered on the 11th December. The letter from Messrs. Brogden's solicitors, requesting leave to amend their petition, was dated the 19th June, 1878.

Mr. Cave: Of course, they had to communicate with England.

Mr. Bell: I submit that the proper course for the Messrs. Brogdens to have followed, instead of having the money reassigned, would have been to have a new petition of right in December, 1877. At any rate, all 1878 was lost by the action of Messrs. Brogden. It may have been caused through the absence of Messrs. Brogden in England. This assignment, I believe, was only some family arrangement, but it caused the delay,. However, put it as we may, the waste of time in 1877 and 1878 was caused by the Messrs. Brogden, and not by the Government. But even then there was time to have had the question decided, before the time had gone by, when these claims could be fairly examined. But what was done? Application was made to the Grey Government in 1878 for leave to file a petition of right in the Invercargill-Mataura claim. The Governor's assent was endorsed on this petition on the 2nd November, 1878, and the petition was not filed in the Supreme Court until the 8th June, 1881. They kept it all that time. The explanation that Messrs. Brogden gave of that is, that Mr. A. Brogden was unable to come to the colony till the end of the year 1880, and that the petition was kept until Mr. Brogden's arrival. After his arrival in the end of the year 1880, he had some communication with the Minister for Public Works, which explains the delay between his arrival and the filing of the petition in June, 1881. But no reasonable explanation is offered why they did absolutely nothing in 1879 and 1880. They wasted those two years, and nothing whatever was done in them. The effect of all this delay, which has undoubtedly been caused by the Brogdens, and not by the Government, has been to scatter the Government evidence to the winds of heaven. The investigation, which we were not only willing but anxious to have in 1877, is an investigation which cannot take place in 1882. I do not say that many of the items of the claims cannot be as easily investigated now as then. My observations are not pointed to all. What I do say is, that as to the major part of the items of these claims, the evidence available to the Government in 1877 is not available now. And I assert this as an indisputable fact, that the delay has been in no sense the act of the Government. The delay throughout has been the act of the Messrs. Brogden, however they may explain it. They have wasted five years in fruitless litigation, they have wasted evidence for the Crown, they have wasted their own evidence, they have said so over and over again, and I dare say it is true. It is important that the Committee should be satisfied who have been the cause of the delay in the investigation of the claims they are now asked to allow to be brought into Court.

I now desire to show the Committee how the claims arose to enable them to decide whether such claims can, after such a lapse of time, be properly heard in any court of arbitration or of law. The provisions of the contract stipulate that the contractors shall have an agent upon the ground, who shall be the contractor's representative, and the method was adopted by the Government of having monthly abstracts of extra work, signed by the Engineer and the Contractors' agent on each contract, which were supposed by the Government Engineers (and have always been supposed) to settle conclusively the quantity and price of the extra work done during the previous month. And these abstracts were in nearly every case, in the vast majority of cases, signed by both the Contractors' agent and the Engineer. The Contractor's agent took the measurements and prices of the work for which he signed the abstract sheets. But there would, of course, at the time have been other evidence available of all what had been done during the month, both on the part of the Engineer and the agent, such additional evidence is no longer available. I am not speaking in a general way of facts which are not within my absolute personal knowledge. I will put before the Committee the monthly abstract sheets for extras on the Invercargill-Mataura contract, and the claim now made in that case, and if the Committee will permit me to trespass for one moment by entering into detail, I will instance one particular item of that claim as an example. It is a matter which will explain itself to the Committee. In these abstract sheets a certain price is fixed for the different classes of work, such as culverts, earth-work cuttings, and so on. Throughout the price of earthwork in the Edendale cutting is fixed at 2s. a cubic yard, that is agreed to by both the agent and the Engineer, and the abstract sheets are signed as correct by the Resident Engineer and the agent. This item appears in the claim at 2s. 6d. and 4s. a yard, and 32½ per cent in addition to the 2s. 6d and 4s. is claimed upon all extra work. Well, I have taken an instance which is not a particularly good one for my purpose, of a question of price in dispute. Now the dispute is as to whether a price fixed by the Engineer in 1874, and assented to by the agent is a fair one, and if there is to be an appeal from the certificate of both parties. It is obvious that evidence that would have then been available as to what was a fair price at the time is not available now. Of course, this work extended to 1876, and probably the actual work to which I am referring was done about 1874.

Mr. Macandrew: Do I understand that they now claim 2s. 6d. and 4s. for what their agent agreed to then at 2s.?

Mr. Bell; Yes. I will read an extract to show what I refer to. It is in reference to what was called the Big Cutting in this contract. This was in 1874. There are 2,930 cubic yards of work at the rate of 2s. a yard, and that total is £273. That is signed as correct by W. E. Brunton, the Engineer; it is signed also by Mr. Armstrong, the contractor's agent.

Mr. Macandrew: Are these persons all alive?

Mr. Bell: No. W. E. Brunton is dead; and the other Mr. Brunton,—both the Government Engineers were named Brunton,—is now in the employ of my friend's clients. I take that as an instance to show the difficulty of proving now what was a fair price in 1874. It would not have been so difficult to have decided that in 1877, because then more evidence would have been available. I do not rely only upon the evidence of the Resident Engineer, but also on the evidence of contractors who had works during the same time, and workmen of the contractors, whose evidence,—I speak from experience,—it would now be exceedingly difficult to get. Having given an instance of a ques-

tion of price, I may be permitted now to give an example of a dispute as to *quantity* of work. In a case in which both my friend Mr. Cave and I were lately engaged, the Clutha Platelaying Contract, the line ran for a considerable distance through a swamp. The question arose as to how much earth had been put into the swamp, and it was actually argued by my friend and myself from papers and memoranda, because we could not now get the facts from measurement. £1,250 was claimed for filling in the Stirling station yard in the swamp, and we found that the other side (Messrs. Brogden) had stronger evidence on paper than we had, and I had actually to agree that a measurement being made in March last of filling in a swamp done in 1876, and if that measurement could not have been made I should have had to yield to a great extent to the evidence on paper brought by the other side. It was almost impossible to take a measurement then of work that had been done long before, but eventually the arbitrator found that £30 or £40 too little had been paid. We did not admit a discrepancy of that sort, because it is very unlikely that the Engineer's measurements should not differ to the extent of a few yards, and we were really without any possibility of an accurate measurement of the work. There was no evidence available of workmen who could give information as to the nature of the work, and their estimate of how much earth had been put in a certain place. But it happened in that case, by a most exceptional circumstance, that we had a man who had kept a diary, and perhaps a more extraordinary diary was never kept. This man had been a foreman on the works, and he had kept a careful diary of every piece of work done, and on that evidence we were able to rely, but if that man had died, or the diary had been burned or lost, we should have been in a very different position indeed. However, we had that diary and the evidence of the man, and that was of the greatest value to us. The man, I may mention, was named Matthews, and I think he really deserves some recognition at the hands of the Government for his services in that respect. I mention this to show how difficult it is after this lapse of time to fairly investigate the quantities of work mentioned in the items of the claims. Another point that must be borne in mind is that an engineer, in making a certificate, always gives and takes—a piece here may be left out, and a piece there may be put in—and the engineer very often strikes an average. This, no doubt was the case; an extra culvert in one place would be set off against a cutting left out in another, and so on; but, of course, that could not be proved now, though it might easily have been proved in 1877. If the members of the Committee will look at the claim, they will find that there is an enormous number of small items, as to which we can only say that we believe our engineers did not overlook them, and if the work was done, and the engineers did not allow for them, they had very good cause. In the Clutha case, of which I have been speaking, we found a considerable amount of work had been omitted, and that a considerable amount of extra work had been done. Very likely that was the reason there was a discrepancy between what the engineer allowed and what the arbitrator allowed, which was something under £700 out of a total claim of £12,000.

Now I have concluded what I have to say on that point, and I now ask whether the Brogdens have not been treated with exceptional liberality. If the Committee will refer to D.–19c, 1872, they will find an agreement was signed with Messrs. Brogden on the 10th August, 1872, for the purchase of railway material. That was the same day on which the first contracts for works were signed. The last paragraph of that contract, to which is the only part I wish to call attention, is as follows:—

Whereas the materials and rolling-stock intended to be purchased under the terms of this present agreement would, under the said Contract No. 3, have been supplied by the contractors, and the cost thereof would have formed part of the sum of seven hundred thousand pounds (£700,000), contracts to the amount of which it was agreed by the said Contract No. 3 should be entered into before the said Contract No. 2 was annulled: And whereas the commission to be paid as aforesaid to the contractors in respect of the advice and assistance given by them in the matters aforesaid is at the rate of five pounds per centum in lieu of the estimated profit of ten pounds per centum which the contractors assure the Government they expected to have earned had the terms of the said Contract No. 3 been adhered to: It is agreed by and between the parties hereto as follows: The said sum of seven hundred thousand pounds (£700,000) shall be reduced by one hundred and twenty-five thousand pounds (£125,000), being one-half of the said sum of two hundred and fifty thousand pounds (£250,000) to be expended as aforesaid; and it is hereby agreed that, upon the parties hereto entering into contracts for the construction of specified railways to the extent of not less than five hundred and seventy-five thousand pounds (£575,000), exclusive of the cost of such materials and rolling-stock as aforesaid, the said Contract No. 2 shall be annulled, cancelled, and of no effect.

The Committee will remember that under the resolution of the House of Representatives of the 24th October, 1871, a million's worth of contracts were to be given to Messrs. Brogden, but by the agreement of December, 1871, this amount was reduced to £700,000. On the 4th August it had been arranged that Messrs. Brogden should have contracts for £545,000, and a commission of 5 per cent. on the purchase of railway material to the extent of £250,000.

I may mention here a curious circumstance, which I should have referred to in my remarks on the passing of the Act of 1872, viz., that the first six contracts were signed on the 10th August, 1872, and that Mr. Travers's letter, enclosing the first revise of the Act of 1872, to Mr. Prendergast was dated the 13th August, so that in all probability Mr. Travers had the draft of the Act in his possession on the 10th, and he certainly had it on the 12th August. Therefore he certainly had the draft of the Bill within a day or two after, and probably at the very time that these six contracts were executed by Mr. James Brogden, as attorney for the firm, his signature being attested by Mr. Travers. The three other contracts were signed on the 19th July, 1873. These latter three were executed about nine months after the Act was passed, and by Mr. Henderson, the signatures being again attested by Mr. Travers.

Mr. Cave: Mr. Travers denies having seen clause 31.

Mr. Bell: Of course I would not impute to Mr. Travers that he would deny having seen the Bill if he remembered having seen it, but he must have forgotten it.

Hon. Mr. Miller: Mr. Travers having seen and altered the draft Bill, is there any record of any remarks of his upon the bearing of the clauses?

Mr. Bell: No. I would point out to the Committee that Mr. Travers did not say he was ignorant of the Act when he began to make arrangements with Mr. Reid in 1877. Those arrangements begun by him contemplated proceedings under the Act, and it is not until Mr. Barton is brought upon the scene that we hear anything about this fraud of passing the Act of 1872. That is the *gravamen* of

Mr. Barton's complaint of March, 1877: "I am not going to have a trial by a Judge if I can prevent it," and so on. If the Committee really think, after reading this correspondence, that Mr. Travers, who never mentioned, so far as we know, that the Act was new to him until after the letter of the 8th March, 1877, had been written, was wholly ignorant of the provisions of the Act, and that it was passed behind Messrs. Brogden's backs, as they have so frequently alleged, and for the purpose of depriving them of their contract rights, then of course I have wholly failed in my contention. For my own part I have never doubted that Mr. Travers had forgotten all about the matter when he said in his letter to the *New Zealand Times* of the 4th April, 1878, that he had never read the Act. I have no doubt that Mr. James Brogden was behind the chair when the Act was passing; but, of course, members of this Committee who were present at those debates have a better knowledge of that than I. I speak only from information given me by members not now in Wellington.

Sir J. Hall: I know I saw Mr. Brogden behind the chair almost constantly at that time.

Mr. Cave: I have never denied that Mr. Brogden was frequently in the House, but not on the particular day of the passing of the Act.

Mr. Montgomery: Does Mr. Brogden absolutely deny that he had the Bill in his hands when it was read a second time?

Mr. Cave: There is the letter of the 15th March, 1882, written by Mr. A. Brogden from information derived from his brother. Mr. A. Brogden told me over and over again that his brother assured him he knew nothing of the limitation clause in the Act. He does not deny he had ever seen the Bill. I do not think it is necessary for him to contend that. I limit myself to contending he had no knowledge of clause 31.

Mr. Bell: If I have not made my contention plain to the Committee I am sure that is my fault. I endeavoured to show the Committee that, in the attacks made upon the Act, everybody connected with the Messrs. Brogden consistently alleged that they were entirely ignorant of the Act. That it was passed without notice being given them, and that it took away rights they would have had but for its being passed. That was the allegation until the correspondence in E.–4 1878 was published. Since then clause 31 only has been attacked. If that clause had happened to have been in the revise seen by Mr. Travers, the Messrs. Brogden would have been now in the position of being proved to be in error; and as their attack applied equally to clauses that were in the draft as to clause 31, which was not, they are proved to have been throughout in error. That the Government showed the utmost good faith is proved by the fact of a copy of the Bill being sent to Mr. Travers, whose suggested amendments were accepted. I do not make the slightest imputation on Mr. James Brogden for asserting that he was utterly ignorant of the Act; but I simply say he has forgotten it. When the letter of the 15th January, 1878, was sent to the Secretary of State, Mr. Brogden said the Act was passed behind his back; that it was an Act with a *misleading title*, and that it was a breach of good faith, and so on. If he had limited himself then to saying, "I saw the Bill, but not clause 31," that would have been quite a different position; but to go back, after saying he was ignorant of the whole Act, and to accuse us of passing only a certain portion without his knowledge, is a course that can only be taken before a Parliamentary Committee; it certainly would not be permitted in a Court of justice.

I was proceeding to show that Messrs. Brogden had been treated with exceptional liberality. We gave them contracts by private tender to the amount of £810,196. They might have had as much as they liked by public tender, but that they did not want. That sum does not include railway material, all of which was supplied by the Government, Messrs. Brogden receiving 5 per cent. commission on the value of the railway material for their advice in purchasing it. The contracts were divided into two parts. In addition to the contract sum, each contract provided that the contractors should build all stations, and construct sidings, &c., as required by the Engineers, they being paid for this station work at cost price, with 10 per cent. added for their profit. This station work on each contract is often referred to in the correspondence as "the 10 per cent," *e.g.*, "Waitara 10 per cent.," "Invercargill 10 per cent." If we include the station accommodation, the total amount of the nine Brogden contracts given without public tender was £928,243 12s. 9d., we being bound under the agreement of the 10th August, 1872, to give contracts only to the amount of £575,000. I say that was most exceptionally liberal treatment. Very well, now I ask the Committee to consider for a moment how the contract prices were arranged between the parties. The Committee will see that, there being no public tenders, prices had to be arranged. Accordingly Messrs. Henderson and Carruthers met, and we have a record of the prices fixed for the first six contracts, which I shall lay before the Committee. The last three contracts, those signed in July, 1878, were contracts with a schedule, and the prices for them were not arrived at in the same way. I confine myself at present to show how the prices for the first six contracts for railway works were arrived at. First of all, quantities were taken out. It was ascertained how much work had to be executed on each line. That was called "the data," and upon it Messrs. Carruthers and Henderson fixed the price for each particular class of work—earthwork so much a yard, timber-work so much per 100 feet, and so on. The prices being so fixed, there were added three separate sums, being 10 per cent. on each item for special profit, 10 per cent. on each item for the cost of management, and 12½ per cent. upon all but a few items for contingencies. Now, I propose to compare the prices fixed in these contracts with the ordinary schedule prices paid to other contractors for the same class of work at the time, in order to show that the prices without the 32½ per cent. included ordinary contractors' profits.

Mr. Cave: That seems to me to be going outside the inquiry. If you are going into that, I am afraid I shall have to call evidence in reply.

Mr. Bell: I desire to show the Brogdens were treated with exceptional liberality, and that, so far from there having been any desire to prevent them having the advantage which ordinary contractors have, they have been granted exceptional advantages over other contractors.

Mr. Cave: I do not think there is any question upon that. If Messrs. Brogden had executed works in excess of their contract, surely that is no reason why they should not get the value of the excess. It seems to me, if we open up this question, it will open up really the whole merits of the claims, and I shall have to give evidence to show they have executed these works.

Mr. Bell: I desire to say that I am anxious that the Committee should stop me sooner than they would my learned friend. I do not wish to press any point which the Committee thinks is in the slightest degree unfair.

FRIDAY, 21ST JULY, 1882.

Mr. Bell, with him Mr. Fletcher Johnston, for the Government; and Mr. Cave for Messrs. Brogden.

Mr. Bell: Sir, it will be remembered that on the day when the Committee last met I undertook to prove that Messrs. Brogden had been treated in all their contracts with exceptional liberality. I had already called the attention of the Committee to these facts: That the contracts which Messrs. Brogden had obtained had been obtained by them without public competition, and without being submitted to public tender. I had also showed that, whereas we were bound to give them railway contracts to the amount of £575,000, under the agreement of the 10th August, 1872, we really did give them contracts to the extent of £928,000. The method by which the prices charged by and paid to Messrs. Brogden was arrived at is another instance of exceptional liberality. The Committee will see that, as the contracts were not let by the usual process of Dutch auction, an exceptional method of arriving at the price which was to be charged had to be adopted; and when I was interrupted by the close of the last sitting I was about to tell the Committee how the prices had been arrived at. I then promised to limit myself to that of which we have positive proof in our possession. I limit myself to the first six contracts, which were executed on the 10th August, 1872, and do not take the other three, executed in July, 1873, into account, because, in the absence of Mr. Carruthers, the Engineer-in-Chief, we are not able to give the particulars of them. The contract prices in the first six contracts were arrived at in this way: First, the quantities of each particular class of railway work in each contract were estimated: so many cubic yards of earthwork, so much timber, so much ironwork, and so on. Then Mr. Carruthers, for the Government, and Mr. Henderson, for the Messrs. Brogden, met and fixed prices for each particular class of work. I undertake to prove that these prices included an allowance for ordinary contractors' profits. I shall produce to the Committee a comparative schedule of prices, showing these side by side with the prices fixed in the schedules of ordinary contracts for railway works entered into about 1872; and I shall produce also another schedule comparing the prices allowed in the Messrs. Brogden's Invercargill–Mataura contract with the schedule prices of other contracts let to ordinary contractors, not exactly at the same time, but in the same locality. I shall ask the Committee to accord me an adjournment until Monday next, when I shall be able to call before it Mr. W. N. Blair, who will be able to give some evidence respecting the fixing of the prices for Messrs. Brogden's Taieri contract. He will say that the prices fixed for the Taieri contract were sufficient to include ordinary contractors' profits. The book I now hold in my hand contains these prices, and it shows that a sum about equal to 10 per cent. was allowed for special profit to Messrs. Brogden, and a sum of about 10 per cent. was added for Messrs. Brogden's management. Then another sum of 12½ per cent., on all but a few items, was added for contingencies; and, in addition to all this, provision was made for damage by flood. The schedule which I shall place before the Committee shows the sums allowed for special profit, for management, and for contingencies on the first six contracts. This schedule gives in detail the figures which are in the book which I intend to hand in to the Committee. There is a slight error in the schedule, but it is against the Government. The record of the details in the book gives on one class of work a sum per mile for contingencies, and in taking out the figures for the purpose of making up this schedule I did not multiply that sum by the number of miles. The amount for contingencies shown in the schedule is less by £3,000 than that actually allowed to the Messrs. Brogden. The schedule is as follows:—

SCHEDULE showing Amount allowed Messrs. Brogden for Special Profit, Management, and Contingencies on the First Six Contracts, the figures being extracted from the Schedules agreed upon between Mr. Carruthers and Mr. Henderson (Messrs. Brogden's representative).

Name of Contract.	Contract Sum.			Profit.			Management.			Contingencies.			Total of Last Three Columns.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Auckland–Mercer ...	168,924	0	0	14,073	0	0	12,000	0	0	15,679	2	8	41,752	2	8
Nakier–Pakipaki ...	49,345	0	0	4,391	0	0	2,500	0	0	3,188	3	0	10,079	3	0
Wellington	29,016	0	0	2,352	0	0	1,500	0	0	2,036	3	5	5,888	3	5
Picton–Blenheim ...	80,494	0	0	7,501	0	0	6,877	0	0	6,009	15	10	20,387	15	10
Taieri	143,835	0	0	10,591	0	0	8,079	0	0	11,127	10	11	29,797	10	11
Invercargill–Mataura ...	88,832	0	0	9,514	0	0	8,000	0	0	7,687	12	2	25,201	12	2
Totals	560,446	0	0	48,422	0	0	38,956	0	0	45,728	8	0	133,106	8	0

Now these figures, which are taken from the record-book, and cannot be disputed, show this: that the contract sums in the first six contracts amounted to £560,446; that the part of this total fixed for the true prices of the contract works was only £427,339 12s.; and that on this sum of, say, £430,000, there was allowed to the Messrs. Brogden more than £130,000 for profit, management, and contingencies. I have shown, I think, that the £430,000 covered an ordinary contractor's profit, and therefore it appears that, according to the joint calculations of Mr. Henderson and Mr. Carruthers in 1872, the Government agreed to pay Messrs. Brogden on these first six contracts £133,000 more than the Government would have had to pay had the contracts been let by public tender. Mr. Alexander Brogden has said that the 12½ per cent. allowed for contingencies was covered by the rise in wages, which he says was to be anticipated by that allowance; but I think that the true explanation of the

allowance for contingencies is to be found in clause 3 of the contracts. The Committee will observe that the plans and specifications were drawn very hurriedly. Mr. James Brogden had arrived in the colony with a staff of engineers, and was pressing the Government to give him work, the consequence being that plans and specifications had to be prepared in a hurried manner. Mr. Brogden complained that he had been brought out here, and could not get on with the work he came out specially to do. It was in consequence of this, no doubt, that the contracts were let before full and complete plans had been prepared. The Committee will find that clause 3 of all the contracts reads as follows:—

A copy of the plans and drawings, with the specifications, shall be furnished to the contractor by the Engineer, and the plans and drawings referred to in the specification, and the specification shall be taken together to explain each other; and if, in the execution of the works, it shall be found that anything has been omitted or misstated either in the drawings or specification, which is necessary for the proper performance and completion of any part or parts of the works, the contractor shall at his own cost and expense execute the same, and provide whatever may be requisite for so doing, provided the extra cost thereof shall not exceed the sum of £200 in each particular case. Any written dimensions on the drawings shall be taken in all cases in preference to measurements by the scale attached, and anything contained either in the drawings or specification shall be equally binding on the contractor as if it were contained in both; and in case the written or figured dimensions on the drawings shall disagree with the scaling, or in case there shall be any discrepancy between the drawings and specification, or any ambiguity in them, such occurrence shall not invalidate the contract, but the same shall be rectified by the Engineer if thought requisite, and the contractor shall not be entitled to make any claim or demand for compensation or damages on account of such discrepancy or ambiguity. If neither the drawings nor the specification contain any notice of minor parts, the intention to include which is nevertheless clearly to be inferred, and which parts are obviously necessary for the workmanlike completion and stability of the work, all such parts are to be made and executed by the contractor without extra charge, and are to be deemed by him as included in the sum at which he contracts for the works.

That clause is never found in ordinary contracts, but it appears in the whole of Messrs. Brogden's; it is a special clause which applies to them only. I think the Committee can come to no other conclusion than that was the reason why the 12½ per cent. was added. Nevertheless the Messrs. Brogden were paid for all extra work they did. There were no schedules to the first six contracts, and nobody knew how the prices had been arrived at excepting Mr. Henderson, Mr. Carruthers, and one or two of the Government Engineers; and the District Engineers proceeded to allow for all extra works, however small, which were done. I shall put in several of the claims, and ask the Committee to consider whether the items charged for extras should have been so charged. The claims include the extras which have been paid for as well as those which have not, and therefore the Committee cannot see, by looking at the claims, what has been allowed and paid for exactly. On the Invercargill and Mataura Railway we paid extra for small box-drains to carry off water, and a number of other such items occur. I give that as an example of the class of work which we have paid for, though it was intended to be met by clause 3 of the contract, and was covered by the 12½ per cent. allowed for contingencies. I have very little more to say; but I wish to impress strongly on the minds of the Committee that to each of the contracts there has been added an extra sum for management, for profits, and for contingencies. If the Committee will look at the letter of the 15th March, 1882, from the Under-Secretary to Messrs. Brogden, they will find the figures accurately stated. We have actually allowed for and paid to the Messrs. Brogden for extra works a sum of £131,523 0s. 1d., and for station accommodation £118,047 12s. 9d., while the contract sums named in their nine contracts, amounting to £810,196, less only £65,900 10s. for reductions, have also been paid. In the amount allowed for extras are included very many items which ought to have been provided by the contractors under clause 3 without charge, and which were really covered by the special allowance for contingencies in the contract sums. It must further be mentioned that in estimating the values for payment of extras the Government Engineers always added the percentages for special profit and contingencies to the prices found in the book for the first six contracts, as in the schedules to the last three contracts. The Messrs. Brogden now claim a further alowance of 10 per cent. on all extras. If the Committee will look at the claims they will see that on all extras 12½ per cent. has been claimed for contingencies, as well as the percentages for Messrs. Brogden's management and Messrs. Brogden's special profit. The claims now put in are the claims of 1881. If the Committee desire it I will read the pleadings in the Waitara case, but they are very long, and I do not think the Committee would gain anything from having them read. I have only now to ask the Committee to allow me to briefly summarize the argument I have addressed to them at their last two sittings. I submit that I have proved, first, that the Act of 1872 was an Act passed in, the interests of Messrs. Brogden, to provide the arbitration which they themselves had stipulated for; secondly, that the right of appeal from the Engineer's decision was an exceptional privilege granted to Messrs. Brogden, which no other contractor in the colony had; thirdly, that everybody connected with the contracts must have known that the Act was necessary to enable a Judge of the Supreme Court to act as arbitrator; fourthly, that Mr. James Brogden and Mr. Travers have utterly forgotten what occurred, and that they were probably cognizant of clause 31, and certainly were aware of all the clauses except clauses 27, 28, and 31; fifthly, that the Act was one in which it was essential that a limit of time should be fixed. The preamble, which was the preamble of the revise seen by Mr. Travers, stated that the Act was passed to provide a summary and final settlement of the disputes, and I would add here that the Messrs. Brogden themselves have admitted the force of my present contention by inserting in the Bill they themselves have introduced this session a clause fixing a limit of one year within which they must present their claims. I submit, also, that the attacks which have been made on the Act were always made on the Act as a whole, and were not specially directed to any particular clause until after the publication in the Appendix E.–3, 1878, of Mr. Travers's letter to Mr. Prendergast, and the announcement of the fact that Mr. Travers had perused and altered the first revise on behalf of Messrs. Brogden. I submit that I have also proved that no objection was offered by Mr. Travers, nor was any surprise expressed by him with regard to the conditions of the Act until after Mr. Barton's letter of the 8th March, 1877, had been written. The Committee will remember that the correspondence shows that Mr. Travers had, in January, 1877, proposed a certain course of proceedings which he thought should be carried out under the Act of 1872, and the first we hear of the "surprise" is in Mr. Barton's letter of the 8th March. I submit that I have also proved that over and over again in 1877 the Government offered to

waive the limitation of time and all technicalties, and that arrangements were actually made for an investigation of the claims upon that basis, which arrangements were repudiated by the Messrs. Brogden by the letter of the 8th March, and again when they elected to proceed with the petition of right in the Waitara case. I submit that I have also proved that throughout Messrs. Brogden have been treated with exceptional liberality and consideration. I submit that I have also proved that by the act of the Messrs. Brogden, and in no way by the act of the Government, the investigation of these claims has been delayed for five years. As a special instance I have shown that the Messrs. Brogden, having in their possession a petition of right, signed in the year 1878, did not file it until the middle of the year 1881. I would here incidentally refer to the fact that Mr. A. Brogden, in his letter of the 15th March, 1882, says,—

> As to the time that elapsed between 1878 and 1881, you appear to ignore the fact that it was the *close* of the year 1878 when the petition of right was granted to us. Our Mr. Brogden came out here in 1880, and was here in that year, but the continued absence of the Minister for Public Works from Wellington prevented communication with him until the first month of 1881.

It seems to me that it is rather Mr. Brogden who ignores a fact than the writer of the letter to whom he is replying. Mr. Brogden refers in italics to the close of the year 1878, but omits to state it was certainly the close of the year 1880 when he arrived in the colony. If I have failed to convince the Committee that the position of 1877 is not the position of 1882, I have no doubt failed along the whole line of my case. Ought the Government or the colony to adopt in 1882 the same course that they fairly and honorably agreed to take in 1877? I think that is the question which the Committee have to consider, and I submit that it is necessary for their decision of that point that they should know what is the general nature of the claims, and whether they are of such a kind that they can be settled five or six years after the close of the contracts, as they could have been examined and settled a year after. The time which I have allowed myself for my address to the Committee has not been sufficient to permit me to mention many matters which I could have brought under your notice to show the impossibility of having as full and satisfactory an investigation now as we could have had in 1877. I have instanced the question of prices and the question of earthwork in swamps as examples of the difficulty of ascertaining the truth now. The Committee will remember, no doubt, that we are no longer in the position we once were with regard to evidence. Mr. Carruthers, for instance, is no longer available to us, as he is absent from the colony, and his evidence under the present law could not be taken by commission; and I say that unless his evidence is obtained the interests of the colony will not be properly protected. Other witnesses are dead, some have disappeared, and, in short, during the time that has elapsed we have lost a considerable part of the evidence we could have adduced in 1877. I do not say that it would not be possible to prove still that the greater part of these claims are without foundation, but I can with regard to some of them say that we have lost most valuable evidence which we could have brought forward if the claims had been prosecuted when they should have been; and I venture to submit to the Committee that the claims which, according to Mr. Henderson's letter, amounted on the 31st January, 1876, to something over £30,000, and which now amount to about £250,000, without interest, cannot with equal facility and with equal safety to the Government be examined now. I have now concluded my address, but as a personal matter I wish to draw attention to Messrs. Brogden's letter of the 13th June, 1882, in which it is stated that "Mr. Bell's version is both inaccurate and unfair, inasmuch as he must have been aware that the amount above referred to, instead of being 'less than £700,' was actually £865." In answer to that I say that my statement is a positive and absolute fact, and one which cannot be denied, and I say that any statement to the contrary is both "inaccurate and unfair."

The Committee then adjourned until Monday, the 24th July, at 11 a.m.

MONDAY, 24TH JULY, 1882.

Mr. W. T. L. TRAVERS, examined.

Mr. Cave: In pursuance of the arrangement made on Saturday, Mr. Travers is now here for the purpose of giving his evidence in reference to the passing of the Government Contractors Arbitration Act, and perhaps it may be convenient that he should make a statement.

Mr. Travers: I have very little to say about the matter. When Messrs. Brogden were—

Mr. Bell: Of course, if Mr. Travers makes a statement, I shall take the opportunity of asking him a few questions.

The Chairman: Of course.

Mr. Travers: Well, when Messrs. Brogden were making arrangements with the Government, I believe Mr. Brogden was anxious as to the arbitrator, and, after some discussion, the Government consented that the Judges of the Supreme Court, in their several jurisdictions, should be constituted arbitrators in respect to any disputes that might arise, and that was made part of the general conditions of the contract. It was, however, considered by the law advisers of the Government that such a duty could not be cast upon the Judges without being provided for by statute, and therefore the Government undertook to bring in a Bill in order to give the Judges jurisdiction. As I understood it, the sole object of the Bill was to give to the Judges the power of acting as arbitrators under the conditions of the contract. I retain, I may say, comparatively slight recollection of what took place in regard to the passing of the Bill, but I find on an account which was rendered by my firm against Messrs. Brogden that I perused the draft of the Bill. I see by a parliamentary paper that Mr. Reid states that a copy of the draft Bill was sent to me "as a matter of courtesy," and I am not prepared to say that it was not. But it is probable, as I was not supposed to deal with the matter professionally, that I may have put the draft by without saying more about it. However, I understood that the object of the Bill was solely to vest the authority in the Judges, as I have already mentioned. But I see that I conferred with Mr. Brogden on the 13th August about the draft Bill, for I find that I drew some amendments of the clauses in the then draft, which were forwarded to the then Attorney-General, now

the Chief Justice. I do not find, however, that I did anything further in the matter. I feel pretty sure that, if I had done anything further, there would have been some charges, and I can find nothing of the kind. I am not in a position to say even whether or not at that date it contained the clauses which have since been considered by the Messrs. Brogden to be objectionable. My impression is that had it contained them I should have noticed them. As a fact, I believe it did not; and I assumed throughout that the Bill was intended for the purpose I have already indicated; and I do not think I ever read the Act as passed, or saw the Act with these clauses in it, until I was consulted some years afterwards by Mr. Henderson.

Mr. Macandrew.] You are referring to clause 33?—There is another clause, clause 28. It is questionable whether without the 28th clause the jurisdiction of the Supreme Court would have been ousted.

Sir John Hall: That was a clause added afterwards?

Mr. Cave: Yes.

Mr. Travers: I am speaking subject to correction without the draft, which I have not got. But it is questionable whether without that 28th clause the jurisdiction of the Supreme Court would have been ousted, and I believe that, and the 31st, and I think there is another clause relating to appeals against the arbitrator. I think those three clauses were afterwards pointed out to me as objectionable; and, really, that is all I know about the matter. But I am perfectly certain my attention was never called to these clauses until some three or four years after the Act was passed.

The Chairman.] Do you propose to ask any questions, Mr. Cave?—No, sir; I thought it better that Mr. Travers should make a statement.

Mr. Travers: I may state further that I have been told recently that I was behind the Speaker's chair while the Act in its present condition was passed. It is quite possible, but I have no recollection whatever of the fact; and I assert most positively that, until my attention was called to these special clauses some years afterwards, I had no knowledge of their existence. I never read Acts of Parliament until I am consulted about them, because half of them become dead letters shortly after they are passed.

Mr. Bell.] You remember the letter you wrote in 1878?—I saw that the other day.

You then stated, "Mr. Henderson was in error in stating that I did not know of the existence of the Government Contractors Act until the year 1877?"—Certainly I was not.

You continue, "I knew of its existence, but had never read it until it became necessary for me to do so in connection with the claims of the Messrs. Brogden against the Government." When you wrote that letter you had forgotten, I suppose, that you had corrected the first revise of the Act?—No, that was of the Bill. I had never read the Act as passed.

You had forgotten when you wrote this letter that you had settled a first revise of the Bill, otherwise you would have stated that in the letter?—I do not know whether I had forgotten it or thought of it either. What I meant by that was that I knew there was such an Act, because I knew such an Act had been passed; but I did not know the actual contents of the Act as passed, beyond the general idea that it was intended to give effect to the clause in the contract.

Your letter, Mr. Travers, was written in consequence, I believe, of a letter which Mr. Henderson had written to the *New Zealand Times?*—It is very possible. I do not quite recollect.

Your letter begins by stating, "Mr. Henderson was in error in stating that I did not know," &c. You had never seen, of course, the letter which Mr. Barton had written to the Minister for Public Works?—I was not acquainted with Mr. Barton at the time. I do not know. Well, Mr. Henderson in his letter to the *New Zealand Times* had stated this: "On looking into Messrs. Brogden's case and the law applicable to it, our solicitors found, to my great surprise, that a statute entitled 'The Government Contractors Arbitration Act, 1872' (of the existence of which Messrs. Brogden and Sons had been up to that time entirely unaware), opposed a complete barrier to the prosecution of Messrs. Brogden and Sons against the Government of ordinary legal proceedings before a jury, at the same time depriving them of valuable clauses in their contracts which would have enabled them to surmount technical difficulties. Messrs. Brogden were advised that by the operation of that statute they would be forced to submit to the adjudication of the Supreme Court Judge, not only without the intervention of a jury, but without any right of appeal from his decision to any Court either here or in England; that full power was vested in such Judge to take unsworn evidence, not only unsworn but *ex parte* if he so pleased; and, lastly, that his judgment was to be given in the simple form of a certificate for money payable from one party to the other, such certificate giving no reasons or explanations of any kind respecting his decision. Such was the tribunal to which Messrs. Brogden were restricted by this extraordinary statute; and, to secure the Government against the possibility of any inconvenient struggle by the English contractors, a very innocent looking little clause at the end of the statute confined the Judge to the examination of such claims only as had been disputed within the previous six months, all disputes older than six months prior to the investigation being barred."

Witness: When was this?

Mr. Bell.] This was a letter written to the *New Zealand Times* in February, 1878. Mr. Travers's letter was 4th April, 1878. I am reading from page thirteen of the correspondence. Then there is a letter to the *Evening Post* also, which was written on the 2nd April. Probably it was in answer to the letter in the *Evening Post* that your letter was written, Mr. Travers. You will find there that what was said was this: "But you raise another issue, that it verges upon the wonderful that 'The Government Contractors Arbitration Act, 1872,' should have passed both Houses of Parliament without the knowledge of the solicitor and agent of the firm resident in Wellington, and should remain five years on the statute-book without the party chiefly interested being aware of its existence. In reply to this I will first answer for Mr. Travers, the solicitor alluded to, and then for the agent (myself). The solicitor, certainly, was not aware up to the end of the year 1876, for he at that time served upon the Government a number of notices based upon stipulations in the contract done away with by the statute, and which notices were immediately objected to by the Government, who called attention to the statute, and declared their intention of enforcing its provisions. When, after receipt of this letter, I consulted

with the solicitor, he distinctly informed me (and doubtless would also inform you) that up to the time he served the notices above referred to he was wholly unaware of the existence of the statute. The agent (myself) was equally ignorant of its existence. At the time it was introduced, I, as engineer superintending Messrs. Brogden's contract works, was with my engineer wholly absorbed in assisting the Government, making surveys and laying out railway-lines. The Bill was introduced into Parliament only ten days after Messrs. Brogden's contracts had been signed, and it was pushed through both Houses almost immediately after its introduction;" and so on.—There is a fallacy running through that. I was perfectly aware of the existence of a statute on the subject, but, as I have said before, from the time that I first saw the draft I never read it.

If you will go a little further down page fifteen you will see this in your letter: "It then appeared to me that the Government and the Legislature by which the Act had been passed had been guilty of a gross breach of faith towards the Messrs. Brogden by introducing into the Act a set of provisions which materially modified the rights they had under their contracts. Messrs. Brogden were informed by the Government in office, when their contracts were entered into, that an Act would be requisite to give the Judges of the Supreme Court authority to act as arbitrators under the contracts, and to provide for the course of procedure; but they assumed that the Government would act in good faith, and therefore did not watch the Act as it passed through the Assembly. The consequence of their reliance on the good faith of the Government has been that their rights under their contracts have been seriously interfered with." If you had remembered when you wrote that letter that you had actually, under the instructions of Mr. James Brogden, as you now tell us, revised and added to the first proof of that Act, you would have mentioned it of course in your letter?—I do not know that I would. It does not appear to be called for. I am speaking rather of the statute as it existed, not that I had seen a draft of the proposed Bill in its present condition. I do not think I should. It was absurd of Mr. Henderson to say I did not know of the existence of a statute which I knew was absolutely intended to be passed for the purpose of giving effect to one of the principal conditions of the contract.

In the letter which Mr. Henderson had written in the *New Zealand Times*, to which the letter in the *Evening Post* is an addition, Mr. Henderson had complained of a number of provisions which were actually in the draft of the Bill as settled by you.—Which provisions? I do not know what you refer to.

Look at the letter in the *New Zealand Times* (copy produced).—I do not know that I ever read that letter. It is a long letter. I have no recollection of having read it.

Your letter is a wind-up to the correspondence in the Press.—But you will observe that my letter of the 4th April has reference to what was published on the 2nd. I may have seen this letter, but I have no recollection of it. My letter of the 4th April has reference to what was published in the *Evening Post*.

But it is sent to the *New Zealand Times*, you will observe?—I do not know where it appeared.

However, there is no doubt, Mr. Travers, that this account to which you have referred Mr. James Brogden did instruct you to peruse, on behalf of Messrs. Brogden, this Act?—The entry is as follows: "Attending you as to arbitrators," &c.

What is the date?—13th August.

There is no doubt now that, acting under the instruction of Mr. James Brogden, you did peruse the first revise of this Bill on behalf of Messrs. Brogden?—I will not say that. Whether it was a first draft or anything else I cannot tell you. All I know is that I perused a draft and suggested alterations, which were accepted, but beyond that I never had anything to do with it.

What I want to fix you with is this, that you, as legal adviser of Messrs. Brogden, perused this draft, and that you did not do it as Mr. Travers, solicitor, but as acting for them?—Most certainly.

Mr. Travers, I want to know this from you: You drafted the Bill which has been introduced into the House this year, did you not?—I believe I settled it. I am not sure that I did not even draft it.

You will observe that there is a limitation clause in that Act?—I dare say there is. Do not ask me, because really I cannot remember. It is very likely.

What I want to know from you is this: Could you conceive that a Bill of this kind—such as that of 1872—to give effect to an arbitration in the contract, should not contain some limitation?—I conceive that a limitation was perfectly desirable.

