

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