But not only desirable, but did you not consider it an essential part of such Act?—Well, I think so. I assume that some limitation would be considered necessary by both parties. It seems to me a proper and reasonable thing that there should be a limitation to the power of referring such matters. I may tell you at once that I was under the impression that the matters to be referred were rather the class of disputes that were likely to arise during the currency of the works than the major disputes that might arise afterwards. I do not look upon it in the light of being the creation of a final tribunal for the adjustment of every matter between the Government and the contractors; and I should consider, if the Bill were before me in the original condition again, that a fair and proper limitation of time should be fixed for proceeding with the arbitration clause.

But do you not consider it was an essential clause?—I should say it would be an essential clause in the Act; but certainly I do not contemplate that the jurisdiction of the Supreme Court would be completely ousted. That makes a distinction in the matter. I think the limitation of six months was a reasonable and proper one; but I doubt whether it was proper without the consent of all parties in regard to ousting the jurisdiction of the Supreme Court.

I will ask you to go one step further, Mr. Travers?—I think I may say it would be necessary for both parties that there should be some limitation of that kind. There is a limitation of six years by law to ordinary proceedings in the Court, and I think there should be a limitation of much less than that in regard to questions of arbitration during the currency of works of this kind, because there would be changes in the *personnel* of the staff and of the Government, which would render it essential that these things should be brought forward early in order that the evidence on both sides might be available.

I am only asking you if a clause of limitation of some kind, which everybody would anticipate, should be in the Act?—I do not know that everybody should anticipate it. It was reasonable to expect a clause of that kind, I say.

Now, you have spoken of the ousting of the jurisdiction of the Supreme Court. Supposing there had been no appeal provided from the final arbitrament of the Engineer, could the Messrs. Brogden have sued in the Supreme Court for sums that had been certified to by the Engineers?—There are conditions precedent without which they could not have sued—that is to say, sued directly for the money. The Engineer may improperly withhold his certificate by collusion with his employer. That is met of course by the Bill in its present condition.

But assuming that the Engineers have acted *bonâ fide*, could the Messrs. Brogden have sued successfully in the Supreme Court?—Clearly not, if their right to recover depended on the performance of a condition precedent, which this had not performed.

Therefore the appeal from the Engineer was a privilege granted to the Messrs. Brogden?—Yes; an appeal is always in the nature of a privilege.

It was a special privilege, was it not? A contractor is always bound by the certificate of the engineer, unless he can show there has been some fraud?—Yes, I think it is a privilege which has not been conceded to other contractors.

And a privilege which you have told the Committee there should be some limit to?—I may have said that also, but many Judges have remarked on the stringency of these clauses in contracts. They are very stringent, and operate sometimes with very great hardship; and you, Mr. Bell, know very well that some Judges have said that it seems unfair to take advantage of the competition that exists for employment in matters of this kind to insist on the introduction of clauses which have frequently been used in a very arbitrary manner to the injury of honest workmen.

You are aware that these conditions were settled by yourself?—Oh, yes; settled as far as the Messrs. Brogden were concerned.

Therefore, if there is anything wrong in the conditions, Messrs. Brogden's solicitors are responsible?—We will take a share of the responsibility.

Supposing the Parliament was now to repeal the Government Contractors Arbitration Act and excise the arbitration clause, could your clients recover one sixpence?—(Laughing) I will not give an opinion on that unless I get a very handsome fee. I do not mean to say there may not be very considerable difficulties, but I remember it being once stated that it is the privilege of an Englishman to try even a desperate case.

But did your clients?—They are not my clients. Mr. Cave is—my partner—and I am absolutely excluded by the terms of our partnership from participation in the profits which may arise from this business.

Well, supposing the Parliament were to repeal the Act of 1872, and excise the arbitration clause from the contract, could a contractor recover anything except what had been certified to by the Engineers, unless he could prove collusion?—You are asking me a question on a matter on which I am profoundly ignorant, because I have very little knowledge indeed of the claims of the Messrs. Brogden. I may tell you that some years ago Messrs. Brogden placed their affairs in the hands of Mr. Barton. I have not acted for several years for them, and I am very ignorant of the character of their claims. I have seen the papers in one case—Brogden *v.* the Queen; and, as the questions under discussion were raised by demurrer, I have not gone into the merits of their case.

But Mr. James Brogden was your client in 1872?—Oh, yes.

Do you remember whether he was in Wellington at the time the Act was passing?—I dare say he was. I think he did not leave Wellington until after all the matters connected with the contract were completed.

Do you know whether he was a constant attendant behind the Speaker's chair in the House?—He was so far interested in these matters that he was very likely to be present during the discussion of matters of this kind.

Are you aware that he took an interest in the debate on the turning out of the Fox Government in 1872?—Very likely. How far he contributed to that I do not know.

Can you give the Committee your opinion as to whether Mr. Brogden saw this Bill or not?—He must have seen the draft at all events; and if you ask me for my opinion as to whether he saw the printed Bill as introduced I should say yes; but whether he understood it is another matter. He never consulted me on these special clauses at all, and I have no recollection of ever speaking to him on the subject of this Bill, except in connection with the suggested amendments.

Was he a good man of business?—Well, some people say he is not as good as his brother Alexander.

Alexander is an exceptionally good man?—I do not think Mr. James Brogden was a good man of business myself. In fact, had he acted wisely, he would have packed up his traps and gone from New Zealand altogether, without entering upon any works there. I told him the probability was that his firm would be landed in a very serious loss by the time their contracts were completed.

Was Mr. Brogden such a bad man of business that he would fail to understand the effect of clause 31, if he saw it?—I do not know really; I could not tell you. I think Mr. James Brogden was shrewd enough in that way, but I think he was much more likely to allow matters of that kind to pass than his brother Alexander would be.

There is no charge, I believe, subsequent to the charge of the 13th August?—Not that I can find in the account. Indeed I feel pretty sure that nothing further was done. I have no recollection whatever of discussing the terms of the Bill at all.

I want to know whether in 1877 or 1878 you discussed the question of the Act with Mr. Henderson at all?—I do not think Mr. Henderson was my client at that time.

Mr. Cave: Yes, he was, at that time.

Mr. Travers: In 1877 he was, but I do not think he was in 1878.

Mr. Bell.] He was both your and Mr. Barton's client?—I think he was much more Mr. Barton's client than mine.

Very likely. But I want to know whether you discussed the matter with Mr. Henderson?—I suppose so.

Were you aware that Mr. Henderson had written to the Minister for Public Works, and that Messrs. Brogden and Sons had written to the Secretary of State for the Colonies, accusing the Government of bad faith in passing a set of clauses of which you, their solicitor, had approved?—No; I never knew that he had written to the Secretary of State at all.

Have you not seen the correspondence in Appendix to Journals, E.-3 of 1878?—No, I have only read my own letter to the *Evening Post* while I have been in this room.

Mr. Henderson did not inform you that he was making a formal attack, both to the Government here and the Government at Home, upon a set of clauses which had been approved by you as Messrs. Brogden's solicitor?—I believe Mr. Henderson talked to me about these clauses, but as to telling me he was corresponding with the Secretary of State I do not remember anything of the kind.

When I tried to refer to the letter to the Secretary of State I was told that it was Mr. Brogden's, and now I am given this answer.—I never heard a word of this correspondence before.

At all events you say, so far as you know now, you were not aware of the correspondence?—I have not looked at my memoranda about these matters. Had I understood you were going to ask me questions about it I would have endeavoured to refresh my memory. But my impression is that the whole thing was between Mr. Henderson and Mr. Barton. I took very little interest in it.

One letter, you say, was published in the papers of the day?—The one I wrote.

Any letter before that? The letter published in the *New Zealand Times?* However you told me you had never seen the letter in the *New Zealand Times.*—I have no recollection of it. I think my letter had relation to the one that appeared in the *Evening Post.*

Have you recently read the Act of 1872?—I do not think I ever read the Act itself until in connection with the recent proceedings, except when I discussed it with Mr. Henderson.

Have you ever read it so as to remember the numbers of the sections?—I do not know that I can remember. I know one section giving the authority—I think the first four or five sections and the limitation sections—but as to the other numbers I do not know.

In the letter to the Secretary of State Messrs. Brogden say this: "Can it be said to be consistent with 'peace, order, and good government' that the Government, being party to contracts with any individual or firm, should vary any of the provisions of such contracts by statute without the consent of the other party to those contracts; and could such legislation, whereby one party to a contract alters some of its provisions without the consent of the other party, be otherwise than 'repugnant to the law of England'?" And they refer to clause 3, which had been approved by you, to clause 4, which had been approved by you, and to clause 12.—Which had not been *disapproved* by me, you mean.

Clause 4 was amended by yourself. Clause 12, which had been in the Bill as seen and approved by you, and clauses 29 and 31, which it is admitted were not in the revise as seen by you. The letter then is obviously untrue with reference to clause 3?—I am not responsible for the letter.

Mr. Macandrew: Were you a member of the House in 1872?—I have been trying to recollect whether I was. I had some idea I was. I may have been perhaps for a part of the time.

I was under the impression that you were a member of the House. If so, you had no occasion to sit behind the Speaker's chair?—I think I resigned in the latter part of the session. This, however, could be easily ascertained by referring to *Hansard.*

I understand you to say that you were perfectly aware of the existence of the statute, but that you believed the statute to be in accordance with the draft submitted to you for perusal and containing the amendments as suggested by you?—What I meant was this: that I was perfectly aware that there was intended to be and in pursuance of that intention an Act had actually been passed for the purpose of giving, jurisdiction to the Judges as arbitrators under the contract. I was perfectly aware of the existence of such a statute. I generally read the index of statutes, and very frequently read the side-note digest of a statute, and I was perfectly aware of the existence of such an Act, but not aware of the actual language in which it was ultimately passed.

Then you think some limitation was extremely reasonable, essential, and desirable. Would such limitation have prejudiced the position of Messrs. Brogden under the contract?—I do not think it would if confined to arbitration.

Do you think it would be reasonable and proper without mutual consent?—I do not think the limitation would have prejudiced their position if the Supreme Court had not been ousted.

But I understand there was a limit as to time?—I do not think there is any limit as to time in the conditions.

Hon. Mr. Miller.] Fourteen days' time?—Fourteen days' notice. I do not think there is any limit of this kind; but I do not think this limitation would have prejudiced either Messrs. Brogden or the Government if the prohibitory clause as to actions had not been inserted.

Mr. Bell: Then you think the insertion of the 31st clause really was no infraction of the original contract?—I do not think it would be considered a material infraction.

The Chairman.] You mean if the 28th section had been left out?—Yes.

Mr. Macandrew.] Was the original contract arranged in Wellington, or where?—Yes, in Wellington. There were two alternative contracts entered into by Sir Julius Vogel in London. They required the affirmation of the Legislature. Sir Julius himself, finding that neither contract was suitable to the circumstances of the country, proposed a resolution disaffirming them both. I think I was in the House at the time, and I think the House generally concurred in that view; and it was considered reasonable to give Messrs. Brogden works to the extent of £1,000,000, if I remember rightly, in order that they might not suffer a loss by the action of the agent of the Crown.

Hon. Dr. Pollen.] Broadly, the contractors would not be justified in saying that the Government Contractors Arbitration Act was passed behind their backs, and without their knowledge?—Well, sir, if Mr. Brogden was doing what most men in his position would do, he probably was aware of the existence of the Act in its present terms. Whether he understood its effect is another matter. I can scarcely conceive that a gentleman who was so very much interested both in the contracts and in what was taking place in the Legislature could have overlooked the very language of the Act, though he

might not at all have appreciated its possible effect. I assume Mr. James Brogden must have seen the statute in a printed form. I can scarcely conceive he would have allowed a statute of this kind to pass on to the statute-books without having seen it; but whether he considered what the result would be is an entirely different matter. He never consulted me about the operation of these particular sections, and so I assumed that he really thought they would be productive of no inconvenience to him.

Sir John Hall.] You say, Mr. Travers, that you do not think the insertion of the 31st clause would have been of much importance if the 28th clause had not been inserted?—Just so, sir.

That, if the 28th clause had not been inserted, appeal to the Supreme Court would not have been barred?—No.

Is it not a fact that there would have been no appeal against the certificate of the Engineers given *bonâ fide?*—The contract is perfectly clear and definite. The certificate of the Engineer is made a condition precedent to the recovery of moneys under the contract, and the absence of that certificate on the ground of fraud or collusion would alone enable the Messrs. Brogden to overcome the difficulty under the conditions.

There would have been no appeal against error of judgment?—I apprehend that the law is clear on the point in regard to the contract.

Considering that the Act was passed by Parliament in the shape in which it was introduced, that it was practically two months before Parliament, and that Mr. James Brogden was in Wellington at that time, do you not think an ordinarily prudent man of business would have made himself acquainted with it at once?—I cannot say anything as to the fact, but I can scarcely believe that Mr. Brogden had not seen the Bill. I do not know when Mr. Brogden left; I am not sure that he did not leave before October.

It was read a first time on the 6th August?—Yes; the Bill was passed finally in October. [To Mr. Williams: Was he here in October?—Mr. Williams: He left in November.]

Mr. Travers: I cannot conceive that Mr. Brogden may not have seen the Bill.

Sir John Hall.] At any rate, do you not think it was the business of a prudent man of business, when he knew that the Bill was introduced to give effect to his own contracts, to make himself acquainted with it at once?—No doubt. I have no doubt that he ought, but the clauses in question may nevertheless have been a surprise upon him.

[At the instance of Mr. Bell, the Solicitor-General was here asked to produce the revise. Mr. Bell suggested that Mr. Reid should make a statement to the Committee. He wished to ask that gentleman simply to say that he had in his hand the revise seen by Mr. Travers, and that it had in it the 22nd clause.]

Mr. W. S. Reid, recalled.

Mr. Reid: I do not know that I have anything further to say. I produce the original drafts of the Bills, and I am positive I never saw Mr. Travers at all while these Bills were in progress. Such communication as he may have had with our department, I presume, must have been with the then Attorney-General. His note, dated the 13th August, forwarding this draft clause, is addressed to Mr. Prendergast. It is, in fact, printed in a paper which has been laid before Parliament. The proof copy of the Bill was dated the 29th July, and the next one the 1st August. That is marked "First revise," and, I presume, is the copy that was sent to Mr. Travers. It was about the 13th August that he must have revised the Bill. There does not appear to have been any previous revise. Then, after that date, as explained in my previous memorandum, the whole nature of the Bill was altered. At this date it was an Act for referring disputes between contractors generally. The subsequent draft altered the recitals to the form in which they appear now in the statute, and refer exclusively to the Brogden contracts. The revise that Mr. Travers saw was one that applied to all contracts which the Government might have entered into under the Public Works Act; and it is quite true that in the subsequent revise the limitation clause was inserted and the clause which barred actions in the Supreme Court. But, so far as I know, I had no personal communication with Mr. Travers whatever. The Bill, as it was prepared, was simply an ordinary one, and might have been shown to any professional friend, whose suggestions might have been taken. I should not have considered myself bound to say that was all I intended to put in the Bill. The proper time for that would have been when the Bill was before the House. There was no stipulation between the parties as to what should be inserted, and therefore I should have considered that the limitation clause which is here in the final revise of the Bill was a proper clause to be inserted. The Bill was somewhat of a novelty, and matters cropped up that had to be provided for. Mr. Travers, of course, could have had copies of the Bill at any time had he wished them. His suggestions in the draft were adopted and inserted in the Bill. I think I have already shown that this Bill, the first revise of which Mr. Travers saw, had a retrospective operation, *i.e.*, it applied to contracts that "shall or may have been entered into and executed before the passing of this Act."

Sir John Hall.] That retrospective clause was in it when Mr. Travers saw it?—Yes.

Have you a copy of the letter in which you sent a revise to Mr. Travers?—I do not know how he got it. That he did get it I am aware simply from finding a note attached to the draft Bills. I presume it was handed to him by Mr. Prendergast, but I have no knowledge as to that.

Mr. Macandrew.] It must have been sent to him in the capacity of Brogden's solicitor?—It may have been. If there had been any official communication with it I think it would have been on record, but there was none. I searched for it at the time when the question was before me some years ago.

Mr. Bell.] I wish to ask, Mr. Reid, whether, in the first revise as seen by Mr. Travers, there is not a clause providing that the decision of the Judge in the arbitration shall be final and conclusive without appeal?—Yes; that is the last clause.

Sir John Hall.] Which clause?—Clause 22.

Mr. Cave.] That is when he is acting as arbitrator, not in his capacity as Judge?—Yes; I think that must be in his capacity as arbitrator.

Sir John Hall.] What is the difference between the effect of clause 22 and clause 28. Clause 28 says neither of the parties shall bring an action in respect of any matters so agreed to be referred?—Both clauses were in the Bill.

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.

Is this the estimate, then, that you prepared?—Certainly not.

Do you know when this entry was made in the book?—I do not know what book this is at all. I believe this is a copy of the schedule that was prepared by Messrs. Carruthers, Henderson, and myself. I think Mr. Dees was also present.

Have you compared it?—The amount is the same. I have not got the original schedule. I do not know where it is.

Do you know the contract price in that case?—The contract price is this amount (pointing to book), *plus* some little additions which were made.

Does that estimate include anything for maintenance?—I think not. In the offer that Messrs. Brogden made next day there were minor amendments, but this schedule is the result of the conference between the Government's and the contractors' representatives.

You are clear upon that point, that this is the result of the conference?—Yes, quite clear. It is the same as that which was printed in a parliamentary paper, which is correct.

That is not the Government Engineer's estimate?—Certainly not. That is the result of the conference.

What is the amount of the Taieri estimate, Mr. Blair?—£142,000, and then there is to be added maintenance, £1,820.

Now I will read you their letter of the 3rd July: "We beg to tender for the construction of the Dunedin and Clutha Railway, so far as regards the matters mentioned in the enclosed specification of works, for the sum of £142,000"—it is printed here £142,000, but it is clear that it should be £142,501—"for the proposed length of thirty-four miles and fifty-five chains, with two miles of sidings, with the addition of £1,835 for maintenance for three months without extra ballast. The whole of the permanent-way materials and all other materials required for the purposes of the work, as also all men employed by us, to be carried free of charge from Port Chalmers to the commencement of the contract, and from Balclutha to the end of the contract. This offer is subject to the terms, conditions, and provisions contained in our letter of the 20th June last, enclosing tenders for the Auckland and Waikato, Invercargill and Mataura, Napier and Pakipaki, and Napier and Port Napier Railways." Then in the same parliamentary paper as that in which this letter is printed—D.-22, 1872—is printed a memorandum of Mr. Carruthers: "Memorandum on Messrs. Brogden's tender.—My estimate amounts to £141,369. Mr. Brogden objected to the prices fixed for wrought and cast iron, and has increased his estimate on these items. I find the price has been put too low, and would recommend that £142,000 should be offered to Mr. Brogden, and, if he agreed to this, that his tender should be accepted." And then there is a subsequent letter from the Public Works Office, by Mr. W. Reeves, dated 4th July, 1872: "Gentlemen, I have the honor to acknowledge the receipt of your letter of the 3rd July, in which your tender for the construction of thirty-four miles and fifty-five chains, with two miles of sidings, being the Taieri portion of the Dunedin and Clutha Railway, according to the specification therein enclosed, for the sum of £142,501, together with £1,835 for the maintenance thereof for three months without extra ballast. In reply, I beg to inform you that the Chief Surveyor's estimate for the construction being lower than the amount above stated, the Government are prepared to meet you liberally, and agree to the terms contained in your letter, provided you reduce the amount for construction to the sum of £142,000."—That correspondence was based on the schedule that we agreed to.

And you still say that these were the prices agreed upon between Messrs. Brogden and the Government?—Yes.

You had nothing to do with the Napier contract?—No, nothing with any of the Brogden contracts, except the Taieri one.

I should like to call the attention of the Committee to the Napier and Pakipaki Contract. (To witness.) You know nothing at all of that?—No.

I have no more questions to ask Mr. Blair. £49,345 was the contract price in the Napier–Pakipaki Railway, and the estimate here is £50,807, so that Messrs. Brogden's tender for this contract was £1,500 less than the estimate, although, as my friend has said, they have been treated with excessive liberality in their prices. They actually tendered and executed these works for £1,500 less than the Government Engineer's estimate.

Hon. W. W. Johnston: Does that include 32½ per cent. on the estimated cost?

Mr. Cave: The Engineer's estimates are for the construction of lines between Dunedin and Balclutha. This book was prepared for the information of Government officers. Messrs. Brogden and Sons had nothing to do with this book. I will prove that their contract for the Pakipaki line was £1,500 less than the Government Engineer's own estimate.

The Chairman: Do you mean on the basis of special arrangements, or outside the value of the work?

Mr. Cave: The price at which they actually tendered for the work was £1,500 less than the Government Engineer estimated the cost.

Mr. Bell: All I can say, sir, is this, that the prices in this book were used as the prices upon which the extra works were to be calculated, because progress payments were made.

Mr. Cave: There is no doubt that progress payments were made upon the prices which are here set down in the Government Engineer's estimates. The contents of this book are all printed in this parliamentary paper.

Mr. Bell: It was admitted time after time that these prices represented the prices which were agreed upon between the contractors and the Government.

Mr. Cave: For progress payments.

Mr. Montgomery: In giving in his estimate of the value of the work, did that include the contractors' profit, or was it the net amount? Was the contractor's profit in the estimate of the work?—

Mr. Blair: Is that in the estimate here?

Mr. Montgomery: No, in the estimate you gave for £159,000. Was the contractors' profit included in that amount?

Mr. Blair: The estimate produced here includes the contractors' profits.

Hon. Mr. Oliver.] There are some items here which I will read: Ballast, so many cubic yards at 3s. 3d.; sleepers, at 3s.; laying sleepers, at 2s.; haulage of material, at 10s. per ton; earthwork, so many thousand cubic yards at 1s. 6d. Are these the prices which ordinary contractors were charging the Government in their contracts?—It is a very difficult thing to say. I objected altogether at the commencement to the two items—"contractors' profits, £10,000; management, £8,000." I think, exclusive of these, the prices were high enough for the work, and I feel confident we could have got it done by tender below Messrs. Brogden's price, exclusive of those two last items.

Mr. Montgomery.] I wanted to know that. I wanted to know whether the estimate of the construction of the work included the contractors' profits.—I felt confident at the time, and I do so now, that we ought to have got the work done for considerably less—for at least £20,000 less—than what we were giving the Messrs. Brogden.

Are the prices put down the prices which an ordinary contractor would be likely to tender for, exclusive of those two items?—I think so.

WEDNESDAY, 26TH JULY, 1882.

Mr. H. D. Bell, with him Mr. Fletcher Johnston, for the Government; and Mr. Cave for Messrs. Brogden.

Mr. H. MORTON WILLIAMS, examined.

Mr. Cave.] You are a civil engineer?—I am.

And you have been in the employ of Messrs. Brogden for some years?—Yes, since January, 1873.

I believe that you were concerned with Mr. Henderson in 1876 in making out the final accounts against the Government?—Yes.

In February, 1876, certain accounts were sent in?—Yes; and while doing so we frequently discussed the accounts with the Engineer-in-Chief. Mr. Henderson was ill at the time, and Mr. Carruthers used to meet us at his (Mr. Henderson's) house. The claims then sent in were for the Napier and Pakipaki contract, the Waitara and New Plymouth, the Picton and Blenheim, and the Invercargill and Mataura contracts.

Were these claims subsequently withdrawn and others sent in?—Yes, the new claims were sent in on the 10th May.

Did you have any communications with the Engineer-in-Chief in reference to these claims?—Yes frequently in 1876. We investigated the items, and found there was a great deal of difference between our accounts as rendered and the accounts which the Engineers of the several lines had rendered to the Government. Mr. Carruthers knew nothing personally of these matters, and had to rely on the reports of his Engineers, to whom he occasionally referred. In March, 1877, Mr. Carruthers went through the accounts with me, and we found that there was a very large difference, not only in the items but in the measurement, in the accounts as rendered by the Engineers. I pointed out to Mr. Carruthers that the Engineers' reports were entirely wrong in regard to the Taieri contract, inasmuch as they did not include two railway stations and two platforms which we had built.

Do you know whether these stations had been certified for in the progress certificates?—I do not think they had.

Was any arrangement made between you and Mr. Carruthers with regard to your meeting Mr. Blair?—Yes; and the result was that Mr. Carruthers agreed that I should go down to Dunedin on behalf of Messrs. Brogden, and that he would instruct Mr. Blair to meet me and settle all the differences on the ground. Therefore, in May, 1877, I went to Dunedin, and requested Mr. Blair to investigate these matters on the ground, but he refused to do so. I then returned to Wellington with my papers, but without having made the investigation. We stated these facts to the Government in a letter dated the 17th August, 1877. This letter is as follows:—

Taieri Contract, Dunedin and Clutha Railway.

SIR,— Wellington, N.Z., 17th August, 1877.

We have the honor to request a reply to our letter of the 16th March last, and having reference to yours of the 8th and 26th January and to ours of the 8th and 16th March, relating to the accounts we forwarded to you in connection with the Taieri contract, Dunedin and Clutha Railway.

We are anxious for an early settlement of the balance due on this contract, and have several times expressed our willingness to go through the accounts with your Engineers. For this purpose, and in accordance with the wishes of the Engineer-in-Chief, our Mr. Williams proceeded to Dunedin in May last, and requested the District Engineer, Mr. Blair, to go through the accounts with him, and, in case of any difference as to measurement or the execution of certain extras, to go out on to the works and settle such differences. The District Engineer, Mr. Blair, however, refused to go through the accounts, stating he had received no instructions to do so. We therefore request an early reply as to when the balance due on the above contract will be paid to us.

We have, &c.,

JOHN BROGDEN AND SONS,

The Hon. the Minister for Public Works. (Per JOHN HENDERSON.)

Have you had any opportunity since then of discussing these claims?—No.

Have any investigations been made since?—No, with the exception of two small outside contracts, viz., the Chain Hills platelaying contract, and the Kakanui and Island Creek Bridges contract, in regard to which we accepted Mr. Higginson as the sole referee. The result was that on both those contracts a considerable sum of money was found to be due to us in the shape of payment for extras. This occurred in consequence of the Engineers not having included some items in their certificates, and it arose also from the fact that some errors had been made in the measurements. We have received the money which was found to be due to us on those two contracts.

After the completion of the work I believe application was made to the Government Engineers for their final certificates?—Yes, in accordance with the terms of the contract.

Were those certificates given?—No; all the Engineers wrote up to say that they were not the proper persons to give final certificates, and the Minister for Public Works said the Engineer-in-Chief was the proper officer to do so.

Have those final certificates ever been given?—No.

Have you from time to time received certificates from the Government officers for sums due since the completion of the work?—Yes. The first letter we received on that subject is dated the 19th June, 1876, and is as follows:—

GENTLEMEN,— Public Works Office, Wellington, 19th June, 1876.

I am directed by the Hon. the Minister for Public Works to inform you that the Engineer-in-Chief, having carefully gone into the accounts submitted by you in reference to certain of your railway contracts, finds—

1. That on the Waipawa, Picton and Blenheim, Picton and Blenheim 10-per-cent., and Winton and Kingston-10-per-cent. contracts the full amounts due to you thereon have been paid.

2. That there are due to you on the Napier contract a sum of £95 13s., and on the Invercargill 10-per-cent. account a sum of £30 10s. 6d.; and

3. That on the Waitara, Waitara 10-per-cent., and Invercargill contracts you have been overpaid, of the exact amounts on each of which you will hereafter be informed.

I have, &c.,
JOHN KNOWLES,
Under-Secretary.

Messrs. J. Brogden and Sons, Wellington.

It was not until the 12th May, 1877, that the Government informed us as to the amounts which we are said to have been overpaid.

Then you were informed that you had been overpaid £2,572 18s. 8d. on the Waitara and Waitara 10-per-cent. contract, and on the Invercargill contract £2,009 16s. 5d.?—Yes.

On the same day there was a letter referring to the Oamaru and Moeraki contract, in which it is stated that there was a sum of £7,910 4s. 11d due to you. Has that sum ever been paid?—No; the Government claimed to retain it on the ground of penalties and in order to cover the overpayments which were alleged to have been made on other contracts.

Did you not receive a communication from the Government subsequent to the 12th May, 1877?—Yes; on the 20th August, 1877, we received a letter from the Government in connection with the Taieri claim, in which letter the Government say there is nothing further due to us. That was the contract on which I went down to Otago to see Mr. Blair.

In 1879 was there a further certificate received from the Government?—Yes; in February, 1879, we received a statement from the Government which purported to show the total amounts due, the total amounts paid, and the total amounts underpaid and overpaid in connection with several of the lines. This statement shows that we were underpaid in the sum of £4,233 6s. 7d. on the Moeraki contract, £104 5s. on the Napier contract, and £806 13s. 2d. on the Taieri contract. With this statement the Government furnished no details, and, therefore, we are totally and entirely at a loss to know how the amounts are made up. There is also a very great difference between this statement and the statement of May, 1877.

Do you mean to say that in every certificate furnished to you by the Government the figures vary?—Yes; and we have asked for particulars of these accounts, but cannot get them.

In the letter of the 12th May, 1877, the Government claim to deduct from the Moeraki contract the sum of £2,749; have they furnished you with any account for that?—No.

Do they make the deduction for non-completion of the work within the contract time?—Yes; and the amount is calculated from the very day on which the works should have been completed.

Can you explain why the works were not completed within the specified time?—On the Oamaru contract there are numerous reasons why the work was not completed within the proper time. Both previous and subsequent to the 19th January, 1876, which was the date on which the work should have been completed, a large portion of the work had been suspended on the written instructions of the Engineers, and various alterations had been made; and then, again, we had not received the permanent-way material, which the Government had to supply, until long after the contract date of completion.

Mr. Cave here read clause 16 of the general conditions of the contract, as follows:—

Suspension of Works.

Clause 16. The contractor, on receiving a written notice from the Engineer, shall suspend or stop the whole or any portion of the works, as may be directed, and the Governor, on behalf of the Queen, shall make good to the contractor any loss or damage he may sustain through such suspension or stoppage, to be ascertained, in case of non-agreement between the contractor and the Minister, by arbitration, as hereinafter mentioned; and the Minister for Public Works shall in no case be bound to give the contractor possession of the work until thirty days after the signature of the contract by the contractor; but a commensurate extension of time for completing the works will be allowed to the contractor, such extension of time to be at the discretion of and to be decided by the Engineer.

During the progress of the Moeraki contract did you receive orders from the Engineer to suspend the works?—Yes, both before and after.

Was any extension of time granted?—None whatever.

A good deal of extra work was executed under this contract?—Yes.

Were the orders for these extra works given at the same time?—No; orders were given for new bridges and all sorts of work after contract time had expired.

Was the material which the Government were bound to furnish under the contract furnished within the contract time?—No; as late as the 18th March, 1876, we received a letter from the Engineer stating that the rails for the permanent-way were landing on the beach at Oamaru, and as late as July he wrote to the effect that the fang-bolts had not arrived.

And the penalties are calculated from the date fixed by the contract for the completion of the works?—Yes.

Notwithstanding that some of the works were not even then ordered?—Yes, that is the fact.

Have you ever been furnished with any particulars of the alleged overpayments on the Invercargill and Waitara contracts?—No.

You have never had an opportunity of meeting the Government Engineers with the view of testing whether such deductions could be sustained or not?—No; nor can we look into these alleged overpayments, and we have not the remotest idea as to how we have been overpaid.

Mr. Macandrew.] Do you admit having been overpaid?—No; we claim we are underpaid.

Mr. Cave.] Can you instance a case in connection with the Invercargill Railway in which a certificate has been granted and the money not been paid?—Yes. The Invercargill line was finished

by us on the 30th November, 1875, and I went to Invercargill from Auckland for the purpose of making up the final certificate. Mr. W. Brunton was the District Engineer, and Mr. W. E. Brunton was the Resident Engineer. We went over the works, and having made the measurements we made up the certificate, and it was forwarded to Wellington by the Engineer by telegraph. The amount we had arrived at as being due to Messrs. Brogden was £3,345 16s. 8d. I obtained from the Government office a copy of the certificate showing the details of the amount.

Have you got that copy?—Yes; it was given to me on the same day that the telegram was sent to Wellington.

Was the sum you have named paid?—No; but in March, 1876, we received a certificate from the Public Works Office here, and that shows that there was a sum of £2,640 15s. 6d. due to us, instead of the £3,335 16s. 8d. that was certified by Mr. Brunton. We were, however, only paid a sum of £1,153 10s, 5d., leaving a balance of £1,487 5s. 1d. still due. On the certificate to which I have referred there is a memorandum to this effect: "That the additions and reductions to this contract have lately been revised, and certain items in the reductions removed or reduced, leaving the amount as stated above."

And according to Mr. Blackett's certificate there is a balance of £1,487 5s. 1d. due to you?—Yes; according to the Treasury voucher that is the amount.

Subsequently you received a letter stating that you had been overpaid?—Yes; that was seven months after the Government had taken over the line; and it was not until fifteen months after this that we were informed of the amount we were stated to have been overpaid. This amount has been varied several times, and is now pleaded as a set-off against the sum which was due to us on the Oamaru and Moeraki contract. The amount which was certified in the Engineer's telegraphic certificate was £3,335 16s. 8d., and in that sum there is included £660 for wagons, which has been paid in Wellington as a separate payment. With regard to the extras, I may say that the Engineers were instructed to return the net amount, and that the contingencies and percentages would be added in the Wellington office.

Did the Engineers, as a matter of fact, ever include anything for profit?—Not during the progress of the contract. They certified a certain set of prices which had been furnished to them.

Can you instance a case in the Auckland contract where a certificate has been granted and the payment has not been made?—Yes. In 1876 we were instructed by the Government to provide a water-supply for the Auckland Station, under the station-accommodation clause in our contract, which provided that we were to receive 10 per cent. on the amounts disbursed by us. We provided the piping for this water-supply, and I rendered the account with the vouchers to the District Engineer. The amount was £431 16s. 9d. The Engineer disputed the account to the extent of 1d. per foot on the last item in the account, but he signed the whole of the vouchers as being correct with this exception. He signed the triplicate voucher, which he retained in order that he might forward it to the Government, and he signed the duplicate, which he handed to me, and which has been presented to the Government by Mr. Billing.

Has any portion of the £431 16s. 9d. ever been paid?—No.

The Chairman.] What is the date of the voucher?—My copy has no date, but the account was certified in 1874. The voucher in the possession of the Government shows the date.

Mr. Cave.] The contracts provide that the Minister for Public Works may require omissions of certain portions of the work?—Yes.

The fifth clause of the general conditions of the contract says,—

Clause 5. To the Minister for Public Works there is reserved the right from time to time of requiring the omission of any particular portion or portions of works described in the specification or shown on the drawings, and of deducting the value thereof from the amount of the contract; such value to be agreed upon between the Minister for Public Works and the contractor, or, in case of difference, to be settled by arbitration, as hereinafter provided; but the contractor shall be entitled to be paid a sum of 10 per cent. on the agreed or ascertained value of the work omitted, such sums for omissions to be paid on the completion of the contract.

According to the statement which has been put in, omissions to the amount of £65,900 10s. are shown?—Yes.

And upon that amount the contractors are entitled to 10 per cent.?—Yes.

But that percentage has only been paid in one case?—Yes; on the Napier contract we have received £449 4s. 7d. That is the only payment of the kind that we have received.

Hon. Dr. Pollen.] Is there no Engineer's certificate with respect to these omissions?—In regard to some of them there are certificates, but I am now speaking from the Government figures.

Hon. Dr. Pollen: Have the Government Engineers satisfied themselves that there is a sum of £6,000 due to the contractors on account of omissions?

Mr. Bell: We are in a position to prove that we have paid 10 per cent. on every account that has been certified.

Mr. Cave.] Have the Engineers from time to time certified to the value of the works which have been omitted?—Yes, I believe they have; and I understand that they have deducted those amounts from the contract sums, but they have never yet rendered us a statement showing the deductions.

Mr. Cave: The contracts provided for the construction by Messrs. Brogden of certain telegraph lines?—Yes; we were to construct a single line of telegraph along the line, and we were to have the use of it for the purpose of carrying out our contracts.

Were these works to be treated as omissions?—Yes. We made an agreement with the Hon. Mr. Richardson, the then Minister for Public Works, which was to the effect that the Telegraph Department should construct the telegraph lines, and that we should receive 10 per cent. in consequence. I now hand in a copy of the correspondence which passed on the subject between our firm and the Minister for Public Works.

Mr. Cave read the following letter:—

GENTLEMEN,— Public Works Office, Wellington, 10th January, 1873.

It is proposed by the Telegraph Department to move the telegraph poles which interfere with the works on your Wellington to Hutt contract, and, as this involves the delicate handling of the wires now in constant use, I beg to suggest to you that this work should be done entirely by the officers of the Telegraph Department.

With reference to the erection of railway telegraph along this line and others under contract by you, I also suggest that it will be better that this should be done in the same way. I quite recognize the fact that the telegraph is to be constructed and paid for as station accommodation under your several contracts; but, considering the nature of this work, and the liability of serious inconvenience to the public service of the colony which may be caused from a variety of circumstances contingent on the erection of these lines, I purpose, if you agree to the same, that the Telegraph Department should do the work, that accounts be kept, and that 10 per cent on the cost, as per your contract, should be paid to you.

I shall be glad to hear from you at an early date, and to have an interview with you on this subject, if you consider it necessary.

I have, &c.,
EDWARD RICHARDSON.

Messrs. John Brogden and Sons, Wellington.

Has that 10 per cent. been paid?—Only in the case of the Wellington and Hutt Railway. This letter is dated the 10th January, 1873.

Has the 10 per cent. not been paid in any of the other cases?—No. I will read you letters of the 10th and 12th February, 1873.

GENTLEMEN,— Public Works Office, Wellington, 10th February, 1873.

With reference to the Hon. Mr. Richardson's letter of the 10th January, and your reply of the day following, relative to the erection of the telegraph along the lines of railway under contract to your firm, I am directed to request the favour of your informing Mr. Richardson whether you concur in extending the arrangement made in respect to the line from Wellington to the Hutt to all the other lines above mentioned.

I have, &c.,
JOHN KNOWLES,
Under-Secretary.

Messrs. John Brogden and Sons,
Wellington.

SIR,— Wellington, 12th February, 1873.

Referring to your letters (P.W.O., 10th January, 1873, P.W.O., 10th February, 1873), and to ours of the 11th ultimo, relative to the erection of the telegraph along the lines of railway under construction by our firm, we have the honor to inform you that we concur in the arrangement proposed in your letter of the 10th ultimo, viz., that this work should be executed by the Government through the Telegraph Department, and that we receive 10 per cent. on the cost.

We have, &c.,
JOHN BROGDEN AND SONS
(Per JOHN HENDERSON.)

The Hon. the Minister for Public Works,
Wellington.

The Chairman.] You say that no other line was allowed for except the Wellington and Hutt?—Yes.

Sir John Hall.] Were there any other cases in which you received 10 per cent. for omissions on account of telegraph lines?—None whatever.

Mr. Montgomery.] Was this work that you were paid commission on ever done?—No, not by us. Under the conditions of the contract the Minister for Public Works has the power to require the contractor to omit any portion of the works, and upon such omissions the contractors are allowed 10 per cent.

Mr. Cave.] Has any certificate been granted for these works?—No; the only record we have is that of a separate payment in connection with the Wellington and Hutt Railway.

Hon. Mr. Miller.] Who constructed the Wellington and Hutt Railway?—Messrs. Brogden did; but they did not make the telegraph line. The Government constructed the whole of the telegraph lines.

Mr. Cave.] You were acquainted with most of the Government Engineers on the line?—Yes.

It has been stated that a considerable number of these Engineers are not now available for the purpose of giving evidence—is that so?—I think nearly all of them are within call, with the exception of Mr. Carruthers, who is in England. I believe the majority of them are still in New Zealand.

Who were the Engineers on the Taieri contract?—Messrs. Blair and Cook. They are now in the employ of the Government.

Who was the Inspector of Works?—There were several of them. There was Mr. Matthews, Mr. Chisholm, and Mr. Fraser, all of whom are either in Government employ or living close by the railway on which they were engaged.

Who was the District Engineer in Oamaru?—Mr. Lowe, who is still in the service of the Government at Christchurch. Messrs. McLeod and Burnett were Mr. Lowe's assistants. I believe they are both in Christchurch.

Who was in charge at Waitara?—Mr. Darnell and Mr. Hursthouse. Mr. Hursthouse is still in the employ of the Government, and Mr. Darnell is in Wellington. Mr. Stewart was the District Engineer in Auckland, and Mr. E. C. Jones and Mr. Coleridge, who were also employed as his assistants, are, I believe, still in Wellington. Messrs. Garrett, Hunter, and Elliott also are still in the Government employ.

Are Messrs. Otway and Hunter still available?—Yes, Mr. Hunter is still in Government employ, and Mr. Otway is in the Public Works Office, Auckland.

Mr. Brunton, District Engineer, of Invercargill, is dead?—Yes; but Mr. W. E. Brunton, the Resident Engineer, is available, and Mr. Black is also available.

Then, as a matter of fact, the majority of the Government employés are available?—I think so.

I think you are the only one of Messrs. Brogden's engineers now left?—Yes; I am the only one who still remains in the employ of the firm. Mr. Henderson and the bookkeeper, who could give a good deal of information, are both dead.

Mr Bell: You have told the Committee that Mr. W. E. Brunton is available if he is required to give evidence?—Yes.

Is it not a fact that Messrs. Brogden retained Mr. W. E. Brunton as soon as Mr. Alexander Brogden arrived in the colony?—We retained him in connection with our compensation claims; but since that time he has been in the service of the Government.

Why do you say that?—Because he has told me so himself.

Do you find him a man on whose word you can rely?—I do not wish to make accusations against any man.

You knew that of the two Government Engineers on the Invercargill line one was dead, and that shortly after Mr. Brogden's arrival you retained the other one?—We only retained him on account of our compensation claims.

Mr. Cave here tendered to Mr. Bell a letter from Messrs. Brogden and Sons to Mr. Brunton, and which was read by Mr. Bell as follows:—

DEAR SIR,— Wellington, 10th August, 1881.

In reference to our claims against the Government in respect of the Invercargill and Mataura Railway, we wish to retain you as a witness for us, and herewith send you a cheque for £10 as a retainer.

We do not object to your giving Mr. Higginson any information he may require as to the measurements.

Yours truly,

W. E. Brunton, Esq., C.E., Oamaru. JOHN BROGDEN and SONS.

Also a telegram dated the 5th August, which says,—

By all means give Mr. Higginson all the information he wants. We shall rely upon you for our compensation claims.—ALEX. BROGDEN.

It appears, therefore that you did retain Mr. Brunton, but consented to his giving information to Mr. Higginson. You know, of course, that Mr. Marjoribanks is dead?—No, I do not.

Do you know that he was one of the Engineers on the Taieri contract?—No; he was only an Inspector.

Do you know that Adam Johnston, who was employed on the Taireri contract, is dead?—There were two Johnstons, but I do not know which of them is dead.

You knew Mr. R. Johnston, who was in the employ of Mr. Stout?—No.

You know that he is no longer in the colony?—I am not aware that that is the case. All I know is that he disappeared from Dunedin just at the time when we wanted him.

Do you not know that Mr. Darnell had been absent in England?—Yes.

Do you know when he returned?—No; he came down from Auckland with me, but until then I did not know that he had been absent from the colony.

You have given us some instances of certificates being unpaid. Now, take the Invercargill certificate. Is that a "progress" or a "final" certificate?—It was not final, inasmuch as we left some items unadjusted, but, as far as the measurements go, it was a final certificate.

But I want to know definitely whether it was a final certificate?—I went to Invercargill for the purpose of settling the measurements, and the matter was final, as between the Engineer and myself, as far as the measurements were concerned.

Are you not aware that the certificates had to be revised by the Superintending Engineer for each Island?—Yes, as a matter of account only.

You were paid £1,153 10s. 5d.?—Yes.

You were paid the instalment which was certified to be due?—Yes; but that was only a part of the amount certified by Mr. Blackett.

Are you not aware that the balance shown upon this is a balance only of progress payments, which were afterwards found to be overpayments?—No.

If upon the making up of the final certificate it is ascertained that you have been overpaid, does not that mean that the amount of the progress certificates exceeds the sum which is found to be due to you on the final certificate?—Yes; but this certificate is given three or four months after the Government have taken over the work, and after we had been told that the progress certificates had been properly revised.

You have omitted to state that you have been paid the full amount which Mr. Blackett had certified you were entitled to?—We were paid £1,153; but it is shown upon Mr. Blackett's certificate that there is still a balance of £1,487 5s. 1d. due to us, which is retained by the Government for alleged overpayments.

The certificate which you tell us you received for the supply of water-pipes on the Auckland Railway was, of course, a progress certificate?—No; the certificate was given for work executed in 1874, and it was not a progress payment.

When was the Auckland and Mercer Railway completed?—In 1875.

And how do you know that this sum has not been included in the final certificate?—Because I have looked through all our books and have found that it has not been paid.

Do you say that after looking at your own books?—We have a copy of what purports to be Mr. Stewart's final certificate. It is not included in that for the reason that a small portion of the account was in dispute, and he sent the voucher direct to head-quarters to have the disputed portion settled.

You cannot say that that sum was not included in the final revise of 1879?—No; I cannot say that; but at any rate I can say that we have never received that money.

Then you say it was not included in the balance which was paid to you in 1879?—We have no details in connection with that payment, and therefore I cannot say positively; but I am quite certain that we have not had the money.

Then, if you found that you had received the money you would be surprised?—I have no doubt when we do get the detail showing how the amounts in the February statement have been arrived at we shall be very much surprised.

You say you have not been allowed or paid 10 per cent. on the reductions?—Yes; this voucher of Mr. Blackett's shows that.

Then you, standing here as the representative of Messrs. Brogden, tell the Committee that you have not been paid 10 per cent. on the value of all works which were deducted from your contracts?—I say we have not been paid the 10 per cent.

And you say that you have only been allowed the 10 per cent. for the telegraph on the Wellington and Hutt Railway?—Yes.

And the Wellington and Hutt Railway is the only one which has actually been settled for with you by the Government?—That line is still as open to dispute as any of the others: no final receipt has been given.

It has been understood that the Wellington and Hutt line has been finally settled for?—Yes, practically it is. We have made no claim, nor do we intend to do so.

And you find that you have been paid 10 per cent. for the telegraph line and 10 per cent. also upon all deductions?—We received 10 per cent. for the telegraph, but I am not sure about 10 per cent. on the deductions.

With regard to the Moeraki contract, you say that the £7,910 odd due to you has been swallowed up by the penalties and alleged overpayments?—It has been retained by the Government for penalties and alleged overpayments on other contracts.

During the progress of Messrs. Brogden's contract works were there not complaints by the Government Engineers that the works were not proceeded with with proper expedition?—I do not think so, as far as the Oamaru line is concerned.

But with regard to other lines?—Yes; complaints have been made about progress.

Then it is quite possible that the Government Engineers may have considered the delays upon the Moeraki line to have been caused by the contractors themselves?—The contractors did not cause the delay.

Is it not possible that, in the opinion of the Engineer, that may have been the case?—No; it is not possible that any sane man should think so.

You have told the Committee that investigations were held into two contracts of Messrs. Brogden's which did not contain the arbitration clause?—Yes.

Why did you not mention the Clutha platelaying contract?—This was not one of Messrs. Brogden's contracts; but the award of the arbitrator in this case was for 100 per cent. more than had been allowed by the Engineer for that platelaying contract.

What was claimed for extras on that contract?—About £12,000.

Do you remember how much the arbitrator allowed?—About £1,600, or £864 over and above what had been paid to us.

In the sum awarded was included payment for works which were found had been done by mistake?—No; I think not.

Your difficulty was that you had no Engineers' certificates?—Yes; but Mr. Justice Gillies said that, although that was the case, in all fairness and justice we ought to be paid.

Do you remember what Mr. Justice Richmond said?—No; I do not.

Did he not hold an opposite opinion?—He said nothing about the fairness and justice of the case.

You have said that yourself and Mr. Henderson made up the figures connected with these claims?—Yes.

In what capacity did you act?—I was in the employ of Messrs. Brogden.

And what was Mr. Henderson?—He was the sole representative of Messrs. Brogden in New Zealand.

Was he in the employ of Messrs. Brogden?—Yes.

Was he not a partner with them?—No; but he was to get a sort of bonus at the end of the works. After 5 per cent. on all moneys expended had been taken out of the profits he was to get one-fourth of what was left.

Had you or Mr. Henderson any interest in making the profits as large as possible?—I had not; but, as I have told you, Mr. Henderson was to get one-fourth of the profits after 5 per cent. on the amount expended had been deducted and all expenses had been paid.

Which of you did most in the matter of settling these figures—you or Mr. Henderson?—I really cannot say. We have been assisted by our agents at the several works.

Did Mr. Henderson assist you in the preparation of the claims which were sent in in February?—Yes.

The claims which were sent in in May were considerably larger than those which were sent in in February?—Not very considerable, I think. The extras on the Invercargill contract, sent in to the Government in February, including interest, amounted to £44,308; and the amount in May, including interest to that date, was £44,354.

Do you know when the arrangement was made with Mr. Henderson that he was to get one-fourth of the profits?—Before he left England.

Mr. Macandrew.] Did I understand you to say that two platforms and two stations had been constructed by you, for which you had not been paid?—Two stations and two platforms which we had built were not included in the Engineer's certificate, and were not paid for up to 1879.

They were not extra works outside the contract?—No; they came under station accommodation.

Hon. Dr. Pollen.] You have stated that upon one occasion you made an arrangement with Mr. Carruthers, under which you went to Dunedin for the purpose of seeing Mr. Blair, with a view to a general settlement of your claims?—Yes, with regard to the Taieri contract.

Did you have that interview by arrangement?—Yes; Mr. Henderson and I met Mr. Carruthers in his office in Wellington and made the arrangement.

And you went to Dunedin on the understanding that you were to see Mr. Blair officially, with the sanction of Mr. Carruthers?—Yes; and when I saw Mr. Blair he refused to investigate with me, and I had to come back without doing anything.

Did you ask Mr. Carruthers whether he had communicated with Mr. Blair?—No; I simply sent a telegram to my chief to the effect that Mr. Blair had refused to go over the work with me.

Sir J. Hall.] Did Mr. Henderson communicate with Mr. Carruthers?—I am not sure.

Mr. Macandrew.] What were the two stations that you have referred to?—The Waihola and Clarendon.

Were you paid the cost of constructing them?—Not up to 1879; but we have to presume that they were included in the statement of February, 1879; but the Government supplied no details by which we can be guided.

THURSDAY, 27TH JULY, 1882.

Mr. H. D. Bell, with him Mr. Fletcher Johnston, for the Government; and Mr. Cave for Messrs Brogden.

Mr. J. P. MAXWELL, General Manager of Railways, examined.

Mr. Bell.] You are General Manager of New Zealand Railways?—I am.

Do you remember in the year 1878 making an investigation into Messrs. Brogden's claims?—Yes, by the instructions of the Hon. Mr. Macandrew, the Minister for Public Works.

And the payment of February, 1879, was the result of your investigation?—Yes.

On what was your investigation based?—I examined the various certificates and the papers relating to the extras and the reductions in the contracts, and made my statement up from them.

Your statement was based upon the certificates of the Engineers, which were among the papers of the department?—Yes.

Including the final certificates?—Yes.

And from those papers you concluded that there was a small sum due to Messrs. Brogden?—Yes, there was a small balance due to them.

Did you find in your investigation that Messrs. Brogden had been paid all moneys which the Engineers had certified to be due to them?—Yes, so far as I could ascertain.

Have you seen the papers in connection with the Taieri contract?—Yes.

Has your attention been called to the Waihola and Clarendon Station charges?—Yes.

Do you know whether the sum certified by the Engineer in connection with those works has been paid to Messrs. Brogden?—Yes; they are included in the amount which was paid to Messrs. Brogden in February, 1879.

Had they been paid when you made your investigation in 1878?—No.

They were part of the balance which you found to be due to Messrs. Brogden?—Yes.

Are the papers now before you certified copies of final certificates that were made for your use?—Yes; relating to additions and reductions.

On each of them you will find the word "Telegraph" written. What entries do you find where that word occurs?—I will take the papers relating to the Invercargill and Mataura contract. There, opposite the word "Telegraph," I find the following: "Per centage of cost of Telegraph allowed by Engineer-in-Chief, £136 10s." I find also that 10 per cent. is allowed for management and 12½ per cent. for contingencies, but there is nothing for contractors' profits. The same thing occurs in the Napier and Pakipaki, and the Picton and Blenheim papers.

Mr. Cave.] In making up your figures what papers had you before you?—I had three certificates.

Did you have before you the whole of the progress certificates sent in from time to time by the Engineers?—I believe I had. I had the final certificates at all events.

Are those copies of the final certificates that you have before you?—They are not complete. They are copies of the certificates for extras and reductions.

Then it is not a final certificate, but simply a final certificate of extras?—Yes.

By whom are these final certificates for extras and reductions made up?—By the Engineer of the district.

By whom were those now before you made up?—The one for Picton and Blenheim is signed by Alfred Dobson, the Resident Engineer. He was the Engineer on the works. Then the Napier paper is signed by Charles Weber, but this is not the final contract certificate. It is the abstract of authorized alterations.

What do you call the final certificate?—The final certificate is the one which has been signed by the Engineer-in-Chief or the Assistant Engineer-in-Chief.

Where is the final certificate in connection with the Taieri contract?—It is not here. There is one signed by W. N. Blair here.

Who was the Engineer of Works on that contract?—I am not aware.

Who signed the Invercargill contract certificate?—The abstract was signed by H. B. Higginson.

Was not Mr. Brunton Engineer on the works?—I am not aware.

Did you have Mr. Brunton's certificates before you when you made up these figures?—I believe I had all the certificates before me.

We may take it that you are not prepared to say that all the sums which had been certified as due by the Engineers on the progress certificates were actually paid to the contractors?—I think I may say that all the sums authorized by the Engineer-in-Chief were paid.

But I am referring to the Engineer in charge of the works?—Then I could not say. The Engineer in charge of the works merely transmitted information to the Engineer-in-Chief, and the latter never permitted alterations to be made in the works or in the plans and specifications without his approval. Consequently it is not possible for any person who may be placed in charge of the works to give interm certificates at his pleasure.

Do you recollect who was the Engineer in charge of the Waitara and New Plymouth contract?—No.

Were particulars given to Messrs. Brogden as to the manner in which the statement which you compiled in 1879 was made out?—Not to my knowledge.

Was any opportunity given to them to express their opinion on any of the items in the claim?—No.

Or was yours an entirely *ex parte* investigation?—Yes.

Without any reference to Messrs. Brogden?—Yes.

Can you explain how the sum of £7,000, which, in 1875, had been admitted to be due to Messrs. Brogden on the Oamaru and Moeraki contract, became reduced to £4,000?—I do not carry these details in my mind now.

Did you investigate the claim of the Government in reference to these penalties?—I merely took the statements that were given to me; I did not examine the details of any of them personally.

You obtained your materials from Government officers, and accepted them as correct without investigation?—Yes, without investigation into details.

Can you say whether you compared these figures which appear on the papers with those on the progress certificate?—No; the figures were compiled for me by the officers of the Public Works Department. I accepted them as they came from the Engineer, and, to the best of my knowledge, I examined all the documents, but after the lapse of four years I cannot say positively whether I did so or not.

And you found a balance due to Messrs. Brogden on the materials contained in these certificates?—Yes.

Did you have the documents in connection with the Auckland and Mercer contract before you? Yes, I think I had all of them before me.

Did you investigate the allowance for deductions on that contract?—I did not.

Did you satisfy yourself as to whether the percentage on the deductions had been allowed in that case?—I did not. I took the statements as I received them.

You cannot tell what the total amount of deductions in that case was?—I can tell you the amount which I accepted from the Accountant of the Public Works Department. The amount was £29,779.

Can you tell me what percentage was allowed upon the deductions in the Auckland and Mercer case?—No.

Mr. Bell.] When you say that you based your statement on the statements that were made to you, do you refer to oral statements or written ones?—On written statements, including the final certificates of the Engineers. These abstracts are final; but the real final certificate is the certificate which is signed by the Engineer-in-Chief.

Hon. Dr. Pollen.] You have stated that you held this investigation *ex parte*, and without any reference to Messrs. Brogden. Was it not part of your duty to communicate with Messrs. Brogden on the subject?—It was no business of mine to do so. All I had to do was to prepare a statement for the Minister. I did not profess to go into details, because that could not be done by one man in Wellington.

Hon. Mr. Miller.] Do you know of any case in which the final certificate failed to include any amounts due on progress certificates?—I do not.

Mr. W. T. L. Travers, examined.

Mr. Bell.] I will ask Mr. Travers to say what his impression is with regard to the manner in which he got the first revise of the Government Contractors Arbitration Bill at his office?—My belief is that it was brought to me by Mr. James Brogden, and that I looked over it at his request, and suggested certain amendments which were drawn by me, and which I either sent or took myself to Sir James Prendergast, then Attorney-General. The circumstance that these amendments were upon two separate sheets of paper, and the character of the note which I sent to the Attorney-General, satisfy me that I did not peruse the Bill as I should have done if it had been sent to me in the ordinary official course. My letter to Sir James Prendergast was to the effect that I ventured to suggest certain amendments. If I had had the Bill before me in ordinary course as the professional adviser of Messrs. Brogden, I should have sent a more official letter either to Sir James Prendergast or to Mr. Reid. Therefore my belief is that I had nothing to do with the Bill except to the extent of looking over the draft or a printed copy, and making the suggestions referred to in regard to it, and for years after I made these suggestions I had nothing more to do with it. In fact, I am firmly convinced that it was not sent to me for perusal in ordinary course as the professional adviser of Messrs. Brogden.

Mr. Montgomery.] You were solicitor for Messrs. Brogden at that time?—Yes. My impression is that Mr. Brogden brought the Bill to me, and that he was looking after it himself. I am also of opinion that he thought the Bill was intended to impose a duty on the Judges of the Supreme Court in order to carry out the arbitration clause of the contract. I have very little doubt that Mr. Brogden looked at the Bill, but whether he supposed that it did more than he anticipated I am not in a position to say. I know that he was under the impression that the Bill was merely intended to carry out the arbitration clause.

Hon. Mr. Miller.] In your statement you have said that the allowing of an appeal to the Judge was in the nature of a favour from the Minister for Public Works?—Yes, it was a privilege.

And you have also stated that it was not proper to oust the jurisdiction of the Supreme Court?—I say it is not usual, though it may be proper in a legal sense.

But the appeal must have been final?—It was made so by the terms of the contract.

The Chairman.] This was a public Bill, was it not?—Yes; and I think the Bill was intended to have a general application at first.

You have said that under other circumstances you would have treated the draft, to a certain extent, differently?—Yes; if it had been sent to me in the ordinary course of business, and as the known legal adviser of Messrs. Brogden, I should have perused it carefully, made any alterations I thought proper on the draft, and kept a copy of them.

But what rights would you have had, as the legal adviser of Messrs. Brogden, in regard to a public Bill?—The object of the Bill was to give effect to the arbitration clause, and to see that the Act went no further. If anything further had been contained in the Act I should have felt myself justified in asking the Government to strike it out.

Sir John Hall.] Do I understand you to say that, in point of fact, the Act in so far as it limits the jurisdiction of the Supreme Court, does no more than is provided in the contract itself?—The Act provides more than the contract does. The contract provides that the decision of the arbitrator is to be final, and therefore, when once the arbitrator has made an award, unless there is some good ground for upsetting it, it would be absolutely conclusive and binding on the parties. But there is nothing in the contract which would have prevented a person from sueing in the Supreme Court in the first instance without going to arbitration at all.

Mr. Bell.] You have admitted that no person can sue successfully in the Supreme Court unless he has the Engineer's certificate?—Yes, if it be not improperly withheld; but a man has a right to pursue a hopeless case if he thinks proper to do so, and chooses to risk the ordinary results of litigation.

Could any contractor by any possibility succeed in an action in the Supreme Court unless he had the certificate of the Engineer?—Yes, I think so, under some circumstances; but of course he could not come out successfully unless he could show that he had complied with the condition in the contract.

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 12½ per cent for contingencies and 10 per cent for contractors' profits. In the case of the deductions, only the 12½ 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 12½ 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.

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:—

The contractor is to make and execute, in the like manner as aforesaid, and with the like materials as aforesaid, any additions, deviations, or alterations to, from, or in the works, which the Engineer may from time to time, previously to the commencement or during the progress of the works, by an order in writing, require, at and for such prices or rates as shall be agreed upon in writing between the contractor and the Minister for Public Works. In case of non-agreement as to price, the work shall be done by the contractor as required by the Engineer, and the price thereof shall be settled by arbitration as hereinafter provided, and shall when so ascertained be added to and henceforth deemed to be part of the contract price for the works to be executed under this contract; but no additions, deviations, or alterations whatever, which shall be claimed by the contractor, will be admitted or recognized under any circumstances, or will be allowed or paid for, which shall be done or executed without, or contrary to any previous order from the Engineer in writing as aforesaid.

Then clause 25 provides that payments are to be made monthly, at a rate not exceeding 90 per cent. on the value of the work actually done. Clause 26 says,—

In case the Engineer shall neglect or refuse to certify the amount due to the contractor in respect of the work, or plant or materials, in manner and within the times mentioned in the foregoing condition, and shall continue such neglect or refusal for a period of fourteen days succeeding the fourteenth day after the end of the month in which the work was done, or the plant or material supplied, as the case may be, the Contractor shall be entitled to measure and value the same, having due regard in his estimate to the actual value thereof, and the measure and value so estimated by the contractor shall be temporarily accepted by the Governor so far as regards the progress payment to be made to the contractor in respect thereof under the foregoing condition, and the payment provided by that condition shall be made accordingly, with interest thereon, at the rate of ten pounds per centum per annum, during the period of delay occasioned by the neglect or refusal of the Engineer: Provided always that, in all cases in which a certificate shall, within the period or further period hereinbefore provided, as the case may be, have actually been delivered to the contractor, such certificate shall, for the purpose of the progress payment to be made thereunder, be conclusive; and in case of any dispute between the contractor and the Engineer as to the estimate therein made of value of work done, or plant or materials provided, as the case may be, of which dispute notice shall have been given by the contractor to the Minister for Public Works within fourteen days after the delivery of the certificate to the contractor, such dispute shall be referred to arbitration as hereinafter mentioned.

This section only applies to progress certificates and not to final ones, and therefore the power to appeal against a final certificate is unlimited except for the Act. The progress certificate is given merely for the purpose of enabling the contractor to get paid what is due to him under clause 25, and is only final for the purposes of the progress payment. It now suits my learned friend who appears for the Crown to say that final certificates have been given; but is that the case? There are letters to show that the final certificates have been refused by the Engineers under the contracts; for, on Messrs. Brogden applying to them for such final certificates, each one of them replied that he was instructed by the Government not to give the certificate asked for, on the ground that the Government asserted that the only person who could properly give it was the Engineer-in-Chief.

Hon. Dr. Pollen: Has any reference ever been made to an arbitrator as between the Government and a contractor?

Mr. Cave: Not between the Government and Messrs. Brogden.

Hon. Dr. Pollen: Could not the progress certificates be regarded as final?

Mr. Cave: I think not.

Hon. Dr. Pollen: But you have never challenged any of these progress certificates.

Mr. Cave: No, because they were accepted for the purpose of the progress payments. I come now to the Act itself. Notwithstanding the reiterated denial of Messrs. Brogden and Mr. Travers that they were not aware of the limitation clause of the Act, it has been contended that it was impossible for the Act to have been passed without their having had full knowledge of the whole of its contents. Yesterday I put in two letters which were written by Messrs. Brogden in London, and which I think go very far to substantiate the position which I took up at the commencement of the case, namely, that Mr. James Brogden and all the members of the firm, and even Mr. Henderson himself, were ignorant of the existence of the limitation clause until 1877. But then my learned friend says that it was not until after Mr. Reid wrote his memorandum in 1878 that the attack on the Act was confined to clause 31; but I may say that the whole sting of the Act is in clause 31. If it were not for that section the Act would be comparatively harmless to Messrs. Brogden. Section 28, if it stood alone, would merely deprive them of their right to sue in a Court of law, and they would still have the right to submit the matter in dispute to arbitration. But section 28 takes away their right to sue, and section 31 deprives them of the right to appeal to the arbitrators unless they do so within six months after the dispute has arisen. It is true that clause 4 was attacked in the correspondence, but why was it so attacked? It provides that, before the reference to the arbitrator, there shall be a reference to the Minister; and then, in case the decision of the Minister is adverse to the contractor, the latter can go to the Judge. The only reason why clause 4 was objected to was that it involved the necessity of incurring a double expense by requiring an appeal to both the Minister and the arbitrator.

Mr. Bell: That was not the objection raised in Mr. Barton's letter.

Mr. Cave: I am not referring to Mr. Barton's letter, and I have disclaimed all intention of indorsing anything that is said in that letter. I am referring to the letter written by Messrs. Brogden to the Secretary for the Colonies, in England, dated the 15th January, 1878. The reference to clause 4 in that letter reads thus:—

Clause 4 constitutes the Minister for Public Works a Court of first instance to hear and determine claims, an appeal lying from him to the Judge of the Supreme Court for the district in which the works are situated. Thus the contractors are put to the expense of a hearing at Wellington, and, in the event of the Minister, who is one of the parties to the suit, deciding in his own favour, of a second hearing in another part of the colony.

There is no doubt that if the Act had been passed as originally drawn Messrs. Brogden would not have had any ground of complaint. My friend admitted that he could not contend that the limitation of six months was a reasonable one, and it is quite clear, from the debates which took place in the House, that no particular attention was paid to clause 31. If Mr. Brogden's attention had been called to that section it is unreasonable to believe that either he or Mr. Travers would have remained quiescent, and taken no steps to have the clause expunged. It is further contended by my learned friend that it is clear, on the face of the correspondence, that the Government never intended to rely on the limitation clause or to take advantage of it. On that point I would ask the Committee to consider the memorandum of the Solicitor-General of the 20th January, 1877, immediately after the notices requiring the Government to consent to an arbitration under the terms of the contract had been delivered. Mr. Reid, in this memorandum, says,—

The notices themselves are, I think, irregular, and ought to have been given under the Government Contractors Act of 1872; and in this Act is a provision that the party desiring a reference shall take proceedings under the Act within six months after the dispute has arisen, unless with consent of the other party. This is not a provision which the Government would take advantage of, unless for good cause; but it may be useful to us should Messrs. Brogden desire to put the Government to inconvenience by bringing on all these claims at once in different parts of the colony.

I think these notices should be acknowledged, and Messrs. Brogden informed that there are several matters stated in their notices which cannot be settled in the absence of the Engineer-in-Chief, but that on his return a final reply will be sent.

The letter should state expressly that, in so acknowledging the notices, it is not intended to waive any irregularity in the terms or form thereof, nor to waive any right or privilege vested in or accorded to the Government or the Minister for Public Works under "The Government Contractors Arbitration Act, 1872." A suggestion might be added that in any future steps to be taken Messrs. Brogden's legal advisers should communicate directly with the Law Officers of the Government.

20th January, 1877.

The letter of the 26th January, 1877, was written immediately afterwards, and was as follows:—

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 26th January, 1877.

I am directed by the Hon. the Minister for Public Works to acknowledge the receipt of your four letters of the 21st December, severally giving notice of a dispute having arisen in respect of the contract entered into by Messrs. Brogden and Sons as regards the railways therein mentioned, the four railways being the Picton and Blenheim, the Napier and Pakipaki, the Waitara and New Plymouth, and the Invercargill and Mataura.

The Minister intended to have deferred acknowledging the receipt of your letters, as above, until he was in a position to have gone fully and finally into the matter in dispute; but, after giving them such consideration as he is able, the Minister instructs me to inform you that he finds some of the matters in dispute cannot finally be fully investigated during the absence of the Engineer-in-Chief. On that officer's return, now shortly expected, a definite reply shall, however, be sent to you. Meanwhile I am to state that it is not intended by this acknowledgment to waive any irregularity in the terms or form of the various notices you have given, nor to waive any right or privilege vested in or accorded to the Government or the Minister for Public Works under "The Government Contractors Arbitration Act, 1872."

I have, &c.,
JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. Brogden and Sons.

Now, I submit that this memorandum of the Solicitor-General not only proves the contention which I first submitted to the Committee, viz., that Messrs. Brogden were never definitely informed that the Government intended to waive this limitation clause, but it proves that they never intended to waive it. They say themselves that the clause may be useful to them. For what purpose? For defeating the very object of the Act, which was intended to provide for a speedy and summary settlement of the disputes. And then, besides the reservation in the memorandum itself, there are three subsequent special reservations—one in the letter of the 26th January, 1877, already referred to; another in Mr. Ormond's letter of the 19th March, 1877, which contains these clauses:—

On behalf of the Government I entirely disclaim any wish to embarrass you in taking proceedings under the Act of 1872; but that Act is now law, and I am advised that the request made by you to dispense with its provisions could not be entertained; and I am further advised that the admissions and consents you ask for are unreasonable, and such as the Government have no power to agree to. It must be recollected that the Government is not in the position of a private person. There is a duty to the public, whose affairs the Government are called upon to administer, which must be considered paramount.

To the course formerly proposed on your behalf and assented to on behalf of the Government by the Solicitor-General, I am prepared to adhere; but I cannot consent to such terms for conducting the references as would preclude the Government from having a thorough investigation of the matters alleged to be in dispute.

Again, in Mr. Reid's letter to Mr. Travers of the 4th June, 1877, he says,—

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.

It is true that a course of action had been proposed by Mr. Travers, and, in a sense, had been consented to by Mr. Reid; but there was nothing binding in that, nor was there anything to prevent the Government from setting up this clause. There was no absolute assurance given that they did not intend to set up clause 31, and Mr. Henderson was perfectly justified in thinking that there was something behind, and in asking the Government to give him a definite assurance that clause 31 would not be made use of. I attribute all the difficulties which have arisen to the reticence of the Government on the subject of the waiver. Mr. Henderson knew very well that if he had once consented to arbitration under the Act he would have been bound by it, and he was justified, if he felt a doubt, in resorting to his other remedy. Even now the legal advisers of the Government do not agree with regard to the construction to be put on clause 31. My friend has referred to the pleadings under the Waitara petition of right, and has endeavoured to adduce a very ingenious argument, namely, that Messrs. Brogden were the first parties to set up clause 31 of the Act. What was really the position? Why, simply that Messrs. Brogden claimed to sue for an amount of money alleged to be due to them upon a contract. The Government plead, You cannot sue, because the Arbitration Act takes away the jurisdiction of the Law courts, and provides a remedy by arbitration, which is an exclusive remedy. Messrs. Brogden's reply is to this effect: True, there is an Act which provides a concurrent remedy by arbitration under certain circumstances, but our right to sue in the Courts of law is not taken away; and, as regards the remedy by arbitration, that can only be adopted within six months after the particular dispute has arisen, and, as more than six months have already elapsed since the dispute in this case arose, it is now too late to resort to arbitration. It is not fair to say that Messrs. Brogden were the first to avail themselves of clause 31. The whole Act had been pleaded by the Government, and Messrs. Brogden were perfectly justified in replying that the operation of the Act was gone by virtue of the provision in clause 31.

The Chairman: But they did avail themselves of it.

Mr. Cave: It was pleaded in that sense. The right to sue in the Courts of law in the Waitara case was denied, and it was replied that it was too late to go under the Act because the six months within which proceedings should have been taken had elapsed. If the Solicitor-General had told Mr. Travers that the Government would waive the limitation clause of the Act on condition that Messrs. Brogden did not press on all their claims at once, I have no doubt the matter would have been settled amicably.

Sir J. Hall.] Do you maintain that, even if Mr. Barton's letter had not been written, the Government would still have insisted on setting up clause 31?—I am not in a position to say that. What I do say is that throughout the correspondence there is the repeated reservation of clause 31—a reservation of the rights which the Government have under the Act. It is an undoubted fact that the intention of the Government not to insist on this clause was never communicated to Mr. Henderson or to Mr. Travers.

The Committee then adjourned till next day.

FRIDAY, 28TH JULY, 1882.

Mr. Cave: I was occupied yesterday in endeavouring to point out to the Committee what appears to me to be clearly proved upon the face of the documents, viz, that the Government never stated their intention to waive clause 31 of the Act; that they not only had never, in fact, waived it, but that they never intended to do so, because they distinctly reserved to themselves the right to make use of it in certain contingencies. I do not think it is necessary to pursue that subject further, but I should like to refer for a moment to the evidence adduced by Mr. Bell, for the purpose of contradicting Mr. Williams's evidence on the question of the non-payment of the commissions, and I think I shall be able to show conclusively that Mr. Williams' statements were perfectly accurate, and that, so far as appears from any accounts which have been rendered to Messrs. Brogden, and so far as the accounts go up to the time the works were completed, no payment whatever had been actually made in respect of the commissions, except in the one case of the Napier and Pakipaki line, in which it was admitted that a sum of £449 14s. 7d. had been received. The works were completed by the latter part of 1875 or beginning of 1876 on nearly all of the lines. During the period of construction certain payments had been made on the Engineer's certificates in respect of the contract works and extra works. None of these payments included any sum on account of commission, and I challenge my learned friend to produce a single voucher by which he can show that a payment in any form has been appropriated towards the payment of these commissions. The various sums included in the vouchers are specially appropriated towards payment of sums certified by the Engineer as due in respect of works actually done by the contractors. I say Mr. Williams's statement on that point was perfectly accurate according to the accounts which have been rendered to Messrs. Brogden, and from copies of the vouchers in their possession. There is not a single voucher which can be pointed to and can be ear-marked (so to speak) as having been given in respect of a payment on account of this commission. All the payments up to the completion of the works were payments on account of the works themselves. After March, 1876, the only payment which was ever made to Messrs. Brogden was a payment which was found to be due on Mr. Maxwell's certificate in 1879. That was a small payment of £700 or £800, which Mr. Maxwell himself stated was made on account of the extra stations on the Taieri contract.

Mr. Bell: There is no evidence that Mr. Maxwell appropriated it to that.

Mr. Cave: Mr. Maxwell said that on going through the accounts he found that these stations had not been paid for. Why? Because Mr. Williams had in 1877 called Mr. Carruthers's attention to the fact that some stations on the Taieri line had not been paid for. My learned friend immediately asked Mr. Williams to specify which stations, and asked, "Will you say they were not paid for in Mr. Maxwell's certificate of February, 1879?" Now, therefore, I repeat that Mr. Williams was perfectly accurate in stating that there had not been a single payment on account of these commissions. It is true that, after the completion of the works, without any reference to the Messrs. Brogden, certain accounts were compiled which the gentlemen in the Public Works Department chose to call the Engineers' final certificates. The contents of these documents were never communicated to the Messrs. Brogden, and, so far as I know, they never saw the light of day till yesterday. Messrs. Brogden never had an opportunity of looking into a single item in these documents. My attention is called to the fact that in 1879 an account was sent in showing that certain stations and other accommodation on the Taieri line had not been paid for. So it was clear that Mr. Maxwell obtained his information on this point from documents in the office furnished by Messrs. Brogden. I was remarking that, subsequently to 1876, when the works were completed, and after payments on the progress certificates had been made in the Public Works Office, behind Messrs. Brogden's back, certain accounts are made up which the gentlemen there designate as the Engineers' final certificates. These documents are never produced to Messrs. Brogden. No details of them are furnished; and it is sought now to contend that these alleged final certificates (documents Messrs. Brogden had never seen) are final and conclusive between the parties. And then it is said, as Messrs. Brogden did not appeal against these documents, which in themselves contain the elements of the dispute (if there is a dispute between the parties), they are now too late to do so. My learned friend says that it is these documents from which an appeal lies,—these documents which never saw the light of day till yesterday. If so, if my friend's argument is right, then the six months within which the appeal is to be allowed ought only to commence from yesterday. But is it reasonable that Messrs. Brogden should be held bound by certificates made in this form? Taking the Invercargill contract as an instance, the last certificate of the Engineer, Mr. Brunton, made in January, 1876 (the last progress certificate), shows a balance due of £3,335 16s. 8d., or, deducting the £660 referred to by Mr. Williams as paid separately, a balance of £2,675 16s. 8d., exclusive of the allowance on the omissions, which, if added, would make the total due £3,045 8s. 9d. That certificate is not adopted by Mr. Blackett, but another is

issued on the 22nd February, 1876, and according to Mr. Blackett's certificate there is a balance due to the contractors of £2,640 15s. 6d., of which £1,153 10s. 5d. is thereupon paid, leaving a balance due to them of £1,487 5s. 1d. That sum has never been paid. Then subsequently this document to which I have been referring, and which is designated the final certificate, is made up, in which, by some manipulation of the figures, and by the omission of items already certified by the Engineer as proper extras, and for which payments on account had been actually made, it is made to appear that Messrs. Brogden have not only been paid the commission on the deductions, but have been overpaid the sum of £2,009 16s. 5d. Now I say such a certificate as that cannot possibly be supported, because no one had a right to interfere with the certificate of the Engineer on the works except the arbitrator appointed under the contract. The works had been certified to by the Engineer under the contract, and progress payments had actually been made on them, and no one had the right except the arbitrator to alter the certificates of the Engineer in charge, or to appropriate payments made on one account to the discharge of other items of the claim. Now what do we find as to the Waitara contract? On that claim a certificate is issued, signed by Mr. Carruthers, dated February, 1876, in which the additions to the contract are shown to be £5,299 0s. 1d., and the balance due to the contractors £3,426 15s. 2d. On account of that, £2,460 2s. 7d. is paid. The balance of £966 12s. 8d. has never been paid to this day. Further than that, in June of the same year comes a letter saying, You have been overpaid on this account, the amount of which you will be apprized of hereafter. The exact amount is not stated till twelve months afterwards. But in the Public Works Statement of 1876 we find that in the estimates attached various sums are asked for on account of Messrs. Brogdens and Sons, one of them being additions to Waitara contract £5,299 0s. 1d., the precise sum stated in Mr. Carruthers's certificate, so that the money has been actually voted but has never been paid.

Mr. Bell: Explain to the Committee how that certificate of Mr. Carruthers's was obtained.

Mr. Cave: It speaks for itself.

Mr. Bell: Do you offer any explanation of how it was obtained?

Mr. Cave: Here it is. It speaks for itself. Then subsequently one of these accounts which are designated in the Public Works Office final certificates was made up. In that certificate, by another manipulation of figures, it is made to appear that Messrs. Brogden have not only been paid the whole of the additions to the contract, the whole of the commissions on the deductions and the telegraph, but are brought in as debtors—it being alleged that they have been overpaid—to the amount of £2,572 18s. 8d. Then it is expected they should be bound by these certificates, the details of which are never furnished to them, and the items of which they are given no opportunity of discussing. I say, if these accounts which were put in yesterday are carefully gone into, and are compared with the progress certificates and vouchers previously given, it will be seen in every case that no payment was actually made on account of these commissions; but that only by a transposition of the figures and appropriations of moneys to items in the claims other than those for which such moneys were paid can it be shown that this commission in either instance has been paid. For these reasons, I say, it will be an act of the greatest injustice to Messrs. Brogden if they are not allowed an opportunity to investigate these alleged final certificates, which are the documents containing the elements of the dispute, and from which my learned friend has repeatedly said the appeal to the Judge is to take place. And are Messrs. Brogden to be debarred from appeal now? How could they appeal without having the details of these certificates before them? It is idle to say they ought to have commenced their appeal within six months when all particulars were denied them. Well, then, subsequently there is Mr. Maxwell's examination, and was ever an investigation performed in a more perfunctory manner? What knowledge had he of the actual works? So far as we know, he had not even the Engineer of the works before him, nor was there any reference to the Messrs. Brogden. He was furnished with what were alleged to be true copies of these so-called final certificates, and was asked to report on those documents. Even he in performing his perfunctory examination was able to discover some omissions; and then it has been urged upon the Committee that this investigation should not be granted, on the ground that the Government evidence is not now obtainable. One further remark I should make with reference to the Auckland contract. The Committee will of course note that the final certificate of the Engineer upon the Auckland contract has not been put in, and my learned friend has adduced no evidence whatever to prove that the sum for which I produced a copy of Mr. Stewart's certificate in that case has ever been paid. As regards the 10-per-cent. commission on the deductions, Mr. Maxwell yesterday stated that the deductions on that contract amounted to £29,779. I ask Mr. Bell to produce any voucher showing that the 10 per cent. on the deductions from that contract has been paid. He does not, in that case, put in even a so-called final certificate containing the item "Commission on deductions," as in the other cases; neither is there any certificate in the Waitara case. Now, as regards the dispersion of witnesses, I should like the Committee to consider who is in the worst position. The majority of the Government Engineers under the contracts are still in the Government employ; many of the Inspectors on the works are still in the Government employ. The only gentleman now in Messrs. Brogden's employ who was engaged on the works is Mr. Williams; Mr. Napier Bell is in New Zealand, and will probably be available, but with these two exceptions Messrs. Brogden would have to get their evidence from all parts of the colonies. Many of their witnesses are dead—Mr. Henderson, their principal witness is dead, their bookkeeper is dead, and their other witnesses are dispersed in all parts of the world. I assert positively that, where the Government, from the absence of evidence, may perhaps lose hundreds, Messrs. Brogden will inevitably lose thousands of pounds. As to Mr. Carruthers's evidence, what can be easier than to obtain that. Mr. Bell says no commission can be issued under the Government Contractors Act, but I venture to think some arrangement could be made, or if it is necessary to pass an Act of Parliament the Government can add a section to Messrs. Brogden's Bill now before the House empowering Mr. Carruthers's evidence to be taken on commission. One other point I should like to refer to. It has been asserted repeatedly throughout this inquiry that Messrs. Brogden have been treated with exceptional liberality. That is a story we have heard before. We heard it last year on the inquiry with reference to Messrs. Brogden's immigration contract. The argument was then adduced that Messrs. Brogden ought not to be allowed any compensation in respect of their losses under that

contract, because of the excessive liberality with which they had been treated in regard to their railway contracts. The Hon. Mr. Richardson was called before the Committee who sat on that inquiry, with the view of testifying as to the liberal manner in which Messrs. Brogden had been treated, but he would not go quite so far as was wished, and declined to say that in the settlement of the contract prices compensation had actually been allowed. He would only go as far as to say that the prices allowed to Messrs. Brogden were somewhat larger than would have been paid to other contractors in the colony; but he qualified that by saying that only the same prices were paid to Messrs. Brogden as would have been paid to Messrs. Brassey or any other large contractors from England if they had come out to New Zealand under the same circumstances with a large staff. But this excessive liberality towards Messrs. Brogden under these railway contracts was put forward last year as a reason why no compensation should be given them under their immigration contract, a contract by which it was proved they had lost over £40,000. Have they been treated with excessive liberality in these contracts? What has actually been done? Out of the Moeraki contract money, £27,000 honestly earned by them has been retained by the Government. £20,000 has been retained in payment of the Government claims under the immigration contract, and £7,000 has been allocated in the way mentioned in the letters of the 12th May, 1877, placed before the Committee. Where is the excessive liberality? I venture to think such liberality will not be found out of New Zealand.

Mr. Bell: The £20,000 was represented by promissory notes of Messrs. Brogden and Sons.

Mr. Cave: I do not deny that for a moment, but Messrs. Brogden, as I venture to think, proved that they had suffered a loss of over £40,000 on their immigration contract, and were asking for compensation in regard to it. I do not say they had any legal claim to it, but they asked for consideration by the Committee. If they had had any legal claim, they would not have been before the Committee. They were asking for compensation, and one ground put forward by the Government why they should not receive it was that they had been so excessively liberally treated in the prices allowed under their railway contracts. And then my learned friend sought to put an interpretation on the allowance for "contingencies," and asserted that the contingencies were allowed Messrs. Brogden for the purpose of covering certain omissions in the drawings and specifications which are referred to in clause 3 of the general conditions. But, assuming that to be so, it is a matter for the arbitrator to determine. If the allowance for contingencies was made on that account, Messrs. Brogden have given full value for their money, and it cannot be said they were very liberally treated in that respect. And then it was urged that five years have been wasted in fruitless litigation. I admit that statement, and assert that they have been wasted in fruitlessly fighting technicalities and legal objections. I venture to say that, during the whole five years, the merits of the claims have never been gone into, or even approached to the extent that they have been in the course of this inquiry. I am unwilling to occupy the time of the Committee longer, and would now finally submit to them that I have proved there are various items in the claims which have not been paid, and which are justly due to the contractors. But whether or not the Committee are satisfied on that point, I would submit that I have shown sufficient to justify further inquiry. The Committee have not to deal with the merits of the case, but, if the Committee are satisfied there is a doubt, I submit that Messrs. Brogden are entitled to the benefit of that doubt. I would strongly urge that I have proved conclusively that sums certified by the Engineers have not been paid. I would also submit that the fact of the retention of the Moeraki money and the surcharges on the Waitara and Invercargill contracts are quite sufficient to warrant the Committee in recommending further investigation into the claims. As I have already said, the Committee are not called upon to decide on the merits, but have only to consider the question whether or not Messrs. Brogden should be given an opportunity of bringing those merits before a Court. I submit that it would be only a simple act of justice on the part of the Committee to recommend an open inquiry into the case; at which inquiry both sides could be heard, the evidence properly taken and considered, and a fair and impartial decision on the merits would be arrived at. I have already pointed out that Messrs. Brogden are willing to make considerable sacrifices, and I venture to think that the colony too can afford some sacrifice with a view to securing a final settlement of these disputes. I am quite sure that every one who has the welfare of the colony at heart would rather see an investigation into these claims, even though it does cost the colony a few thousands of pounds, than that Messrs. Brogden should have the slightest foundation for asserting that, under cover of an unprecedented Act of Parliament (for in those terms the Act has been described by the Solicitor-General), the Courts of justice should be closed to them, or that they should be denied an inquiry into the merits of their claims. I now put in the letters asked for by my learned friend, the replies to which have already been put in. The first is dated the 10th February, from Mr. Henderson to Messrs. Brogden, in London, as follows:—

DEAR SIRS,— Wellington, New Zealand, 10th February, 1877.

Ourselves v. *the Government.*

As you are aware, immediately upon my return I commenced serving the Government with notices of submission to arbitration relative to our claims for extras, all being done under advice of Mr. Travers. After two months you will see the Government have notified us in an indirect manner that our notices were informal, not being in accordance with an Act passed on the 10th October, 1872, called "The Government Contractors Arbitration Act," of which I knew nothing. Mr. Travers then finds he has lost two months, and has to commence *de novo*. I have, &c.,

Messrs. John Brogden and Sons, London. JOHN HENDERSON.

GENTLEMEN,— 21, Queen Anne's Gate, Westminster, S.W., 5th April, 1877.

The only letters received by the Fr'isco mail, which arrived on the 27th ultimo, were one from Mr. Henderson, with enclosures, and one from Mr. Blamey, with the usual accounts. We are very much disappointed at the absence of other information, as we are not able to write you so fully by this mail as we should otherwise have done. We note in this letter the principal points that strike us with reference to the matters named in the enclosures sent by Mr. Henderson.

We have perused the general Contractors Act, 1872, and compared it with our contracts, and we find there is a marked difference between them. This seems to us to be a very serious matter, and to be really *ex post facto* legislation. We do not see it stated in the Act itself that we have given any consent to the new conditions it contains, nor do we know that our consent has been given in any other way, and we are therefore at a loss to understand how we can be bound by them. Mr. Tahourdin is not at his office to-day, so that we are unable to send you his opinion; but we must urge this question upon the very careful attention of yourselves and Mr. Travers, as we look upon the difference in the contracts and this Act as a very serious matter, especially as the Government do not waive any right or privilege which they allege is

vested in them by the Act. We shall write you further on the subject *viâ* Brindisi. We note that a proposal has been made to the Solicitor-General, but no copy of it is enclosed, so that we are quite unable to judge of its contents.

We have, &c.,

Messrs. John Brogden and Sons, Wellington, New Zealand. JOHN BROGDEN AND SONS.

EXTRACT from Letter to Messrs. J. BROGDEN and SONS, London, from Mr. J. BILLING, dated Wellington, 9th April, 1877.

Proceeding against Government.— . . . Upon Mr. Henderson's return from Australia, in December last, he saw Travers respecting the course of procedure to be observed in sending in our claims, and Mr. Travers naturally took the arbitration clause of general conditions of our several contracts, being quite unaware at the time of the existence of the Government Contractors' Arbitration Act of 1872 until his attention was called to it by the Solicitor-General in February last.

The Government.—The Premier has apparently urged his colleagues to force us to go under the Act of 1872. Their letters show no concession—no compromise—but a rigid interpretation of every clause in that Act. On our part, we cannot accept the Act, for the reasons shown in our letter to Government of the 8th ultimo. We are doing all we can to get redress or fairplay, but there is a desire to fence on their part: to keep us here dilly-dallying until Parliament meets. The stakes are too heavy to be trifled with, and I can assure you we are both perplexed as to what our course of action should be. Our letters to them have been couched in such terms as we thought would meet with your approval, and our recent course of action is in many respects similar to that taken by you in respect to Emigration Contract. . . .

DEAR SIRS,— 21, Queen Ann's Gate, Westminster, S.W., 8th June, 1877.

From our previous letters, and those of Messrs. Tahourdin and Hargreaves, you will now thoroughly understand that the Government Contractors Arbitration Act does not bar the recovery of our claims under the general law and by the ordinary methods of procedure. It is merely an Act for regulating the method of proceeding, if arbitration takes place, and its limitations merely apply to proceedings under that Act, should any be taken. As you have now refused arbitration under the Act you will have to proceed under the ordinary laws, and will ignore the Act. This we think is made quite clear in the previous correspondence. At the same time we think you ought to lose no opportunity of enforcing upon the attention of the Government the injustice of withholding payments, and especially of retentions which are not made because certificates are withheld by their Engineers acting under their instructions. If an amicable settlement can be obtained, we are sure that we need not impress upon you its desirability, so as to avoid the great delays and expense of litigation. If the latter cannot be avoided, of course it will be conducted with a view to the proceedings being prosecuted here, should the decision be against us in the colony, and from this point of view alone you will see the necessity of keeping us fully informed of your proceedings in the colony.

We have, &c.,

Messrs. John Brogden and Sons, Wellington, New Zealand. JOHN BROGDEN AND SONS.

Hon. Mr. Johnston: You have spoken from time to time of the dates of completion of the contracts. Did you receive certificates from the Engineer when the works were finally completed?

Mr. Cave: No; we have never received final certificates. We applied to the Engineers on the works for those certificates, but they were refused by the Engineers acting under orders from the Government. The letter of the 9th February, 1877, by Mr. Knowles, Under-Secretary for Public Works, refers to that:—

GENTLEMEN,— Public Works Office, Wellington, 9th February, 1877.

It having come to the knowledge of the Government that several of their Railway Engineers have recently been applied to by you for certificates in terms of clause 25 of the general conditions of your railway contracts, I am directed by the Hon. the Minister for Public Works to inform you that the Engineer-in-Chief is the Engineer under that clause, and that application should be made to him.

I have, &c.,

JOHN KNOWLES,

Messrs. Brogden and Sons, Wellington. Under-Secretary for Public Works.

As to who was the proper Engineer to certify, Messrs. Brogden always contended that it was the Engineer engaged on the works. Only one Engineer is referred to throughout the whole of the contracts, and that is the Engineer in charge of the works.

Hon. Mr. Johnston: That would mean the Engineer-in-Chief.

Mr. Cave: No; Messrs. Brogden always assumed that the Engineer-in-Chief was not the proper person, and that his certificate would be valueless for their purposes.

Hon. Mr. Johnston: Apparently the contracts were completed in 1875 and 1876. A difference having arisen in this way in 1876, you desired to proceed to a reference, and to obtain some assurance in doing so from the Government that they would not plead the limitation-of-time clause.

Mr. Cave: Yes; but we could never get that assurance.

Hon. Mr. Johnston; Having reasonable ground to believe that the Government would not plead it, apparently in 1877 you were going to proceed to this reference. Then I understand you to say that Messrs. Brogden changed their minds, because, on further consideration, they recognized that to proceed would acknowledge the validity of that Act, which they did not wish to do.

Mr. Cave: If they had once accepted the Act they would have been bound by it, at all events so far as concerned that contract; but as six months had expired, and as the Government were in a position to plead the limitation clause, Messrs. Brogden did not feel themselves safe in going on unless they obtained an explicit assurance that the clause would not be pleaded. Therefore they were forced to seek relief by another remedy.

Hon. Mr. Johnston: But it always comes back to this: that the refusal to proceed to the reference was entirely a voluntary act on the part of Messrs. Brogden.

Mr. Cave: Not entirely, because I submit, from the view they took of the matter, they knew very well they were barred by the limitation clause, unless they could obtain a waiver from the Government. That was their object in trying to get the waiver, because they knew the effect of clause 31. They knew they could be stopped under the Act.

Hon. Mr. Johnston: But it was quite a different thing to seek to obtain a general waiver of the Act, and to acquire the knowledge that this clause would not be pleaded.

Mr. Cave: I submit it is scarcely that. Mr. Reid's letter does not amount to that. Mr. Travers, in his letter of the 31st January, 1877, to Mr. Reid, says, "Assuming that the Government will treat the existing notices as a sufficient compliance with the Act, Messrs. Brogden will at once file in the Court here their claim in respect of the Napier and Pakipaki line, with the propositions of law and fact in support of it. The Government will then file any counter-propositions." But there is nothing there stating that the Government will not set up the Act, and there is nothing in Mr. Reid's letter which binds the Government not to set up the Act. In fact, it is shown by the memorandum of the 27th January, 1877, that the Government did not intend to waive it, but intended to keep it as a sort

of rod over the Messrs. Brogden if the Government could not get the proceedings conducted in the way they wished.

Hon. Mr. Johnston: Why did not Messrs. Brogden go on as they began?

Mr. Cave: Supposing they had begun proceedings, and the Solicitor-General had pleaded clause 31.

Hon. Mr. Johnston: They could then have come here in 1877, instead of coming here in 1882.

Mr. Cave: If it could have been foreseen that the Judges would have held that the Act ousted the jurisdiction of the Supreme Court, of course it would have been much better to come here then than now.

Mr. Montgomery: What about the last clause of Mr. Ormond's letter?

Mr. Cave: That carries the thing no further. It reads thus: "To the course formerly proposed on your behalf, and assented to on behalf of the Government by the Solicitor-General, I am prepared to adhere; but I cannot consent to such terms for conducting the references as would preclude the Government from having a thorough investigation of the matters alleged to be in dispute." That letter is written in reply to one explicitly asking for a waiver of clause 31.

Mr. Montgomery: No, I think not.

Mr. Cave: At all events there is nothing to my mind throughout the whole correspondence except that letter to Mr. Travers in reply that can in any way be said to show an intention on the part of the Government to allow the arbitration to proceed.

Mr. Bell: May I suggest an answer to what my friend has said, that, before any question arose between Messrs. Brogden and the Government as to who was the proper person to give a final certificate, four notices to arbitrate were given, so the elements of the dispute were not considered by Messrs. Brogden in 1876 as a necessary preliminary to arbitration.

Mr. Cave: There were certain matters in dispute then, but by the alleged final certificates the elements of the dispute were entirely changed at once.

The Chairman: By the letter of the 8th June from Messrs. Brogden, in London, to Mr. Brogden, here, I see they appear to consider that the Act does not interfere with them.

Mr. Cave: They were so advised by counsel in London—that the Act did not interfere with their ordinary rights. They were advised all through that they had two remedies—the ordinary remedy of the Courts of law, and the remedy the Act gave them, provided it was taken advantage of within six months. Unfortunately, by the oversight of everybody, the limitation in the Act was not discovered until after the six months had gone by with respect to most of the contracts. Of course, when one petition of right was filed, it was always assumed that that would decide the question of jurisdiction on all the contracts, which it practically did.

Hon. Dr. Pollen: Do you contend that these sums which you assert to be due and unpaid on the Engineer's certificates have not been carried to the general account?

Mr. Cave: I have never investigated the general account; but I should say from the figures it is absolutely impossible, because certain amounts were paid on progress certificates, and no further payments whatever have been made on two contracts. On the contrary, Messrs. Brogden were surcharged with £4,000 odd, so that there is positive evidence that some of the items of work previously paid for on progress certificates were not included in the final certificates.

Hon. Dr. Pollen: I understand you to take up your position very strongly on the legal ground that progress payments in excess on some contracts cannot be considered in respect to the others. Is it in that view that you say it is clear these amounts have not been paid even if they have been carried into the general account?

Mr. Cave: I still contend they have not been, because no further payments whatever have been made.

Hon. Mr. Oliver: But do you contend that overpayment on one contract cannot be set off by the Government as to underpayment on another.

Mr. Cave: Except there is a special contract, that is clearly the law.

The Chairman: Then, in the event of a final settlement of accounts, the Goverment would have to proceed against you for overpayments?

Mr. Cave: The Government could bring their action, and when they got judgment they would be entitled, on a proper order, for an attachment perhaps. But at all events such an action would have afforded opportunity for an investigation.

The Chairman: Your contention is, I believe, that, if there were some other account between the parties, the state of the accounts generally between the parties would not justify the Government in deducting overcharges.

Mr. Cave: Certainly, that is the law.

Mr. Bell: It has been so decided.

Mr. Cave: If Government brought an action to recover overpayments that would have afforded an opportunity for investigation of the question generally.

Mr. Bell: The Government would certainly have taken that point to the Privy Council had they not succeeded on another point. In the immigration contract there was an agreement that moneys might be deducted, and therefore we succeeded. If we had not we should certainly have taken it to the Privy Council.

The Chairman: You mean the law as to the New Zealand Courts.

Mr. Bell: Yes.

Mr. Cave: At Home there is a special Act giving a right of set-off, which does not exist in New Zealand.

Hon. Mr. Miller: On what point has that been tested here?

Mr. Cave: The Government have deducted £20,000 on the Moeraki contract. The Court decided they were entitled to deduct that; but I say they were not entitled to deduct the further £7,000. Certainly not.

Hon. Mr. Miller: At the time the dispute as to this contract took place was it then the correspondence was going on with regard to a meeting between Mr. Carruthers and Mr. Henderson?

Mr. Cave: I think it was after.

Hon. Mr. Miller: I cannot understand why there was no distinct answer to the letter of the 14th February, 1877, from the Solicitor-General to Mr. Travers.

The SOLICITOR-GENERAL to Mr. TRAVERS.

Crown Law Office, Wellington, 14th February, 1877.

SIR,— *The Government and the Messrs. Brogden.*

I have the honor to acknowledge receipt of your letter of the 31st ultimo respecting the submission to arbitration of Messrs. Brogden's claims against the Government, and, in reply, to inform you that the Government are prepared to adopt the course indicated in the letter above referred to. I think it will be more convenient that Mr. Henderson should meet the Engineer-in-Chief and settle the items in dispute before the claim is filed, and these gentlemen can arrange accordingly.

I have, &c.,

W. T. L. Travers, Esq., Solicitor, Wellington. W. S. REID.

Now it appears to me that throughout Messrs. Brogden have evaded any compliance with the request of the Government.

Mr. Cave: Here is the letter of the 15th May, 1877, from Mr. Travers to the Solicitor-General:—

Mr. TRAVERS to the SOLICITOR-GENERAL.

SIR,— *Re Brogden.* Wellington, 15th May, 1877.

I have been requested to address you again with reference to the contemplated proceedings under the provisions of "The Government Contractors Arbitration Act, 1872."

The Messrs. Brogden are desirous that the Government should waive any proceedings under the 4th section, allowing all matters in dispute to go direct to the Judge in the first instance.

They are further desirous that the Government should concur with them in preventing the applications of sections 12 and 13 to the proceedings to be referred. I have pointed out that this could only be done effectively by alteration of the law, but that in all probability the Judge would consent not to use the powers given by those sections if both parties concurred in requesting him to abstain from doing so.

They are further desirous that the Judge should be empowered, at the request of either parties, to submit any question of law for the decision of the Supreme Court, if his decision should be unsatisfactory. I have pointed out that this is not provided by the Act, but I apprehend that by consent such a power might be given to the Judge independent of the Act, and that such a power would probably be satisfactory to the Judge himself.

Some doubt exists in the mind of their agent here whether, in our former correspondence, you consented to waive any question of time under section 31. I have informed them that I understood you to have agreed on the part of the Government to do so, but it would be satisfactory to my clients if you would, assuming I rightly understood you, repeat that assurance.

With respect to the first three points above referred to, I have the honor to request that you will inform me, at your early convenience, whether the Government will consent to all questions going direct to the Judge instead of first passing through the stage mentioned in section 4; whether the Government will concur in an arrangement, pending legislative alterations, to avoid the Judges acting under the powers given by sections 12 and 13; and whether the Government will consent to give the Judge power, at the request of either party, to refer any matter of law for the consideration of the Supreme Court.

I have, &c.,

The Solicitor-General, Wellington. WM. THOS. LOCKE TRAVERS.

Now, it is clear that Mr. Henderson had doubts as to whether the Government would waive or not; and it was, no doubt, in consequence of that uncertainty that the arbitration did not go on.

Mr. Bell: Mr. Reid's answer says,—

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 proper, on the 8th March last, to address a letter to the Minister, couched in language which almost rendered further correspondence impossible, and certainly was not calculated to facilitate proceedings.

Mr. Cave: Unfortunately he goes on to make a special reservation. He says, "I think it better at present not to make any promise either with respect to sections 4 or 31, and content myself with repeating the assurance contained in my reply to your letter of the 31st January." It must be borne in mind that Mr. Henderson was not a principal in these negotiations, but that the principals were many thousands of miles away; and he probably felt that, by allowing the arbitration to go on without some provision which he considered necessary, he might place the Messrs. Brogden in a very considerable difficulty. Very probably if one of the Messrs. Brogden had been here at that time the whole difficulty would have been removed.

Hon. Mr. Oliver: When the Government seem to have agreed to the proposals of Mr. Travers, Messrs. Brogden seem to have become dissatisfied with Mr. Travers.

Mr. Cave: Not exactly Messrs. Brogden, but Mr. Henderson. I must again ask you to consider that Mr. Henderson was only an agent, and of course he was bound to act with very much greater caution, and be thoroughly satisfied on every point he thought doubtful, before he committed his principals to any particular line of action. It really was a most important matter, on which an agent could scarcely be expected to decide or take any responsibility.

Hon. Mr. Oliver: Are we to understand that when Mr. Travers sent that letter containing proposals, which were immediately adopted by the Government, he was acting as the trusted legal adviser of Messrs. Brogden?

Mr. Cave: He was then so acting; but immediately afterwards Mr. Barton was consulted by Mr. Henderson without the knowledge of his principals at home. Mr. Barton, probably through having had fewer dealings with the Government than Mr. Travers, had not the same confidence in them as Mr. Travers had. That is the only way in which I can explain it; but no doubt (as I have already said), if one of the Messrs. Brogden had been here at the time, the whole thing would have been settled, and this inquiry might have been held then instead of now. But still I would strongly urge that if there was any ground for granting an investigation in 1877, still more ground exists now, and it would be nothing more than an act of justice to grant such an investigation. Messrs. Brogden have never had an opportunity of testing the merits of their claims—no opportunity on which both sides could be heard.

Hon. Mr. Johnston: In 1877 you decide not to proceed to a reference, because you believed the Act of 1872 not to be in operation, or for some other reason of your own you elected to take another course. Now you bring your chosen position before the Committee, and say you are under a grievance.

Mr. Cave: If the Act had been more precise, if it had been less vague in its terms, no question would have arisen, but any one reading the Act carefully must see that it is full of inconsistencies. It does not enact in precise terms what it purports to do, and arguments might be raised as to the construction of almost every clause. There can be no doubt about that. If in precise terms it had enacted that no action should be brought, or that the jurisdiction of the ordinary Courts should be ousted, of course there would have been no ground for the construction which Messrs. Brogden's legal advisers in London put on it.

Mr. Montgomery: In the letter of the Solicitor-General to Mr. Travers (14th February, 1877) the conference you suggested is agreed to.

Mr. Cave: There were numbers of letters between Mr. Reid and Mr. Travers. Even after that—even after the petition of right was granted—we wanted a conference.

Mr. Montgomery: Between the 14th February and the 8th March, the date of Mr. Barton's letter, were there any letters between Mr. Travers and Mr. Reid?

Mr. Cave: I have no doubt there were.

Mr. Montgomery: After you received the letter of the 14th February, explicitly agreeing to a conference, if you were dissatisfied with that, why did you not ask for a more explicit arrangement? Was there any correspondence between the letter of the 14th February, when the Government offered to waive the clause, and Mr. Barton's letter of the 8th March, when arbitration was absolutely refused by your side?

Mr. Cave: I cannot see any correspondence to show it. There was no letter from the Government between those dates.

Mr. Bell: There were some communications before the 14th February, which showed that Mr. Barton had been consulted before that date.

Mr. Montgomery: On the 14th February the offer was apparently made by the Government to waive.

Mr. Cave: Mr. Reid's letter of that date merely says, "I have . . . to inform you that the Government are prepared to adopt the course indicated in the letter above referred to." That, as I have already said, did not bind the Solicitor-General not to set up clause 31.

Mr. Montgomery: It was an offer of some kind.

Mr. Cave: It was an offer which, if Messrs. Brogden had accepted, and had been met by clause 31, they could not afterwards have retreated from and brought their action. I think there was an endeavour on our side to carry the arbitration out, because, if it was not the desire of Messrs. Brogden to do so, Mr. Travers's letter of the 15th May, 1877, to Mr. Reid would not have been written. That is merely asking for a definite assurance on the part of Mr. Reid that the clause would not be insisted on. The hope of being able to go to arbitration was not abandoned till long after the letteer of the 8th March.

Mr. Bell: In the letter of the 31st January, 1877, part of the suggestion is that Messrs. Brogden should file their proposition, and that the Government should file theirs, and that issues should be drawn to raise the questions involved in the dispute. Mr. Reid says he agreed to that; and how would that be if Government intended to set up the 31st clause?

Hon. Mr. Oliver: Mr. Ormond's letter shows that is not the spirit in which it was written.

Mr. Cave: If Messrs. Brogden had had a definite assurance that the clause was going to be waived, even upon terms, such as that they should only proceed with one claim at once, there would have been a probability that arbitration would have been proceeded with, but, as Mr. Henderson saw a doubt about the matter, he did not feel justified in going on.

Mr. Montgomery: This arrangement between Mr. Travers and Mr. Reid seems to have been abruptly stopped by the change of solicitors. If there is any doubt in the minds of the Committee on that point, would it not be better to remove it?

Mr. Cave: I do not think that was the reason. Mr. Travers did not cease acting when Mr. Barton was consulted. Mr. Henderson consulted Mr. Barton without reference to his principals. It was not until long after that Messrs. Brogden became acquainted with the fact. Mr. Travers was still their solicitors in May, and was still acting in connection with the claims.

Hon. Dr. Pollen: Would it not be quite true that the very fact of granting a reference was in itself a waiver of the 31st clause, inasmuch as the moment the case came before the Judge as arbitrator the 31st clause was inoperative?

Mr. Cave: That was not the view which Mr. Justice Gillies took of it in Auckland last March. He said, "The very first question I have to consider is—have I jurisdiction? I must ascertain if the disputes have arisen within six months." He was sitting as an arbitrator, and he said, "I cannot act as arbitrator, unless the Government consent, until I satisfy myself that the disputes have arisen within six months."

Hon. Dr. Pollen: I am speaking entirely apart from that. The very act of the Government proposing to allow the case to go to arbitration was an actual positive waiver.

Mr. Cave: It would not have been if they had afterwards chosen to plead clause 71.

Hon. Dr. Pollen: When they got the case before the Judge they could not plead it then, unless we assume an amount of rascality on the part of the officers concerned which is barely credible.

Mr. Cave: Of course, if they did not raise it in their points of defence, they could not raise it afterwards. But the mere fact of the arbitration being instituted would not have debarred them from raising it.

Hon. Dr. Pollen: No Government or private individual, I believe, would behave like that in any possible circumstances.

Hon. Mr. Miller: I think there is continual proof of the spirit in which the Government indicated its desire to act. This letter of the 4th June, 1877, is a very forcible instance.

Mr. Cave: Well, I put it to the Committee, should Messrs. Brogden suffer for all time in consequence of one mistake on their part?

Hon. Mr. Miller: Well, if they make this proposal on their part, it is difficult to understand how you can plead that the Government were the cause of the delay.

Mr. Cave: I do not think Messrs. Brogden do that. They are here not because they have any legal grounds, but they are asking for a concession.

Hon. Mr. Oliver: It seems to me that, in endeavouring to put the construction which you put on Mr. Reid's letter of the 14th February, 1877, in which he consented to adopt Mr. Travers's proposals, you are greatly undervaluing Mr. Travers's letter. That letter did evidently contain proposals meeting the case, in his opinion. He was the trusted legal adviser of Messrs. Brogden. He made certain proposals which he must, as their solicitor, have thought covered the whole ground necessary to them. He immediately receives a reply consenting absolutely to his proposals. How can you get over that?

Mr. Cave: I can only say that unfortunately Mr. Henderson was not quite satisfied.

Hon. Mr. Oliver: And the result was a change in the mode of procedure.

Mr. Cave: Mr. Henderson had some doubts as to the course of procedure. He had some doubts as to whether Mr. Travers had got such an assurance that the clause would be waived as Mr. Travers himself thought he had. Men's minds, of course, are differently constituted, and what was enough to satisfy Mr. Travers did not satisfy Mr. Henderson.

MEMORANDUM.

The Parliamentary and other printed papers referred to, but not included, in this Appendix have since been reprinted, and are set out in full further on (Appendix G).

Other papers which were produced before the Committee, and not printed in this Appendix, appear in Appendices H and I.

APPENDIX A.

PAPERS AND CORRESPONDENCE RELATIVE TO MESSRS. BROGDEN'S CLAIMS.

PRELIMINARY CORRESPONDENCE.

See Appendices to Journals, 1871: D.–6, pp. 3 to 7 inclusive; A.–6, pp. 6 to 8 inclusive; A.–6A, pp. 1 and 2.

PRELIMINARY CONTRACTS.

See Appendices to Journals, 1871, A.–6, pp. 22 to 48 inclusive.

MOTION MADE BY THE HON. MR. VOGEL.

"That this Committee, having before it the contracts entered into with Messrs. Brogden and Sons, either one of which, or both, the Governor by the terms of the agreement is empowered to ratify, recommends that No. 1 be not accepted." 24th Oct., 1871. *Hansard*, vol. xi., p. 500.

Amendment moved by Mr. Reynolds, and accepted by the Government.

"And further recommends that the Government negotiate with the Messrs. Brogden for the modification and extension of No. 2 Contract, or the substitution of one in its place, as nearly as possible to the following effect: That Messrs. Brogden and Sons construct such railways authorized or to be authorized by the Assembly, as it may be agreed shall be offered to them, to the amount of £1,000,000, at prices to be agreed between them and the Government, such prices being within the limits fixed by the Legislature. Messrs. Brogden and Sons to state the price at which they are willing to construct each railway, and the Government to be at liberty to refuse or accept the offer. Payment to be made in debentures bearing 5¼ per cent. interest, or in cash, at the option of the Government. In the event of the Government and Messrs. Brogden and Sons not being able to agree as to the construction of railways under these provisoes, the Government or Messrs. Brogden and Sons, on notice to that effect being given by either party, to be bound to carry out No. 2 Contract." 24th Oct., 1871. *Hansard*, vol. xi., p. 564.

SUBSEQUENT CONTRACTS PRELIMINARY TO RAILWAY CONTRACTS.

See Appendices to Journals, 1872, D.–1., pp. 14 to 19 inclusive.

FURTHER CORRESPONDENCE PRELIMINARY TO RAILWAY CONTRACTS.

See Appendices to Journals, 1872, D.–1., p. 20.

THE SIX RAILWAY CONTRACTS ENTERED INTO 10TH AUGUST, 1872.

See Appendices to Journals, 1872, D.–19.

THE RAILWAY MATERIAL CONTRACT.

See Appendices to Journals, 1872, D.–19A.

FURTHER CORRESPONDENCE PRELIMINARY TO RAILWAY CONTRACTS.

See Appendices to Journals, 1872, D.–19C.

"THE GOVERNMENT CONTRACTORS ARBITRATION ACT, 1872."

See Statutes of 1872, No. XVII.

THE THREE RAILWAY CONTRACTS ENTERED INTO 19TH JULY, 1873.

See Appendices to Journals, 1873, E.–9.

CORRESPONDENCE PRIOR TO THE PRESENTATION OF THE CLAIMS OF 1876.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 31st January, 1876.

We have the honor to acknowledge the receipt of your letter of the 26th instant with reference to ours of the 26th November, 21st December, and 26th instant, in regard to the continued delay in the payment of moneys due to us on contracts, dating from October last, and amounting at present to over *thirty thousand pounds.*

It is hardly necessary for us to again repeat that the non-payment of this large sum is causing us great inconvenience and loss.

We are very anxious to come to a final settlement upon all the finished lines; but, if the Government are not prepared to meet us, we think we have fair grounds for asking you to sanction an interim payment in fair proportion to the amount involved. At present we are obliged to keep on our agents until the final settlement of our finished lines.

We have, &c.,
John Brogden and Sons,
(*per* John Henderson.)

The Hon. the Minister for Public Works.

The Under-Secretary for Public Works to Messrs Brogden and Sons.

Gentlemen,— Public Works Office, Wellington, 7th February, 1876.

I am directed by the Hon. the Minister for Public Works to acknowledge the receipt of your letter of the 31st January relative to the payment of moneys alleged to be due to your firm on account of the railway contracts, and, in reply, to inform you that they are passing through in reference to the Auckland, Waitara, and Picton lines, but that the settlement of the amount due on the Clutha line is delayed owing to there being no one on the spot to represent your interest, and that of the Invercargill line awaits the measurement of the slips.

I have, &c.,
John Knowles,
Under-Secretary for Public Works.

Messrs. J. Brogden and Sons.

Messrs. Travers and Ollivier to the Hon. the Minister for Public Works.

Sir,— Wellington, 20th April, 1876.

We are instructed by the Messrs Brogden to point out the very great inconvenience to which they are put by the refusal of the Government to pay over to them the moneys from time to time becoming due and payable to them under their contracts for railway construction, and to state that the Government, by adopting this course, are virtually disabling the contractors from carrying on the works by keeping them without the funds necessary for the purpose. The contractors are unwilling to take any extreme course in the matter, but will be compelled to do so if the Government should confirm their refusal to make the necessary payments in due time.

We have, &c.,
Travers and Ollivier.

The Hon. the Minister for Public Works, Wellington.

The Under-Secretary for Public Works to Messrs. Travers and Ollivier.

Gentlemen,— Public Works Office, Wellington, 20th April, 1876.

I am directed by the Hon. the Minister for Public Works to acknowledge the receipt of your letter of this day's date, in which you refer to the refusal of the Government to pay moneys to Messrs. J. Brogden and Sons, due from time to time on their contracts, and, in reply, to inform you that Mr. Richardson is not aware that any such sums are so held back; and the Minister will be obliged if you will inform him what are the amounts to which you refer.

I have, &c.,
C. T. Benzoni,
(in absence of Under-Secretary for Public Works.)

Messrs. Travers and Ollivier, Wellington.

Messrs. Travers and Ollivier to the Hon. the Minister for Public Works.

Sir,— Wellington, 2nd May, 1876.

We have the honor, in reply to your letter of the 20th ultimo, to inform you that the amounts due to our clients, Messrs. John Brogden and Sons, are as follow:—

	£	s.	d.
Auckland	2,000	0	0
Moeraki	12,293	6	8
Waitara	966	12	8
Invercargill	1,487	5	1
Dunedin	1,571	14	10
Dunedin	1,210	1	0
	£19,529	0	3

We mention these as specific sums actually due to our clients, but we understand that they do not comprise the whole amount owing to them in respect of these contracts.

We have, &c.,

The Hon. the Minister for Public Works, Wellington. TRAVERS AND OLLIVIER.

The Hon. the MINISTER for PUBLIC WORKS to Messrs. TRAVERS and OLLIVIER.

GENTLEMEN,— Public Works Office, Wellington, 3rd May, 1876.

I have the honor to acknowledge the receipt of your letter of yesterday's date, in which you give a schedule of accounts, amounting to £19,529 0s. 3d., stated by you to be due to Messrs. John Brogden and Sons; and in reply I have to state that the item £12,293 6s. 8d. is, as you are aware, retained in accordance with the terms of the Moeraki Contract. The accounts at present in our possession do not show any such sums as you represent to be due to Messrs. Brogden to be owing to them.

I have, &c.,

Messrs. Travers and Ollivier, Wellington. EDWARD RICHARDSON.

MESSRS. BROGDEN'S CLAIMS OF 1876.

(Printed for use of the Government Law Officers.)

CORRESPONDENCE SINCE THE PRESENTATION OF THE CLAIMS OF 1876, AND PRIOR TO THE VISIT OF A. BROGDEN, ESQ, M.P., TO THE COLONY.

The ENGINEER-IN-CHIEF to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 23rd May, 1876.

Your letter of the 10th instant, enclosing accounts for the following contracts, viz.,—

Waitara and New Plymouth Railway,
Picton and Blenheim and Kingston Station Accommodation,
Invercargill and Mataura,
Invercargill and Mataura, Station Accommodation,
Picton and Blenheim,
Picton and Blenheim, Rolling-stock,
Waipawa,
Napier–Pakipaki,

has been received. They differ materially from other accounts sent in before, and it would be useless my devoting time to examine them minutely, unless they are the final accounts. Would you therefore please inform me whether the accounts now sent in are to be the last, or whether there are any further claims which you intend hereafter to make on account of these contracts.

I have, &c.,

JOHN CARRUTHERS,

Messrs. Brogden and Sons, Wellington. Engineer-in-Chief.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 25th May, 1876.

In reply to your letter of the 23rd instant, we have the honor to inform you that the accounts therein mentioned showed moneys actually due to us as specified, up to a certain date. It is impossible for us to render final accounts whilst there is so much delay on the part of the Government in settling those already rendered.

If, however, the Government are prepared to settle the amounts due on those accounts within fourteen days from this date, we are willing to forego any further claims in connection with the lines therein mentioned.

We have, &c.,

JOHN BROGDEN AND SONS,

The Hon. the Minister for Public Works. (*per* J. BILLING.)

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 19th June, 1876.

I am directed by the Hon. the Minister for Public Works to inform you that the Engineer-in-Chief, having carefully gone into the accounts submitted by you in reference to certain of your railway contracts, finds—

1. That on the Waipawa, Picton and Blenheim, Picton and Blenheim 10 per cent., and Winton and Kingston 10 per cent. Contracts, the full amounts due to you thereon have been paid.
2. That there are due to you on the Napier Contract a sum of £95 13s., and on the Invercargill 10 per cent. account a sum of £30 10s. 6d.
3. That on the Waitara, Waitara 10 per cent., and Invercargill Contracts you have been overpaid; of the exact amounts of each of which you will hereafter be informed.

I have, &c.,

JOHN KNOWLES,

Messrs. J. Brogden and Sons, Wellington. Under-Secretary for Public Works.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Waitara–New Plymouth Railway.

Sir,— Wellington, 21st December, 1876.

We have the honor hereby to give you notice that a dispute has arisen between us and the Government with reference to the Waitara and New Plymouth Railway Contract, in respect of the following matters:—

1. We claim for contract sum £41,000. The Government claim to deduct therefrom moneys for alleged reductions in the work, the right to do which we dispute.

2. We claim for additions to contract, as per details already rendered, including station accommodation and interest charges, the sum of £13,178 9s. 10d.

We also claim a further additional sum of £135 14s. 7d., including interest charges to the 30th April, 1876, for repairs of rolling-stock, during construction, as per clause 17 of specification; making a total of additions to contract of £13,314 4s. 5d.

We also claim further interest charges until date of payment. The Government dispute our claim to part of the above.

We therefore give you notice that we require that the matters so in dispute be referred to arbitration after the expiration of one month from the service of this notice, as provided by the 27th clause of the General Conditions of our contract.

We have, &c.,
John Brogden and Sons,
(*per* John Henderson.)

The Hon. the Minister for Public Works.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Invercargill and Mataura Railway.

Sir,— Wellington, 21st December, 1876.

We have the honor hereby to give you notice that a dispute has arisen between us and the Government with reference to the Invercargill and Mataura Railway Contract, in respect of the following matters:—

1. We claim for contract sum £88,832. The Government claim to deduct therefrom moneys for alleged reductions in the work, the right to do which we dispute.

2. We claim for additions to contract, as per details already rendered, including station accommodation, percentage on cost of telegraph line, and interest charges, the sum of £44,740 18s. 11d.

We also claim a further additional sum of £1,019 4s. 6d., including interest charges to the 30th April, 1876, for repairs of rolling-stock during construction, as per clause 19 of specification.

We also claim a further additional sum of £340 6s. 10d., including interest charges to the 30th April, 1876, for maintenance of extras, making a total of additions to contract of £46,100 10s. 3d.

We also claim further interest charges until date of payment. The Government dispute our claim to part of the above.

We therefore give you notice that we require that the matters so in dispute be referred to arbitration after the expiration of one month from the service of this notice, as provided by the 27th clause of the General Conditions of our contract.

We have, &c.,
John Brogden and Sons,
(*per* John Henderson.)

The Hon. the Minister for Public Works.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Napier and Pakipaki Railway.

Sir,— Wellington, 21st December, 1876.

We have the honor hereby to give you notice that a dispute has arisen between us and the Government, with reference to the Napier and Pakipaki Railway Contract, in respect of the following matters:—

1. We claim for contract sum £49,345. The Government claim to deduct therefrom moneys for alleged reductions in the work, the right to do which we dispute.

2. We claim for additions to contract, as per details already rendered, including station accommodation, percentage on cost of telegraph line, and interest charges, the sum of £18,903 16s.

We also claim a further additional sum of £508 10s. 7d., including interest charges to the 30th April, 1876, for repairs to rolling-stock during construction, as per clause 17 of specification.

We also claim a further additional sum of £235 15s. 5d., including interest charges to the 30th April, 1876, for maintenance of extras, making a total of additions to contract of £19,648 2s.

We also claim further interest charges until date of payment. The Government dispute our claim to part of the above.

We therefore give you notice that we require that the matters so in dispute be referred to arbitration after the expiration of one month from the service of this notice, as provided by the 27th clause of the General Conditions of our contract.

We have, &c.,
John Brogden and Sons,
(*per* John Henderson.)

The Hon. the Minister for Public Works.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Picton and Blenheim Railway.

Sir,— Wellington, 21st December, 1876.

We have the honor hereby to give you notice that a dispute has arisen between us and the Government, with reference to the Picton and Blenheim Railway contract, in respect of the following matters:—

1. We claim for contract sum £80,494. The Government claim to deduct therefrom moneys for alleged reductions in the work, the right to do which we dispute.

2. We claim for additions to contract, as per details already rendered, including station accommodation, percentage on cost of telegraph line, extra maintenance, and interest charges, the sum of £33,401 8s. 9d.

We also claim a further additional sum of £436 9s. 4d., including interest charges to the 30th April, 1876, for repairs to rolling-stock during construction, as per clause 19 of specification.

We also claim a further additional sum of £280 11s. 6d., including interest charges to the 30th April, 1876, for maintenance of extras, making a total of additions to contract of £34,118 9s. 7d.

We also claim further interest charges until date of payment. The Government dispute our claim to part of the above.

We therefore give you notice that we require that the matters so in dispute be referred to arbitration after the expiration of one month from the service of this notice, as provided by the 27th clause of the General Conditions of our contract. We have, &c.,

JOHN BROGDEN AND SONS,
(*per* JOHN HENDERSON.)

The Hon. the Minister for Public Works.

The Hon. the MINISTER for PUBLIC WORKS to the UNDER-SECRETARY for PUBLIC WORKS.

(Telegram.) Christchurch, 25th December, 1876.

TAKE the earliest opportunity to lay Brogden's claims before Solicitor-General, and get his advice how to act. The sooner these questions are brought to an issue the better. I have telegraphed to Carruthers on subject.

EDWARD RICHARDSON.

John Knowles, Esq., Wellington.

The SOLICITOR-GENERAL to the UNDER-SECRETARY for PUBLIC WORKS.

The Under-Secretary for Public Works.

I FIND notices delivered by Messrs. Brogden and Sons as under:—

1. Waitara and New Plymouth Railway.
2. Invercargill and Mataura Railway.
3. Napier and Pakipaki Railway.
4. Picton and Blenheim Railway.

All these are substantially in one form, making a general claim for the amount of the contract, then stating that the Government claim to make deductions, the right to which is disputed. Next follows a claim for additions to the contracts, for percentages and other moneys, according to details said to have been rendered. None of these details are with the present papers, but I presume they are to be found in your department.

In preparing an answer to these several claims, and in order to a right understanding of the position of the Government, the following general particulars must be obtained:—

1. The contract with its conditions and specifications.
2. Any deviation or alterations therein, and how the same have been effected, *i.e.*, by what writing or other evidence.
3. Any correspondence on the matters affected by these notices.
4. Accounts showing payments made on the contract, or any addition or alteration, but keeping the latter distinct from the general payments.

Coming to particulars, information must be got showing what is the particular dispute between the Government and the contractors; and in this respect the following order may be observed:—

1. Whether the dispute is with the Engineer or with the Government; and, if former, how it has been settled or disposed of. (See "Government Contractors Arbitration Act, 1872," section 4.)
2. What is claimed by Government as deduction from contract, showing how these sums are arrived at; whether Messrs. Brogden had notice of them; whether they have acquiesced in the deduction expressly or impliedly; and generally get together any correspondence on the matter.
3. How the claim for additions is made up, and under what authority claimed; when these claims were first made, and whether details have been rendered; and whether there are any variations in the accounts or details rendered at different times; and also all correspondence relating to these details.

The result of our answer to the claims now made could be tabulated, so as to show at a glance what the claim is, and how we dispose of it.

Of course if there are admissions of any of these claims they should be so stated, and kept distinct from the general answer. Any correspondence as to these admissions should also be procured.

I am aware that getting up this detail will involve a good deal of trouble, but, as the matter will finally be decided by the Judge of the Supreme Court, who sits as Arbitrator, special care must be taken to set everything out concisely but clearly.

The notices themselves are, I think, irregular, and ought to have been given under the Government Contractors Act of 1872; and in this Act is a provision that the party desiring a reference shall take proceedings under the Act within six months after the dispute has arisen, unless with consent of the other party. This is not a provision which the Government would take advantage of, unless for good cause; but it may be useful to us should Messrs. Brogden desire to put the Government to inconvenience by bringing on all these claims at once in different parts of the colony.

I think these notices should be acknowledged, and Messrs. Brogden informed that there are several matters stated in their notices which cannot be settled in the absence of the Engineer-in-Chief, but that on his return a final reply will be sent.

The letter should state expressly that, in so acknowledging the notices, it is not intended to waive any irregularity in the terms or form thereof, nor to waive any right or privilege vested in or accorded to the Government or the Minister for Public Works under "The Government Contractors Arbitration Act, 1872." A suggestion might be added that in any future steps to be taken Messrs. Brogden's legal advisers should communicate directly with the Law Officers of the Government.

20th January, 1877. W. S. Reid.

The Under-Secretary for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Public Works Office, Wellington, 26th January, 1877.

I am directed by the Hon. the Minister for Public Works to acknowledge the receipt of your four letters of the 21st December, severally giving notice of a dispute having arisen in respect of the contract entered into by Messrs. Brogden and Sons as regards the railways therein mentioned, the four railways being the Picton and Blenheim, the Napier and Pakipaki, the Waitara and New Plymouth, and the Invercargill and Mataura.

The Minister intended to have deferred acknowledging the receipt of your letters, as above, until he was in a position to have gone fully and finally into the matter in dispute; but, after giving them such consideration as he is able, the Minister instructs me to inform you that he finds some of the matters in dispute cannot finally be fully investigated during the absence of the Engineer-in-Chief. On that officer's return, now shortly expected, a definite reply shall, however, be sent to you. Meanwhile I am to state that it is not intended by this acknowledgment to waive any irregularity in the terms or form of the various notices you have given, nor to waive any right or privilege vested in or accorded to the Government or the Minister for Public Works under "The Government Contractors Arbitration Act, 1872."

I have, &c.,

John Knowles,

Messrs. Brogden and Sons. Under-Secretary for Public Works.

Mr. Travers to the Solicitor-General.

Sir,— *Re Brogden.* Wellington, 31st January, 1877.

With reference to the conversation between us at our yesterday's interview with respect to the claims of the Messrs. Brogden against the Government, I now beg to put in writing the course which I think would be most satisfactory to both parties, in the hope that it may meet the approval of the Government.

Assuming that the Government will treat the existing notices as a sufficient compliance with the Act, Messrs. Brogden will at once file in the Court here their claim in respect of the Napier and Pakipaki line, with the propositions of law and fact in support of it.

The Government will then file any counter-propositions.

Before the Court is asked to appoint a day for hearing the matter, Mr. Henderson will be willing to meet the Engineer-in-Chief, and go through the claim, for the purpose of eliminating all items in respect of which no dispute exists; or Mr. Henderson will meet Mr. Carruthers before the claim is filed, for the purpose of reducing it to the actual elements in dispute.

When the latter have been ascertained by either of the above courses, issues could, with the sanction of the Judge, be drawn by you and myself, so as to raise all the questions involved in the dispute; and the decision of his Honor on these questions would guide both parties in regard to similar questions arising out of the other cases, either party being at liberty, however, to treat such questions as still open with respect to other lines.

It is not my wish, acting for the Messrs. Brogden, to pursue these investigations in any spirit of hostility towards the Government, or in a manner likely to embarrass or inconvenience them; and I trust that the Government, on their part, will consent to carry on the proceedings with as much freedom from technical difficulties as may be consistent with their duty; I, on the part of the Messrs. Brogden, being quite willing to waive technical points in the course of the proceedings.

I should be glad to have your views upon the above at your early convenience, this letter being, of course, without prejudice.

I have, &c.,

The Hon. the Solicitor-General, Wellington. Wm. Thos. Locke Travers.

The Solicitor-General to the Under-Secretary for Public Works.

The Under-Secretary for Public Works.

I send you this letter received by me to-day. It seems to me Mr. Travers's proposal is fair and reasonable, and one that should be entertained by the Government. The decision in one of the cases will practically settle all the questions in dispute respecting the various contracts; and should this be favourable to the Government it is not likely the Messrs. Brogden will proceed with other cases; and if, on the other hand, the Government do not succeed in their view it would be useless going to increased expense and loss of time in further cases. Will you please lay this before the Minister for instructions. The details, of course, remain to be finally settled.

31st January, 1881. W. S. Reid.

Minute of the Hon. the Minister for Public Works to the Under-Secretary for Public Works.

Mr. Knowles.

The course advised by the Solicitor-General is approved. Solicitor-General to correspond with Mr. Travers.

14th February, 1877. J. D. Ormond.

Mr. Travers to the Solicitor-General.

Sir,— *Re Brogden* 13th February, 1877.

I have the honor to call your attention to my letter to you of the 31st ultimo, to which I have as yet received no reply. The delay is extremely inconvenient to my clients, who are anxious that all matters still unsettled between themselves and the Government should be brought to a close without further waste of time.

I have, &c.,

Wm. Thos. Locke Travers,
(for Self and Partners.)

The Hon. the Solicitor-General, Wellington.

The Solicitor-General to Mr. Travers.

Crown Law Office, Wellington, 14th February, 1877.

Sir,— *The Government and the Messrs. Brogden.*

I have the honor to acknowledge receipt of your letter of the 31st ultimo respecting the submission to arbitration of Messrs. Brogden's claims against the Government, and, in reply, to inform you that the Government are prepared to adopt the course indicated in the letter above referred to. I think it will be more convenient that Mr. Henderson should meet the Engineer-in-Chief and settle the items in dispute before the claim is filed, and these gentlemen can arrange accordingly.

I have, &c.,

W. S. Reid.

W. T. L. Travers, Esq., Solicitor, Wellington.

The Under-Secretary for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Public Works Office, Wellington, 9th February, 1877.

It having come to the knowledge of the Government that several of their Railway Engineers have recently been applied to by you for certificates in terms of clause 25 of the General Conditions of your railway contracts, I am directed by the Hon. the Minister for Public Works to inform you that the Engineer-in-Chief is the Engineer under that clause, and that application should be made to him.

I have, &c.

John Knowles,
Under-Secretary for Public Works.

Messrs. Brogden and Sons, Wellington.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 8th March, 1877.

In reply to your letter of date 9th February, 1877, we have the honor to state that we do not construe our several contracts in accordance with the reading placed upon them by that letter. The clauses in these contracts referring to Engineers and their certificates in our opinion evidently refer to the several Engineers in charge of the respective works. The District and Resident Engineer have throughout the performance of these contracts been the officers who, on the Government's behalf, exercised the supervising and controlling power over us, and who therefore are alone competent to judge on behalf of the Government whether the contractors ought to receive payment without dispute. They were the officers who from time to time made up the progressive-payments certificates, and upon presenting these certificates to the Minister, and sometimes upon the telegraph order of such Engineers, payments have been made.

We therefore submit that, from the working of the contracts themselves, from the nature of the duty to be performed, and from the usual course and practice of the Government up to the date of the letter we have now the honor to reply to, the District or Resident Engineer, as the case may be, are the proper officers to whom we should apply for final certificates; and we submit, from prohibiting them from dealing with the matter, the Government has acted in violation of the contracts.

With respect to the proposal of the Solicitor-General, contained in his letter to Mr. Travers, dated 14th February, 1877, we beg to say that we shall not object to meet Mr. Carruthers and to go through the accounts with him with a view to amicable settlements; but we desire that it should be clearly understood that we so meet him for that purpose only, and that our so meeting him shall not be deemed in any respect a waiver or an abandonment by us of any rights already accrued to us.

We desire to call attention to your letter of 26th January, 1877, in which we are informed that it is not intended by the acknowledgment made in that letter to waive any irregularity in our notice or any right or privilege vested in the Government or the Minister for Public Works under "The Government Contractors Arbitration Act, 1872."

We most respectfully state that the provisions of that Act, altering and affecting our contract rights, were utterly unknown to us prior to the date of your letter, and that they are under our most careful and anxious consideration. Its clauses have been a serious surprise to us, and we feel it necessary at once to complain, and to enter our protest against the conduct of the Government in thus, without our knowledge or consent, and under colour of an arrangement with ourselves, passing through the Houses of Legislature an enactment aimed directly against our contract rights, and placing, or endeavouring to place, us under heavy and serious disabilities.

We are advised that it is highly probable that the statute in question will be declared by the Courts to be absolutely void, and that the Government of New Zealand (who are the parties contracting with us) had no right or power to alter so essentially, and so injuriously to us, the bargain entered into between them and ourselves.

When we entered into the contracts with the Colony of New Zealand, and deposited with the New Zealand Government £25,000, and expended the very considerable sums of money we have done, we did so on the faith and in the belief that our contract rights were inviolable. We never for one moment imagined that the advantage would be taken by the Government and Legislature of their

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.

Our firm specially insisted throughout the negotiations preceding the contracts being signed that the Engineers of the Government should not be the sole arbiters of our rights, and also specially insisted that previous orders in writing should not be required from us as a condition precedent to the performance of work ordered by the Engineers; and the Government, after much discussion, distinctly gave way to us upon both these points, as appears upon the face of the published correspondence, to which we ask the Government to refer.

In reliance upon this arbitration clause of our contract we have done much extra work not ordered in writing by the Engineers, and we have expended considerable sums of money, under the impression that, in case of dispute with the Engineer, we could obtain the Arbitrator's decision after the termination of our contract, when the whole case should come before him. We now find that the thirty-first section of the Act requires that such matters should have been referred to the Arbitrator within six months after the particular dispute or matter of difference arose, and not afterwards.

If such be the case, we are at this moment debarred by the statute from claiming payment for much of our work; and we venture to suggest that such a serious alteration of our contract rights, without our knowledge or assent, amounts to a repudiation of making a contract whereby they have induced an English capitalist firm to construct their railways, and, that object gained, of having passed an Act of Parliament to relieve themselves of their obligations to them.

As to the sixth ground of objection, viz., that the cumbrous machinery of the statute, and its contradictory clauses, render it almost if not quite impossible for us to comply with its requirements.

By section 7 we are required, before any dispute, whether accruing between the Engineer and contractor or either of the parties, shall be referred under the power in this Act contained, to give the Minister for Public Works one calendar month's notice in writing of such dispute and of the nature and cause thereof; and in such notice the contractor's claim shall be especially stated, and, if such claims be for pecuniary compensation, the amount shall also be stated.

By section 4, whenever such dispute shall have arisen between the Engineer and contractor, the matter shall be referred to the Minister for his decision; and in case the decision be adverse to the contractor, then the latter shall be entitled to avail himself of the provisions for arbitration thereinafter contained, but not otherwise.

By section 5, "If any dispute shall arise between either of the parties upon any matter or thing which ought or might be referred to arbitration, then either party desiring to proceed to arbitration under this Act shall prepare a statement in writing, setting forth concisely the nature and extent of the claim made by such party, and the propositions of fact and law which such party desires to submit to a Judge of the Supreme Court in support of such claim." It then provides that the "other party" shall submit within fourteen days his counter-propositious of law and fact in opposition to the claim. By clause 27 neither party shall have power to revoke or recall any statement of claim or proposition of fact or law submitted without the consent of either party.

By clause 17 it is provided to the contrary of clause 27, namely, that either party may apply for leave to amend his proposition of law and fact against the consent of the opposite party, and the Judge shall decide as to the reasonableness of the application.

By clause 26 the practice of the Supreme Court in civil actions shall apply to the summoning of witnesses, the taking of evidence, &c.; but by clause 12 the Judge may send "skilled persons" to inspect the work and report to him, and the report or certificate of such person may be sent by such person to the Judge, and may be taken by the Judge and acted on by him as effectually as if he had taken the evidence of such person *vivâ voce*. And by clause 13 the Judge may, either during such reference or at any time thereafter, "call before him" engineers, accountants, or other skilled persons, and obtain their opinions for his guidance.

By clause 15, if either party shall fail or neglect to produce any contract, plans, drawings, paper, or writings, after having been lawfully required so to do, it shall thenceforth be lawful for the Judge to proceed with the subject-matter of such reference *ex parte*.

By clauses 19 and 20 the Judge, when he has finished his investigation, is to give his certificate, either ordering payment of money or prescribing what is to be done by either or both of the parties, or what shall be refrained from being done by either or both of them.

As nearly as we can gather from the complicated and involved language of the statute, such is the course of procedure; and we draw from it the following conclusions:—

We must lose one calendar month out of our six months' limitation in giving the preliminary notice in writing of such dispute, which has to be served on the Minister for Public Works.

We must then concentrate in Wellington, from all quarters, our documents, proof, and witnesses, in order that, under clause 4, the Minister for Public Works may hear our evidence, and adjudicate upon our claims.

We must then send back to each district all our aforesaid evidence and witnesses, and appeal from the Minister in Wellington to each Judge of the Supreme Court in his own judicial district, and for him we must set out in writing the propositions of fact and of law upon which we support our claim.

If the words "propositions of fact" mean "statements of facts" we intend to set out in evidence in support of our claim, we submit that it would be impossible so to do within the remnant of six months that would remain to us after the conclusion of the investigation before the Minister, even if it be possible at all, which we doubt. If, on the other hand, the words "propositions of fact" have no such meaning, then we respectfully ask what do they mean? In that case their signification is unknown to us, and therefore we cannot comply with their requirements.

If the words "propositions of law" mean that we are to set forth every proposition of law necessary to support our "propositions of facts," we respectfully submit that this also is imposing on us an impossible task.

Had it been enacted that the Government, when objecting to pay us for our work, upon our claim as sent in to them, should state in writing their objections of facts and the legal grounds of their objections, to which statement we should reply, the statute would have required no more than is

required of every plaintiff and defendant in an ordinary action; but the statute, on the contrary reverses the ordinary process, and requires the plaintiffs to divine beforehand and anticipate what objections of fact and law the defendant intends to make, and so forces us to argue in the dark, and raise against ourselves any conceivable objection and then overturn it in our written statement.

We respectfully protest against such a task being imposed upon us, and against the unfairness of the statute in compelling us thus to point out to our opponents every possible objection capable of being raised, under the penalty that, if we fail to do so, the Government may object to our answering such objection when raised by them. Under these circumstances we cannot help feeling that the statement in your letter of 26th January, informing us of the intention of the Government to take advantage of every irregularity in our notices, and of every right and privilege vested in the Government or in the Minister for Public Works by the Government Contractors Arbitration Act of 1872, is almost tantamount to a threat that the Government will deprive us of our just rights upon technicalities outside the justice of the case, and will take advantage of the impossibility of the tasks imposed upon us by the statute to shield themselves from the fair consideration of our claims. Such a threat, in our humble opinion, amounts to a threat of repudiation, unfair to us and not creditable to the Colony of New Zealand; and we shall use every legitimate endeavour to prevent its being put into execution against us.

It is in the highest sense unjust that the Legislature should declare it to be our duty (our duty by statute) to settle within six months after they arose all the questions that may have arisen during the course of complicated and difficult contract works, in which numerous "disputed questions" were daily arising between the contractors and the Engineers. Had we known of the existence of these clauses of the statute, and had we attempted to perform such a duty, our engineers and overseers would have had no time to attend to their legitimate duties, and thus the impossibility of the task would have been earlier exposed. Our contracts as they stood before the passing of the statute imposed no such duties, expenses, and difficulties, and we respectfully protest against their creation by statute.

To sum up, we submit that the Legislature, as one of the contracting parties, had no more right than a private individual would have had to alter the terms of our contract with them to our disadvantage, and without our knowledge or consent.

We submit that the Legislature had no right to bar our remedy against them in six months, when by the ordinary law of the land we were entitled to six years.

We submit that the Government had no right to pass as a public statute a private Bill aimed at our interests.

We submit that the Legislature had no right to excise from our contract its arbitration clause, and substitute a far more onerous and vexatious clause as against us.

We submit that the Legislature had no right to put the Minister for Public Works, representing by his office one of the contracting "parties," in the position of a judge to decide as a preliminary step on the validity of our claims, and also to convert the arbitration provided in our arbitration clause into a kind of Star Chamber tribunal, composed of Judges appointed by the Crown, entitled to act upon any evidence (hearsay or otherwise) they may please to accept, and from whom we are to have no appeal upon error of law, error of fact, or error of any kind whatever.

Finally, we submit that the Legislature has no right to confine us to trial without jury, and then to deny us the right of appeal both here and in England.

Having thus informed the Government of our view of the statute, and of the reasons why we think it ought not to be allowed to affect our interests, we have the honor to request that the Government shall entirely waive all benefit from this statute, and all technical and other objections arising to them under or in pursuance of its provisions, and withdraw their letter of 26th January, 1877. We are advised that "The Government Contractors Arbitration Act, 1872," not being a general statute, but being an Act affecting only the parties to these contracts, its provisions can be lawfully waived by the parties interested; and, even if we are wrongly advised in this respect, we submit that the Government can doubtless secure its repeal by showing the Legislature the true character and scope of the Bill.

Also we have the honor to request that, under the circumstances, the Government shall expressly waive performance of any conditions precedent under our contract which might otherwise be held to go to our right of action; such, for example, as the absence of the written orders and other authorities for works under Clause 4 of General Conditions; the necessity for any written notices where required to be given by us to the Engineer or otherwise; the absence of certificates under clauses 25, 26, and 27 of the General Conditions; and, generally, any other conditions of a similar kind, the performance of which we might otherwise be required to prove as a condition precedent to the consideration of our claims; and, in fine, that our claims shall be disputed upon their merits and their merits alone.

We make this request for reasons appearing above, and because, amongst other things, the Government has already refused to permit the Engineers who were appointed for that purpose by the contract to give to us the necessary certificates.

After what has taken place we are no longer desirous of having our rights investigated by a Judge without a jury; and we ask that, in order to prevent any technical objection hereafter, the Government shall expressly agree not to raise any objection to a trial by jury, to take place according to the ordinary law of the land. If these requests be refused, then we will proceed, under protest, to take all necessary steps to protect our rights, whether under or in opposition to the statute of 1872, or in both ways, as we may be advised.

The Colony of New Zealand and its Government must not complain if Messrs. Brogden and Sons avail themselves of every means to prevent such grave injuries being inflicted upon them as this Act attempts to do in so unwarrantable a manner, and they reserve to themselves the right to make what use of this letter they may deem desirable both here and elsewhere, if it should be necessary to protect their rights, and to show the manner in which they have been wronged.

We undertook these contracts in reliance upon the public good faith of an English colony, and we will use every means in our power, by protest and otherwise, to prevent any attempt on the part of the colony to violate its engagements.

We have, &c.,
JOHN BROGDEN AND SONS,
(*per* JOHN HENDERSON.)

The Hon. the Minister for Public Works.

P.S.—As we are anxious to wind up our affairs in the colony, our contracts being now all completed, and as we are necessarily obliged to keep in our pay a considerable number of persons whose testimony will be necessary to us in case of dispute respecting the works executed or superintended by them, we have the honor to request an immediate answer to this letter.—J. B. and S. (*per* J. H.)

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 16th March, 1877.

The time left to us to assert our claims is so short if we are to be bound by "The Government Contractors Arbitration Act, 1872," that we cannot lose a moment in taking proper steps (1) to test the question of the validity of that Act, and (2) to proceed under it if bound by it. We therefore have the honor to request an immediate answer to our letter of the 8th instant, it being necessary that our case should be placed in the hands of our legal advisers without delay.

We have, &c.,
JOHN BROGDEN AND SONS,
(*per* JOHN HENDERSON.)

The Hon. the Minister for Public Works.

The Hon. the MINISTER for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 19th March, 1877.

I have to acknowledge the receipt of your respective letters of the 8th and 16th instant, the former of which has caused considerable surprise to the Government. On the 31st January last your legal adviser, Mr. Travers, addressed a letter to the Solicitor-General, proposing a certain course of action under "The Government Contractors Arbitration Act, 1872," for the purpose of determining disputes between the Government and yourselves in respect to the execution of your contracts.

To this letter a reply was given assenting to the course proposed, and I was therefore wholly unprepared for the proposals contained in your letter of the 8th instant, and the tone in which they were made. I do not propose to discuss with you the merits and probable working of the Act referred to, but I must be allowed to say that in my opinion your letter is based upon a misconception as to its effect and operation. Indeed I am advised that the Act only prescribes the necessary machinery for giving effect to the terms of the contracts entered into by your firm respecting the reference of dispute to Judges of the Supreme Court. Nor can I look upon the past action of the Legislature, nor the past or proposed action of the Government, as having in any degree prejudiced the investigation of your claims against the latter.

Respecting those portions of your letter of the 8th instant which speak of "threats of repudiation," and which contain remarks tending to show that the Government had, in procuring the passage of this Act, knowingly obtained unfair advantages over you, I can only say that your statements are erroneous and wholly uncalled for.

On behalf of the Government I entirely disclaim any wish to embarrass you in taking proceedings under the Act of 1872; but that Act is now law, and I am advised that the request made by you to dispense with its provisions could not be entertained; and I am further advised that the admissions and consents you ask for are unreasonable, and such as the Government have no power to agree to. It must be recollected that the Government is not in the position of a private person. There is a duty to the public, whose affairs the Government are called upon to administer, which must be considered paramount.

To the course formerly proposed on your behalf, and assented to on behalf of the Government by the Solicitor-General, I am prepared to adhere; but I cannot consent to such terms for conducting the references as would preclude the Government from having a thorough investigation of the matters alleged to be in dispute.

I have, &c.,
J. D. ORMOND.

Messrs. John Brogden and Sons, Wellington.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 20th March, 1877.

We beg to inform you that we have instructed our solicitors to take proceedings against the Government in the Supreme Court by petition under "The Crown Redress Act, 1871," such proceedings being for the purpose of testing the validity of "The Government Contractors Arbitration Act, 1872."

We have therefore the honor to request that the consent of His Excellency the Governor may be given in the manner required by section 2 of the "Crown Redress Act," to a petition setting forth the particulars of our claims for work and labour done, and for materials supplied by us for Her Majesty the Queen, and also in a second count setting forth one or more of the contracts entered into between Her Majesty the Queen and ourselves, together with the breaches of contracts on which we claim damages.

We are unable to send with this letter the form of petition, but, as the action will be simply to recover for our work, labour, and materials, such action being sufficient to raise the question of the jurisdiction of the Supreme Court outside "The Government Contractors Arbitration Act, 1872," we presume the Government will intimate their intention of either granting or withholding such consent, without requiring the formality of awaiting the preparation of the petition itself.

The reason we make the above request, without awaiting the preparation of the petition, is that so short a time remains within which the validity of the statute in question must be settled so as to still leave sufficient opportunity for us to enforce our claims under the Act, if bound by it.

We have, &c.,
JOHN BROGDEN AND SONS,
(*per* JOHN HENDERSON.)

The Hon. the Minister for Public Works, Wellington.

The SOLICITOR-GENERAL to the Hon. the MINISTER for PUBLIC WORKS.

The Hon. the Minister for Public Works.

I HAVE read the within letter addressed to you by Messrs. John Brogden and Sons. The purpose for which the Messrs. Brogden seek to obtain the consent of the Governor to a petition under the Crown Redress Act is that the validity of the Government Contractors Arbitration Act may be tested. It seems to me that this is not a purpose for which the necessary consent should be given, and that the writers should be so informed. Moreover, the consent, even in a proper case, should be given only when a claim is laid before the Governor in the manner prescribed by law.

21st March, 1877. W. S. REID.

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 22nd March, 1877.

In reply to your letter of the 20th instant, I am directed by the Hon. the Minister for Public Works to inform you that the purpose for which you seek to obtain the consent of the Governor to a petition under the Crown Redress Act—viz, to test the validity of "The Government Contractors Arbitration Act, 1872"—is not a purpose for which the desired consent should be given.

I have, &c.,
CHARLES T. BENZONI,
(in the absence of Under-Secretary for Public Works.)

Messrs. Brogden and Sons, Wellington.

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 12th May, 1877.

With reference to the last paragraph of the letter addressed to you on the 19th June last by direction of the Hon. the Minister for Public Works, I am now directed to inform you that the overpayment to your firm on the Waitara and Waitara 10-per-cent. contract is £2,572 18s. 8d., and the overpayment on the Invercargill Contract is £2,009 16s. 5d.

I have, &c.,
JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. Brogden and Sons, Wellington.

Mr. TRAVERS to the SOLICITOR-GENERAL.

SIR,— *Re Brogden.* Wellington, 15th May, 1877.

I have been requested to address you again with reference to the contemplated proceedings under the provisions of "The Government Contractors Arbitration Act, 1872."

The Messrs. Brogden are desirous that the Government should waive any proceedings under the 4th section, allowing all matters in dispute to go direct to the Judge in the first instance.

They are further desirous that the Government should concur with them in preventing the applications of sections 12 and 13 to the proceedings to be referred. I have pointed out that this could only be done effectively by alteration of the law, but that in all probability the Judge would consent not to use the powers given by those sections if both parties concurred in requesting him to abstain from doing so.

They are further desirous that the Judge should be empowered, at the request of either parties, to submit any question of law for the decision of the Supreme Court, if his decision should be unsatisfactory. I have pointed out that this is not provided by the Act, but I apprehend that by consent such a power might be given to the Judge independent of the Act, and that such a power would probably be satisfactory to the Judge himself.

Some doubt exists in the mind of their agent here whether, in our former correspondence, you consented to waive any question of time under section 31. I have informed them that I understood you to have agreed on the part of the Government to do so, but it would be satisfactory to my clients if you would, assuming I rightly understood you, repeat that assurance.

With respect to the first three points above referred to, I have the honor to request that you will inform me, at your early convenience, whether the Government will consent to all questions going direct to the Judge instead of first passing through the stage mentioned in section 4; whether the Government will concur in an arrangement, pending legislative alterations, to avoid the Judges acting under the powers given by sections 12 and 13; and whether the Government will consent to give the Judge power, at the request of either party, to refer any matter of law for the consideration of the Supreme Court.

I have, &c.,
WM. THOS. LOCKE TRAVERS.

The Solicitor-General, Wellington.

The SOLICITOR-GENERAL to the Hon. the MINISTER for PUBLIC WORKS.

The Hon. the Minister for Public Works.

I FORWARD for your information and instructions the within letter received from Mr. Travers respecting the matters in dispute between the Government and the Messrs. Brogden. I have simply acknowledged Mr. Travers's letter in the meantime. The proposal now made by Mr. Travers is to the effect stated in the latter part of his letter. Clause 4 of the Government Contractors Arbitration

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

proper, on the 8th March last, to address a letter to the Minister, couched in language which almost rendered further correspondence impossible, and certainly was not calculated to facilitate proceedings. Under the circumstances, therefore, I think it better at present not to make any promise, either with respect to sections 4 or 31, and content myself with repeating the assurance contained in my reply to your letter of the 31st January.

I have, &c.,

W. T. L. Travers, Esq., Solicitor, Wellington. W. S. Reid.

Messrs. Travers, Ollivier, and Co., to the Solicitor-General.

Sir,— *Re Brogden.* Wellington, 5th July, 1877.

We have the honor to forward herewith petition under "The Crown Redress Act, 1871," and to request you will be good enough to procure the necessary consent of His Excellency the Governor to the filing of the same. The claim arises under the contract between the Queen and the Messrs. Brogden for the construction of the Waitara and New Plymouth Railway.

We have, &c.,

The Hon. the Solicitor-General, Wellington. Travers, Ollivier, and Co.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 20th July, 1877.

We have the honor to submit for your consideration the following method of settling all differences between the Government and ourselves relating to the railways we have constructed in New Zealand:—

1. That the Engineer-in-Chief and Mr. Henderson go through the accounts with a view of agreeing to as much as possible, and eliminating such items as are agreed on.

2. That all differences as to work and labour done and materials supplied, or as to the price of extra work, or as to whether we are entitled to the various claims in our accounts, or as to any other matter upon which the Government and ourselves may not agree, should be referred to either of the following gentlemen, viz., Thomas Higginbotham, Esq., Engineer-in-Chief for Victorian Government, and Robert Watson, Esq., Assistant Engineer-in-Chief for Victorian Government, to decide such differences upon their respective merits, and whose decision shall be finally binding and conclusive on both parties, each party being at liberty to be represented by counsel if they so desire.

We make the above offer without prejudice, and request the favour of an early reply.

We have, &c.,

The Hon. the Minister for Public Works, Wellington. John Brogden and Sons, (*per* John Henderson.)

The Solicitor-General to the Hon. the Minister for Public Works.

The Hon. the Minister for Public Works.

Respecting the proposal of Messrs. Brogden and Sons in their letter of the 20th instant, I have to remark that, as a whole, it is not one which, in my opinion, the Government could be advised to entertain. Quite apart from the merely legal aspect of the case, and the somewhat vague nature of the proposal, there is the question of expense to be considered, and the policy of submitting difficult legal questions to the decision of a gentleman who, whatever his qualifications as an engineer may be, cannot be expected to arrive at correct legal conclusions. With regard to the first proposal made in the letter, it is one which was made and acquiesced in long ago, when first proceedings were contemplated under the Government Contractors Arbitration Act, and of which, as far as I am aware, the Messrs. Brogden never availed themselves. Indeed, the matters in dispute never have been definitely ascertained, and it has always seemed to me that the real objection of these gentlemen to proceeding under the Act above mentioned was the necessity, as a first step, of stating "the propositions of law and fact," to be submitted to a Judge upon the claims they preferred.

The power of obtaining opinions from engineers or other skilled persons upon questions arising out of the proceedings for arbitration is conferred upon the Judge by sections 12 and 13 of the Act; and this very power was one of these the Government was lately asked to consent should be waived in the then proposed proceedings.

Upon the whole it seems to me that the writers can only be informed that the contracts between themselves and the Government have prescribed a method of settling disputed questions arising thereout, and that the Legislature has provided ample means of giving effect to the proceedings contemplated by the contracts, and that the Government are now, as they have always been, quite willing to have such questions settled in the manner so prescribed.

25th July, 1877. W. S. Reid.

Minute by the Hon. the Attorney-General.

I see no reason to depart from the course the law prescribes.—Fred. Whitaker.

The Under-Secretary for Public Works to Messrs Brogden and Sons.

Gentlemen,— Public Works Office, Wellington, 14th August, 1877.

I am directed by the Hon. the Minister for Public Works to acknowledge the receipt of your letter of the 28th July, in which you propose that all the differences between yourselves and the Government relating to the railways you have constructed in New Zealand should be settled in the mode therein suggested, and, in reply, to inform you that, after giving the matter very full consideration, the Government are unable to accede thereto.

I am to point out that the contracts themselves prescribe a method of settling all disputed questions arising out of the same, and that the Legislature has provided ample means for giving effect

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 9th February, 1877

It having come to the knowledge of the Government that several of their Railway Engineers have recently been applied to by you for certificates, in terms of clause 25 of the general conditions of your railway contracts, I am directed by the Hon. the Minister for Public Works to inform you that the Engineer-in-Chief is the engineer under that clause, and that application should be made to him.

I have, &c.,

JOHN KNOWLES,

Under-Secretary for Public Works.

Messrs. Brogden and Sons, Wellington.

to the proceedings which those contracts contemplate. Under these circumstances, and bearing in mind that the Government are now, as they always have been, quite willing that the questions in dispute should be settled in the manner so prescribed, there does not appear to the Minister to be any sufficient ground for warranting a departure from the course which the law directs to be followed.

I have, &c.,
JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. Brogden and Sons, Wellington.

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. TRAVERS, OLLIVIER, and Co.

GENTLEMEN,— Wellington, 17th August, 1877

In reply to your letter of the 5th July, in which you enclose a petition by Messrs. J Brogden and Sons, praying the Governor's assent to certain claims arising out of their Waitara and New Plymouth Railway contract being filed under "The Crown Redress Act, 1871," I am directed by the Hon. the Minister for Public Works to inform you that His Excellency will be advised to consent to the filing of the petition. Will you be good enough to communicate further therein with the Solicitor-General.

I have, &c.,
JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. Travers, Ollivier, and Co., Wellington.

CORRESPONDENCE WITH THE SECRETARY OF STATE FOR THE COLONIES REFERRING TO THE ACT OF 1872, AND PAPERS RELATING THERETO.

See Appendices to Journals, 1878, E.–No. 3.

LETTERS WRITTEN BY MR. HENDERSON AND MR. TRAVERS TO THE WELLINGTON NEWSPAPERS IN 1878.

[Extract from the *New Zealand Times* of the 23rd February, 1878.]

MESSRS. BROGDEN AND SONS AND THE LATE MINISTRY

SIR,— *To the Editor of the New Zealand Times.*

Mr. George McLean, member for Waikouaiti, who filled the office of Commissioner of Customs in the late Atkinson Ministry, is quoted in your article of Wednesday morning in the following words: "He would now come to the £170,000 discrepancy. What was it? They had heard of the large contractors, Messrs. Brogden and Sons, who had come to this colony to get contracts. They had obtained a number, but they were not satisfied with the settlement of the Engineers, and claimed £100,000 for work which they never got, but which they say they should have got. The late Ministry were not going to throw away £170,000 because the Brogdens thought proper to dispute that amount. He considered that the proper course was to leave the contractors their remedy at law, for he preferred not to give any contractors £100,000 for work which they had not got, but which they said they should have got. While he was in office the Government decided not to pay away a penny except they got value for it. They were determined to see justice done to the contractors, but the Government must be dealt with justly also."

Upon this language of the ex-Commissioner of Customs, quoted by you, the writer of the article makes the following comment: "As the claims of the Messrs. Brogden against the colony are to come before a Court of law, it would not be advisable at this stage to express an opinion as to their character, but there is little doubt that the people of this colony will indorse the action of the late Ministry in refusing to include the claims in the list of colonial liabilities. It is a matter of notoriety that the representatives in this colony of the great contracting firm were very anxious for the downfall of the Atkinson Ministry, for it was perfectly certain that the Brogdens would not get a single shilling above what Ministers believed them justly entitled to." Now, Sir, apart from the unfairness of your and Mr. McLean's remarks respecting a claim the merits of which you, and doubtless Mr. McLean also, are probably unacquainted with, I have to complain that Mr. McLean's statement that the late Government were "determined to see justice done to the contractors," and his further statement (which your article in effect repeats) that the contractors were "left to their remedy in a Court of law," is incorrect, and, as far as Mr. McLean is concerned, is most unaccountably so, as will appear from the following facts: So long ago as February, 1877, Messrs. Brogden and Sons placed in the hands of Messrs. Barton and Fitzherbert for recovery a claim of £173,000, together with considerable claims for finished contract work. Other claims had previously been placed in the hands of Travers and Ollivier. On looking into Messrs. Brogden's case and the law applicable to it, our solicitors found, to my great surprise, that a statute entitled "The Government Contractors Arbitration Act, 1872" (of the existence of which Messrs. Brogden and Sons had been up to that time entirely unaware), opposed a complete barrier to the prosecution of Messrs. Brogden and Sons against the Government of ordinary legal proceedings before a jury, at the same time depriving them of valuable clauses in their contracts which would have enabled them to surmount technical difficulties. Messrs. Brogden were advised that, by the operation of that statute, they would be forced to submit to the adjudication of the Supreme Court Judge, not only without the intervention of a jury, but without any right of appeal from his decision to any Court either here or in England; that full power was vested in such Judge to take unsworn evidence, not only unsworn but *ex parte* if he so pleased; and, lastly, that his judgment was to be given in the simple form of a certificate for money payable from one party to the other, such certificate giving no reasons or explanations of any kind respecting his decision. Such was the

tribunal to which Messrs. Brogden were restricted by this extraordinary statute; and, to secure the Government against the possibility of any inconvenient struggle by the English contractors, a very innocent-looking little clause at the end of the statute confined the Judge to the examination of such claims only as had been disputed within the previous six months; all disputes older than six months prior to the investigation being barred. Thus, at one blow, the ordinary time allowed to creditors against their debtors by the law of the land was reduced in Messrs. Brogden's case from twenty years (Messrs. Brogden's contract being under seal) to six months.

The above may perhaps appear so incredible that its correctness will probably be doubted; but when I state that in a certain letter sent to the Government on 8th March, 1877, the above matters are explicitly entered into, and that Messrs. Brogden in that letter complain that this most unjust statute has been drawn by the legal advisers of the late Government without communication with them, and was passed through Parliament without any notice or intimation to them, all doubt of the public will be removed.

There unfortunately exist many and weighty reasons why Messrs. Brogden, when enforcing this disputed claim, should avail themselves of the protection afforded by an unprejudiced jury. Not that I desire to impute to a Judge, sitting as sole arbitrator between them and the Government, that he would be prejudiced against them.

All I desire to say here is, that the objections to a sole Judge hearing the case, taking evidence, and deciding as above mentioned, without leaving Messrs. Brogden any right of appeal from him, are many and weighty, and that they earnestly pressed upon the Government, in their letter of the 8th March, 1877, to repeal this statute, and allow Messrs. Brogden to try their claims before a jury in the ordinary way upon the merits. They complained in that letter of the unjust conduct of the former Government when passing that statute, contrary, in my opinion, to all good faith, and in repudiation of the public pledges made to Messrs. Brogden by that same Government during their negotiations with them in London. They also in that letter charged the Government with an attempt at repudiation, and concluded by asking that the consent of His Excellency the Governor should be given to the filing of a Petition of Right for a trial of the case before a jury upon its merits alone.

Now, Sir, when Mr. G. McLean made the statement you have quoted, viz., that the late Government "were determined to see justice done to the contractors," and his further statement that the "contractors were left to their remedy in a Court of law," he must have forgotten that, up to the date of the decease of the late Ministry, His Excellency the Governor, doubtless acting on their advice, refused his assent to the aforesaid Petition of Right; and I now beg to assure Mr. McLean that His Excellency to this day refuses to give the required assent, and that the aforesaid Petition of Right still lies in the hands of the Solicitor-General. The pubic will now see that it is therefore not true that the late Government "determined to see justice done to the contractors," nor is it true that they have left the contractors "to their remedy at law." The contractors can have no remedy at law until after His Excellency shall be advised by his responsible advisers to assent to the Petition of Right, and until he shall graciously give his assent accordingly.

The public will perhaps ask, "Why is it that nearly all the members of the late Ministry have attacked Messrs. Brogden and Sons, and why have their organs in the Press, a long time previous to the overthrow of that Ministry, followed the same course?" The answer is evident. The late Ministry was in effect a continuation of the previous Vogel Ministry. The Vogel Ministry it was of whose unjust conduct I complain in their getting the statute referred to passed through the House. The Government thus became hostile to Messrs. Brogden and Sons. It was at Sir J. Vogel's request that Messrs. Brogden and Sons undertook their contracts in New Zealand. If the statute referred to were repealed, the Government well knew that resistance before a jury would be useless; hence their objectionable line of action, and hence their charge against Messrs. Brogden that they did their best to oust that Ministry.

If Mr. G. McLean and his late colleagues deny that they ever desired to throw technical obstacles in the way of a just trial before a jury, let him and his late colleagues unite in requesting His Excellency the Governor to give the required assent to the Petition of Right. It is not in my opinion an honorable mode of warfare that Mr. G. McLean has adopted to injure Messrs. Brogden, to accuse them of hostility to the late Government, because they sought, and vainly sought, the right to sue the Government.

In the very last session of Parliament a Bill was introduced abolishing the formality (in all other Australian Colonies a mere formality) of obtaining the Governor's assent to commence proceedings against the Crown, and that Bill has been passed and is now law for everybody in New Zealand except Messrs. Brogden and Sons, who are expressly excluded from its operation. Why, I ask again, is this wrong done to them? I answer that it is done, in my opinion, in order that the other and greater wrong done by "The Government Contractors Arbitration Act, 1872," may be continued, and that their hands may continue to be tied from claiming before a jury their just rights, whatever they may be.

I am, &c.,

JOHN HENDERSON, C.E.,
Representative and Attorney, in New Zealand, of the firm of John Brogden and Sons.

[It is perfectly true that we are unacquainted with the details of the Messrs. Brogden's claims, but the Engineers employed by the colony may be supposed to know something about them, and they advised the late Ministry that the claims should not be paid. In the face of such advice no Government, worthy of the confidence of the country, would include the claims in the list of colonial liabilities. Mr. Henderson says that the firm which he represents were ignorant of "The Government Contractors Arbitration Act, 1872," till March last. He may well say that this may appear incredible. That Act particularly concerned the Messrs. Brogden, and it is strange that it should pass both Houses of the Legislature without the knowledge of the solicitor and agents of the firm resident in Wellington; and it verges on the wonderful that the Act should remain nearly five years on the statute-book of New Zealand without the party chiefly interested being aware of its existence.

However, in fairness, we feel bound to accept the writer's assurance that such was the case. We have given no opinion as to the merits of Messrs. Brogden's claims, as Mr. Henderson infers in his letter. Our remarks were simply to the effect that the Ministry were justified in acting in accordance with the advice of the Government Engineers.—Ed. *N.Z. Times.*]

[Extract from the *Evening Post* of the 2nd April, 1878.]

MESSRS. BROGDEN and SONS and the late MINISTRY.

WE have been requested to publish the following letter, which was refused insertion by the *New Zealand Times*, as it is only just that Messrs. Brogden and Sons should have an opportunity of placing their side of the case before the public:—

To the Editor of the New Zealand Times.

SIR,—In an editorial footnote appended to my letter in your issue of the 23rd ultimo you make no attempt to combat my charge against the late Ministry that they unjustly deprived Messrs. Brogden (and, through His Excellency the Governor still deprive them) of a trial before a jury of New Zealand colonists of their claim for work done for the colony. No doubt you felt that it exceeded even your power to argue that if they were allowed to prove, and should succeed in proving, that they had done the work, they ought nevertheless to be deprived of their just reward. You take a convenient side-issue that the late "Government were justified in acting on the advice of their Engineers," that advice being stated by you to have been "that the claims should not be paid."

Now, Sir, assuming such advice to have been given, it may have afforded an excellent reason for refusing payment without a lawsuit, but surely it is an insufficient reason for refusing the power of litigating the claim. But I by no means admit that the Government did refuse "upon the advice of their Engineers." When Messrs. Brogden, at the conclusion of their contract works, applied through me to the Superintending Engineers for their certificates that the works had been performed according to the contract and specifications, those Engineers replied to me by letters, at present in my possession, that the Government had expressly forbidden them from taking into their consideration the propriety of our charges, and the Government also wrote to me insisting that Messrs. Brogden should deal, not with the Superintending Engineers, who by the contract were the proper persons to certify, and who also had personal knowledge of the works done, but should deal with the Engineer-in-Chief at Wellington, Mr. Carruthers, who is not the person appointed to certify. Thus the Superintending Engineers refused their certificates, or even to enter into consideration of the matter, not because Messrs. Brogden's claims were improper claims, but upon the sole ground that they were forbidden by their superiors to inquire into the merits of the several cases. Perhaps, Sir, after this explanation, you will withdraw your side-issues that the late Government were justified in acting upon the advice of their Engineers that the claims should not be paid. But you raise another issue, that it "verges upon the wonderful that 'The Government Contractors Arbitration Act, 1872,' should have passed both Houses of Parliament without the knowledge of the solicitor and agent of the firm resident in Wellington," and should "remain five years on the statute-book without the party chiefly interested being aware of its existence." In reply to this I will first answer for Mr. Travers, the solicitor alluded to, and then for the agent (myself). The solicitor certainly was not aware up to the end of the year 1876, for he at that time served upon the Government a number of notices based upon stipulations in the contract done away with by the statute, and which notices were immediately objected to by the Government, who called attention to the statute, and declared their intention of enforcing its provisions. When, after receipt of this letter, I consulted with the solicitor, he distinctly informed me (and doubtless would also inform you) that, up to the time he served the notices above referred to, he was wholly unaware of the existence of the statute. The agent (myself) was equally ignorant of its existence. At the time it was introduced I, as engineer superintending Messrs. Brogden's contract works, was with my engineer wholly absorbed in assisting the Government making surveys and laying out railway lines. The Bill was introduced into Parliament only ten days after Messrs. Brogden's contracts had been signed, and it was pushed through both Houses almost immediately after its introduction. I was at that time under the impression, and no doubt so was Messrs. Brogden's solicitor, that the material rights and obligations of the parties had been immutably fixed and ascertained in and by the contract, and I had no shadow of a suspicion that the Government, without consulting Messrs. Brogden, and under pretence of an arrangement with them, intended to pass a Bill through the Legislature so seriously affecting their rights and obligations. When in February, 1877, I learned for the first time the provisions of this statute I was astounded. Immediately on finding out the extent to which Messrs. Brogden's rights had been interfered with, and after I recovered from the surprise and indignation consequent upon the passing of an Act which embraced articles contrary to the agreement between the Government and Messrs. Brogden, I sent the letter of the 8th March, 1877, and I also communicated with my principals in London, who were, if possible, even more amazed and disgusted than myself; and I confess that I felt in a position of very great responsility, that of having expended hundreds of thousands of pounds of the moneys of Messrs. Brogden, while, in case any dispute should arise, it was at the mercy of the Government through the operation of this statute. Disputes have arisen, caused, I fully believe, not by want of merits in Messrs. Brogden's claims, but by desire on the part of the late Government to avoid payment. Those who do a great wrong frequently seek to cover its perpetration by slanders and abuse. The members of the late Government appear to form no exception to this rule, and hence the misrepresentations they have so industriously propagated, and hence their untruthful statement that the Courts are open for Messrs. Brogden for the assertion of their claims. The Courts are closed. Trial by jury is for Messrs. Brogden an impossibility. Appeal is cut away from them, and the Government Contractors Arbitration Act amounts to *an act of repudiation*, as being utterly at variance with contracts entered into by the Government with Messrs. Brogden previous to the passing of the said Act. I do not blame the Parliament, but I do blame the late Ministry, or such other persons as have misled the Parliament.

I have, &c.,
JOHN HENDERSON.

[Extract from the *New Zealand Times* of the 4th April, 1878.]

Messrs. Brogden's Claims.

To the Editor of the *New Zealand Times*.

Sir,—

Mr. Henderson was in error in stating that I did not know of the existence of the Government Contractors Act until the year 1877. I knew of its existence, but had never read it until it became necessary for me to do so in connection with the claims of the Messrs. Brogden against the Government. It then appeared to me that the Government, and the Legislature by which the Act had been passed, had been guilty of a gross breach of faith towards the Messrs. Brogden, by introducing into the Act a set of provisions which materially modified the rights they had under their contracts. Messrs. Brogden were informed by the Government in office, when their contracts were entered into, that an Act would be requisite to give to the Judges of the Supreme Court authority to act as arbitrators under the contracts, and to provide for the course of procedure; but they assumed that the Government would act in good faith, and therefore did not watch the Act as it passed through the Assembly. The consequence of their reliance on the good faith of the Government has been that their rights under their contracts have been seriously interfered with.

I have, &c.,

Wellington, 3rd April. Wm. Thos. Locke Travers.

CORRESPONDENCE SINCE THE VISIT OF A. BROGDEN, ESQ., M.P., TO THE COLONY.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 19th February, 1881.

We have the honor to request to be furnished with the particulars and details which respectively make up the following sums named in our Treasury voucher, P.W. 78/4689, under date 28th February, 1879:—

Auckland and Waikato: Newmarket–Mercer Contract, Auckland Station-ground, Auckland and Newmarket, Onehunga Branch ...	£267,848 15 7

—but, inasmuch as these are two separate accounts, we should be obliged by having the amounts appropriated respectively:—

Napier–Pakipaki	£61,904 2 7
Waitara–New Plymouth	48,825 14 2
Waitaki–Moeraki	177,901 7 4
Taieri Contract	186,580 1 5
Invercargill–Mataura	109,080 6 2

Also particulars of cash stated to be paid on account, viz.:—

Auckland and Waikato: Newmarket–Mercer Contract, Auckland Station-ground, Auckland to Newmarket, Onehunga Branch ...	£267,883 14 1

—but, inasmuch as these are two separate contracts, we should be obliged by having the amounts appropriated respectively:—

Taieri Contract	£185,773 8 3
Invercargill–Mataura	111,321 11 3

We should not trouble you but we are unable, from any previous information rendered by you, to make up or identify the different amounts; and, as they do not agree with those previously received, we are unable to examine their accuracy or to point out the discrepancies.

We have, &c.,

The Hon. the Minister for Public Works, Wellington. John Brogden and Sons.

The Hon. the Minister for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Public Works Office, Wellington, 3rd March, 1881.

I have the honor to acknowledge the receipt of your letter of the 19th ultimo, requesting that you may be furnished with the particulars and details which respectively make up certain sums named in a voucher indicated by you; and, in reply, to state that, having given the matter full consideration, I regret that I cannot comply with your request. Apart from the labour that would be entailed upon the department in supplying this information, I may remind you that the detailed accounts have already been furnished in respect of these contracts, and that you have preferred various claims against the Government based upon such accounts. Considering the relations between yourselves and the Government, and the position which the latter has taken in regard to your claims, I do not think it expedient or necessary that the desired details should be furnished.

Referring to the interview of your Mr. A. Brogden with myself a few days ago, at which certain proposals were made by him to the effect that your engineer should be permitted to accompany an officer appointed by the Government over the various works, and that they should together enter generally into a consideration of the several matters in dispute, I feel compelled to say that this proposal, and the others made at the same interview, would not in my opinion lead to any practical result.

I have, &c.,

Messrs. Brogden and Sons, &c., Wellington. R. Oliver.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 4th March, 1881.

We have the honor to acknowledge receipt of your letter of the 3rd instant, in reply to ours of the 19th ultimo. Our Mr. A. Brogden came out here with the view of promoting an amicable settlement of our outstanding accounts with the Government, and finds in the course of his examinations that the Treasury voucher alluded to in our letter of the 19th ultimo, and of which we ask for details, is the last of such statements received from the Government, and contains deductions and alterations altogether different from any previous statements, and, in particular, charges us with more than £2,000 cash in excess of the previous vouchers, without any such cash having been paid to us on our contracts, and more than we admit having received. The object of the inquiry was to obtain an explanation of these discrepancies and alterations, and we only regret that you do not feel it incumbent on you to have them cleared up at once.

It will be well to recapitulate the proposals made at the interview on the 26th ultimo between yourself and Mr. Brogden, in order that there may be no future mistake. Mr. Brogden proposed to go over the certificates of your Engineers with them, in order to point out items omitted to be certified, wrongly priced, or inaccurately measured: this, at least, would have cleared the ground of needless discussion. Upon your statement that you had engaged Mr. Higginson to go over the various contracts on behalf of the Government and report thereon, Mr. Brogden pointed out that such an investigation would be comparatively futile and valueless without the knowledge of what we had to say about the matters mentioned above, and offered to let one of our staff accompany Mr. Higginson for the purpose of giving him that information. And, further, Mr. Brogden proposed that the President of the Institution of Civil Engineers in London should be requested to name some competent person to come out and arbitrate between us upon all differences. It is manifestly not correct to say that any one of these proposals, if adopted, could lead to no "practical result;" and we now ask you to be good enough to inform us what you propose to do in order to promote, if possible, a friendly settlement of the outsanding accounts, as we cannot believe it to be the desire of the Government or the interest of the colony to allow them to remain unsettled. We shall be obliged by an early reply, and

The Hon. R. Oliver, We have, &c.,
Minister for Public Works, Wellington. John Brogden and Sons.

The Hon. the Minister for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Public Works Office, Wellington, 9th March, 1881.

In reply to your letter of the 4th instant, in which you point to a discrepancy of more than £2,000 between the vouchers of the 28th February, 1879, and previous vouchers, I have now the pleasure of enclosing a memorandum from the Accountant of this department, which I hope may have the effect of explaining the supposed discrepancy.

You say that Mr. A. Brogden has come to the colony for the purpose of promoting an amicable settlement of your outstanding accounts with the Government; and, on the part of the Government, I fully recognize the desirability of a friendly settlement of any matters which may be in dispute; but I cannot think that the course which you suggested at our interview is one which I can in the interests of the colony adopt.

Your agents have forwarded certain claims, and these claims you have varied from time to time. I gathered from your Mr. A. Brogden, at our interview, that some of these he does not intend to press, and that he acknowledges himself only very imperfectly informed and undecided as to the amount which he will eventually seek to recover. The position of the Government is that the colony has paid your firm every just claim, and owes you nothing. That being the case, I hope you will forgive me for pointing out that, before entertaining any proposals such as those to which you allude, the Government is entitled to have a full, definite, and exact statement of the claims which you desire to abide by, and which you will ask the Government to consider. I desire to point out that your Mr. A. Brogden is in error in supposing that I said at our interview that I had "engaged Mr. Higginson to go over the various contracts on behalf of the Government, and to report thereon." What I said was that Mr. Higginson, an engineer formerly in the employment of the Government, had called on me and informed me that Mr. A. Brogden had offered to engage his services in prosecuting your firm's claims, but that he had thought it his duty first to offer them to the Government, and that I had thereupon retained him. The fact is that up to this date, in the absence of specific information as to your claims, no duties have been assigned to Mr. Higginson, it being manifestly impossible at present to foresee where or in what manner that gentleman's services may be required. Under the circumstances, I think it my duty to say that this letter must not be understood as waiving any of the provisions of "The Government Contractors Arbitration Act, 1872."

I have, &c.,

Messrs. J. Brogden and Sons, Wellington. R. Oliver.

[Enclosure.]

The Under-Secretary Public Works.

I think Messrs. Brogden must have lost sight of the two amounts of £1,887 1s. 11d. and £300 paid to them as a bonus on Newmarket–Mercer and Taieri Contracts. These amounts form part of the total payments, £851,552 2s. 11d., shown on the voucher of £698 5s. 7d., to which Messrs. Brogden refer, and it is possible that the amounts are not shown as "contract" payments in Messrs. Brogden's books.

W. A. Thomas,
8th March, 1881. Accountant, Public Works.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 11th March, 1881.

We have the honor to acknowledge receipt of your letter of the 9th instant, for which we are obliged, and have forwarded under separate cover revised accounts of the following contracts:* Waitara–New Plymouth, Taieri Contract, Napier-Pakipaki, Clutha Platelaying, Kakanui and Island Creek Bridges. The remainder shall be forwarded in a few days; and when you have received them we shall be glad to hear further from you. We defer referring to the other subjects named in your letter; but with regard to the discrepancy in the money charged against us for our contracts for works we note the explanation that "it is for bonuses paid to us." As it is not therefore chargeable against sums due for works, we presume you will have the error corrected at once.

The Hon. R. Oliver, Minister for Public Works, Wellington.

We have, &c.,
John Brogden and Sons.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 14th March, 1881.

We have the honor to forward you under separate cover our claims on the contract for works, viz., Invercargill and Mataura Railway, Picton and Blenheim Railway, Newmarket–Mercer Railway, Auckland Station-ground, Auckland to Newmarket, Onehunga Branch. We have still to furnish you with the accounts for the Oamaru and Moeraki Railway, which will be ready in a few days. As you have now, however, all but this one, we think we are entitled to ask you to inform us what course you propose to adopt with reference to them.

The Hon. R. Oliver, Minister for Public Works, Wellington.

We have, &c.,
John Brogden and Sons.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Oamaru to Moeraki Railway, Moeraki Contract.

Sir,— Wellington, 23rd March, 1881.

We have the honor to enclose,* in accordance with the request in your letter of the 9th instant, account and particulars of the claims by us in respect of the Oamaru to Moeraki Railway, "Moeraki Contract," amounting to £225,438 9s. 7d., and which we ask the Government to consider. The reductions from the contract sum, according to Mr. Conyers's estimate of "value of works left unfinished," are £1,671 6s., and we estimate further reductions amounting to about £7,000; but we await particulars from the Government before adopting this amount. The amount of cash received on this contract was £152,928 4s. 11d., and a further sum of £4,233 6s. 7d., as shown on the statement of 28th February, 1879, leaving the cash actually received at £157,161 11s. 6d. We have charged the extra works at schedule prices where they can be applied.

The Hon. R. Oliver, Minister for Public Works, Wellington.

We have, &c.,
John Brogden and Sons.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 23rd March, 1881.

We have the honor to mention that we have now forwarded to you our claims in detail for works, &c., upon each of our contracts.

The amounts may be considered definite, but we reserve the right to alter the form and terms as may be necessary to meet any objections which the Government may make.

The Hon. R. Oliver, Minister for Public Works, Wellington.

We have, &c.,
John Brogden and Sons.

The Under-Secretary for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Wellington, 25th March, 1881.

In the absence of the Minister for Public Works, I have the honor to acknowledge the receipt of your letter of the 23rd instant, in which you state that you reserve the right to alter the form and terms of the claims you have sent in as you may find necessary.

I have, &c.,
John Knowles,
Under-Secretary for Public Works.

Messrs. J. Brogden and Sons, Wellington.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 25th March, 1881.

We have the honor to refer to a letter received from the Government (P.W. 76–5640), under date 12th March, 1877, which states that the Minister for Public Works directs that sums amounting to £3,325 5s. will require to be deducted from moneys due to us on account of certain penalties having been incurred on the Moeraki Contract, and Kakanui and Island Creek Bridges Contract.

We cannot recognize the right of the Government to make any such deduction, as the delays were caused entirely by the action of the Government, over which we had no control.

We give a few of our reasons for coming to this conclusion.

The earthwork in several positions was delayed for several months at the request of the Government, and delays have been occasioned by slips in cuttings, deviations of line, alterations, extras, and additions.

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* The claims of 1881, printed for use of the Government Law Officers.

The Kakanui and Island Creek Bridges were not ordered until May, 1874, and the Mill Stream Bridge not until 29th April, 1875, and there were several variations from the plans, ordered after the bridges had been commenced. The Kakanui Bridge was for a long time delayed waiting for the Engineer to decide on the foundations.

The detail drawings of the Otepopo Bridge were not received until August, 1875, and the mode of construction of the Waimotu Bridge was not decided on by the Engineer until October, 1875.

An extra bridge was ordered in October, 1876, and both earthwork and permanent-way were materially delayed on account of the Kaka Bridge, the last alteration for which we did not receive until 11th October 1876—nine months after the contract time had expired.

The deviation at Otepopo delayed the commencement of that portion of the work for five months.

The Government did not decide to line the tunnel at Otepopo until June, 1874, after which the material had to be prepared.

The platelaying and ballasting were delayed for several months for want of rolling-stock and permanent-way material which the Government should have supplied, and in February, 1876, we had to ask for six miles of rails and fastenings, which had not then been supplied to us.

In addition to the above, the extras and additions to the contracts would alone entitle us to more than twelve months' extension of time.

We do not burden you with further particulars, of which, however, we have a great number.

We have, therefore, to request that the amount withheld from us improperly as penalties be paid to us without delay.

We have, &c.,
JOHN BROGDEN AND SONS.

The Hon. R. Oliver, Minister for Public Works, Wellington.

MESSRS. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 5th April, 1881.

We have the honor to request a reply to that portion of our letter under date 14th March, wherein we ask you to inform us what course you propose to adopt with reference to the several accounts we have rendered.

We have, &c.,
JOHN BROGDEN AND SONS,
(*per* J. BILLING.)

The Hon. R. Oliver,
Minister for Public Works, Wellington.

The Hon. the MINISTER for PUBLIC WORKS to MESSRS. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 8th April, 1881.

I have the honor to acknowledge the receipt of your letters dated 14th and 23rd March, which were laid before me on my return to Wellington.

In your letter of the 23rd March I observe you state that your claims had been forwarded in detail, and that the amounts might be considered definite, although you reserved the right to alter the form and terms to meet any objections which the Government might make. This reservation deprives the claims (which you have submitted for the consideration of the Government) of that definite and final character which might reasonably be looked for under the circumstances. It amounts to a declaration that you may alter the nature of your claims, and shape them in any way you think fit to suit the exigencies of the moment.

That I am justified in this view is apparent from the fact that on the 25th March you forwarded a further claim, amounting to £3,325 5s.; and this gives rise to the supposition that there may be others of a like character which are now held in abeyance.

Under these circumstances I can only repeat the statement in my letter of the 9th February* last, viz., that before entertaining any proposals for examining your claims, or considering the propriety of waiving any of the provisions of "The Government Contractors Arbitration Act, 1872," the Government is entitled to have a full and final statement of the claims which you are prepared to abide by.

It will be for the Government then to say what claims they are prepared to consider; but it is clear that finality on your part must be a prior condition to the giving of that consideration by the Government which they may be willing to accord.

I have, &c.,
R. OLIVER.

Messrs. J. Brogden and Sons, Wellington.

MESSRS. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 9th April, 1881.

We have the honor to acknowledge the receipt of your letter of the 8th instant, in reply to ours of the 14th and 23rd March. Our letter of the 23rd ultimo stated that the definite amount of the claims on our various contracts was then sent in. We scarcely think you can have considered carefully our letter of the 25th March, and that to which it refers, as they relate only to cash retained by you for penalties, and not to any new claim; and in our letter of the 25th we gave you some particulars to show that you could not properly retain the cash for penalties, as the causes for the delay in completing the works arose from the Government, and not from us. When you render an account of the deductions you claim to make, there may be other explanations necessary to rebut them, and we think it would simplify matters greatly if you would have this account furnished to us at once.

We repeat that you now have our claims fully before you, but we cannot think that you intend to ask us to waive any right we may have to vary the form and mode of statement to meet any objections, technical or otherwise, which the Government may make use of, while at the same time the Government hold themselves free to avail themselves of all the advantages which they may possibly possess.

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* A clerical error probably, doubtless intended for the 9th March.

We believe that a fair consideration of the claims, with a view to an amicable settlement, would be in the interest of the Government as well as ourselves, and we therefore place no particular value on the mode of arriving at the settlement, if it can be done; but we must request that there be no delay in determining this point; and we, of course, in the meantime retain and reserve our other remedies.

We have, &c.,
JOHN BROGDEN AND SONS.

The Hon. R. Oliver,
Minister for Public Works, Wellington.

The Hon. the MINISTER for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 14th April, 1881.

I beg to acknowledge the receipt of your letter of 9th April, the terms of which I am sorry to say do not invest the claims which you have forwarded with the character of finality which, as I have already informed you, the Government consider themselves entitled to expect before entering on the consideration of them.

At present the Government have no reason other than the prosecution of your claim to suppose that the colony is at all indebted to your firm, and they think that whatever claims you may have must necessarily be capable of definite statement. Nor can the Government see that the duty devolves upon them of furnishing you with detailed accounts, the elements of which are entirely within your own knowledge.

A careful and thorough examination of the large claims which you have already preferred will, when undertaken by the Government, absorb much time and labour, and they object to entering on such a task until they have before them a statement, definite and final, of the character and extent of the claims to be examined.

You say that "you cannot think that I intend to ask you to waive any right you may have to vary the form and mode of statement of your claims to meet any objections, technical or otherwise, which the Government may make use of, while at the same time the Government hold themselves free to avail themselves of all the advantages which they may possibly possess."

In answer, I would direct your attention to clause 17 of "The Government Contractors Arbitration Act, 1872," which provides for the hearing of any reasonable application for leave to amend any statement of claim. If the Government, after receiving your final statement of claims, resolve to waive in respect of any or all of them the provision in the above-mentioned Act which limits the time during which such claims can be referred to arbitration, they will be bound equally with yourselves by clause 17 of the Act to which I refer.

I have, &c.,
R. OLIVER.

Messrs. J. Brogden and Sons, Wellington.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 14th April, 1881.

We beg to acknowledge receipt of your letter of to-day's date, P.W. 81–986, No 1605.

The accounts we have furnished you with are in every respect definite, and contain full particulars of every item for which claims are made. If any of them require further explanation we shall be glad to know which they are, and, as far as practicable, to comply with the request.

They are also final as to the amounts; and our reservation is to provide for such amendment of them as would be allowed in any Court of law during the proceedings to meet the counter-claims or objections from your side which might be presented and admitted, and which might necessarily entail the amendment of the mode of stating our claims.

We cannot deprive ourselves of this right by any consent.

We notice your reference to the 17th section of "The Government Contractors Arbitration Act, 1872," and also your suggestion that the Government might resolve to waive the limitation of time during which such claims could be referred to arbitration, and we presume that you are under the impression that we are unable to prosecute our claims except such as you may consent to receive under such a waiver. We beg to inform you that we do not so interpret the Act. It may be that our claims could not otherwise be arbitrated under the Act, although that is by no means clear; but it certainly places no such limitation on our receovery of moneys due to us under our contracts with the Government, which are under seal, and the claims under them run for a very much longer period.

As to the Government not being bound to furnish us with detailed accounts, we beg to refer you to the General Conditions of the contracts, which clearly puts the duty of giving particulars upon the Government or their Engineer, and to inform you that no such particulars have been given to us; and if you persist in saying that we have received such particulars we must request to be referred to the respective dates on which they have been so given.

We regret to perceive that the accounts furnished to you have not yet been examined. If you wish to ascertain whether the Government are indebted to us you must necessarily have this examination; and our suggestion to meet your Engineers, or any person you may appoint to go into them together, was intended to shorten and facilitate the proceedings. If our claims are not sustainable, that would soon appear, as would also the reverse of that proposition.

That, or recourse to legal proceedings, is the only way in which, in our opinion, it can be definitely shown whether you or we are right in our contention.

We have, &c.,
JOHN BROGDEN AND SONS.

The Hon. R. Oliver,
Minister for Public Works, Wellington.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 21st April, 1881.

We seem to have come to a deadlock, and fear we are only now losing time. You ask us for an assurance that the claims sent in to you are final, and we tell you that they are final as to the

amount, but they may have to be varied in the mode and terms of presenting them, and you reply that they are therefore not final, and on that view of the case you object to enter on an examination of them. Your statement that they have not the character of finality will not, excuse us for saying so, bear examination. If it has a meaning, it asks us to deprive ourselves of that which the law reserves to us, and probably such a consent would prevent our availing ourselves of the rights conferred under the 17th section of "The Government Contractors Arbitration Act, 1872," to which you refer us—*i.e.*, supposing that we proceeded under that Act, but we are advised not to do so unless the Act is amended so as to be in accordance with the contracts. We suppose, however, that it is of no use urging the point, as we cannot comply with your request, and in our opinion ought not to be asked to do so.

If the Government and we are to attempt to settle the disputes, you have the means of ascertaining the facts, and of dealing with us in reference thereto, and we beg to put on record that amicable settlement is what we wish for, and would make considerable sacrifices to effect, but if we are to abandon that idea we must try our rights. We therefore send you notice to arbitrate under the Invercargill and Mataura Contract, and wish to explain that the amounts we shall proceed to recover agree with the claim sent to you on the 14th March last, with the addition of those belonging to this contract and included in the claims sent to you on the 2nd ultimo, and of which the vouchers were tendered yesterday. This is an illustration of the necessity of reserving the right to change the mode of presenting the accounts.

As you are aware, we have already a Petition of Right signed on 2nd November, 1878, by His Excellency the then Governor of New Zealand relating to this case. We shall probably have to ask you if the Government will be good enough to advise His Excellency to grant us in lieu thereof a new Petition of Right based on our claims as now presented.

We could of course apply to the Court for leave to amend our particulars so as to accord with our present reduced claim, but it will avoid confusion if the petition deposited agrees with particulars on which we rely. The petition would be in all other respects similar to that now in our possession.

We have, &c.,

Hon. R. Oliver, Minister for Public Works. JOHN BROGDEN AND SONS.

MESSRS. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

Invercargill and Mataura Railway.

SIR,— Wellington, 21st April, 1881

We have the honor again to submit to you particulars of our claim against the Government of this colony under the contract dated the 10th August, 1872, entered into by us for the construction of the above-mentioned railway and the performance of the other works in connection therewith.

	£	s.	d.
In addition to the contract price of ... ... we claim to be paid the following sums, viz.:—	88,832	0	0
For extra works done and executed in and about the formation of the railway, the details of which are set out on pages 2 and 3 of the accompanying account*	15,323	2	8
For the cost of the station accommodation provided by us pursuant to the contract, as per details on page 4, and 10 per cent. thereon	15,601	10	6
For the miscellaneous items specified on page 5 of the accompanying acccount	8,853	13	0
For money paid for wharfage charges, Customs dues, railway fares, and sundries, as per details on pages 6 and 7 of the accompanying account	93	1	7

We further claim interest at the rate of 10 per cent. per annum on all the above-mentioned sums, or so much thereof as now remains unpaid from the respective dates when the same respectively became due and payable until payment.

The Government having refused to permit the Engineer under the contract to give his final certificate of the completion of the works, and having declined to satisfy our claim, we have no alternative but respectfully to request that you will accept this letter as a formal notice that disputes have arisen between us (the contractors) and the Government relative to certain of the subject-matters of the contract, and of our desire that the matters so in dispute may, after the expiration of one calendar month from the delivery hereof, be referred to the determination, arbitrament, and award of the Judge of the Supreme Court within which (*sic*) the works relative to which the disputes have arisen have been executed, in conformity with clause 32 of the General Conditions of the said contract.

The Hon. the Minister for Public Works, Wellington. We have, &c., JOHN BROGDEN AND SONS.

The ASSISTANT UNDER-SECRETARY for PUBLIC WORKS to MESSRS. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 26th April, 1881.

I am directed by the Minister for Public Works to ask you to be good enough to state whether you have any further claims against the Government besides those which you have already sent to him.

I have, &c.,

C. T. BENZONI,

Messrs. John Brogden and Sons, Wellington. Assistant Under-Secretary Public Works.

MESSRS. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Grey Street, Wellington, 27th April, 1881.

We have the honor to acknowledge the receipt of your letter of the 26th instant, P. W. 81–1380, No. 1721, and, in reply, to state again that the claims already forwarded to you, in accordance with your letter of the 9th ultimo, embrace the whole of our claims against the Government.

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* The claims of 1881, printed for the use of the Government Law Officers.

By reference to our letters of the 23rd March and 14th April, you will observe that we have in both letters notified you of this fact.

No amount is specified for interest, it being impossible to arrive at any sum until the amount of the claims is settled.

We have, &c.,

The Hon. the Minister for Public Works, Wellington. JOHN BROGDEN AND SONS.

The Hon. the MINISTER for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 28th April, 1881.

I have the honor to acknowledge receipt of your letter dated yesterday, in which you inform me that the claims already forwarded by you embrace the whole of your claims against the Government.

So far as I can gather from the previous correspondence, this is the first distinct intimation the Government has had as to the finality of your claims, and this being so, I am now prepared to enter upon an investigation of the several claims you have preferred. As already intimated, when this investigation is complete I will inform you of the course the Government is prepared to adopt.

It must be understood that this communication is subject to the same reservations on the part of the Government as have been contained in previous correspondence relating to your claims.

I have, &c.,

Messrs. Brogden and Sons, Wellington. R. OLIVER.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 29th April, 1881.

We have the honor to acknowledge the receipt of your letter P.W. 81–1402, No. 1786, of yesterday's date, for which we are obliged.

We have, &c.,

The Hon. the Minister for Public Works, Wellington. JOHN BROGDEN AND SONS.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

Grey Street, Wellington, 20th May, 1881.

SIR,— *Waitaki to Moeraki Railway.*

We have the honor again to submit to you particulars of our claim against the Government of this colony under the contract and supplemental contract, dated respectively the 19th July, 1873, and 8th July, 1875, entered into by us for the construction of the Oamaru to Moeraki Section of the above-mentioned railway, and the completion of the other works in connection therewith.

	£	s.	d.
In addition to the contract price of	135,550	0	0
Reduced by agreement to	132,434	6	9
we claim to be paid the following sums:—			
For extra works executed under special agreement of 8th July, 1875 ...	18,566	0	0
For extra works done and executed in and about the formation of the railway, the details of which are set out on pages 2 to 13 of the accompanying account*	46,071	1	8
For the cost of station accommodation provided by us pursuant to the contract, as per details on pages 14 to 17 of the accompanying account, and £10 per cent. thereon	15,397	15	11
For the miscellaneous items specified on page 17 of the accompanying account	12,969	5	3
For money paid for wharfage charges, telegrams, and sundries, as per details on page 17 of the accompanying account	109	10	10

We further claim interest at the rate of £10 per cent. per annum on all the above-mentioned sums, or on so much thereof as now remains unpaid, from the respective dates when the same respectively became due and payable until payment.

The Government having refused to permit the Engineer under the contract to grant his final certificate of the completion of the works, and having declined to satisfy our claims above stated, we have now respectfully to request you to accept this letter as a formal notice that disputes have arisen between us (the contractors) and the Government relative to certain of the subject-matters of the contract; and we beg hereby to express our desire and willingness that the matters so in dispute shall, after the expiration of one calendar month from the delivery of this letter, be referred in writing to the determination, arbitrament, and award of the Judge of the Supreme Court assigned to that judicial district of the Supreme Court within which the works relative to which the disputes have arisen have been executed, pursuant to and in conformity with clause 30 of the General Conditions of the said principal contract.

We have, &c.,

The Hon. the Minister for Public Works, Wellington. JOHN BROGDEN AND SONS.

NOTE.—*Letters in a form similar to the above, but in respect of the "Auckland Station," "Newmarket–Mercer," "Napier and Pakipaki," "Waitara and New Plymouth," "Picton and Blenheim," and "Taieri" (Dunedin–Clutha) Contracts, were addressed by Messrs. Brogden and Sons to the Hon. the Minister for Public Works on the 25th May.*

* The claims of 1881, printed for the use of the Government Law Officers.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 25th May, 1881.

We have the honor to forward you Petition of Right in the case of our Invercargill and Mataura Contract, as mentioned in our letter of 21st April, 1881, and to request that you will be good enough to inform us whether we shall receive this petition signed in exchange for that signed the 2nd November, 1878, or whether we shall have to rely upon the latter in the proceedings.

We have, &c.,

The Hon. the Minister for Public Works. John Brogden and Sons.

The Hon. the Minister for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Wellington, 3rd June, 1881.

I have the honor to acknowledge the receipt of your letter of the 25th May, in which you forward a Petition of Right in the case of your Invercargill and Mataura Contract, and request to be informed "whether you shall receive this petition signed in exchange for that signed November, 1878, or whether you shall have to rely upon the latter in the proceedings."

In reply, I beg to inform you that, having given your request full consideration, the Government have decided that the best course will be to allow you to amend your claim and file the old petition without any fresh consent.

I think it right to add that, in adopting this course, the Crown does not waive any of its rights under "The Government Contractors Arbitration Act, 1872," or otherwise; and also that, in the event of any petitions being presented with respect to the other claims you have preferred, the course to be taken by the Government will not be considered until the questions raised in the present case have been disposed of.

I have, &c.,

John Hall.

P.S. The Petition of Right forwarded in your letter of the 25th May is returned enclosed.

The Under-Secretary for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Wellington, 6th June, 1881.

I am directed by the Minister for Public Works to acknowledge the receipt of your letter of the 21st April, referring to your claims under the Invercargill–Mataura Railway Contract. As the Government understand that you have since that date determined to proceed with the Petition of Right which was signed by His Excellency the Governor in 1878, it is unnecessary to reply specially to your letter.

I have, &c.

John Knowles,

Messrs. J. Brogden and Sons, Wellington. Under-Secretary for Public Works.

The Under-Secretary for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Wellington, 6th June, 1881.

I am directed by the Hon. the Minister for Public Works to acknowledge receipt of your seven several communications, dated the 25th May last, covering accounts of claims made by you under your contracts with the Government, and to state that the delay in replying has been occasioned by the absence of the Hon. Mr. Hall from Wellington.

The Minister observes that you request the Government to accept your several letters as formal notices that disputes have arisen between you (as contractors) and the Government relative to certain subject-matters of the contracts, and that you express your desire and willingness that the matters so in dispute should, immediately after the expiration of one month from the delivery of your letters, be referred in writing to the arbitrament of the respective Judges of the Supreme Court assigned to those judicial districts of the Supreme Court within which the several works relative to which the several disputes have arisen have been executed, pursuant to and in conformity with clause 30 of the General Conditions of the principal contract.

The Minister gathers that the letters referred to are intended by you to operate as formal notices under a clause of the General Conditions of your contracts, and not under section 7 of "The Government Contractors Arbitration Act, 1872." I am directed to refer you to the provisions of section 3 of that Act, and to inform you that the Government do not admit the validity of your notices.

I am directed to state that the claims rendered by you, and the numerous items in the accounts attached to your letters referred to, must first receive careful examination and consideration by special officers of this department before the Government can be in a position to make a definite statement as to the course they will adopt upon each particular claim, and that such examination and consideration have already been commenced and will be pursued without unnecessary delay.

I am, however, to state that the Government neither admits any part of the claims, nor your right to advance and prosecute them; that this letter must be understood to be without prejudice to any defence which the Government may have to any of the claims; and that the Government specially reserve the full right to avail themselves of any of the provisions of the Government Contractors Arbitration Act.

I have, &c.,

John Knowles,

Messrs. J. Brogden and Sons, Wellington. Under-Secretary for Public Works.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 7th June, 1881.

We have the honor to acknowledge your letter of the 3rd June, and regret to perceive that every obstacle possible is to be put forward against the settlement of our claims.

We protest in the strongest manner against the arbitrary determination not even to consider the course the Government will take with the other petitions until that of the Invercargill and Mataura is disposed of.

It assumes that all the questions raised in the other petitions are identical with that one. We beg at once to state that they are not. We shall send in the petitions for signature, and we do not think the Government will, on reflection, feel themselves justified in closing the doors of justice to us or any other proper claimant.

We have, &c.,

The Hon. John Hall, Wellington. JOHN BROGDEN AND SONS.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Grey Street, Wellington, 7th June, 1881.

In reply to your letter of the 6th June, No. 2203, we have only to remark that it does not accurately represent the facts, as we applied on the 25th May for a Petition of Right, in accordance with the claims rendered on the 21st April under the Invercargill and Mataura Contract, and in exchange for that signed in 1878.

The refusal of the Government to the exchange obliged us to rely, therefore, on the earlier-dated petition.

We have, &c.,

The Hon. the Minister for Public Works, Wellington. JOHN BROGDEN AND SONS.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 7th June, 1881.

We have the honor to acknowledge the receipt of your letter No. 2204, of the 6th June.

Our notices to arbitrate are in accordance with our contracts, and are legal and proper, and we insist upon them as such.

The accounts referred to in them have been in the possession of the Government for three months, and we do not believe that any appreciable progress has been made in their examination; and we respectfully say that we have no confidence in such an examination, either as to accuracy or expedition. We even prefer the well-known delays of the law, where we at least have the advantage of being heard and of criticism.

We put forward our right to prosecute our claims as a right enjoyed by every one having even a *primâ facie* case, and shall not fail in our persistence to obtain our rights, notwithstanding the obstruction of the Government.

We have, &c.,

The Hon. the Minister for Public Works, Wellington. JOHN BROGDEN AND SONS.

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Wellington, 9th June, 1881

I am directed by the Minister for Public Works to acknowledge the receipt of your letter of the 7th instant, on the subject of your recent notices to arbitrate.

I have, &c.,

JOHN KNOWLES,

Messrs. J. Brogden and Sons, Wellington. Under-Secretary for Public Works.

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Wellington, 9th June, 1881.

I am directed by the Minister for Public Works to acknowledge the receipt of your letter of the 7th June, relative to the circumstances which you state oblige you to to rely on the earlier Petition of Right in the Invercargill and Mataura claim.

I have, &c.,

JOHN KNOWLES,

Messrs. J. Brogden and Sons, Wellington. Under-Secretary for Public Works.

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Wellington, 9th June, 1881.

I am directed by the Minister for Public Works to acknowledge the receipt of your letter of the 7th instant, in reference to the Petition of Right on your Invercargill and Mataura Contract, and am to state that the Government see no reason to alter the decision notified in the Minister's letter of the 3rd instant, to which your letter above mentioned is a reply.

I have, &c.,

JOHN KNOWLES,

Messrs. J. Brogden and Sons, Wellington. Under-Secretary for Public Works.

Mr. CAVE to Mr. BELL.

Wellington, 20th June, 1881.

SIR,— *Brogden* v. *Queen.*

Herewith I beg to hand you print of the amended Petition of Right herein. At the same time my clients desire me to repeat their offer to submit the disputes involved in the matter to arbitration, and to express their willingness to consent either to an order of reference under "The Supreme

Court Practice and Procedure Act Amendment Act, 1866," or to an arbitration to be conducted under "The Government Contractors Arbitration Act, 1872," provided certain amendments are first made in that Act. The principal amendments which I would suggest on Messrs. Brogden's behalf are—

Repeal section 4, which is practically inoperative, as it relates to disputes between the Engineer and contractor, which can only arise during the progress of the works.

Repeal section 8, which seems inconsistent with section 26.

Repeal sections 12, 13, and 14. Section 9 gives the Judge power to summon witnesses *at his discretion.*

Repeal sections 27, 28, and 29, and add a clause embodying such of the provisions relating to arbitration and references in the Supreme Court Practice, &c., Act, 1866, as are not inconsistent with the previous provisions of "The Government Contractors Arbitration Act, 1872."

Repeal section 31.

Add a clause negativing operation of Act as regards all future contracts, if any, between the Government and Messrs. Brogden.

Perhaps you will be good enough to consider this proposal, and let me hear from you thereon.

I have, &c.,

H. D. Bell, Esq., Crown Solicitor. CHARLES W. CAVE.

Mr. BELL to Mr. CAVE.

Brogden v. *Queen.—Invercargill and Mataura Contract.*

SIR,— Wellington, 30th June, 1881.

I am not prepared on behalf of the respondent to consent to an order of reference under the Supreme Court Practice and Procedure Acts, as suggested in your letter of the 20th instant.

In reply to that part of the same letter in which you suggest certain amendments to be made on Messrs. Brogden's behalf in "The Government Contractors Arbitration Act, 1872," I am directed to state that the Government see no reason to recommend Parliament to repeal any of the provisions of that Act.

This letter is without prejudice.

I have, &c.,
H. D. BELL,
Crown Solicitor.

Charles W. Cave, Esq., Solicitor, Wellington.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Grey Street, Wellington, 1st July, 1881.

We have the honor to forward you herewith Petitions of Right in respect of the following contracts, viz., Newmarket–Mercer, Auckland Station, Auckland to Newmarket, Onehunga Branch, Napier and Pakipaki, Dunedin and Clutha (Taieri Contract), Picton and Blenheim, and request that the Government will be good enough to recommend that they be indorsed by His Excellency the Governor.

We forward them notwithstanding your letter of the 3rd June, and we cannot believe the Government will refuse to allow us to bring these claims before the Courts of justice in the colony.

We have, &c.,

The Hon. the Minister for Public Works, Wellington. JOHN BROGDEN AND SONS.

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 13th July, 1881.

I am directed by the acting Minister for Public Works to acknowledge the receipt of your letter of the 1st July, in which you forward six Petitions of Right in respect of the contracts therein named, and request that His Excellency the Governor may be recommended to indorse the same.

In reply, I am to inform you that, having given your request due consideration, the Government do not see any reason for modifying their decision conveyed in the Acting Minister's letter of the 3rd June, and the six Petitions of Right above alluded to are therefore returned.

I have, &c.,

Messrs. John Brogden and Sons, Wellington. JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Grey Street, Wellington, 14th July, 1881,

We have the honor to acknowledge the receipt of your letter of yesterday's date, P.W. 81–2212, No. 2770, together with the Petitions of Right which were forwarded to the Government by us on the 1st July.

We may here mention that there are only five petitions returned, and not six as stated in your letter. We hold ourselves free to take any course we may be advised.

The Hon. the Minister for Public Works, Wellington.

We have, &c.,
JOHN BROGDEN AND SONS.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Grey Street, Wellington, 11th August, 1881.

We have the honor to refer to your letters of the 3rd June and 13th July last, as to the further Petitions of Right forwarded to you by us.

Seeing that the decision just given by his Honor Mr. Justice Richmond has affirmed that we are right in our mode of procedure, we think that you cannot reasonably or justly withhold these further Petitions of Right, and we beg to request that the Government will now advise the Governor to sign them. At the same time we are willing to agree that we shall delay taking any action under them until after the next sittings of the Court of Appeal have been held.

The Hon. the Minister for Public Works, Wellington. We have, &c., John Brogden and Sons.

Extract from the *New Zealand Times*, of the 13th August, 1881.

Messrs. Brogden's Claims.

Doubt existing as to the present position of the case of Brogden *v.* the Queen, in the Supreme Court, which came up on Wednesday, we publish the following: His Honor Mr. Justice Richmond delivered judgment, dismissing with costs, the motion made on behalf of the Crown to stay the proceedings pending in the Supreme Court, under the Petition of Right presented by the Messrs. Brogden, in which they claim a large sum for extra works, &c., in connection with their contract for the construction of the Invercargill–Mataura Railway. The contention for the Crown upon the argument was that the petitioners are, by the terms of "The Government Contractors Arbitration Act, 1872," bound to proceed under that Act, and not otherwise, to recover any moneys in respect of disputes or claims arising out of their contract. The affidavit filed in support of the motion stated that the moneys claimed by the petition were all claimed in respect of disputes under the contract. The affidavit filed for the petitioners, on the other hand, stated that a large part of the moneys was not the subject of such disputes.

His Honor said: I have come to the conclusion that I ought to refuse the application to stay the proceedings, not (*sic*, read *but*) simply upon the ground that from the affidavits it does not appear as an admitted fact that the moneys claimed by the petitioner are claimed in respect of the disputes defined in clause 32 of the General Conditions of the contract. I decline on that ground to exercise my discretionary power to stay the proceedings at this stage; but I purposely abstain from expressing any opinion upon the question whether the petitioners can proceed otherwise than under the Act of 1872, or upon any other questions raised in the argument. I dismiss this application with costs, the Crown to have two months' further time to plead.

Mr. Bell asked for leave to appeal, which was granted, his Honor, however, expressing a doubt whether the Court of appeal would review his decision, the matter being one within the discretion of the Judge.

Alexander Brogden, Esq., M.P., to the Hon. the Minister for Public Works.

Sir,— Wellington, 15th August, 1881.

I beg to refer you to a letter of the 11th instant, which I wrote in the name of the firm, as to the further Petitions of Right which were forwarded to the Government by us. I shall be much obliged if you will inform me if I am to expect an answer. The bearer will wait for a reply.

The Hon. John Hall, Acting Minister for Public Works, Wellington. I have, &c., Alex. Brogden.

The Under-Secretary for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Public Works Office, Wellington, 16th August, 1881.

I am directed by the Acting Minister for Public Works to inform you that, after consideration of your letter of the 11th instant, in which you request that the Government will now advise His Excellency the Governor to sign the Petitions of Right forwarded by you to the Minister on the 1st July last, the Government see no reason for altering the decision communicated to you in my letter of the 13th July. The Government are advised that his Honor Mr. Justice Richmond, in delivering his judgment upon the application to stay proceedings in your Petition of Right upon the Invercargill–Mataura claim, rested his decision solely upon the conflict as to facts apparent on the affidavits, and expressly abstained from deciding the question whether you can prosecute claims founded on alleged disputes under your contracts with the Government otherwise than under "The Government Contractors Arbitration Act, 1872." The Government are therefore unable to agree with your view that Mr. Justice Richmond's decision has affirmed that you are right in your mode of procedure.

I have, &c.,
John Knowles,
Under-Secretary for Public Works.

Messrs. J. Brogden and Sons, Wellington.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 18th August, 1881.

We have the honor to acknowledge the receipt of your letter of the 16th instant, in which you inform us that the Government see no reason for altering the decision communicated on the 13th July last. We have no wish to enter into a controversy in which, while we are convinced you are in error, we should fail to alter your views; but the true result of the judgment of his Honor Mr. Justice Richmond is seen in the fact that you have failed to restrain our proceeding with our suit, and we are now waiting the next step to be taken by the Crown Solicitor.

We think, however, that you will admit that we have a right to ask you, and to have your reply, as to the course the Government intend to pursue with the other Petitions of Right in the event of the

Court of Appeal deciding in our favour in this case. It is not a trifling matter, and the delay which has already occurred has caused serious loss and inconvenience to us, and has detained one of our firm in the colony for a very long time. The Government have rejected all our offers to promote an amicable settlement, and we cannot avoid recording our sense of the injustice of the effort now being made, whether successful or not, to set up a statute of limitations of six months against our claims.

With regard to our not presenting this petition as soon as it was signed by His Excellency the Governor, we have only to state that the peculiar provisions of the Government Contractors Arbitration Act required grave consideration, and our Mr. Alex. Brogden could not arrange to be absent from home until the middle of last year. The Government have, however, had substantially nearly all the claims before them since the end of the year 1876, and we are naturally surprised that they have taken no steps to investigate them until about two months ago. We therefore ask you to be good enough to inform us whether there is any reason other than that of the desire to compel us to proceed under the Act referred to, which actuates the Government in refusing to recommend His Excellency the Governor to sign our other Petitions of Right, and, if so, to be good enough to state what the reason is.

The Hon. the Minister for Public Works, Wellington.

We have, &c.,
JOHN BROGDEN AND SONS.

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 23rd August, 1881.

I have the honor, by direction of the Acting Minister for Public Works, to acknowledge the receipt of your letter of the 18th instant, in which you request to be informed what course the Government intend to pursue with the Petitions of Right forwarded by you to the Minister on the 1st July last, in the event of the Court of Appeal deciding in your favour the question of procedure.

In reply, I am directed to say that the Government cannot agree to state what course they may take in consequence of a possible judgment of the Court of Appeal until the Court has pronounced its decision.

In reply to that part of your letter in which you advert to loss and inconvenience suffered by you in consequence of delays which have occurred, I am directed to point out that the delay which has taken place in the presentation in a definite shape of your claims against the colony has not been occasioned by any act of the Government.

With reference to your request that you may be informed what are the reasons which have actuated the Government in returning your Petitions of Right, I am directed to reply that the Government do not feel called upon to state their reasons for refusing to recommend His Excellency the Governor to sign the necessary consents.

I have, &c.,
JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. J. Brogden and Sons, Wellington.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 25th August, 1881.

We have the honor to acknowledge the receipt of your letter of the 23rd instant. We submit that a curt and absolute refusal of any information on the various questions we put is not the answer we are entitled to expect. We have large claims against the colony, and have furnished particulars of the items for work done, and for which we have not been paid. Under ordinary circumstances we should have been entitled, upon showing the *bonâ fide* character of our claims, to have a Petition of Right, by means of which the Courts of law would pronounce judgment upon them.

The Government contend that the claims have to be settled under the conditions laid down in "The Government Contractors Arbitration Act, 1872," and by no other means. We contend otherwise, and that is practically what will have to be decided by the Courts of Appeal.

The defence set up by the Government is unusual, and quite out of the regular way. We ask that we may be informed what course the Government intend to take when this irregular defence is disposed of. If some other device is to be set up, we think we are entitled to know it.

We feel it necessary to state the real effect of the contention of the Government in reference to the Act. It is a veiled attempt to prevent us having any means of recovery of the moneys due to us, for if successful in compelling us to arbitrate under the Act—which, however, we do not anticipate—they would reply to any such arbitration, "It is too late to commence the proceedings, because they ought to have been commenced within six months from the time of the particular dispute."

We refrain from observations about the passing of the Act, or its correct interpretation or application, but we would point out that parliamentary paper E.–3, 1878, page 9, shows that certain sections, which are the disabling clauses, were added by the Solicitor-General without any communication with us or our solicitors; and, as the pages of *Hansard* and the newspaper referred to will show, no intimation was given either to the Ministers, or to the House of Representatives, or to us, that such important and improper additions had been made.

It is not correct to say that the delays are attributable to us. The accounts for nearly every contract were delivered in detail in May, 1876, and in the following months of December and January. If you will examine the accounts for works as rendered, you will find them practically the same now as then, the different sums appearing at various times being claims for interest and compensation. Every contract is a separate one, and particulars of six out of the ten contracts have been with you for five years, and the delay in dealing with them rests entirely with the Government. We therefore respectfully repeat our inquiry, and shall be glad if, upon further consideration, the Government will see their way to afford us the information we ask for.

The Hon. the Minister for Public Works, Wellington.

We have, &c.,
JOHN BROGDEN AND SONS.

The Under-Secretary for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Wellington, 29th August, 1881.

I am directed by the Acting Minister for Public Works to acknowledge the receipt of your letter, subject and date as noted in the margin (25th August), and to state that the same will be considered.

I have, &c.,
John Knowles,
Under-Secretary for Public Works.

Messrs. J. Brogden and Sons, Wellington.

The Under-Secretary for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Wellington, 24th September, 1881.

I am directed by the Acting Minister for Public Works to reply to your letter of the 25th instant, in which you again request to be informed what steps the Government propose to take in the event of certain questions being decided in a particular manner by the Court of Appeal.

I am to point out that your letter is practically a request to be informed what steps the Government have been advised by the Law Officers of the Crown to take in defence to the Invercargill–Mataura and Clutha Platelaying claims; the Government, therefore, adhere to the decision notified to you in my letter of the 23rd ultimo.

With reference to your observations on the subject of "The Government Contractors Arbitration Act, 1872," I am to remind you that the grave charges which on a former occasion your firm formulated in a letter to the Secretary of State for the Colonies, referring to the Act in question, were, upon investigation, entirely disproved; and the Government must decline to reopen the question, or to discuss the provisions of a statute which the Parliament of the colony has thought fit to pass.

I have, &c.,
John Knowles,
Under-Secretary for Public Works.

Messrs. J. Brogden and Sons, Wellington.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 7th October, 1881.

In acknowledging receipt of your letter of the 24th September, we beg to observe that our letter of the 25th August, and the correspondence immediately preceding it, did not refer to the Petitions of Right in the Invercargill–Mataura and Clutha Platelaying cases, but to the other Petitions of Right, which up to the present time have been refused to be granted to us; and we are unable to see how you could construe it into a request for information as to the defence in the two cases named.

We must further remark that we cannot accept your statement as to the investigation of the subject of "The Government Contractors Act, 1872." We are not aware of any other inquiry, except that which is stated in parliamentary paper E.–3, 1878, containing a correspondence between the legal advisers of the colony. It was to this document we referred in our letter of the 25th August, but it is an error to call this correspondence an investigation.

We observe that in the Invercargill case you charge us with having received £111,321 11s. 3d., notwithstanding the fact that in your voucher, February, 1879, you have deducted £2,241 5s. 1d. from moneys stated to be underpaid on the Napier, Moeraki, and Taieri Contracts, which you allege has been overpaid on the Invercargill Contract, and thus reducing the amount paid on this contract by that sum. You surely do not mean to make this money do duty twice over, but will now pay up the amount retained.

We have, &c.,
John Brogden and Sons.

The Hon. the Minister for Public Works, Wellington.

The Under-Secretary for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Public Works Office, Wellington, 22nd October, 1881.

I have the honor, by direction of the Acting Minister for Public Works, to inform you, in reply to your letter of the 7th instant, that the Government still consider that to supply the information requested in your letter of the 25th August would practically be to inform you of the advice which the Government have received from their Law Officers.

With reference to your observations that in the Invercargill and Mataura claim you are charged with having received £111,321 11s. 3d., though the Government have deducted from payments alleged to be due to you on other contracts the sum of £2,241 5s. 1d., I am to call your attention to the fact that the pleas pleaded on behalf of the Government to the Petition of Right on the Invercargill–Mataura Contract expressly aver that, by the payments made to you for which credit is claimed by the Government, you have been overpaid. I am further directed to say that the Government cannot enter into discussion upon the form or effect of pleadings in the proceedings pending in the Supreme Court.

I have, &c.,
J. Knowles,
Under-Secretary for Public Works.

Messrs. J. Brogden and Sons.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 11th November, 1881.

We have the honor to acknowledge the receipt of your letter of the 22nd ultimo.

As the time for the hearing of the Petition of Right on the Invercargill Contract is now so close at hand, we abstain at present from further correspondence on the other petitions.

With reference to the alleged overpayment on the Invercargill Contract, we beg to observe that you arbitrarily deducted, in February, 1879, from the moneys due to us, £2,241 5s. 1d. in respect of these alleged overpayments You now, in the accounts furnished, show an alleged overpayment of £1,224 8s. 5d., and not £2,241 5s. 1d., as deducted; but, nevertheless, you both retain the difference

and charge us with the full sum paid, as if no deductions had been made; and at the same time you deny us our Petition of Right in the other cases to recover the moneys deducted, as well as the other sums due. We have, &c.,

The Hon. the Minister for Public Works, Wellington. JOHN BROGDEN AND SONS.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 14th December, 1881.

Referring to your letter of the 6th June, in which you state that our accounts are being examined by special officers of the department, and, as now six months have elapsed, we have the honor to request to be informed whether you are yet in a position to deal with them, either wholly or in part, or to make any proposals with reference to a settlement of them.

Our Mr. A. Brogden has been now more than a year here, and we are fully prepared, by communication with your officers, by arbitration, or by any other amicable means, to establish our claims, or, if we fail in doing so, to withdraw them.

We have not had the opportunity previously, but now do so, of asking if anything was specially meant by your statement in the House of Representatives on the 21st September last, viz., "It is possible that the contractor may wish us to waive our technicalities, and to retain technicalities which may be to his advantage." If the remark was suggestive and hypothetical we have no observations to make, but, as far as we can remember, we have never been asked to waive any technicalities, nor have we set up any.

Again, with regard to the statement that the claims have grown from comparatively small to large amounts, we must repeat what we have said before that they have not so grown except by interest, which runs on under the contract until final payment, and that we are, and always have been, willing to adhere to the offers for settlement which we made in 1876, when our contracts were drawing to a close. We presume you refer to the offer to accept £42,000 contained in our letter of the 25th May, 1876, but if you will examine the letter you will see it only relates to contracts specially named. The accounts for the other contracts were not then rendered, and some of the works were not completed.

We write without prejudice to pending proceedings. We have, &c.,

The Hon. the Minister for Public Works. JOHN BROGDEN AND SONS.

Mr. CAVE to Mr. BELL.

DEAR SIR,— Wellington, New Zealand, 19th December, 1881.

Messrs. Brogden's Claims, Waitara and New Plymouth Contract.

My clients have instructed me to deliver a statement of claim in this case under the Government Contractors Arbitration Act. As the notices to arbitrate are applicable either under the arbitration clause in the contract or under the Act, I shall be glad to know whether you will accept the notice which has been given in this case as sufficient under section 7 of the Act. It would also, I think, facilitate matters if you were to inform me the position the Government will take up in reference to these proceedings, having regard particularly to section 31 of the Act, and the limitation of time imposed by that clause. Yours, &c.,

H. D. Bell, Esq., Crown Solicitor. CHARLES W. CAVE.

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 22nd December, 1881.

I have the honor, by the direction of the Acting Minister for Public Works, to acknowledge the receipt of your letter of the 14th instant.

I am directed to inform you that the special examination of the claims of your firm, which was promised in the letter of the 6th June last, to which you refer, was commenced some time since, and is still proceeding. That examination, however, was ordered and is being made for the information of the Government with respect to the claims now before the Supreme Court, and in preparation for possible litigation with respect to other claims.

The Government cannot make proposals with reference to your claims: they are, of course, bound by the contracts and by the laws of the colony, which affect the contractors. If you suggest that your claims can be settled otherwise than in the manner and within the time specially appointed by the Legislature for the purpose, then it appears to the Government that you should state the method which you propose should be adopted.

I am directed to inform you that the observations quoted by you from the Hon. Mr. Hall's speech in the House of Representatives on the 21st September last were not pointed to any particular proceedings taken by your firm. I have, &c.,

JOHN KNOWLES,

Messrs. John Brogden and Sons, Wellington. Under-Secretary for Public Works.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 30th December, 1881.

We have the honor to forward to you our statement of claim in regard to the Waitara and New Plymouth Railway Contract. We have, &c.,

The Hon. the Minister for Public Works, Wellington. JOHN BROGDEN AND SONS.

MESSRS. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Grey Street, Wellington, 3rd January, 1882.

We have the honor to acknowledge the receipt of your letter, P.W. 81–4247, No. 5037.

We do not at this moment reply to your letter, but, seeing that Mr. Higginson is in Wellington, we suggest that he be put into communication with us in regard to the Clutha Platelaying Contract.

We feel sure that on all questions of fact there could not be much difference between us, and evidence could be taken for the purpose of settling matters upon which legal difficulties might arise.

The Hon. the Minister for Public Works, Wellington.

We have, &c.,
JOHN BROGDEN AND SONS.

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 4th January, 1882.

I am directed by the Acting Minister for Public Works to acknowledge the receipt of your letter of yesterday's date referring to the Clutha Platelaying claim.

When the pleadings in the case of Smyth *v.* Queen come to issues of fact, the Government will consider the course which should be followed to have the facts correctly ascertained, but at present the Minister is advised that the judgment of the Court of Appeal lately delivered has declared your replications to some of the Government pleas to be bad in law, and that, until you have decided what course you will take consequent on that judgment, it is impossible to say what issues of fact will really arise. Under these circumstances the Government must postpone consideration of the suggestions made by you in the letter under reply.

I have, &c.,
JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. J. Brogden and Sons, Wellington.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 6th January, 1882.

We have the honor to acknowledge the receipt of your letter of the 4th instant, referring to the Clutha Platelaying claim.

We are advised that the pleadings in this case, which, so far as the suppliant is concerned, are complete, disclose what are the issues of facts between the parties; and that the next step, unless the respondent makes an application to amend the pleas, is the formal settlement by the Judge of the issues of facts for trial. My suggestion was made with the view of saving time, and possibly obviating the necessity for this formal proceeding.

We have, &c.,
JOHN BROGDEN AND SONS.

The Hon. the Minister for Public Works, Wellington.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 10th January, 1882.

In your letter of the 22nd ultimo you request us to state what method we can suggest by which our claims can be settled otherwise than in the manner and within the time specially appointed by the Legislature for the purpose. With regard to the method, we suggest the course which all ordinary business people would adopt, and which, in the end, will have practically to be adopted, viz., a comparison and inquiry between any person you may appoint and ourselves, so as to eliminate from the accounts all items about which there can be no possible reasonable dispute. As to many of the items in dispute, the discussion would no doubt diminish them by showing that we were wrong, or would establish them by convincing your appointee that the Government were wrong; and as to the remainder, we are agreeable either to refer them to the Judges of the Supreme Court in their respective districts, or some other arbitrator, or to a jury. On our part, we are quite prepared to waive all technicalities or formalities, only stipulating that, if the Government claim to correct any measurements or quantities of work done and previously certified and paid for, they should be called upon to show a *primâ facie* case, and bear the whole cost of our witnesses in support if they fail in establishing their claim. If they dispute only the principle of the payment, on the ground that it should be included in the contract price, we are content that the ordinary rule as to costs should apply. We should then expect the Government to dispense with technicalities and formalities on their side, and that the fact that the works were ordered and executed and accepted and enjoyed by the Government, and the reasonableness of the prices, should be the questions to be settled. There will be most probably some question of interpretation of clauses of the contract, which could be settled by an appeal to the Supreme Court. If we have omitted anything in this proposal which ought to be added, so as to give the fullest and fairest inquiry into the facts, it is unintentional on our part, and we will willingly consider any other suggestion.

On the second point, as to the time specially appointed by the Legislature within which these questions can be settled, we defer our reply until we see your answer to Mr. Cave's letter of the 19th ultimo. We beg again to observe that our object is to get at the facts, and to terminate, in the speediest manner, the legal technicalities and fallacies which have hitherto obscured them. With this view we will endeavour to co-operate with the Government in any way they may suggest, so as to save time and expense to all parties.

We are quite prepared to compromise for a specific sum, and to discuss the terms and mode of payment; but, before putting any such proposition forward, we must be informed whether the Government are prepared to deal with the matter in that way.

We have, &c.,
JOHN BROGDEN AND SONS.

The Hon. the Minister for Public Works, Wellington.

P.S. Mr. Brogden will very shortly return to England, and it is therefore necessary to lose no time in replying to this letter.

Mr. Bell to Mr. Cave.

Dear Sir,— 11th January, 1882.

Messrs. Brogden's Claims, Waitara–New Plymouth Contract.

You will remember that when I received your letter of the 19th December I informed you that the questions asked therein could not be answered by me, but must be considered by the Government, and that it would be impossible to give a reply until after the Christmas holidays.

Before such reply could be given, viz., on the 30th December, a statement of claim under the above contract was delivered by you, and I assume that this is intended as a preliminary to proceedings under the Act of 1872. As the Act allows only fourteen days for the delivery of propositions in reply to a claim, I think you must have anticipated that I should set up all legal defences available to the Government. The propositions of fact and law will be delivered to you to-morrow, under protest to the jurisdiction on various grounds, including the limitation defined by section 31 of the Act.

By delivering the statement without waiting for reply to your letter of the 13th December, you have practically asserted that your clients have a legal right to proceed to arbitration, whether the Government consent or not. In the course of the proceedings it will no doubt be finally ascertained and decided by the Courts of law whether you have such legal right, or whether, as we are advised, the Government have the power to prevent your proceeding at all. But so long as you deny the existence of the power, it is useless for the Government to consider how and to what extent they would choose to exercise it. Before anything in that direction is done, it is obvious the legal position should be determined. I cannot consent to accept any document previously delivered as a sufficient notice under section 7, as I am of opinion that no such notice has ever been given.

I have, &c.,

C. W. Cave, Esq. H. D. Bell.

Mr. Cave to Mr. Bell.

Dear Sir,— Wellington, 17th January, 1882.

Messrs. Brogden's Claims, Waitara and New Plymouth Railway.

Before filing in the Supreme Court the statement of claim under the above contract, I desire, on behalf of Messrs. Brogden, most distinctly to give notice that they do not intend, by the present proceedings under "The Government Contractors Arbitration Act, 1872," for the recovery of this particular claim, to waive their right in the course of any proceedings which have been or may be instituted by them for the recovery of their claims under any of their other railway contracts with the New Zealand Government to question and put in issue the validity of "The Government Contractors Arbitration Act, 1872," or the power of the Colonial Legislature to pass an Act dealing with Messrs. Brogden's rights under the contracts referred to in a manner repugnant to the laws of England, or otherwise prejudicially to affect those rights.

I shall be obliged if you will acknowledge the receipt of this letter.

Yours, &c.,

H. D. Bell, Esq., Crown Solicitor. Charles W. Cave.

The Under-Secretary for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Public Works Office, Wellington, 27th January, 1882.

I have the honor, by direction of the Acting Minister for Public Works, to reply to your letter of the 10th instant. The Minister is assured by the officers engaged in the investigation of your claims that the differences between yourselves and the Government on the great majority of the items are such that no practical advantage could be derived by either party to the disputes from the preliminary discussion which you suggest. The Government, therefore, seeing that there is no probability that the adoption of such a course would result in the elimination of any considerable number of items from the list of disputed claims, feel that to enter into the proposed comparison and discussion would be a waste of time.

The steps you have lately taken of filing the Waitara claim under the Act of 1872 will probably lead to an authoritative determination of the legal position of the Government as well as of yourselves under the contract. The Government are advised that they can insist upon certain legal conditions imposed by the contracts and by Parliament; but, as they are informed that you deny their right to do so, it would be premature to consider whether the Government will waive any such conditions so long as their right to rely upon them is contested.

Since the letter under reply was received, the Minister has concurred in proposals made by your Mr. Alex. Brogden for reference of certain matters of fact in the Clutha claim to an arbitrator, to be agreed on by the parties.

I have, &c.,

John Knowles,

Messrs. J. Brogden and Sons. Under-Secretary for Public Works.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 30th January, 1882.

We believe that the impression prevails that we have purposely kept back the prosecution of our demands, so that the staff of the Government officers who could examine and confute them would be dispersed, and the interest at 10 per cent. on the amount due to us might accumulate. Any person familiar with these matters will easily see how unfounded is such a statement.

The Government retain in their permanent service many of the staff engaged during the construction of the railways by us, while we have suffered by the death of Mr. Henderson, our principal witness, and are obliged at great expense to keep our officers together as far as we can, so as to be available when we can obtain an examination into the accounts, while many of them are now in distant

countries. This has cost us already a large sum of money, and the delay in going into the examination is, as the Government knows and possibly relies on, a considerable annual charge to us.

As to the delay being on our side, the correspondence, year by year, shows that we have always been demanding and urging an inquiry for the obvious reason that we wanted our money and also wished to wind up our affairs here. The 10-per-cent. interest secured by the contracts is no compensation to us for these losses and expenses.

Then the Government say we could have had this inquiry under the Contractors Act without delay, but did not avail ourselves of it. Let us examine this matter: the first intimation we or our agent here, Mr. Henderson, or Mr. James Brogden, ever had of the existence of the Contractors Act, 1872, was in January, 1877, after we had sent in our final accounts in respect of all our contracts excepting the Auckland and Oamaru cases. The startling character of the provisions of that Act, especially those limiting the time for arbitration to six months from the time when any particular dispute arose, and giving the arbitrator power to take unsworn evidence, without the opportunity of cross-examination, &c., quite overwhelmed our representative and took us equally by surprise. Notices to arbitrate were at once served by us, and the Government were asked to acknowledge that the notices were proper, but they refused to accept them as in order, and never intimated their willingness to waive the limitation of six months, and therefore retained the position at any moment to say that they relied on that limitation.

This Act was declared to have taken away our rights at common law and closed the Courts of justice to us. It was new to us and unexpected, and therefore we naturally strove to test our common-law rights before adopting any of its provisions, one of which is that, in respect of any matter in which we proceed under the Contractors Arbitration Act, we voluntarily give up any right of action at law. We therefore applied for and obtained in 1877 a Petition of Right to sue for the moneys unpaid to us on the Waitara Contract. To this the Government pleaded "The Government Contractors Arbitration Act, 1872," and the question would have been tried then, but the Government subsequently pleaded a further technical plea, arising out of a difference between the laws of England and the colony, and, although the difficulty was fully removed in substance, they insisted on maintaining their technical defence, to which we could not reply, and that action was thereby stopped, and we had to pay the costs.

We pressed for, and, finally, in November, 1878, obtained, another Petition of Right on the Invercargill Contract, to try the question. We endeavoured in the meantime to come to amicable terms of settlement, but subsequently the action was proceeded with by us with all expedition; but we could not obtain a hearing before the Court of Appeal until last November.

After this explanation we think no persons, especially those who, from their position in the Government or the public service, have the opportunity of informing themselves, can repeat the statement, obviously to our prejudice, that we have been keeping quiet with purpose and intent, while in fact all the time we have been pressing for an inquiry, but unable to enforce it from the want of the power to proceed until we had obtained the Petitions of Right.

Our demands for Petitions of Right in respect of our other contracts have been refused, even up to the present time; and we are therefore unable to take a step in regard to them unless we voluntarily go under the Act, and so, with the six months' limitation before us, practically abandon our rights.

It may seem extraordinary that we did not take steps to protect our interests while the Act was being passed, and remained ignorant of it for so long a time. Of our ignorance of it there is no doubt; and there is not much in that fact to occasion surprise, as it is essentially a private Act, and deals with no one but ourselves; but neither in New Zealand nor in England was any notice, such as is required in the case of private Bills, given to us. Its title is calculated to mislead, as it is called by the general term "The Government Contractors Arbitration Act," although it only applies to us, and not to the many other contractors with the Government, and its clauses were altered at the last moment in a manner materially affecting our interests and our position under the contracts, and this without any intimation to us or obtaining our consent.

It is not necessary to state that this was done designedly, but the fact that the Act closes the Courts of justice of the colony to us, and limits us to six months to go before the arbitrator, shows that we have suffered most grievous wrong by this kind of legislation, passed without consulting us and behind our backs.

With regard to the attempt to show that Mr. Travers, who was then acting as our solicitor, had notice of the introduction of the Bill, and should have watched its progress, we must take the exception that such a notice, even to a solicitor, unless he was specially authorized, would be insufficient; but Mr. Travers distinctly denies that he ever had such a notice, and the correspondence published in parliamentary paper E.–3, 1878, shows how unfair this statement is to him.

The draft of a general Bill, authorizing the Judges to act as arbitrators, and fixing the mode of procedure, was forwarded to him "as a matter of courtesy" (*see* Mr. Reid's letter E.–3, 1878, page 9), and on which he made some observations, but without any special reference to us or our contracts; it contained headings of twenty-two clauses, while the Act, as passed, had thirty-one, the objectionable clauses having been added by Mr. Reid, as he admits in his letter published in the parliamentary paper just referred to, page 9. Even the Minister, in introducing the Bill, appears to have been unaware of these alterations, as he never alluded to them, but said it was a Bill to carry out the arrangements which had been made with us for enabling the Judges to act as arbitrators. Our ignorance of the existence of the Act, and its effect upon us, is therefore to be accounted for by the misleading title under which it passed into law, and the concealment of the alterations made in our contracts by it.

We give this explanation to prevent any misconception of the facts.

We have, &c.,

The Hon. the Minister for Public Works. JOHN BROGDEN AND SONS.

The Under-Secretary for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Public Works Office, Wellington, 1st February, 1882.

I am directed by the Acting Minister for Public Works to acknowledge the receipt of your letter of the 30th January, and to state that the Minister will reply thereto as soon as he possibly can.

I have, &c.,
J. Knowles,
Under-Secretary for Public Works.

Messrs. J. Brogden and Sons, Wellington.

Messrs. Brogden and Sons to the Hon. the Minister for Public Works.

Sir,— Wellington, 15th February, 1882.

We have the honor to acknowledge the receipt of your letter of the 1st instant, promising a reply to ours of the 30th ultimo.

In continuation of our remarks on "The Government Contractors Arbitration Act, 1872," and its operation upon us, we wish now to show how the Government, who were not ignorant, as we were, of the passing of the Act, have acted in respect to it.

The clauses to which we object in the Act, added by Mr. Reid (now the Solicitor-General), were intended by him, as he says, "As to these clauses, they apply equally to the Government and the contractor" (*see* parliamentary paper E.-3, 1878, page 9), and therefore all deductions (involving any dispute) from the contract sums, or from amounts previously agreed upon and certified, or for any other purposes, if disputed, ought to have been claimed by the Government within the time and in the terms of the Act by which it is sought to bind us.

The fact is that, while seeking to apply the Act and its limitations to us, the Government have themselves utterly disregarded it. They have altered the certificates of their Engineers, and have made deductions from amounts previously certified and due, and have wrongfully retained moneys from some contract accounts in respect of claims of alleged overpayment on other contracts long after the six months had expired, and without any demand for arbitration or reference to the Act of 1872, and without condescending to furnish any particulars of the matters for which the deductions were made, and have even refused (*see* letter from the Minister, Mr. Oliver, 3rd March, 1881) to furnish the particulars when asked for in writing. They have on the Oamaru Contract deducted penalties (although their right to do so was disputed) for non-completion at the exact time originally fixed for completion in the contract, notwithstanding that they had in writing instructed us to suspend the works, and had not furnished the plans of bridges and other works to be constructed until long after the time fixed for completion, and during which they deduct the penalties; and, further, they had themselves delayed the completion by neglecting to give possession of the necessary land, and not furnishing the rolling-stock and permanent-way material according to contract; indeed they have acted towards us as if there were no such Act as "The Government Contractors Arbitration Act, 1872," and as if, at least, they were not called on to recognize it or apply the provisions of it to their use.

The balance due to us on our respective contracts amounts, according to the accounts we have rendered, to upwards of £250,000.

Of course the Government know that, quite outside of this balance due to us for works, we have sustained very heavy losses through the immigration contracts which we entered into solely at the desire of and under pressure from the then Government, and for which Dr. Featherston, the Agent-General, who was familiar with the whole subject, recommended that we should be compensated. (*See* his letters of 10th July, 1873, and 5th May, 1874.) That compensation has been refused to us.

But, at least, we are entitled to be paid for the works we have done for the Govenment. These consist of stations, bridges, fencing, sidings, earthworks, &c., &c., and we have given, in the detailed accounts furnished, the exact locality in which each piece of work is situated, and can now be seen, and the exact measurements and value of each.

The Government and the colony have adopted and are now using the respective railways and stations of which these works form part. It does, therefore, seem extraordinary that we cannot get paid for them—nay, cannot even get an open inquiry as to whether they have been done or not.

We think we have shown sufficient reasons to induce the Government to give this matter careful and immediate consideration, as it cannot remain longer in its present position.

The Hon. the Minister for Public Works, Wellington.

We have, &c.,
John Brogden and Sons.

The Under-Secretary for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Public Works Office, Wellington, 18th February, 1882.

I am directed by the Acting Minister for Public Works to acknowledge the receipt of your letter, subject and date as noted in the margin [15th February. Further *re* claims and "The Government Contractors Arbitration Act, 1872"], and to state that the same will be considered as soon as circumstances will permit.

I have, &c.,
John Knowles,
Under-Secretary for Public Works.

Messrs. J. Brogden and Sons, Wellington.

The Under-Secretary for Public Works to Messrs. Brogden and Sons.

Gentlemen,— Public Works Office, Wellington, 21st February, 1882.

I have now the honor, by direction of the Acting Minister for Public Works, to reply to your letter of the 30th ultimo.

With reference to the part of that letter in which you express your belief that certain impressions prevail as to the reasons which have influenced you in delaying the prosecution of your demands, and state that any person familiar with the matters will easily see how unfounded are such impressions, I am to say that the Minister is not aware why you should entertain such a belief, and that the Govern-

ment has no desire to enter into a discussion as to the reasons which have led to the postponement on your part.

In reply to your statement that the Government retain in their service many of the staff engaged during the construction of the railways, while you have suffered by the death of Mr. Henderson, your principal witness, and have been obliged, at great expense, to keep your other witnesses together, I am to remind you that the principal witness for the Government, Mr. Carruthers, is no longer in the Government service, and has left the colony; while your firm last year endeavoured to obtain the professional services of Mr. Higginson, a witness for the Government, second only in importance to Mr. Carruthers, and have now in your employment, as the Minister is informed, others who have formerly held positions in the Government service.

To your statement that your firm has always been demanding and urging an inquiry, I am to reply this is hardly consistent with the fact that from 1878 to 1881 nothing whatever was done by you, while you rejected the offers of the Government in 1877 to submit the matter in dispute for investigation and settlement in the manner provided by your contracts.

To your statement that notices to arbitrate were served by you in January, 1877, and that the Government were then asked to acknowledge that the notices were proper, but they refused to accept them as in order, and never intimated their willingness to waive the limitation of six months, I am to reply that you write under a strange misconception as to what really occurred in the year 1877.

On the 21st December, 1876, your firm, through your representative here, Mr. Henderson, delivered four notices to arbitrate upon your claims under the Waitara, Invercargill, Napier, and Picton Contracts. The notices were in form, and probably in effect, erroneous, because they were not in the form of a statement as provided by the Act of 1872. My letter to you of the 26th January, 1877, was in the following terms: "I am directed by the Hon. the Minister for Public Works to acknowledge the receipt of your four letters of the 21st December, severally giving notice of a dispute having arisen in respect of the contract entered into by Messrs. Brogden and Sons as regards the railways therein mentioned, the four railways being the Picton and Blenheim, the Napier and Pakipaki, the Waitara and New Plymouth, and the Invercargill and Mataura. The Minister intended to have deferred acknowledging the receipt of your letters as above until he was in a position to have gone fully and finally into the matter in dispute; but, after giving them such consideration as he is able, the Minister instructs me to inform you that he finds some of the matters in dispute cannot finally be fully investigated during the absence of the Engineer-in-Chief. On that officer's return, now shortly expected, a definite reply shall, however, be sent to you. Meanwhile, I am to state that it is not intended by this acknowledgment to waive any irregularity in the terms or form of the various notices you have given, nor to waive any right or privilege vested in or accorded to the Government or the Minister for Public Works under "The Government Contractors Arbitration Act, 1872."

The last clause of this letter may possibly be referred to and relied on by you as proving that, from the very first, the Government notified their intention to set up the bar of the time-limit prescribed by section 31. It can be proved that the Government of the day had no such intention, and that the general reference to the provisions of the Act was rendered necessary by your apparent endeavours to ignore them. Upon receipt of the letter Mr. Travers called upon the Solicitor-General, and the result of the interview was that Mr. Travers wrote the following (addressed to the Solicitor-General), 31st January, 1877:—

"With reference to the conversation between us at our yesterday's interview with respect to the claims of the Messrs. Brogden against the Government, I now beg to put in writing the course which I think would be most satisfactory to both parties, in the hope that it may meet the approval of the Government. Assuming that the Government will treat the existing notices as a sufficient compliance with the Act, Messrs. Brogden will at once file in the Court here their claim in respect of the Napier–Pakipaki line, with the propositions of law and fact in support of it. The Government will then file any counter-propositions. Before the Court is asked to appoint a day for hearing the matter, Mr. Henderson will be willing to meet the Engineer-in-Chief, and go through the claim for the purpose of eliminating all items in respect of which no dispute exists; or Mr. Henderson will meet Mr. Carruthers before the claim is filed, for the purpose of reducing it to the actual elements in dispute. When the latter have been ascertained by either of the above courses, issues could, with the sanction of the Judge, be drawn by you and myself, so as to raise all the questions involved in the dispute; and the decision of his Honor on these questions would guide both parties in regard to similar questions arising out of the other cases, either party being at liberty, however, to treat such questions as still open with respect to other lines. It is not my wish, acting for the Messrs. Brogden, to pursue these investigations in any spirit of hostility towards the Government, or in a manner likely to embarrass or inconvenience them; and I trust that the Government, on their part, will consent to carry on the proceedings with as much freedom from technical difficulties as may be consistent with their duty; I, on the part of the Messrs. Brogden, being quite willing to waive technical points in the course of the proceedings. I should be glad to have your views upon the above at your early convenience, this letter being, of course, without prejudice."

To the proposals thus made by your firm the Government agreed, as appears by Mr. Reid's letter to Mr. Travers of the 14th February, 1877, which was as follows:—

"I have the honor to acknowledge receipt of your letter of the 31st ultimo, respecting the submission to arbitration of Messrs. Brogden's claims against the Government, and, in reply, to inform you that the Government are prepared to adopt the course indicated in the letter above referred to. I think it will be more convenient that Mr. Henderson should meet the Engineer-in-Chief and settle the items in dispute before the claim is filed; and these gentlemen can arrange accordingly."

Preparations were made by the Government for immediate proceedings upon the basis thus agreed upon, and it was understood that the claims were to be finally investigated and disposed of, when you chose to repudiate the above arrangement, and wrote the letter of the 8th March, 1877. Of the nature and effect of that letter you are well aware; and I am to point out to you that it was by the act of your firm, and not by any act of the Government, that a judicial investigation and final

settlement of your claims was not effected in January, 1877, upon a basis, and following a procedure, proposed by your own legal adviser and accepted without even an alternative suggestion by the Government. And I am still further to remind you that, in his reply to the most unjustifiable and uncalled-for communication of the 8th March, 1877, Mr. Ormond, the then Minister for Public Works, used the following words: "On behalf of the Government I entirely disclaim any wish to embarrass you in taking proceedings under the Act of 1872. . . . To the course formerly proposed on your behalf, and assented to on behalf of the Government by the Solicitor-General, I am prepared to adhere; but I cannot consent to such terms for conducting the references as would preclude the Government from having a thorough investigation of the matters alleged to be in dispute."

On the 15th May, 1877, your solicitor, Mr. Travers, again wrote to the Solicitor-General, suggesting modifications of the previous agreement. You will find, on reference to Mr. Reid's reply of the 4th June, 1877, that he repeated the assurance contained in his letter of the 14th February that the the Government would carry on the then proposed proceedings with as much freedom from technical difficulties as was consistent with their duty. The Minister regrets that you should have thought it advisable to repeat a charge against the honor and good faith of the Parliament of the colony in relation to the passing of "The Government Contractors Arbitration Act, 1872," which, on a former occasion, was completely refuted by evidence of the most convincing character. You say that you have suffered most grievous wrong by this kind of legislation, passed without consulting you and behind your backs, and in the same sentence it is insinuated that the Act was passed with the design of materially affecting your interests and position without any intimation to you. The Minister feels it incumbent upon him to deny in the most emphatic manner both the statement and the insinuation. He accepts without question the assurance of the writer of the letter under reply that he was personally ignorant of the scope and intent of the Act; but it is a fact, which is capable of absolute proof, that both Mr. James Brogden, who was then the duly-authorized representative of your firm in the colony during the session of Parliament of 1872, and your solicitor, Mr. Travers, were then fully aware that the Act, in the form in which it now stands in the Statute-book of the colony, was being passed through Parliament.

I am to remind you of the following facts:—

1. The terms of the General Conditions of your contracts with the Government were drafted by the Government counsel, and settled by Mr. Travers on your behalf in the year 1872; Mr. James Brogden, a member of your firm, and fully accredited as the attorney and agent of the other members, being then in the colony and directly supervising everything done.

2. The main difference which arose on the settlement of such conditions was the question of arbitration. The Government wished the Engineer-in-Chief to be final arbiter, while Mr. James Brogden insisted on an independent referee.

3. Finally it was agreed that the Judge of the Supreme Court, within whose district the works under a contract were to be executed, should be the final arbiter. A memorandum to this effect was signed by the Minister and Mr. James Brogden.

4. It was obvious that legislation was necessary to give effect to this agreement. A provision for reference to a final arbiter named in the contract, and to no other, would be absurd, unless such arbiter was bound by statute to take the reference. It was also obviously necessary to confer on the Judges special powers when sitting as arbitrators.

5. Six of the contracts with your firm were signed on the 10th August, 1872. Mr. Travers was the attesting witness to Mr. James Brogden's signature for those contracts. At that very time he must have had in his possession a copy of the first revise of the Act, for only three days afterwards, on the 13th August, 1872, he wrote to the then Attorney-General, suggesting certain alterations in the Bill, which were in part adopted.

6. The Bill was introduced into the House of Representatives on the 16th August, 1872, and finally received the Governor's assent and became law on the 10th October, 1872. During the whole of that time Mr. James Brogden was in Wellington, and in constant attendance behind the chair of the Speaker of the House.

7. Between the dates of the first and second readings of the Bill in the House, the Fox Government resigned and the Stafford Government took office. Mr. Stafford moved the second reading of the Bill in a speech in which he said he did not approve it, but found that the Government was bound by an honorable obligation with the Messrs. Brogden to carry it through.

8. Mr. Stafford's speech is reported in *Hansard*. It was also reported in the *Wellington Independent* of the 21st September, 1872. If Mr. James Brogden did not hear the speech, he could hardly have missed the reference to his firm in the report in next morning's newspaper.

9. Your firm signed the three other contracts on the 19th June, 1873, ten months after the Act had been passed, and Mr. Henderson's signature, as your attorney, is attested by your solicitor, Mr. Travers. The three last, like the six first, contracts contained the condition for reference to a Judge of the Supreme Court as arbitrator, which Mr. Travers must have known had been rendered effectual by the Act of 1872. No objection whatever was then offered.

10. By section 31 of the Act the time within which you were entitled to refer disputes was not limited but extended. By the General Conditions of your contracts it was provided that you should give notices of any disputes within fourteen days after the delivery of an Engineer's certificate. By section 31 the fourteen days were extended to five months.

It is true that section 31 was not in the first revise seen by Mr. Travers, but that the form of a Bill should be altered both before and after its introduction into Parliament is quite a common occurrence. It is entirely incorrect to say that the addition was a breach of faith. The preamble of the Act recites that "It is expedient that provisions should be made for summary and final settlement of disputes," and, therefore, clause 31 was one which was quite in accord with the scope and intent of the Act. I am, however, to remind you that the charges which you made in 1877 and 1878 were not levelled at the addition, but at the whole of the Act itself, which you then alleged "was aimed directly against your contract rights, and placing or endeavouring to place you under heavy and serious disabilities," and had been passed "without your knowledge and consent, under colour of an arrangement

with yourselves." To that part of your letter in which you say that "The objectionable clauses were added by Reid, as he admits in his letter published in the parliamentary paper before referred to," I am to refer you to the long list of "objectionable" clauses which you selected in your previous letters to remind you that only one of such clauses, viz., section 31, was added by Mr. Reid, and to inform you that the Government see no reasonable ground for the complaint by you that that clause was added before the Bill was introduced into Parliament, and that they do not consider that anything which has been said or written on the subject has cast the smallest imputation upon the good faith of the Parliament of the colony, the Governments of 1872, or the Solicitor-General.

I am further to remind you that until the Government propositions of law and fact, in reply to the Waitara statement of claim filed by you under the Act of 1872, were delivered in January, 1882, the Government had never pleaded or made use of the provisions of section 31, which prescribes the limit of six months. But you formally pleaded and relied on the time-limit prescribed by that section in your replications to the Government pleas to the Waitara Petition of Right in October, 1877; that is to say, that in the same year in which you had asked the Government to waive the time-limit, and the Government had consented to your request, you endeavoured to avail yourselves of its provisions in the Supreme Court.

The Minister fails to see upon what grounds you can fairly complain if the Government follow the course which you elected to pursue in 1877, nor with what force you can attack the part of the Act of which you have yourselves made use in reply to the Government pleas.

I have, &c.,
JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. Brogden and Sons, Wellington.

The ASSISTANT UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 15th March, 1882.

I have now the honor, by direction of the Acting-Minister for Public Works, to reply to your letter of the 15th ultimo.

In Mr. Knowles's letter of the 21st ultimo the allegations now made by you with reference to the "Government Arbitration Act" were anticipated and refuted. A reference to that letter should prove to you that your statement, that the Government and yourselves were ignorant of the passing of the Act is entirely incorrect. It is for obvious reasons impossible for the Government, in the present position of the differences between your firm and the colony, to enter into a discussion as to the validity of the deductions which have been made on account of works omitted from your contract works, or on account of penalties. I am, however, to state that the Government does not admit the correctness of your statements or the justice of your contention. But I am again to point out that, had you not refused in 1877 to proceed with the investigation upon a basis which you yourselves had proposed, and to which the Government had assented, the grievances of which you now complain would then (if real) have been remedied.

The Government agree with you in your statement that you "are entitled to be paid for the works you have done for the Government." According to the Government accounts you have been paid all that is due to you for such works. I am to call your attention to the actual facts of the case.

Your six contracts of the 10th August, 1872, amounted to £560,446. Your three subsequent contracts of the 19th June, 1873, amounted to £249,750; total, £810,196. You have been paid by the colony in respect of these nine contracts the sum of £993,866 2s. 10d., or £183,670 2s. 10d. in excess of your total contract sums. Of this excess, the sum of £118,047 12s. 9d. was paid for station-accommodation, leaving a sum paid to you for extras (after allowing £65,900 10s. for deductions) of £131,523 0s. 1d.

You will remember that the first six contracts were arrived at upon calculations between your Mr. Henderson and the Engineer-in-Chief. On reference to those calculations we find that, out of £560,446, the total of the six contracts, no less than £133,106 8s. was allowed to you for profit, management, and contingencies. It may fairly be assumed that you derived a proportionate profit from the last three contracts.

A very large margin having been thus allowed in your contract sums for contingencies and profits, it appears to the Government that the sum of £131,523 0s. 1d. already paid to you for extras is rather a large than a small excess upon contract sums amounting to £810,196.

You will further remember that you were allowed a profit of 10 per cent. on all work done by you in station-accommodation.

Your claims in reference to the Immigration Contract have been presented by you on two occasions for the consideration of the Parliament of the colony. Two Committees of the House of Representatives have reported that you have no right whatever to compensation from the colony, and it has thereby been proved that your claim is an unreasonable one. I am to state that the immigration claim must be considered to be definitely disposed of.

I have, &c.,
CHAS. T. BENZONI,
Assistant Under-Secretary for Public Works.

Messrs. John Brogden and Sons,
Wellington.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 15th March, 1882.

We have the honor to acknowledge the receipt of your letter of the 21st ultimo.

In order to reply to the whole of your letter, we fear that we shall have to do so at considerable length. A few matters, however, may be disposed of shortly. Mr. Carruthers is and has been available for you at any time, and either could have been recalled here or examined by commission at Home. It is not correct to say that we endeavoured to deprive the Government of the services of Mr.

Higginson. When we applied to him, he was not in the Government service, but he very properly stated that he must first offer his services to the Government before he could be free to communicate with us. In our inquiry from him we paid the strictest regard to propriety and courtesy. Mr. Lawson, formerly Commissioner of Railways for the North Island, it is true is with us, as he was before he entered the Government service; but he never was connected with the construction of the railways, and has no particular knowledge of anything that occurred in that department. He is the only person to whom your remarks can be said to apply.

Then as to the time that elapsed between 1878 and 1881: You appear to ignore the fact that it was the *close* of the year 1878 when the Petition of Right was granted to us. Our Mr. A. Brogden came out here in 1880, and was here in that year; but the continued absence of the then Minister for Public Works from Wellington prevented communication with him until the first month of 1881.

We fail to see how, in our letter of 30th January, we had misconceived or misstated the circumstances which occurred in 1877. You admit that the remarks of the Minister in the letter of 26th January, 1877, would have covered the application at any stage of the proceedings, of the limitation of six months; but you say that it could be proved that it was not intended by the Government that the limitation should be enforced or other technical objections raised. We do not wish to controvert this statement, otherwise than to say that it is much to be regretted that this was not made more apparent to us and our representatives. In no case that we can refer to are any such admissions made without the concluding sentences of the letter being made to appear as if the whole of the admissions were cancelled and taken back. With reference to the letters which passed during 1877 between Mr. Travers and Mr. Reid, of the 31st January and 14th February, and again 15th May and 4th June, we beg to say that, in order to understand them properly, they must be read together; and Mr. Travers, in his letter of 15th May, writes: "Some doubt exists in the mind of their agent (J. B. and Sons) here, whether, in our former correspondence, you consented to waive any question of time under section 31. I have informed them that I understood you to have agreed, on the part of the Government, to do so; but it would be satisfactory to my clients if you would inform me if I rightly understood your assurance.

And Mr. Reid concludes his reply by stating that he could make no promise other than that contained in his letter of 14th February, which certainly contained no promise with reference to the six months' limitation, but left the Government free to enforce it if they thought it consistent with their duty to do so. So, therefore, whatever may have been the intention of the Government, they never distinctly gave any assurance that this 31st section, which undoubtedly was in contradiction to our contracts, would not be enforced. Mr. Ormond's letter of 19th March, 1877, also referred to by you, contains the following passage, in addition to those you have quoted: "I am advised that the Act only prescribes the necessary machinery for giving effect to the terms of the contracts entered into by your firm respecting the reference of disputes to Judges of the Supreme Court." And again, "I am advised that the request made by you to dispense with its provisions could not be entertained, and I am further advised that the admissions and consents you ask for are unreasonable, and such as the Government has no power to agree to." The conditions referred to as being unreasonable are that the disputes should go direct to the Judge, and not through the intermediate stages of a dispute with the Engineer, then to be referred to the Minister, who might have exhausted a large part of the six months before giving his decision; and the other was to restrain the use by the arbitrator of unsworn and *ex parte* evidence, which under clauses 12 and 13 were allowed. Thus, Mr. Ormond, therefore, clearly refused to state that the Government were prepared to waive the limitation of time or the other conditions asked for.

We beg to say most distinctly that we have made no charge against the good faith of the Parliament of New Zealand. We do not doubt that the Act of 1872 was passed by them without their being aware of the alteration it made in our contracts and in our relations with the Government, who, in this case, were one of the contracting parties, and were not, therefore, free to alter the terms of the contract without the knowledge and consent of the other party. Nor was it our intention to raise any such question in our letter of the 30th January. It was outside the argument we were addressing ourselves to, and that was all we intended to say; but we do deny that there is "absolute proof that either Mr. James Brogden or Mr. Travers were then fully aware that the Act in the form in which it now stands in the Statute-book of the colony was being passed through Parliament." Mr. James Brogden and Mr. Travers have both denied the statement, and you are aware of their denial; so that to reassert it in such a direct manner, without giving proof to substantiate your statement, is, we beg to say, a most unusual circumstance.

As to the facts, which you have stated *seriatim*, we may say that we accept those Nos. 1, 2, and 3 as substantially correct. No. 4 is not a statement of facts alone, but contains an argument which may be accepted by some but not by others; but an Act, such as is referred to, should have been confined to the object therein stated, viz., "to give effect to the agreement," and not to alter it. No. 5: We have only to refer you to our letter of the 30th January, and the parliamentary paper E.–3, 1878, on the last pages of which are stated the exact knowledge Mr. Travers had of the Act, and how he obtained it. The Act, as passed, is very different from the first revise submitted to Mr. Travers. Nos. 6, 7, and 8: The fact of Mr. James Brogden being in Wellington, and frequently at the House, and behind the Speaker's chair, would not make him acquainted with the contents of a Bill passing through the House, nor would the publication later on in *Hansard* of the speech of Mr. Stafford, or even in the *Wellington Independent*, necessarily be brought within his knowledge. Mr. James Brogden was occupied with obtaining information of the country through which the railways were to be made, and the prices of materials and labour. Even during the last session of Parliament a Bill passed both Houses containing clauses in which our firm are specially referred to, but it did not come to the knowledge of Mr. A. Brogden until the Act had passed. No. 9 is subject to the previous explanations. Mr. Travers was not aware of the Act, otherwise than as is stated in his letter, and the clauses added by Mr. Reid were not within his knowledge. No. 10: The ground upon which you defend the introduction of the limitation to six months is really too inconsistent with reason and fact to require much serious treatment by us. It requires a great amount of special pleading to make out that it is a

benefit to us to have a limitation of six months within which we could take any steps to recover moneys due to us, or to settle any disputes in the contract, instead of the full time we should have under our contracts.

The whole tenor of your letter under reply, as well as of all previous ones upon the subject, has been to defend the course taken by the Government in passing the Act, and to show that they had not insisted upon the limitation-of-time clause. According to your present reasoning, you ought to have claimed great merit in extending fourteen days to five (six ?) months; but of course the two matters are not analogous. The fourteen days relates only to progress payments (as is explicitly stated in the contracts), and the other to a final settlement of the accounts; and we have dealt at length on this matter only to show what a strained interpretation of the contracts you have to put forward in order to appear to justify, in the smallest degree, the passing of the Act and its effect upon the contracts.

You are obliged to admit that section 31 was not in the "revise" sent to Mr. Travers, neither was the alteration limiting the operation of the Act to us alone, nor any of the other clauses named in the letter of Mr. Reid, to which we have previously referred as being set out in full in parliamentary paper E.-3, 1878. Nor is there any inconsistency in our referring now to these clauses in particular, and not to the whole Act, as we have previously done.

We should weary with repetitions if on every occasion we went fully over all the objectionable features of the Act of 1872. Nor were the alterations made on the passing of the Bill through the House of Representatives, but they were made before the Bill was submitted to the House, and appear not to have been the subject of remark or explanation by any one, and certainly were never submitted to Mr. Travers or ourselves, or any notice given of them.

With regard to our having quoted and made use of certain sections of the Act in the pleadings in the petition on the Waitara and New Plymouth Contract, we confess ourselves surprised at the views you put forward. That petition was granted and obtained with the object of trying the question as to whether we were obliged to proceed under the "Contractors Act," or could recover, as our contracts provided, in the ordinary Courts of law. It was the Government who pleaded the Act of 1872 as a bar to our proceedings; and we, in reply, endeavoured to show that the Act was only optional, and had ceased to have any operation or effect. To do this we were obliged to refer to the Act and its clauses, and cannot be said to have made use of it for any other purpose than to show that we had only our common law rights to rely upon: no ingenuity can construe it into anything else.

Without making any charge of breach of faith, or saying harder things than are absolutely necessary, we think we have disposed of all your facts and arguments; and that the honor and good faith of the country are involved in correcting the injustice which has been caused by the passing of "The Contractors Act, 1872."

We have, &c.,

JOHN BROGDEN AND SONS.

The Hon. the Minister for Public Works.

MESSRS. BROGDEN AND SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington 18th March, 1882.

We have the honor to reply to letter of 15th instant, signed by the Assistant Under-Secretary, crossing ours of same date.

There is obviously some mistake in reading our letter of 15th February, as we have never stated that the Government, as well as ourselves, were ignorant of the passing of the Contractors Act. One letter expressly says that the Government were *not* ignorant of the passing of the Act. Nor have we entered upon a discussion as to the merits or validity of the deductions made by the Government, although we are quite prepared to do so. Our letter pointed out that the Government had ignored all the provisions of the Act, which Mr. Reid says was equally binding on them and us, and that they had acted as if no such Act existed.

As to the alleged refusal to proceed with a reference on terms proposed by us and assented to by the Government in 1877, we beg to refer you to our letter of the 15th instant, in which we have supplied quotations omitted by you from the letters of Mr. Ormond, Mr. Reid, and Mr. Travers, which show distinctly that we had not the opportunity of an investigation into our claims, except under the disability of having our claims barred by the clauses of the "Contractors Act."

We find, too, that from July, 1877, to August, 1878, Mr. Travers was in frequent communication with the Solicitor-General as to the withdrawal of the purely technical objection to the Waitara petition without being able to effect its withdrawal; and a reference to the letter from the Under-Secretary of Public Works Department, dated 17th October, 1878, shows that we were at last informed that we must depend upon the petition granted to us in the Invercargill Contract.

We observe that you repeat the statement that we have been paid for all the works we have done for the Government. If that statement be true, there can surely be no reason for refusing the investigation, and if it were so established we should have to bear the costs; but your continued refusal to have the investigation, and the very tedious and costly process you force us to take in order to compel it, are suggestive of a different conclusion.

We do not criticise too narrowly the accuracy of the figures you have quoted, in which you endeavour to make it appear that we have been paid a large sum for extra works. There is an error in the view you put forward, which we would point out, viz., that the reduction of the contract sum, estimated by you at £65,900, must be taken off the £131,523 (about one-half), the amount of the extra works—many of which are in substitution of the omitted works—and your arguments and inferences are proportionately diminished.

All the statements as to contingencies and management and profit could be equally answered if necessary. The sums estimated for contingencies were more than absorbed by the rise in wages and materials in the colony, owing mainly to the numerous contracts put into work at one time; and the management over works scattered in small lengths in different parts of the colony, and at that time, was necessarily very costly and difficult.

As to the Committee of the House having decided against our claims for compensation in respect of the Immigration Contract, we beg to observe that the report was that we had no claim, meaning—we suppose, legal claim, and not that the claim was unreasonable.

We have, &c.,
JOHN BROGDEN AND SONS.

The Hon. the Minister for Public Works.

The ASSISTANT UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 22nd March, 1882.

I am directed by the Acting Minister for Public Works to acknowledge the receipt of your letter of the 18th instant, having further reference to your claims, and in reply to inform you that most of the statements in your letter could be answered if necessary, but the Minister does not see that any useful purpose would be served by such a controversy.

I have, &c.,
CHARLES T. BENZONI,
Assistant Under-Secretary for Public Works.

Messrs. J. Brogden and Sons, Wellington.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 12th June, 1882.

Our attention has just been drawn to the enclosed telegram published in one of the Dunedin newspapers. As the statements are grossly inaccurate, we shall be glad to have your assurance that the information *did not* emanate from your department as stated, as we purpose to set the matter right through the same channel.

We have, &c.,
JOHN BROGDEN AND SONS,
(*per* J. LAWSON.)

The Hon. the Minister for Public Works, Wellington.

The following is the telegram referred to, taken from Dunedin *Morning Herald*:—

THE BROGDEN CLAIMS.

(Per Press Association.) Wellington, 7th June.

The Public Works Department supply the following particulars regarding the decision of the Appeal Court in the case of Smyth *v.* the Queen: The Messrs. Brogden claim £12,000 for extras. Of this, about £700 had been allowed and paid for by the Government in 1876. Of the balance, items amounting to £4,000 were referred to Mr. Scott, as arbitrator, who awarded less than £100, and as to that sum he stated questions of law. Items amounting to £8,000 were tried before Mr. Justice Richmond, who found against the suppliant on all items except one, amounting to £750, as to which he stated a question of law on the construction of the contract, not arising out of a technical objection. If, therefore, the Crown had waived all technicalities the suppliant would only have recovered £700 out of a total of £12,000, or about one-seventh of his claim.

The UNDER-SECRETARY for PUBLIC WORKS to Messrs. BROGDEN and SONS.

GENTLEMEN,— Public Works Office, Wellington, 12th June, 1882.

I am directed by the Minister for Public Works to acknowledge the receipt of your letter of this date, in which you request to be informed whether the telegram sent by the Press Agency on the 7th June, and therein enclosed, was furnished by the Public Works Department.

In reply, I am to state that the information was supplied for the Press by the Crown Solicitor, and that two errors appear in the print. Mr. Bell wrote that, of the items referred to Mr. Scott, less than "seven huundred," not less than "one hundred," had been awarded; and Mr. Bell also wrote that if the Crown had waived technicalities the suppliants would have recovered £700, about "one-seventeenth," not "one-seventh," of their claim.

The Minister is informed that Mr. Bell's memorandum for the Press was strictly accurate, and it is to be regretted that the Press should have misprinted it.

I have, &c.,
JOHN KNOWLES,
Under-Secretary for Public Works.

Messrs. J. Brogden and Sons, Wellington.

Messrs. BROGDEN and SONS to the Hon. the MINISTER for PUBLIC WORKS.

SIR,— Wellington, 13th June, 1882.

We have the honor to acknowledge the receipt of yours of yesterday's date, explaining that the Crown Solicitor's version of the result of the case of Smyth *v.* the Queen (as rendered to the Press Agency) was "strictly accurate," but that two errors appear in the print to which we drew your attention, viz., the substitution of £100 for £700 as Mr. Scott's award, and a statement that one-seventh, instead of one-seventeenth, of the total claim was inserted as the proportion recoverable in the event of the Crown waiving technicalities.

Accepting your explanation, we have still to complain that Mr. Bell's version is both inaccurate and unfair, inasmuch as he must have been aware that the amount above referred to, instead of being "less than £700," was actually £865. Mr. Justice Richmond's finding was for £1,250, and therefore, if the Crown waived all technicalities, the suppliant would have recovered £2,115, instead of the £700 stated.

We have, &c.,
JOHN BROGDEN AND SONS,
(*per* J. LAWSON.)

The Hon. the Minister for Public Works, Wellington.

APPENDIX B.

MESSRS. BROGDEN'S CLAIMS.

STATEMENT showing Amounts actually paid to Messrs. Brogden on their Six Railway Contracts of 10th August, 1872, and their Three Contracts of 19th July, 1873.

	£	s.	d.
Total of sums fixed by the several contracts for contract works ...	810,196	0	0
Total station accommodation	118,047	12	9
Total extras	129.335	18	2
Bonus, Auckland–Mercer Contract	1,887	1	11
Bonus, Taieri Contract	300	0	0
Amount paid for work on Auckland–Mercer Railway under provisional contract	16,697	2	6
	1,076,463	15	4
Total reductions	65,900	10	0
	£1,010,563	5	4

SCHEDULE showing Amount allowed Messrs. Brogden for Special Profit, Management, and Contingencies on the First Six Contracts, the figures being extracted from the Schedules agreed upon between Mr. Carruthers and Mr. Henderson (Messrs. Brogden's representative).

Name of Contract.	Contract Sum.			Profit.			Management.			Contingencies.			Total of Last Three Columns.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Auckland–Mercer ...	168,924	0	0	14,073	0	0	12,000	0	0	15,679	2	8	41,752	2	8
Napier–Pakipaki ...	49.345	0	0	4,391	0	0	2,500	0	0	3,188	3	0	10,079	3	0
Wellington	29,016	0	0	2,352	0	0	1,500	0	0	2,036	3	5	5,888	3	5
Picton–Blenheim ...	80,494	0	0	7,501	0	0	6,877	0	0	6,009	15	10	20,387	15	10
Taieri	143,835	0	0	10,591	0	0	8,079	0	0	11,127	10	11	29,797	10	11
Invercargill–Mataura ...	88,832	0	0	9,514	0	0	8,000	0	0	7,687	12	2	25,201	12	2
	560,446	0	0	48,422	0	0	38,956	0	0	45,728	8	0	133,106	8	0

COMPARATIVE SCHEDULE of PRICES between Messrs. Brogden's Invercargill Contract and other Contracts in same Locality.

Nature of Work.	Brogden's Contract.—August, 1872, to August, 1875.	Bennett's Winton No. 2.—, 1874, to January, 1876	Litton's Mataura Contract.—Feb., 1876, to Feb., 1877.	Blair's Winton No. 3.—March, 1876, to Sept., 1877.	Whitaker's Elbow Contract.—January, 1879, to July, 1880.	Whitaker's Gore Contract—January, 1879. to July, 1880.
	32½ p.c. added to this.					
Cutting, ordinary ...	1/3	1/2 and 1/3	1/3	1/3 to 1/5	...	...
„ long lead ...	1/8*	1/6	...	...	1/6	...
„ side ...	1/3	/10½ to 1/	1/1	1/3	1/	1/
„ solid rock ...	...	3/	...	...	...	...
„ loose rock ...	...	...	1/6	1/10	...	...
„ partly rock ...	...	...	...	...	...	1/8
Stream diversions ...	1/3	...	1/	1/	...	1/
Ditching	/7 to 2/	...	1/	1/	1/	1/
Felling	45/	...	...	...	...	...
Clearing	100/	...	10/	...	...	...
Grubbing	20/	...	...	10/	...	...
Level crossing, 1st class	£37 5 0	...	£40	...	...	...
„ 2nd „	53 17 6 / 21 17 6	...	£30	£40	£60 with C.S.	£60 with C.S.
„ 3rd „	39 13 6 / 7 13 6	100/	£20	£40	£60 „ „	...
„ private	...	70/	£8	£20	£15 without	£15 without
Metal or gravel ...	...	...	3/	9/	3/6	3/6
Excavation foundations	1/6	...	1/	1/3	1/	1/
Inlets and outlets ...	1/	...	1/	1/3	1/	1/
Timber, B.M. ...	30/	...	35/ and 50/	47/	34/	33/
„ ironbark ...	...	...	120/	100/	...	...
Piling	3/6	...	6/	5/6	4/ and 5/	4/ and 5/
Ironwork	/6	...	/9	/9	/6	/6
Rubble masonry ...	40/	...	40/	40/	40/	40/
Cattle-stops	£16	£4	£10	...	...	...
Gates, wood... ...	£11	£4	...	£15	...	...
Ballast	2/	...	...	...	1/10	1/9
Platelaying	1/3†	...	...	...	1/3	1/3
Points and crossings ...	...	...	...	...	£5	£5

* Special items inserted for plant have the effect of raising this to 1s. 11¾d. Furthermore, there is a margin of £2,135 on the total of the schedule.

† £500 in schedule for "loss."

APPENDIX C.

COMPARISON of PRICES in Messrs. Brogden's Taieri and Invercargill Contract with other Contracts let at about the same time.

Nature of Work,	Dunedin Contract.—A. J. Smyth. 1871–1872.	A. J. Smyth. 1871–1872.	Kaikorai Contract.—A. J. Smyth. 1872–1873.	Clutha Contract.—Blair and Watson. 1873–1874.	Timaru to Young's Creek Contract.—Allan and Stumbles. 1873–1874.	Cust River Contract.—E. G. Wright. 1873.	Brogden's Taieri Contract.—1872–1876.	Brogden's Invercargill Contract.—1872–1876.
Grading,—								
Cutting earth ...	1/4 c. y.	1/4 c. y.	1/4 c. y.	1/3 and 1/9 c. y.	1/6 c. y.	1/3 c. y.	/9 c. y.*	1/3 and 1/8 c. y.
„ rock ...	...	2/3 c. y.	...	...	...	...	4/6 c. y.*	...
Ditching	...	20/ chain	25/ chain	12/ chain	...	...	15/ chain	...
Road diversions ...	...	1/4 c. y.	1/6 c. y.	1/3 c. y.	...	...	1/3 c. y.	/9 c. y.
Metal	...	...	8/ c. y.	7/ c. y.	...	...	8/ c. y.	...
Tunnel	...	£9 l. y.	...	...	...	...	£36 l. y.	...
„ lining ...	...	£15 l. y.	...	...	...	...		...
Bridges and Culverts,—								
Excavation foundations	1/ c. y.	1/4 c. y.	1/6 c. y.	1/6 c. y.	...	...	1/6 c. y.	1/6 c. y.
Piling	...	...	...	3/4 l. ft.	6/6 l. ft.	...	4/ l. ft.	3/6 l. ft.
Timber	33/4 c.b.m.	33/4 c.b.m.	33/4 c.b.m.	27/9 c.b.m.	35/5 c.b.m.	...	30/ and 35/ c.b.m.	30/ c.b.m.
Iron in bolts, &c. ...	/6 lb.	/6 lb.	/6 lb.	/4½ lb.	/8 lb.	...	/6 lb.	/6 lb.
Masonry in lime ...	25/ and 27/ c. y.	27/ c. y.	...	...	...	...	25/ c. y.	...
„ in cement ...	30/ c. y.	30/ c. y.	30/ c. y.	...	...	...	30/ c. y.	40/ c. y.
Concrete	22/ and 26/ c. y.	...	35/ c. y.	...	...	...	30/ c. y.	...
Brickwork	40/ c. y.	...	...	...	...	...	40/ and 50/ c. y.	...
Puddle	3/ c. y.	...	...	...	...	...	5/ c. y.	6/ c. y.
Pitching	2/ and 7/ s. y.	5/ s. y.	4/6 s. y.	...	...	...	4/ s. y.	...
Fencing,—								
Fencing	30/9 to 34/6 chain	32/6 chain	35/ chain	14/6 and 20/ chain	47/6 chain	45/ chain	17/6 and 30/ chain	25/ chain
Permanent Way,—								
Ballast	...	...	...	...	2/4 c. y.	1/9 c. y.	3/3 c. y.	2/ c. y.
Platelaying	...	...	...	...	2/4 l. y.	1/8 l. y.	2/ l. y.	2/ l. y.†

* Plus, 3½d. to 11d., according to distance moved, for haulage.
† Laying, 1s. 3d., and boxing 9d.

APPENDIX D.

WAITAKI AND MOERAKI CONTRACT.

Original Contract:—		£	s.	d.
Contract sum		132,435	0	0
Additions		20,488	19	10
		152,923	19	10
Reductions* ...	£8,389 16 3			
Penalty	2,749 0 0			
	11,138	16	3	
				141,785 3 7
Moeraki Deviation Agreement:—				
Contract sum		18,566	0	0
Additions		3,670	18	3
		22,236	18	3
Reductions	1,091 14 0			
Penalty	256 5 0			
Maintenance not performed	160 0 0			
	1,507	19	0	
				20,728 19 3
				162,514 2 10
Payments on account of original contract ...		137,576	16	3
Payments on account of deviation ...		20,704	0	0
				158,280 16 3
Under-payment				£4,233 6 7

* Including Mr. Conyers's award for unfinished work.

The under-payment here shown was taken into account in a general statement of under- and over-payments in February, 1879, and the excess of the under-payments over the over-payments, £588 4s. 3d., together with interest at 10 per cent. from April, 1877, to February, 1879, £110 1s. 4d., was paid to the contractors in the following month.

APPENDIX E.

CORRESPONDENCE BETWEEN MESSRS. BROGDEN, HENDERSON, AND BILLING.

Wellington, N.Z., 10th February, 1877.

DEAR SIRS,— *Ourselves v. Government.*

As you are aware, immediately upon my return, I commenced serving the Government with notice of submission to arbitration relative to our claims for extras, all being done under advice of Mr. Travers. After two months you will see the Government have notified us in an indirect manner that our notices were informal, not being in accordance with an Act passed on the 10th October, 1872, called the Government Contractors Arbitration Act, of which I knew nothing. Mr. Travers then finds he has lost two months, and has to commence *de novo*.

Messrs. John Brogden and Sons, London. J. HENDERSON.

21, Queen Anne's Gate, Westminster, 5th April, 1877.

GENTLEMEN,—The only letters received by the Fr'isco mail, which arrived on the 27th ultimo, were one from Mr. Henderson, with enclosures, and one from Mr. Blaney, with the usual accounts.

We are very much disappointed at the absence of other information, as we are not able to write you so fully by this mail as we should otherwise have done. We note in this letter the principal points that strike us with reference to the matters named in the enclosures sent by Mr. Henderson.

We have perused the Government Contractors Arbitration Act of 1872, and compared it with our contracts, and we find there is a marked difference between them. This seems to us to be a very serious matter, and to be really *ex post facto* legislation. We do not see it stated in the Act itself that we have given any consent to the new conditions it contains, nor do we know that our consent has been given in any other way, and we are therefore at a loss to understand how we can be bound by them. Mr. Tahourdin is not at his office to-day, so that we are unable to send you his opinion; but we must urge this question upon the very careful attention of yourselves and Mr. Travers, as we look upon the difference in the contracts and this Act as a very serious matter, especially as the Government do not waive any right or privilege which they allege is vested in them by the Act. We shall write you further on the subject *viâ* Brindisi.

We note that a proposal has been made to the Solicitor-General, but no copy of it is enclosed, so that we are quite unable to judge of its contents. For J. BROGDEN AND SONS,

W. A. BROGDEN.

Messrs. J. Brogden and Sons, Wellington.

Wellington, 9th April, 1877.

* * * * * * *

Upon Mr. Henderson's return from Australia in December, he saw Mr. Travers respecting the course of procedure to be observed in sending in our claims, and Mr. Travers naturally took the arbitration clause of general conditions of our several contracts, being quite unaware at the time of the existence of the Government Contractors Arbitration Act of 1872 until his attention was called to it by the Solicitor-General in February last.

The Premier has apparently urged his colleagues to force us to go under the Act of 1872. Their letters show no concession, no compromise, but a rigid interpretation of every clause in that Act. On our part we cannot accept the Act for the reasons shown in our letter to Government of 8th ultimo. We are doing all we can to get redress or fairplay, but there is a desire to fence on their part, to keep us here dilly-dallying until Parliament meets. The stakes are too heavy to be trifled with, and I can assure you we are both perplexed as to what our course of action should be. Our letters to them have been couched in such terms as we thought would meet with your approval, and our recent course of action is in many respects similar to that taken by you in respect to Emigration Contract.

* * * * * * *

Messrs. J. Brogden and Sons, London. J. BILLING.

DEAR SIRS,— 21, Queen Anne's Gate, Westminster, 8th June, 1877.

From our previous letters, and those of Messrs. Tahourdin and Hargreaves, you will now thoroughly understand that the Government Contractors Arbitration Act does not bar the recovery of our claims under the general law and by the ordinary methods of procedure. It is merely an Act for regulating the method of proceeding if arbitration takes place, and its limitations merely apply to proceedings under that Act, should any be taken. As you have now refused arbitration under the Act, you will have to proceed under the ordinary laws, and will ignore the Act. This we think is made quite clear in the previous correspondence. At the same time we think you ought to lose no opportunity of enforcing upon the attention of the Government the injustice of withholding payments, and especially of retentions, which are not made because certificates are withheld by their Engineer, acting under their instructions. If an amicable settlement can be obtained, we are sure that we need not impress upon you its desirability, so as to avoid the great delays and expense of legislation. If the latter cannot be avoided, of course it will be conducted with a view to the proceedings being prosecuted here, should the decision be against us in the colony; and from this point of view alone you will see the necessity of keeping us fully informed of your proceedings in the colony.

For J. BROGDEN AND SONS.

Messrs. J. Brogden and Sons, Wellington (W. A. BROGDEN.)

APPENDIX F.

TELEGRAMS FROM CHAIRMAN, BROGDEN CLAIMS COMMITTEE, WITH REPLIES THERETO.

14th August, 1882.

W. REEVES, Esq., Christchurch.—I am directed to ask you to inform the Committee, by telegram, whether you remember the circumstances attending the passing of "The Government Contractors Arbitration Act, 1872," sufficiently to say whether or not Mr. James Brogden was fully acquainted with the provisions of the Act in the shape in which it finally passed. Sections 28 and 31 are alleged by Brogdens to have been introduced without their knowledge, whilst the Government side allege that Brogdens must have had full knowledge, but must have forgotten it. Please send collect telegram, of such length as you may deem necessary. E. C. J. STEVENS, Chairman.

Christchurch, 14th August, 1882.

HON. E. C. J. STEVENS, Chairman, Brogden Claims Committee.—Strong impression remains on my mind that Brogdens were well acquainted with all the provisions of Government Contractors Arbitration Bill. As long as I remained in office I took great interest in the Bill, which really originated with me; but Stafford Government, which followed, had to carry the Bill through the House. I am nearly sure they made no alterations in the Bill, and, that being so, am quite satisfied that James Brogden was fully acquainted with all its provisions, as he was very careful to study all measures affecting his interests. W. REEVES.

14th August, 1882.

J. HENRY LOWE, Esq., C.E., Dunedin.—I am directed to ask you to be good enough to inform the Committee, by wire, on the following points. Can you explain the circumstances under which the Oamaru-Moeraki Railway contract was taken over from Messrs Brogden and Sons, and whether penalties were exacted for non-completion of contract when the delays in carrying out such contract were caused by the action of the Government. E. C. J. STEVENS, Chairman.

Dunedin, 15th August, 1882.

HON. E. C. J. STEVENS, Chairman, Brogden Claims Committee, Wellington.—I know the circumstances of taking over Oamaru-Moeraki railway from contractors. Am not aware that penalties were exacted for non-completion of contract; but deductions were made for unfinished works, which was finished by Government afterwards. Am aware contractors allege delays were caused by Government, but not aware that they can prove it, nor that it was even admitted. J. HENRY LOWE.

14th August, 1882.

HON. E. RICHARDSON, Christchurch.—I am directed to ask you to be good enough to inform the Committee, by wire, on the following points: Can you explain the circumstances under which the Oamaru-Moeraki Railway Contract was taken over from Messrs. Brogden and Sons, and whether penalties were deducted for non-completion of contract when the delays in carrying out such contract were caused by the action of the Government? E. C. J. STEVENS, Chairman.

Christchurch, 15th August, 1882.

HON. E. C. J. STEVENS, Chairman, Brogden Claims Committee.—Not having the records of the Public Works Office to refer to, I cannot give you satisfactory answer to your inquiries of yesterday.

EDWD. RICHARDSON.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1882.